



# PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

**AFTERNOON SESSION: 3.09 p.m. – 11.47 p.m.**

**Gibraltar, Thursday, 25th February 2021**

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# The Gibraltar Parliament

*The Parliament met at 3.09 p.m.*

[MR SPEAKER: Hon. M L Farrell BEM GMD RD JP *in the Chair*]

[CLERK TO THE PARLIAMENT: P E Martinez Esq *in attendance*]

## **Standing Order 7(1) suspended to proceed with Government Statement**

**Clerk:** Thursday, 25th February 2021, Meeting of Parliament.  
Suspension of Standing Orders. The Hon. the Chief Minister.

5 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I beg to move, under Standing Order 7(3), to suspend Standing Order 7(1) in order to proceed with a Government Statement.

**Mr Speaker:** Those in favour? (**Members:** Aye.) Those against? Carried.

## **Tribute to former Minister Hubert Corby**

10 **Chief Minister (Hon. F R Picardo):** Mr Speaker, before I address the House on matters related to updating on the COVID pandemic, we agreed last time, when we received late in the day of our last session ... that we would today have an opportunity to speak with a little more consideration about the sad passing of former Member of the House and former Minister the Hon. Hubert Corby.

15 I already said a few words at the last session, and I have had an opportunity since then to write to the family. Indeed, I have had an opportunity to reflect that, contrary to what I told the House last time, I was not a Member of the House at the same time as Hubert Corby was a Member of the House, but I sincerely thought that I was because, when I was a Member of the House, Hubert was still here, not sitting on these benches but he would come very regularly to sit in the Gallery. When I would pop downstairs for coffee he would invariably be there, and although we were on  
20 different sides in the sense that we were members of different political parties, he was invariably encouraging of me. I think it was the Hon. the Leader of the Opposition who said, last time, that Hubert was one of those people who was not a tribal politician, he had friendships across the floor of the House, even when he was active in politics, which he was very happy to promote.

25 I remember that when I was in opposition I would see him downstairs for coffee, or I would see him here, just across the Bar of the House, and he would often say to me, '*Sigue, niño, sigue,*' in his usual style. I remember that after a particularly hard, as they were in those days, session of the House with the Hon. the former Chief Minister having given me one of those hell-for-leather days which I consider to have been a part of my political apprenticeship – the other, of course, at the even less merciless hands of the former leader of my party, who would not forgive a mistake  
30 even today if he can avoid it, as hon. Members know – Hubert took me to one side as I was walking out of the House, put his arm around me and said to me, in punctilious Gibraltarian which I can still remember, '*No deje que te haga depressing pisha, Peter es así, pero no es malo,*' which loosely translated means, 'Do not let the bastard get you down,' or words to that effect, as they sounded to me at that time, (*Interjection*) although it certainly did not feel as if Peter was not bad then.

35 I am reminded that Hubert had cause to come and see me by the time I was Chief Minister. He called on me, and I remember saying to him, *‘¿Por qué no me dice “niño” ya?’* now that I was in office – ‘Why do you no longer call me *niño*?’ – and he replied with his usual flair and his usual joy and with a twinkle in his eye. Despite the difficulties and many issues he was facing, which were what brought him to see me, he looked me in the eye and said, *‘A tí, sí, te digo “niño” – al Chief*  
40 *Minister, no,’* – loosely translated as ‘Of course I call you “boy”, but not the Chief Minister.’ I do remember laughing very heartily with him as a result.

Mr Speaker, I certainly am greatly saddened also by the circumstances of his passing. As ever with Hubert, I know that his wish would be that the circumstances of his own death should not be in vain and that lessons should be learnt from it. I am sure the whole House will join me in  
45 expressing, once again, regret to see him go, as a former Member and as a friend to all of us, wherever we might sit on these benches.

**Mr Speaker:** The Hon. the Leader of the Opposition.

50 **Hon. K Azopardi:** Mr Speaker, I wholeheartedly associate myself with the remarks of the Chief Minister. On behalf of myself and everyone who sits on this side of the House will, I am sure, join me in associating myself with those remarks in support of the tribute to Hubert.

I first met Hubert when I was around 16, as a young tennis player at Sandpits. He was already a bit of a legend in racquet sports in Gibraltar, in tennis and squash. He was not involved in politics  
55 at that stage, but he was still at Barclays Bank; little did I know that, years later, we would be colleagues. He was someone who struck you immediately, despite the age difference, as someone who connected with all ages – encouraging, always able to speak on any issue of concern with anyone he met.

He was – as I said on the first occasion, where we had just a moment’s notice to reflect on  
60 Hubert passing – he was the epitome of someone who was not a tribal politician. In the early 1990s, when I had a fledgling first outing into politics, he was the kind of guy who would stop you in the street – I was not in the GSD then – to congratulate you on your opposite point of view. That is the kind of guy Hubert was.

Initially, when I did join the GSD, as he was 30 years older, he, in effect, took me under his  
65 wing. I remember one issue where the party decided to collect signatures on a particular matter and we went round the houses of Gibraltar, and Hubert asked me go along with him. I was just taken aback, really, by his natural style and ability to connect with people. I think the only time I saw him slightly put off his style and his natural ability was knocking on a door somewhere in the South District when an elderly lady opened the door and after we explained what we were there  
70 to do, to collect signatures, she turned to Hubert and asked him if we were from Sir Joshua Hassan’s party. He was slightly flummoxed at that moment, but then responded disarmingly and said to her, *‘No, but ... qué casa más bonita tiene usted’* and that immediately lead to an invitation into the House.

He also called me a *niño* in the GSD, and we grew quite close. The name stuck. Years later we  
75 found ourselves in government and he would still call me that, despite the fact that we were in government. I thought it was an affectionate referral and I was very close to Hubert. In government he was a formidable ally on particular issues, but with Hubert it was important always to understand that once his mind was set, it was set. So, if there were issues of contention and disagreement at Council of Ministers, it was always important to speak to Hubert and persuade  
80 him *before* his mind was set, because after that it was very difficult. But he was, when he was on your side on a particular issue, very formidable indeed and immovable. He was a real hawk on foreign relations, in the old, traditional sense.

I happened to speak to Hubert the day before he died. I was very shocked, as I think everyone  
85 in this House was shocked – as was his family, in fact – and my parting words to him, on the day before he died, when he rang me in the evening ... He asked me to call him again the following day and I said to him that I would. Mindful that I was in the House the next day, that was my

intention. It was a shock to hear in Parliament on the day I thought that after the session I was going to call him, he had passed.

90 Hubert was a loyal and generous man. He could connect with so many people. He gave so much of his time to this community, in the field particularly of his great interest in drugs rehabilitation. He worked very hard as Minister for Social Affairs in the first term, and thereafter as Minister for Employment and Consumer Affairs in the second term of the GSD. I spent my entire time in government with Hubert as a fellow colleague in government. He was able to add to that work in drugs rehabilitation when he was in government, and we did quite significant work. Also, his  
95 contribution in the reform of the Elderly Care Agency is something to be noted. When we were elected, Members and the public will remember that Mount Alvernia was run still by the trustees of the John Mackintosh Home and it was while Hubert was Minister for Social Affairs, and elderly care was his responsibility, that there were reforms in that area and he was able to spearhead those changes so that we set up the Elderly Care Agency and took over responsibility for that  
100 home.

After we both left Government we stayed in touch, and, common to the experience of the Chief Minister, indeed he would often stop you in the street and you felt as if you had never gone away. Hubert was always there when you needed him, as he was with so many people.

105 He is now with his beloved Mariola. Rest in peace, and our condolences to his family. (*Banging on desks*)

**Mr Speaker:** The Hon. Marlene Hassan Nahon.

**Hon. Ms M D Hassan Nahon:** Mr Speaker, thank you.

110 I, too, would like to echo the tributes paid by the Chief Minister and the Leader of the Opposition to the late Mr Hubert Corby. Today, we are paying tribute to one of our own, a former Member of this House, and it is important, I think, that we reflect on his finest qualities and the legacy that he leaves, so that we can be inspired to continue this legacy and learn from his example.

115 I personally did not have the honour of having a close rapport with Mr Corby, nor was I around to witness first hand his achievements in front-line politics. However, over the years it became known to me, from hearing everyone talking about this man, that he was respected and admired for his constructive and collegiate approach with his fellow parliamentarians. He was known to be open, helpful, mindful and always eager to foster unity in this Chamber, whether he was in  
120 government or in opposition. This attitude, in my opinion, points to two very valuable and rare qualities, the first being that he was a man who had the humility to accept the point of view of others, and the second being that he had the generosity to put the greater good in front of party allegiances and egos. I believe, here today, that we should all take a leaf out of this man's book in the way we treat each other and in our readiness to work together to achieve common goals.

125 Outside of the House, this man was known for his kindness and the generosity of spirit he had, as well as for his groundbreaking policies in the delivery of mental health and drug addiction services, where he implemented his vision to focus on rehabilitation rather than criminalisation. Twenty years later, for example, Bruce's Farm is still the go-to place for drug addiction and rehabilitation, and so many people's lives have improved thanks to this facility and this man's  
130 vision.

Mr Speaker, I will not repeat the achievements of Mr Hubert Corby reflected here today, other than to thank Mr Corby for his fine service to Gibraltar, praise his many achievements and remind the House that it is incumbent on all of us to uphold the values and good work of this great man. I pass my sincere condolences to his family.

135 Thank you, Mr Speaker.

**Mr Speaker:** The Hon. Sir Joe Bossano.

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**Minister for Economic Development, Enterprise, Telecommunications and the Gibraltar Savings Bank (Hon. Sir J J Bossano):** Mr Speaker, in my case, in joining other Members I have to say that my friendship with Hubert predated his entry into politics. We went back to the days when he was in Barclays Bank and when members of Barclays Bank were members of the ACTSS (Association of Clerical Technical and Supervisory Staff), the white-collar branch of the union. He was also a personal friend, because his wife, Mariola, and my wife were very close friends. The fact that eventually he was representing a different political party made absolutely no difference to the relationship we had as two closely related families and the many things we shared, and indeed the fact that some members of the family were in the GSLP and others were not. Politics was never, for him, something that divided people; it was just something that allowed people to have different views about what was the best thing for Gibraltar.

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Certainly his commitment not to give an inch of Gibraltar to our neighbour was something that he kept alive all his life, right up to a week before we lost him when he rang me out of the blue and told me to scrutinise every comma and full stop in anything we did with Spain because we could not trust them an inch. I think that is the kind of hawk the Hon. Leader of the Opposition was referring to. It was a hawk that it was better not to be mistaken in thinking that the regime on the other side is going to change permanently when we see, in fact, the forces are playing in their political scene – what has happened with Vox in Cataluña, of all places, is something that might have wider repercussions on some future elections, and we therefore need to be permanently on our guard.

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I think there is nothing better that one can say to the memory of our dear Hubert than we will all be as vigilant as he was while he had the responsibility as a Member of this Parliament and a Member of a Government of Gibraltar. A truly devoted Gibraltarian, we will miss him. I still cannot get used to the idea that he is not with us anymore.

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**Mr Speaker:** The Hon. Daniel Feetham? No.  
The Hon. Edwin Reyes.

**Hon. E J Reyes:** Thank you, Mr Speaker.

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Very similar to what the Father of the House has just said, my first recollections of Hubert were well before he ever joined Parliament. I lived in Alameda House, in Alameda Estate, and he was a regular visitor there, visiting his elderly relatives who lived in that same block. But then, as a very young teenager I remember having seen Hubert playing on the tennis courts at Sandpits in the days when they were still clay courts, and the powerful shots were something that really impressed any sports-loving youngster. I remember Hubert was the talk of the town for a long time: he was the first Gibraltarian to own one of those Wilson steel racquets that had two bars. As young teenagers, we all aspired to one day owning that racket – perhaps it would make us as good a player as Hubert.

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Another thing that one remembers about Hubert ... I hope I am correct in saying he was a teetotaler. After a game of tennis, many people used to meet up for a chit-chat in the clubhouse, and the beer and so on would flow. Hubert always insisted that he wanted a Coke, one of those things that, especially when you are young ... As a tennis champion, he became a role model: you did not need to be into alcoholic drinks to be as good a player as Hubert.

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Like the Father of the House has reminded us, he was a manager in Barclays Bank, and whether you were a big client or just a very small client with a small current account, he was always charming to each and every client that came to his bank. And he was always wise. That word '*niño*' – although he did not use it as often with me, I remember hearing him some days saying, '*Niño*, open a savings account and start to put in there, because you never know what is going to happen next year, and if you do not need the money then you can go on holiday.' There was always father-like advice.

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195 But Hubert's biggest impact came from his contributions and his commitment to drug rehabilitation, as has been mentioned in the House. He was certainly instrumental in obtaining the premises for what today we know Bruce's Farm. Before that, I had developed a type of friendship with him where I allowed him to use certain premises in my days when I was a cleric in St Theresa's Church, and Hubert's courtesy and generosity in dealing with everyone was certainly something to be admired.

200 It got to a stage when it was a special wedding anniversary for him and Mariola and he said, 'Because we are older and because so many things are happening in the world, I think we should set an example,' and he went through an ecclesiastical ceremony, a renewal of vows with Mariola. I wish Hubert and Mariola the best of happiness in eternity together, and one day, when I join them, perhaps we can do, once again, that ceremony and that renewal of vows.

Thank you, Mr Speaker.

205 **Mr Speaker:** The Hon. the Chief Minister.

**Hon. Chief Minister:** Mr Speaker, I now invite the House to join me in a minute's silence for Hubert Corby.

*The House observed a minute's silence.*

**COVID-19 update –  
Statement by the Chief Minister**

210 **Chief Minister (Hon. F R Picardo):** Mr Speaker, it has been a pleasure to work with those who were members of the COVID Platinum Executive Committee. We have worked as a team at the most difficult periods of the pandemic. I have, however, been particularly pleased to be able to disband COVID Platinum yesterday.

215 As at today, there is one case reported of COVID-19 in our community after 888 tests were carried out yesterday. There are only 20 active cases in our community and we have seen that the number of people in St Bernard's Hospital has been greatly reduced. Overnight, there have been no new admissions to our Critical Care Unit. There has been one discharge from Victoria Ward and no further admissions. The overall picture now is, therefore, three patients in the Critical Care Unit with the three of them ventilated, and only one patient on the Victoria Ward – and that patient, I am very pleased to say, is stable. So, it is with great pleasure that it is possible for me to confirm to the House that Gibraltar will step down from its major incident posture, one that we have held for over two months, at 6 a.m. on Monday, 1st March. As from that date, all of our catering establishments will be free to open once again.

225 We do still have to remain vigilant, and for that reason we will need to have certain constraints on the operation of our catering establishments. All staff in catering establishments will be required to wear double masks for the 30 days of March. The international evidence suggests that double masking reduces even further the possibility of the spreading of the virus by up to 95%, and given the demographic nature of the staff of most of our catering establishments, and the fact that they will not have the benefit of full immunity from vaccination in the early days of the reopening of our catering establishments, we have decided that the staff will have to double mask for the first 30 days.

230 In order to assist all our catering establishments, the curfew rules will change as from 1st March and it will no longer be a curfew from 10 p.m. to 6 p.m. Instead, the curfew will be from midnight to 6 a.m. every day, at least for the first 14 days of March.

The total number of people who will be able to gather in one place will remain 12 for the first 14 days of March at least, and in our catering establishments we will introduce a rule of six, so

235 that the maximum number of people who will be able to book a table or sit at a table will be six.  
In order to ensure that we do not see great accumulations of people and the loss of inhibitions,  
which can lead to behaviour that is more conducive to a lack of social distancing, there will be a  
temporary control on licensing hours, so that there will be no alcohol sales between 3 p.m. and  
7 p.m. in any catering establishment in the month of March.

240 This is the balance that we are trying to do, to enable our catering establishments to remain  
open later and to be able to offer a greater service to the public whilst at the same time not having  
the difficulties that we can have if we open our catering establishments and we permit business  
as usual. The curfew and the control of licensing hours will be reviewed after the first 14 days of  
March. Additionally, during the first 14 days of the month, only table service will be permitted.

245 The epidemiological advice that we have tells us that the prevalence of the virus worldwide is  
in decline, at last. We may be at the beginning of the end at last, and we may be seeing an end to  
this dreadful virus at last. The Public Health advice is now that it is safe for people to return to  
their offices, so long as they observe the basic rules of social distancing, wearing masks where  
required and hand hygiene.

250 Given the low numbers of in-patients at St Bernard's Hospital, I have directed that the  
Nightingale Hospital can now be decommissioned. It will be now, once again, on 14 days' notice.

Although we are able to take these faltering steps towards normality, we will only be able to  
do so if we maintain the full effect of our Contact Tracing Bureau in order to be able to deliver an  
efficient Test, Trace and Isolate strategy in the instances where there might still be cases of the  
virus. Test, Trace and Isolate and our Contact Tracing Bureau will become, once again, even more  
important now than they have been at the worst periods of high infection in our community.

255 As we welcome back the opportunities for live sporting and cultural events, we want to work  
with our cultural and sporting associations and the promoters and organisers of sports and  
cultural events to try to reintroduce not just the sporting and cultural activities themselves, but  
260 also the ability of audiences to attend those sporting and cultural events. Working with Public  
Health Gibraltar, we will put in place protocols that will enable all those who are practising sports  
or performing in cultural activities to have their supporters and fans with them after the second  
half of this month. That will include working with the Gibraltar Football Association for a live  
audience in their international matches at home and with the promoters of the heavyweight title  
265 fight between Whyte and Povetkin to be organised in Gibraltar at the end of the month. We very  
much hope that these will be the first events that we will see return to our calendar this year. It  
is, however, probably too late to see some of the larger events organised, and we will nonetheless  
all want to be very prudent about the numbers of persons permitted initially at such events and  
the social distance required between them.

270 Before I continue, I want to congratulate today the Gibraltar Boxing Association (GBA) on  
behalf of the Government – and the whole House, no doubt – for the double achievement of  
admittance to the International Boxing Association and to the European Boxing Confederation.  
This is extremely good news, not just for the GBA but also for Gibraltar as a nation in terms of our  
recognition on the European and world stages – or European and world rings. I want to thank all  
275 those in the team who have fought hard for this recognition. It is right that this achievement is  
publicly recognised and that the GBA is duly congratulated. We will obviously gladly consider ways  
in which the Government can assist the GBA going forward. I now urge the GBA to continue to  
work with the GSLA and the GSAC and address the minor details which will bring to an end over  
three years of work that they have done together. This will also allow the sport of boxing to  
280 flourish further and develop further in Gibraltar. Together with the announcement of  
International Boxing Association membership, we will hopefully see the return of the glory days  
of Gibraltar boxing.

Mr Speaker, I cannot thank all GHA, ERS, Care Agency, law enforcement and other frontline  
staff enough for the fantastic work they have done in the worst periods of this pandemic. I will say  
285 more when the House has been able to agree its motion to thank them and to mourn all those  
who have passed away.

290 Today, as we celebrate the first faltering steps towards normality, we must also, unfortunately, record another COVID death, bringing the total death toll to 91; 84 of them this calendar year. I know that I speak for the whole of this community when I say that we will never forget any of those lost to this awful disease.

Mr Speaker, I should also just add a word of best wishes to the Jewish community, who will be celebrating Purim tomorrow. As I reckon the House is in for a long and fairly adversarial session this afternoon, I want to just record that now and wish all the best to all members of our magnificent Jewish community, not least the hon. Lady herself.

295 Thank you, Mr Speaker.

**Mr Speaker:** The Hon. Leader of the Opposition.

300 **Hon. K Azopardi:** Mr Speaker, I associate myself also with those comments, particularly starting with a couple of those issues that do not require clarification, but, with your indulgence, to wish our Jewish community a happy Purim also on behalf of Members on this side of the House; also, our condolences on the announcement of a further death from COVID. The Chief Minister knows that we share the grief the Government has on these issues and the difficulties of COVID management. Our congratulations, of course, to the Boxing Association for being recognised and admitted to these international bodies. That augurs well for that association and indeed is something to look forward to in the future.

305 I also want to join him, for Members on this side of the House, to congratulate the essential services, and the GHA in particular, once again for the management of the COVID issue, and in particular, most recently over the past couple of months, for the excellent handling of the vaccine programme, which has systematically been rolled out to a point where, despite the fact that we have questions on it on the Order Paper ... There are issues, of course, to discuss, but despite all that, it has been well run and rolled out to so many people in the community and is well on the way to being a sterling example of the way that the vaccine can be rolled out to people.

310 Mr Speaker, I have a number of small questions, if I may. The Chief Minister has not mentioned the situation in ERS at all in his Statement, and I wonder if he would clarify a couple of things. First of all, I think the latest situation ... I have not seen today's statistics, because presumably they have not yet been uploaded on to the Government website, but there was still a residual one positive case in ERS and I wonder if he has more information about that. One of the things I noticed the other day – I believe it was Sunday, when there were a couple of ERS deaths announced – was that the statistic of ERS positives was not changing. In other words, there was one positive ERS case before the deaths were announced, and still one after, and yet the Government press release indicated that one – I think it was an elderly lady – had died positive within ERS. So, I have questions in relation to that. First of all, does the Chief Minister have information about that? Is it a contained situation in ERS? Is it a new situation? How is it that there was one positive ERS case, and yet one of the ladies who regrettably died apparently died positive of COVID? And then, additionally, in relation to other deaths that also happen to have been from ERS in recent days without again changing the statistic, does the Chief Minister have information on that? Can he confirm that it is people who no longer were positive with COVID but perhaps were suffering the effects of COVID, if that is the situation? I understood it must be that, but it would be helpful to just get confirmation of it.

320 325 330 In relation to the sporting events, I think I speak for most people who will welcome a return to sport generally. Crowds aside, people will welcome the return to sport simply for physical and mental well-being of the community, who have for so long endured the stress and anxiety of a COVID lockdown, and young people in particular will want to go out and compete in sport, so that is a good thing. I share the Chief Minister's view that the return of fans and crowds should be managed. I wonder if he has information about the numbers of people he is talking about in a managed return to crowds, if the Government has set the kind of limits that we are talking about. Obviously, different events will require different limits, and, in particular, the event that was the

subject of tweets over the last couple of days presumably will require a larger limit. I am not sure  
340 if we have to ask the Director of Public Health for tickets to that event – I will join the queue, no  
doubt, for that. But, jokes aside, I wonder if the Government has any sort of view on the kind of  
limits it is talking about, given that it is still maintaining a rather tight social-gathering rule in  
restaurants. There is a bit of a dichotomy there. Why have such a tight social-gathering rule in  
345 restaurants? Why not a social-gathering rule which allows a larger table in a restaurant when  
perhaps there is going to be a return to crowds in sporting events? That is the question.

In relation to that as well, if the Government is contemplating the return to public participation,  
will that also be the case in terms of culture? Are we going to see the return of art exhibitions and  
performances, and is the cinema going to open; and, if so, is it going to be limited in terms of  
seating and so on? Does the Government have a view? Has it formed a view on these issues?

350 I have a question on the Order Paper, but given the delay on questions and given the COVID  
Statement as an update, I perhaps raise it now in case the Chief Minister has an opportunity to  
update the House on this issue, and if not, the question can remain on the Order Paper for a  
subsequent update. I wonder if, given the success of the vaccine programme, have there have  
been discussions with the UK government in relation to the ability for us to have the return of air  
355 travel with the UK without quarantine on proof of, perhaps, vaccination.

Finally, on the issue of masks, I hear what the Chief Minister says on double masks – I confess  
to not being completely up to speed with the research on double masks – but that would  
presumably change the previous requirement that restaurants had. Up to the closure of  
restaurants in December, employees were single masking, as I understand it. If that is so, I believe  
360 the Chief Minister said that double masks would be required for the first 14 days, the basis of that  
advice being that ... Given the background and backdrop, which is the big descent in cases, what  
is the justification for double masking in restaurants? I hear what he said about the effectiveness  
of it, but given the public health backdrop, the success and the low number of cases, the fact that  
there is one positive today, I believe there were zero yesterday and maybe for the previous day,  
365 but then we had had successive zeros again ... Against that, why is it a necessary public health  
measure when the Public Health advice is that we can return to crowds in a couple of weeks and  
football and that kind of thing?

Finally, the Chief Minister mentioned the boxing event. As I understand it, the international  
boxing event will have no crowds. That is an event at the end of March, I believe. Is that still the  
370 case, or is the situation changing? And in any event, given that presumably there were some  
discussions with the Government for some time for that to be able to be launched and announced,  
what is the kind of support structure for people coming in from outside to support that  
international event? I am assuming that a crew is coming in with the infrastructure and support  
for such an event, both in terms of telecommunications and indeed in terms of setting up the  
375 event itself. What is the Public Health evaluation of the risk in respect of newcomers coming in,  
who obviously may not have the benefit of having been vaccinated?

**Mr Speaker:** The Hon. the Chief Minister.

380 **Hon. Chief Minister:** Mr Speaker, I am grateful to the hon. Gentleman for that which he said  
which was positive in the context of the response that he has given to my Statement. I was  
particularly grateful for him setting out that, in fact, on the vaccination programme we are all  
rightly very proud of the work that has been done by the GHA, rightly very proud indeed, and I  
think we will have time to reflect on that. She is not here today, but one of the people who has  
385 been similarly responsible for that has been the Minister for Health. He knows her well, like I do,  
and she is diligent to a fault when it comes to something as important as this. I know that there  
will not be a partisan divide between us in wanting to see that this structure has worked  
magnificently well, literally from the nurse who is jabbing the needle into the arm of each one of  
us, to the top of the hierarchical tree in the GHA, chaired by the Hon. Samantha Sacramento. I am  
390 particularly grateful for the fact that he says that even when they question things, it does not

mean that they are not being done particularly well and in a sterling fashion, which I am particularly pleased to record for future reference in respect of other matters.

I see that he has not raised it here, but hon. Members have issued a statement about the inoculation of students, and the response to that is that, as far as we are concerned, all students  
395 have now been communicated with, to be offered an inoculation. As we had with those who are over 50, the notice to people should be if you have not been contacted, please do contact the GHA because the GHA believes that all who were registered with them wishing an inoculation have now been contacted. In fact, I understand that some of them have already been vaccinated and the rest of their cohort are being vaccinated tomorrow. That is the information that I have  
400 been provided.

In relation to the issues at ERS, I can confirm that there are no new cases. What we have at ERS are cases of those who have had the infection and who, unfortunately, are still labouring under the effect of the infection. In some instances, there are even deaths recorded from COVID with people who are not active in the infection, because the medical examiner has made the decision  
405 that the cause of death has been *from* COVID, not *with* COVID. Hon. Members know that a person may have COVID and die from an unrelated matter, and that is a death *with* COVID; or a death *from* COVID can occur even if the person is not actively in the COVID infection, because of the effect that COVID can have on the body. There is a lot to be still understood about the long-term effects of COVID, and this is something that we are learning about also. He will recall, I think, two  
410 weeks ago I made the announcement that there was no longer anybody in ERS who had COVID, and then subsequently we had some deaths because the medical examiner determined that even though the patients – the residents in that case – were deemed to be recovered from the infection, the death nonetheless arose from something that the infection had done in the body, and when the post mortem was carried out this was identified.

Mr Speaker, the hon. Gentleman should not think that there are going to be crowds at sporting events in March. There is going to be a limited audience, and so, for example, if there are events on the football pitch at Victoria Stadium, where all of the seating is in the open air, there will be a view taken by Public Health Gibraltar, who are already working with the GFA, about what the spacing should be between people who are of different households. If an event is going to be held  
420 inside – for example, at the Tercentenary Hall or at the Europa Sports Hall – a different rule will apply as to the distance that will have to be maintained between different households attending that event, and the ventilation of the location will be relevant as well, so the Tercentenary Hall may have a different capacity to the Europa Hall because of the different levels of ventilation, height of the building, etc. All of that will be relevant. That is the way Public Health Gibraltar is  
425 approaching this, as I understand it, with the GFA and with the organisers of the heavyweight boxing bout that we have referred to.

The rules that I have explained in respect of restaurants, in terms of the rule of six – I will come to the issue of masking in a minute – are for the first 14 days of March. The sporting events are in the second 14 days of March. It is nonetheless possible that you might still have a rule of six in  
430 restaurants for the second 14 days in March. We do not know what the review is going to tell us, if anything, or what the numbers will be then, but you can still have an audience at the football and the boxing. Remember that if you are dealing with a restaurant the size of, for example, this Chamber, it is very different, in terms of ventilation and the movement of air and the ability of people to be segregated, to dealing with the Tercentenary Hall, the Europa Sports Hall or, indeed,  
435 the open-air facility at the Victoria Stadium. It would not be logical to say that, simply because in the open air at Victoria Stadium you could have say 250 people instead of the usual 2,000, in a restaurant you can sit 12 at a table. Those two are not entirely directly connected because they are completely different circumstances, and epidemiologically we will be told that the safe position will be different for one or the other, depending on where we are in the context of the  
440 pandemic. I think we will be better able to make a decision in 14 days about what the effect of the opening of the schools and the opening of the catering facilities etc. has been, and of course the inoculation programme, because, as hon. Members will have seen in the context of the progress

of the inoculation programme and the evidence emerging from the United Kingdom and from Israel in particular, where inoculation has proceeded very quickly, the dive in the numbers of hospitalisations is really quite dramatic, and our position has always been – and I think it is one that we have shared – not that we can eliminate the virus, but that we can put ourselves in a position where we protect the GHA so that it is able to provide care for those who need it. And so we will have to allow Public Health Gibraltar to make those relevant judgements with the sporting and cultural organisations it is dealing with.

Mr Speaker, I said during my main intervention – the hon. Gentleman has asked me to clarify, so he may not have heard me say this, but I said consistently – ‘sporting and cultural events’. I said it interchangeably, and so I think that should answer his question. The Minister for Culture I know is keen to work with Public Health Gibraltar on these issues also. We have issues that affect children, for example in the Gibraltar Academy of Music and Performing Arts (GAMPA), where we are hoping to be able to bring them back to performance etc. because this is hugely important, in particular for the Government that created GAMPA and wanted to invest in the growth of those cultural activities. In particular, in respect of the cinema, I must tell the hon. Gentleman I am very disappointed to see that the Bond film has once again been put back to October. I cannot wait to see our cinema reopen and see the instalments of series such as that and other great motion picture events. I look forward very much to the new facility that I understand is soon to open, which I saw advertised on social media, the Queen’s Picture House at Casemates, where we will no doubt be able to enjoy movies and, in the more modern fashion, also a meal. And, of course, we need a new instalment of the *Star Wars* saga; otherwise, what am I going to talk about during the Budget speech?

The air corridor issue is a slightly different one. The United Kingdom is not going to make any announcement on air corridors in respect of any jurisdiction until 17th April. It is considering issues between now and then. Gibraltar will have a very good case to make, in my view, because of the high levels of inoculations, thanks to the United Kingdom and the support that they have given us with the supply of the vaccine. The United Kingdom does not expect to be able to make any announcements for changes coming into effect until 17th May in respect of any jurisdiction – so, 17th April consideration, 17th May changes.

Those issues should not be confused with issues relating to travel without vaccines. I think the United Kingdom position is not necessarily linked to vaccines, although consideration has been given to that. The hon. Gentleman will know that Israel is now welcoming those who can demonstrate that they have inoculations and has created a passport. We are looking also, as I have said before, at QR-code-style passports, but there is an issue with airlines. Airlines are private concerns and they may determine whether or not they wish to permit those who are not vaccinated to board their aircraft. This is not an area, currently, of regulation. It may be an area where private litigation determines whether or not commercial entities are able to do that, and therefore it is not an area in which I can give him satisfaction.

Mr Speaker, the evidence suggests that double masking prevents those with infection from passing it on by 95%, and those who wear double masks are given an extra 95% protection from getting the infection. That is the evidence from the WHO.

The issue with catering facilities is, as I said, demographic. The majority of those who work in our catering industry are cross-Frontier workers. The majority of them will not have been inoculated with sufficient protection by the time the catering establishments open. The hon. Gentleman knows that, there, we are dealing with not the prevalence of the virus in Gibraltar, which is what he referred to, but the prevalence of the virus in the area around us, which is still higher than in Gibraltar, although much lower than it was. For that reason, to protect patrons – who are more likely to be resident in Gibraltar whether or not they are inoculated – from getting the infection, because the hon. Gentleman knows that the inoculation does not give 100% protection, we want to bring in this additional protection on the advice of Public Health Gibraltar, which we think therefore enables the catering establishments to open with greater freedom, the protection of the waiter or waitress in particular, also the kitchen staff and other staff and the

495 protection of the patrons, and therefore the continued suppression of the infection. The hon. Gentleman, I hope, will factor that in the determinations he is making based on what I said.

The boxing bout, as far as I know, is not indicated to be with no crowds or with no audience. There is no position yet between the promoters and Public Health Gibraltar, what they determine, because, as I understand it, they have not yet determined which venue it is going to be. They have  
500 a number of venues that they are considering, and therefore the result may be a different one for all the reasons that I have explained. Not a crowd, as he suggests, but an audience, as I understand it, is something that will potentially be permitted. It may just be the sponsors. It may be that there are tickets open to the public. The Government is not the promoter; the Government is facilitating this because we think it helps to promote Gibraltar at no cost to the taxpayer. The numbers of  
505 people expected to arrive in Gibraltar would be strictly controlled and all of them would have to arrive with a negative PCR test carried out within the previous 24 hours and a further PCR test carried out in Gibraltar, also to be negative, after they arrive. They will arrive and they will go into a bubble. They will fly privately into Gibraltar on a chartered aircraft. The numbers of people who will come – the technical crew, in effect, and the sporting crew – will be no more than 150 people,  
510 and Public Health Gibraltar and the promoters are working to ensure that they can be in the right bubbles so that they will be entirely protected. Given the numbers of people we see crossing the Frontier already today, in the region of 18,000 a day, 150 people coming in with a negative PCR test, in a way that is privately controlled, in a plane that is a private aircraft, and then moved by private transport – at no cost to the taxpayer, I emphasise – by the promoters to hotels where  
515 they will be in a bubble, has been explained to us by Public Health Gibraltar as being acceptable to them. We would not have given the go-ahead for this unless Public Health Gibraltar was satisfied that all of the safety requirements could be provided for in an appropriate way.

Mr Speaker, I hope that the hon. Gentleman will be satisfied with the explanations I have given to the issues that he has raised for clarification.

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**Mr Speaker:** The Hon. Marlene Hassan Nahon.

**Hon. Ms M D Hassan Nahon:** Thank you, Mr Speaker.

It is a real novelty to be hearing a briefing on COVID with such positive news and outlooks after  
525 the year we have had, and I think that is fantastic. I also want to extend my condolences to the family of the latest COVID death, as well as to all the other people facing families with the disease and hoping that they get better. And of course I also want to wish our Jewish community a great Purim – and, indeed, myself. I hope to get home at some point tonight, so I hope that we can all take this into account when we get into our sparring over the Tax Treaty motion this afternoon.

530 Mr Speaker, I have obviously been listening intently to the clarification on the Chief Minister's Statement, but I have not heard much about ... The Chief Minister talks about lifting the restrictions in the next weeks or month, but we have not heard much about the plans for ERS facilities. When are these restrictions going to be lifted? How exactly are they going to be lifted? What is the modelling? What is the projection on that? Obviously it is of huge concern to all of us;  
535 it holds our most vulnerable.

Other questions, if I may ask for clarification – for example, the lockdown: definitively, what is the projection for completely coming out of lockdown? What can the Chief Minister tell us about the vaccination programme, in terms of is it going to be a yearly thing, or every nine months? What do we know? What can we find out? And in terms of the immunity, what can we know about  
540 how long it will last?

In terms of the travel restrictions, the Chief Minister spoke about the airlines, as an entity of their own, making decisions, but what about us, in terms of when people land? What do we have in place in terms of how we are going to react to countries where perhaps their vaccination levels are very low? How are we going to treat them when they come in? Are we going to continue  
545 imposing quarantine? The test centres – are they going to keep going when we seem to get into normality? I think it is very positive that Gibraltar, like Israel, are the two leading nations that will

be coming out of this because of our excellent vaccination programme – and I take this opportunity to thank the GHA, as the other two gentlemen have – but when we get back to normal, how do we deal, exactly, with countries who are far from normal?

550 Lastly, I would like to ask: in terms of our economy are we looking to invest public money in relaunching our economy? Has the crisis been used to refocus some parts of our economy that were struggling?

I am grateful in advance to the Chief Minister for any answers he can provide. Thank you.

555 **Mr Speaker:** The Hon. the Chief Minister.

**Hon. Chief Minister:** Mr Speaker, I am grateful to the hon. Lady for her remarks about the work done at ERS. The persons who are responsible for the administration and management of ERS I know have been extraordinarily concerned about how the lifting of restrictions last time might have led to the arrival of the virus into that community of residents. We want to ensure that, this time around in particular, there is no chance whatsoever of any other new infections in respect of COVID, so consideration has been given to negative tests being required before somebody is able to visit. Of course, the inoculation programme seems hugely successful, but one out of 20 people may still get the virus – hopefully the vaccine will mean that they will not require hospitalisation because it will not be serious, and that they will therefore not die from the virus – but of course in the age range we are dealing with in ERS, those very advanced age ranges, it is possible that even the slightest thing can lead to an acceleration of death, and so I know that the administrators, managers, carers and doctors at ERS are very concerned to ensure that they combine permitting people to once again see their relatives with ensuring that we are entirely safe.

570 The indications I have been giving suggest that the last vestiges of the restrictions on civil liberties which have been introduced would likely come to an end towards the end of March. I cannot crystal-ball-gazing confirm that; a lot will depend on whether the prevalence of the virus continues to be abated as it is. Hon. Members will read, like all of us do, about new strains every day, the effects of new strains and the ability of different vaccinations to stave off new strains but the ability of all vaccinations to at least ensure that there is no serious illness, whatever the strain up to now. My own reading suggests that it is likely that we will all need booster vaccinations, whether those booster vaccinations will be with the existing vaccinations, or whether, because of the new strains, the vaccinations will have to be modified and therefore new supplies will have to be contracted for us to be able to access those boosters, or whether, indeed, a combination of the existing vaccinations is sufficient to provide a boost. So, one of the things that is being investigated is whether you take two Pfizer now and then you take one AstraZeneca in October-November and that combination produces the immunities that are required, or other combinations of existing vaccines. All of that is above my grey-cell grade. I do not understand it. I read it in the way that it is explained to lay people in reputable newspapers, but I cannot pretend to understand it more than that. I think it is one of the issues that we have been looking at. Already, Public Health Gibraltar and the GHA are working on ensuring that we are able to inoculate as quickly the whole population in the autumn, if we have the product with which to inoculate. There is talk of a combination vaccine which would be given in the autumn or the winter, and that it could also be a combination vaccine combined with the flu vaccine. The flu vaccine, I have understood now, is a combination vaccine. It contains usually four strains that you are inoculated against. This could also, in future, be the case, where the flu vaccine might also include something in respect of COVID, or a separate combination vaccine is given at the same time as the flu vaccine is given. All of those things are a ‘please keep in view’ as we head towards the latter part of this year.

595 People arriving from countries where vaccination programmes may not be so advanced or where there may be prevalence of new strains which we may not be inoculating effectively against may be put on the red list. That list is constantly updated by the Minister for Civil Contingencies. Brazil and Portugal are on it at the moment, there are other countries on it and off it, and so that

600 is one of the things that we need to keep a very close eye on. That is why the Contact Tracing Bureau and the Test, Trace, Isolate provisions will be even more important as we go forward, as those who might arrive in Gibraltar, although we will be requiring negative PCR tests etc., might nonetheless subsequently develop infections. We need to be able to shut down any particular individual who has an infection, and those who have been with him, for the requisite period of five to 10 days, etc.

605 In terms of the relaunch of the economy, one of the things I think we have done very successfully is to ensure that operators in our economy have continued to be buoyed by the provision of BEAT when they have been shut down. We cannot account for the worldwide economic downturn, of course, but we do believe that with the plans we are deploying and some of the announcements that we will see, and the Budget that we will deploy, we will be putting  
610 Gibraltar back on the strongest footing, in terms of its economy, its growth and its public finances, sooner than other nations in the world might. I will ask hon. Members to reflect, when I bring the Budget to the House next time, that we can, at this difficult time, be in it together when it comes to dealing with the issues that we have to deal with in the context of our public finances or our economy, or we can do politics as usual. I venture to suggest that we might all fall into the trap of  
615 politics as usual, but I am sure that history will judge us harshly if we do.

**Mr Speaker:** Does any other hon. Member wish to speak on the Statement?

620 **Hon. D J Bossino:** Mr Speaker, with your permission, simply to point out – I feel duty bound to rise and make this comment – that I am particularly chuffed and it is particularly poignant for me and for my family, the announcement that the Hon. Chief Minister has made in relation to GBA's admission to its international body, given that my father was well known among his generation as a very good, I understand, amateur boxer himself and today would have been his 83rd birthday.

625 **Mr Speaker:** The Hon. the Chief Minister.

**Hon. Chief Minister:** Mr Speaker, as the hon. Gentleman knows from the eulogy we provided at the time, Jimmy was well known to and well loved by all Members of the House. I did not realise he was a pugilist; his son certainly is not – he has a completely different style, for which I also  
630 congratulate him.

### **Standing Order 7(1) suspended to proceed with Government Bills**

**Clerk:** Suspension of Standing Orders. The Hon. the Chief Minister.

**Chief Minister (Hon. F R Picardo):** Mr Speaker, I beg to move, under Standing Order 7(3), to suspend Standing Order 7(1) in order to proceed with Government Bills.  
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**Mr Speaker:** Those in favour? (**Members:** Aye.) Those against? Carried.

## Order of the Day

### BILLS

#### FIRST AND SECOND READING

##### **Petroleum (Amendment) Bill 2021 – First Reading approved**

**Clerk:** (ix) Bills – First and Second Reading.

A Bill for an Act to amend the Petroleum Act. The Hon. the Minister for the Environment, Sustainability, Climate Change and Education.

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**Minister for Environment, Sustainability, Climate Change and Education (Hon. Prof. J E Cortes):** Mr Speaker, I have the honour to move that a Bill for an Act to amend the Petroleum Act be read a first time.

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**Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Petroleum Act be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

**Clerk:** The Petroleum (Amendment) Act 2021.

##### **Petroleum (Amendment) Bill 2021 – Second Reading approved**

**Minister for Environment, Sustainability, Climate Change and Education (Hon. Prof. J E Cortes):** I have the honour to move that the Bill now be read a second time.

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Mr Speaker, the Chief Minister, as you know, has certified this Bill as being urgent; hence we are taking it today. The Bill is being brought at the first opportunity after the Commissioner of Police expressed concerns to the Chief Minister about a worrying, relatively new activity which is connected to the drugs trade and which must be stamped out as soon as possible. The activity being carried out concerns a supply of fuels to rigid hull inflatables (RHIBs) used for illegal activity connected with drugs. RHIBs are prohibited imports and cannot therefore be present at the yacht reporting station to take on fuel in the normal way. Instead, large quantities of fuel containers are being filled and then transported to a rendezvous along Gibraltar's coastline, where they are loaded on to the waiting RHIB.

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Quite apart from the support that such an activity lends to the drugs trade, there are potential consequences which are very concerning. The storage of petrol is a dangerous activity which requires suitable premises and suitable containers. The nature of petrol and the fumes it emits presents a real danger of an explosion and fire. The storage of petrol in unlicensed premises exposes not only the persons concerned, but also the occupants of the adjoining premises at risk. If the storage is being conducted in residential settings, the risk to the lives of families, including children, does not bear thinking about. Even the transportation of significant quantities of fuel carries grave risk. What may be a minor traffic accident may turn into an explosion and inferno that could engulf other road users and pedestrians. For these reasons, the Government is acting as fast as it can.

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This Bill therefore amends the Petroleum Act, which regulates and licenses the sale and storage of petrol. This Bill amends section 9 of the Act so as to increase the penalty available for

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675 contravention of the Act, the Petroleum Rules or any directions given under the Act. The penalties increase on summary conviction to a fine at level 5 on the standard scale or a term of imprisonment for six months, or both. In respect of conviction on indictment, the penalty is a fine at ten times the amount at level 5 on the standard scale or a term of imprisonment of five years, or both. The Bill also extends the regulation-making powers to enable the making of rules to license and regulate the storing, transportation and possession of petroleum.

680 If Parliament approves the Bill, we will be making amending rules as soon as possible. We are already in discussions with the Royal Gibraltar Police and with the Fire and Rescue Service, which is the licensing authority for these purposes. These rules will be aimed at curbing the storage or transportation of petroleum for supply of fuel to RHIBs.

Mr Speaker, I commend this Bill to the House.

685 **Mr Speaker:** Before I put the question, does any hon. Member wish to speak on the general principles and merits of the Bill? The Hon. the Leader of the Opposition.

690 **Hon. K Azopardi:** Mr Speaker, we are going to support this Bill. I had a conversation with the Chief Minister about the motivation and urgency of the Bill the other day. We agree that this is something that should be passed quickly. We support the reason why the Government wants to do this. It is important that Gibraltar is not used for the drugs or tobacco smuggling trade. It is absolutely necessary that this legislation is introduced, so that there can be larger controls on the storage of petroleum, which not only is being used for these illicit purposes but rather represents a risk in itself of the type that the Minister has indicated, so we are entirely supportive of this.

695 Perhaps in his reply he could indicate to Members of this House the kind of timescale he is talking about in the introduction of the rules because of the need to act quickly to deal with the concerns that the Police have voiced to the Government.

700 Also, I notice that the Bill that was published is in a slightly different form from the one that the Chief Minister shared with me, which had a number of savings, and I assume that is primarily because those things will be dealt with in the rules themselves, and so this is an enabling provision that allows the regulations to be made, and so on – and that is fine, but perhaps the principal question I would have is in terms of the timescale of the introduction of the rules. I assume that that is not going to be an impediment to the Police acting in the meantime.

705 **Mr Speaker:** Does any other hon. Member wish to speak? The Hon. Marlene Hassan Nahon.

**Hon. Ms M D Hassan Nahon:** Mr Speaker, I, too, will be supporting this Bill. The legislation is clearly necessary. It will make our waters and our roads safer, and it will make life more difficult for those trying to use our waters for smuggling in its multiple forms and manifestations.

710 The main point I would raise here is the issue of enforcement. I believe that we must ensure that our law enforcement agencies have all the resources and support to tackle issues head-on by applying a zero-tolerance policy to any activity related to smuggling, because if legislation is not followed by stringent enforcement all we are doing here today is effectively paying lip service to the cause.

715 I will be voting in favour of this Bill. Thank you.

**Mr Speaker:** The Hon. the Chief Minister.

720 **Chief Minister (Hon. F R Picardo):** Mr Speaker, it is hugely important that anybody who is involved in the business of either the trafficking of illegal drugs or the support of those who are trafficking illegal drugs should know that Gibraltar is not, for them, a safe haven in any material respect. Whether for the doing of their business or the supporting of their business, whether it is the front end of it or the back end of it, any aspect of it is not welcome here, and the minute we are advised that there is a potential need to amend our legislation we will act immediately.

725 I want to specifically thank the Minister for Justice, who is not here but who has had carriage  
of this drafting, which has been done urgently, and the Minister for the Environment, the Leader  
of the Opposition and the hon. Lady for indicating, when I approached them, their support for this  
immediate change to our legislation. In the past, in Gibraltar, we needed to give one week's notice,  
five working days, of a Bill to be published. Under our current Constitution, we give six weeks  
730 unless there is good reason that we should not, and we have been able, therefore, to bring this  
Bill on to our statute book the minute we have been advised that it is absolutely necessary.

I want to be very clear in explaining what it is that will no longer be possible. It will not be  
possible for somebody to claim that they have a good reason to be in possession of a number of  
vats of petrol in their car. There will be no legitimate excuse that will be accepted. If you need, for  
some legitimate reason – and there may be one – to have a vat of petrol in your car, you get  
735 yourself a permit to do so, if it is more than 20 litres. Twenty litres is enough for a lawnmower, for  
one of the other things that might need a small amount of fuel, a seagull engine for small pleasure  
craft, all of those things that might require a small amount of fuel; but if you need more, you need  
to get a permit and you need to put ahead of the possession of the petrol the reason for the  
possession of the petrol.

740 Let nobody suggest that the short time of publication has not permitted them to know that  
they cannot have these vats of petrol in their car. It is dangerous and it is only used for a nefarious  
purpose. The phrase I will use – which I had written before the hon. Lady used it, but it is the right  
phrase – is absolute zero tolerance in Gibraltar to any aspect of the nefarious trade in narcotics,  
whether it is the front end or the back end or the support end.

745 When it comes to enforcement, I think that our law enforcement agencies demonstrate that  
they are ready to act, and this gives them the additional tool that they need in legislative terms.  
They have the physical resources that they need. Certainly they have never been turned down  
when they have come to seek those physical resources from us; the budget for the Royal Gibraltar  
Police I think speaks for itself in the time that we have been in Government.

750 Mr Speaker, I am very pleased indeed that this Government and this House together are going  
to act as quickly as we are going to act to unanimously ensure that where we have seen this  
potential for activity in Gibraltar, which is nefarious, we together have stamped it out  
immediately.

755 **Mr Speaker:** The Hon. Minister for the Environment.

**Hon. Prof. J E Cortes:** Thank you, Mr Speaker.

I would like to thank the Chief Minister for his initiative in taking this forward and for speaking  
here in support, and obviously the Members opposite for theirs.

760 Yes, just to confirm to the Leader of the Opposition that the reason the Law Officers felt that  
there should be a slight change was to allow us the flexibility of incorporating changes as they may  
be required by regulation, but also to give the RGP and the GFRS a little bit more time to drill down  
into the detail that they would want – things, for example, like specifying the types of containers;  
specifying the quantities; specifying where they can or cannot be stored, cars and so on – so,  
765 getting that detail out.

The intention is that these will be refined very shortly, due for publication next week. It will  
only be a day or two after that this Act, once it is passed, is actually put into effect, so a very short  
timeframe.

770 Mr Speaker, I have nothing further to add, and I commend the Bill to the House.

**Mr Speaker:** I now put the question, which is that a Bill for an Act to amend the Petroleum Act  
be read a second time. Those in favour? (**Members:** Aye.) Those against? Carried.

**Clerk:** The Petroleum (Amendment) Act 2021.

**COMMITTEE STAGE AND THIRD READING**

**Petroleum (Amendment) Bill 2021 –  
Committee Stage and Third Reading to be taken at this sitting**

775 **Minister for Environment, Sustainability, Climate Change and Education (Hon. Prof. J E Cortes):** Mr Speaker, I beg to give notice that the Committee Stage and Third Reading of the Bill be taken today, if all hon. Members agree.

780 **Mr Speaker:** Do all hon. Members agree that the Committee Stage and Third Reading of the Bill be taken today? (**Members:** Aye.)

*In Committee of the whole House*

**Petroleum (Amendment) Bill 2021 –  
Clauses considered and approved**

**Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to move that the House should resolve itself into Committee to consider the following Bill clause by clause, namely the Petroleum (Amendment) Bill 2021.

785 **Clerk:** A Bill for an Act to amend the Petroleum Act.  
Clauses 1 to 3.

**Mr Chairman:** Clauses 1 to 3 stand part of the Bill.

790 **Clerk:** The long title.

**Mr Chairman:** Stands part of the Bill.

**Petroleum (Amendment) Bill 2021 –  
Third Reading approved: Bill passed**

795 **Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to report that the Petroleum (Amendment) Bill 2021 has been considered in Committee and passed without amendment.

**Mr Speaker:** I now put the question, which is that the Petroleum (Amendment) Bill 2021 be read a third time and passed. Those in favour of the Petroleum (Amendment) Bill 2021? (**Members:** Aye.) Those against? Carried.

**Standing Order 7(1) suspended to proceed with Private Member's Motion**

800 **Clerk:** Suspension of Standing Orders. The Hon. the Chief Minister.

**Chief Minister (Hon. F R Picardo):** Mr Speaker, I beg now to move, under Standing Order 7(3), to suspend Standing Order 7(1) in order to proceed with a Private Member's Motion.

**Mr Speaker:** Those in favour? (**Members:** Aye.) Those against? Carried.

**PRIVATE MEMBER'S MOTION**

**International Agreement on Taxation and the Protection of Financial Interests –  
Debate commenced**

**Clerk:** Private Member's Motion. The Hon. Keith Azopardi.

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**Hon. K Azopardi:** Mr Speaker, I have the honour to move the motion standing in my name, which reads as follows:

*THIS HOUSE:*

*NOTES the International Agreement on Taxation and the Protection of Financial Interests entered into on the 4 March 2019 between the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland regarding Gibraltar (the 'Tax Treaty') and signed by the Rt Hon David Lidington MP, the Chancellor of the Duchy of Lancaster, on behalf of Gibraltar AND;*

*CONSIDERS that the Tax Treaty is intrusive and harmful to Gibraltar's interests*

*AND;*

*RESOLVES that the Tax Treaty should be replaced at the earliest opportunity with a neutral and fair Tax Treaty based on the OECD model Tax Treaty.*

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We have heard much about the Tax Treaty since it was signed on 4th March 2019 with great fanfare, we were told, particularly by Spain, but also it was noted here that this was the first treaty between the UK and Spain specifically on Gibraltar since 1713. There had, of course, been an attempt to achieve a previous treaty, not that long ago, on joint sovereignty, which was derailed by the GSD Government. Nonetheless, we were told – as I say, with great fanfare – that this was the first treaty since 1713.

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If this was the first UK-Spain treaty since 1713, we wait with bated breath for the next one, and indeed with bated breath for the treaty on the new relationship between the EU and the UK. If this is the best handiwork of the Government, we are concerned about what will emerge in the UK-EU treaty. If this is not the best handiwork of the Chief Minister, then we are even more concerned about what can emerge, and especially so because of the tendency of the Government for so long to be, in our view, much more interested in the perception – the optics, as some people would say – than in the substance, much more interested in appearing to look as if something is a success than whether it actually is a success. And this Tax Treaty, in our view, is a great example of precisely that: something that, very hard, the Government tries to present as a success when it is a bad agreement, a failure, intrusive and harmful to Gibraltar's interests, its people and our economy. (**A Member:** Hear, hear.)

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Mr Speaker, I will deal at length with the issues that I want to raise, but I wanted to start my contribution at a point where this came up, because where it came up was in the context of the Withdrawal Agreement and the negotiations that were ongoing at the time in respect of it. I have had much to say on other occasions about what we perceive on this side of the House to be the failures of the Government in respect of the 2018 process. This is not the time to detail those again – which are well known, as our views are indeed well known – but it is important to understand where the Tax Treaty came from. It first made its appearance in a public document, or at least mention of it in a public document first made an appearance in the Protocol itself that was attached to the EU-UK Withdrawal Agreement. That is when it was first mentioned. I refer

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835 the House to where the Protocol, having made a number of recitals, one of which noted that the parties, the Union and the United Kingdom being the parties to the Protocol, were:

EMPHASISING also the need to combat fraud and smuggling and to protect the financial interests of all the parties concerned,

then also took note of a number of memoranda of understanding which had been concluded between Spain and the UK – those are well known, on citizens' rights, tobacco, co-operation on environmental matters, co-operation on police and customs matters – and then added the phrase:

as well as the agreement reached on [xx] November 2018 to conclude a treaty on taxation and the protection of financial interests.

That is the first mention there was in a document in respect of that.

840 Also relevant in the Protocol itself, which links to the Tax Treaty which then was published subsequently, is Article 3, which talks about Spain and the United Kingdom, in respect of Gibraltar, establishing the forms of co-operation necessary to achieve full transparency in tax matters and in respect of the protection of financial interests of all the parties concerned, in particular by  
845 establishing an enhanced system of administrative co-operation to fight against fraud, smuggling and money laundering and to resolve tax residence conflicts. We have had occasion before to say that going along with language in the Protocol which gave the implication and tarnish to Gibraltar that there was fraud, money laundering or smuggling was not the wisest decision of the Government, because it went along with the traditional portrayal and caricature of Gibraltar in a way that we, on both sides of the House, have always said is not the case.

850 In any event, what was not published at the time the Protocol agreement was announced and the MoUs that were announced in late November, what was not published was the Tax Treaty itself, although there was a difference of opinion, even at the outset, as to whether the content of the agreement had been agreed. On 29th November 2018, the Government of Spain issued a press release which indicated several things, noting the MoUs and the signing of the  
855 memorandum on Gibraltar between Spain and the United Kingdom. It said that bilateral agreements had been reached on Gibraltar 'which shall be completed with an international agreement on taxation and protection of financial interests'.

I pause there because the emphasis with Spain is that this has been an entirely bilateral process, as we will see from other contributions that had been made on the issue. In respect of  
860 the Tax Treaty itself, Spain said this, I remind the House, on 29th November 2018:

With regard to the agreement on taxation and protection of financial interests, an agreement has already been reached regarding its content, and the procedure for signing off shall begin as soon as possible. As its content involves matters of legal reserve, it is necessary to sign an international agreement, which requires parliamentary approval.

This tax agreement will be the first signed between Spain and the United Kingdom to ensure that the tax jurisdiction of Gibraltar is transparent with our tax authorities and cannot be used for money laundering or tax evasion. This is such an important issue that an international treaty has been preferred despite the difficulty in negotiating it.

Regarding tax issues, a reinforced system of administrative cooperation with Spain will be established by the Gibraltarian authorities in order to combat fraud, smuggling and money laundering, and to guarantee full tax transparency in Gibraltar. The agreement also establishes some tax residency criteria to prevent tax evasion. Ultimately, it is a step forward in preventing Gibraltar from becoming a tax ...

– 'heaven' it says. I do not know if it is meant to be heaven, although I suppose *paraiso fiscal* is a heaven. I do not know if 'haven' is intended, but it says:

Ultimately, it is a step forward in preventing Gibraltar from becoming a tax heaven that enables the avoidance of tax obligations with the Spanish Treasury.

865 Again, entirely the caricature of Gibraltar that Spain has put forward for many years, which is in line with Article 3 of the Protocol, which the United Kingdom signed up to, having had the consent and acquiescence of the Gibraltar Government.

The tone and content of that paragraph of 29th November 2018 makes it clear that Spain is, at that stage, talking about content that it believes has been agreed and is set down in some form. The phrase 'the agreement also establishes' also implies that it must be written in some shape or form and at least there has been a very advanced form of it available.

870 There was a disagreement – it is obvious from the contributions that have been made in this House subsequently that Members on that side of the House appear not to agree that that was the state of play, because the Chief Minister indicated to this House on 30th January 2019, in answer to questions from the Hon. Mr Clinton, that the particular paragraph referred to in the Protocol was not a reflection of an agreement. In fact, he ridiculed Mr Clinton, saying:

there could be no clearer an agreement to agree. This is not a reflection of an agreement done; it is a reflection of an agreement to agree ... but what there is not, is yet a settled text of that agreement ...

875 Be that as it may, and despite the content of the press statement of Spain on 29th November, people will be able to judge whether what I just read into *Hansard*, which was the position of Spain as to whether the Tax Treaty would have a reinforced system of administrative co-operation to ensure full tax transparency and that there will be tax residency criteria to prevent tax evasion ... People will judge whether, four months later, what was published in fact did all that, whether perhaps the advanced form was available at that stage. In fact, what we saw subsequently, in the months of November, December, January, February and early March, was, in our view, a Government trying to, in effect, bury the Tax Treaty, ignoring calls for publication, which were made several times, and breaching its promise in Parliament to share the Agreement, and then misrepresenting it systematically.

885 These are patterns that emerge not just on this issue; patterns that emerge on other issues and patterns that we see on the issue, most recently, of the New Year's Eve agreement, on which we have had exchanges. People will judge out there whether these patterns indicate that they may be repeated again. They are not only patterns of behaviour; they are also patterns of behaviour because this is a Government that insists, on issues that are sensitive, that it does no wrong. It is not a Government or a Chief Minister who is prepared to have the political honesty of speaking to the people of Gibraltar in a way that indicates to them that there are peaks and troughs, and that sometimes agreements are reached in a particular way because of difficulties. Rather, the presentation is all based on 'Everything is wonderful, it has been an unprecedented success and the Government has done no wrong and made no mistakes.' That is simply unreal and people will make their own judgement on those issues.

890 The Opposition called repeatedly for publication of the Tax Agreement after November 2018, in December 2018 and in early 2019. In fact, there was then a promise made to Members of this House for the document to be shown confidentially. That promise was made by the Chief Minister in this House to the Hon. Mr Hammond when he put a question in the House on 30th January 2019. I am reading from *Hansard*. The Chief Minister said, in answer to Mr Hammond:

although the text is not stable and is subject to change I am very happy to offer the hon. Members who are members of the Brexit Select Committee the opportunity to see the current draft of that

– 'that' being the Tax Treaty –

at an informal session that the Deputy Chief Minister and I will ensure is as soon as we are able to fix their availability.

That never actually happened. That promise was breached. The next thing we knew – again patterns, but the next thing we knew was that there were leaks in the Spanish press over the weekend of 1st and 2nd March which indicated an agreement had been reached. The document

905 had still not been shared with the Opposition, despite their promise in the House, and the next  
thing we knew was that there were leaks, which then triggered the announcement on 4th March  
that the agreement itself had been reached – not unlike the more recent patterns, where  
publication of the New Year’s Eve agreement happened in practice because *El País* leaked it to the  
910 wider world. But when everyone was told on 4th March 2019 that the Tax Treaty had been signed,  
it still was not published. In fact, at that stage, on 4th March, there was an attempt to hold back  
on publication, again in the context of the usual pattern, which is a Government trying to massage  
public opinion on an issue which it believes is sensitive. So, on 4th March, after the leaks in the  
Spanish press and after we are told that an agreement has been signed, instead of it being  
915 published immediately, Gibraltar is told it will be published on 14th March, 10 days later – but on  
4th March it is told, ‘We have signed an agreement and it is a great agreement; it is a great  
agreement that safeguards Gibraltar’, and so on. The Chief Minister had promised the Members  
opposite to show them the draft. In fact, it never happened.

There was then a Select Committee meeting on 5th March, which the members of the Brexit  
Select Committee attended, the day after Gibraltar was told that there was a Tax Treaty already  
920 on the books. At that meeting on 5th March, the Government still refused to give Members a copy  
of the Tax Treaty – it gave them a briefing on it, but not a copy of the Tax Treaty – despite the fact  
that there had already been a promise in the House on 30th March to give us a copy, confidentially  
at that stage, of the Tax Treaty. That did not happen. When it got to the fact that a treaty had  
been signed, a meeting was held on 5th March, and yet, still, at that stage, the Members of the  
925 Opposition were not provided with a copy of the Tax Treaty.

I place quite a lot of stock and importance on the issue of the promise that the Chief Minister  
made on 30th January because I make it very clear that we would view very seriously indeed that  
there should be a repetition of something like that. I draw the hon. Member’s attention to the  
commitment that he gave in this House that ‘when and if a draft treaty between the EU and the  
930 UK emerges, it will be tabled in this House in draft for a proper debate’. That is a commitment that  
we will seek to hold the hon. Member to. We do not wish to see a repetition of what went on in  
relation to the Tax Treaty, where there was a promise that we would be shown the matter  
confidentially and it was not given to Members; it was not even given to Members after everyone  
knew that it had actually been signed on 4th March. In fact, people were told that the  
935 Government wanted to hold to 14th March. Then, of course, it was precipitated. What actually  
happened was that the day after the meeting on 5th March, the Government finally wrote to the  
Speaker at the time, Speaker Canepa, and tabled a copy of the Tax Treaty so that Members of the  
House had it, and then published the Tax Treaty on 6th March. And on 6th March, not only do  
they table the Tax Treaty, they also publish a video explainer which had been recorded on  
940 5th March.

This is a Government that was working hard behind the scenes, first of all, to massage public  
opinion without publishing the content of the Tax Treaty, and secondly, producing videos, which  
they call explainers, in respect of the Tax Treaty, to load public opinion in the same way as they  
did with the rather Orwellian notes of interpretation to the MoUs. Or have we forgotten the notes  
945 of interpretation to the MoUs, which at the time I did describe in those terms, Orwellian? When  
you pick up the MoUs and access them from the Spanish Foreign Office site or from the UK Foreign  
Office site they do not carry a cover sheet called the ‘Notes of Interpretation’, which are only  
individual to Gibraltar so as to load the reader into thinking that these documents are trilateral  
documents, that they are safe and that they have no implications in certain respects – in other  
950 words, as if the reader will think that this is part of the document agreed by Spain. It is quite a  
stunning manoeuvre to do that. Like everyone else, I looked at the documents on the Gibraltar  
site and I was quite struck by that. I thought, ‘Wow! Spain has agreed these notes of  
interpretation – it is quite stunning that they accept that there are no concessions on this, that  
and the other.’ And then of course you realise, on verification, that when you go to the Spanish  
955 site or you go to the UK Foreign Office site it is not there, because it is not part of the document;

it is about massaging public opinion in the usual way – smoke and mirrors, where substance matters less than form – and that is a constant of the Government.

960 The Agreement, in substance, is harmful and intrusive, and I am going to deal with that at length. The Agreement is – (*Interjection*) yes, indeed. In reality, stepping back from it, and I know the Chief Minister will talk about his concordat, but is it a bilateral agreement because, rather than this being about the recognition of Gibraltar ... When the Government issued its press statements and his press releases subsequently, it hailed how this Tax Treaty is so important because it amounts to recognition of Gibraltar, recognition of the Gibraltarians. Well, recognition of the Gibraltarians only so as to penalise them by taxation, that is all, and to impound their cars and so on and so forth, presumably, but not much more than that. It is not a recognition of Gibraltar. It is the opposite of that. This is not about the recognition of Gibraltar. Spain does not want to recognise Gibraltar. Spain will not sign a Tax Treaty with Gibraltar. It is stunningly obvious when you scratch the surface of the mirage that the Government is trying to construct on this issue.

970 This is an enduring Agreement, so if the Chief Minister were to say, ‘Well, you have to see it in context. We were backs against the wall, trying to negotiate a way forward in the context of the Withdrawal Agreement. We signed up to the MoUs and we signed up to the Tax Treaty because we got this list of benefits for Gibraltar’ ... But that is not what he is saying. What he has consistently been saying after the publication of the Tax Treaty is not that this was a price to pay because we obtained other things in return – he is not saying that; what he has always been saying is, ‘This is a good agreement.’ Well, then, it has to be judged on its terms, if he says it is a good agreement and we say it is a bad agreement.

975 But the most obvious thing about it is that it is enduring, so whether or not we then get a future relationship ... And I remind everyone listening, of course, that we are now the only British territory that remains that does not have the benefit of a future relationship deal, a permanent one, because here we are, in February 2021, without one, still out there, on borrowed time, trying to negotiate the future. Although he calls it success, we call it failure because it stands to reason that being the only micro-place in Europe that does not have the benefit of a deal can hardly be called success, even on the stretched levels of dimension of explication of concepts that he has. It really strains people’s understanding to believe that there were 70 million Britons who were EU citizens,

980 69-point-whatever-it-is million have a deal, and 30,000 – the Gibraltarians – do not have a deal, but that it is a success story. The enduring feature of this is that the Tax Treaty will live on, whether or not there is a deal. Whether or not there is a deal, Spain has the benefit of this intrusive and harmful Tax Treaty.

990 The only bilateralism that we are interested in, that Spain should have, if an agreement is going to be signed in respect of Gibraltar, is that it should be bilateral, meaning Spain should sign an agreement with Gibraltar, recognising Gibraltar. That is the bilateralism we are interested in. But if it is not bilateralism at that level, it should be, at the very least, trilateral. Spain, the UK and Gibraltar should at least sign the agreement. In fact, this is an abandonment of the trilateralism that the GSD had achieved. This is an abandonment of trilateralism, and the Chief Minister and his Government have not been able to salvage a return to that trilateralism, despite that superficial pretence of good relations that he has with the Spanish government and so on, all the meetings with Laya, whether he speaks to people on the phone and so on. Spain is saying the opposite. Rather than salvage trilateralism, Spain – even the socialist government in Spain – is saying openly that trilateralism is dead. If there is one stunning failure, it is that there was a window of opportunity. Presumably the Chief Minister must have thought, when Pedro Sánchez was elected as socialist Prime Minister, there was a window opportunity to revive that trilateralism which the GSD had achieved with the PSOE before, and yet he has been disappointed, presumably twice: first when, despite his apparent good relations with the Socialist Party in Spain, Pedro Sánchez nearly threw the toys out of the pram at the November meeting in 2018 and almost collapsed the Withdrawal Agreement talks over Gibraltar; and second, because it is not trilateral. Even the

1010 socialists in Spain today are not acting like the socialists of 15 years ago. They are standing in the way of the return to trilateralism. On the Spanish government website the government has notes about aspects of Gibraltar and it makes very clear ... Having given a summary of the process, it says:

El Gobierno ha invitado en múltiples ocasiones al Reino Unido a retomar, a la mayor brevedad, la negociación bilateral sobre cuestiones de soberanía, interrumpida durante demasiados años sin haber obtenido contestación.

And:

También ha reiterado ocasiones su disposición a negociar con el Reino Unido un nuevo mecanismo de cooperación regional 'ad hoc' que favorezca aspectos prácticos [inaudible] Este mecanismo sustituya el foro trilateral que España considera extinto.

[Spain has repeatedly shown its disposal to negotiate with the United Kingdom a new mechanism of co-operation, a regional one, ad hoc, that favours practical aspects of co-operation. This mechanism will substitute the trilateral forum that Spain considers extinct.]

1015 The reality is that we have gone backwards, rather than forwards. If Spain is a 21st-century, modern democracy, what more obvious thing to do than to respect our rights? But you know what Spain does, and even in the incarnation of the current Foreign Minister, who is a thousand times better in the way she expresses herself than other Spanish politicians of the day – I have no doubt about that – even then, Spain is hamstrung by its history and unwilling to show any leadership on this issue, any democratic leadership, in the 21st century, going around the world talking about  
1020 human rights but not prepared to show human rights on its doorstep, going backwards instead of forwards on the issue of trilateralism. If there is a real change of climate, then there should be respect of our rights. If there is a real change, then why treat Gibraltar as pariahs, not even being willing to sign the Tax Treaty with Gibraltar?

1025 Spain is doing and saying the opposite of what the Chief Minister says this Tax Treaty does. This Tax Treaty does not recognise Gibraltar. Spain is putting it forward as doing the opposite of recognising Gibraltar. It is a manifestation of their traditional politics of refusing to recognise Gibraltar, and that is obvious from the intervention of Mrs Laya herself in the Congreso de Diputados on 4th June 2020:

Me permito subrayar que estamos hablando de un acuerdo internacional bilateral entre el Reino Unido y España en relación con Gibraltar, es decir, no estamos hablando de un acuerdo internacional firmado con las autoridades locales de Gibraltar sino de un acuerdo firmado entre España y el Reino Unido sobre Gibraltar...

[I emphasise that I am talking about a bilateral international agreement between the United Kingdom and Spain in relation to Gibraltar. In other words, I am not talking about an international agreement signed by the local authorities of Gibraltar, but rather an agreement signed between the UK and Spain over Gibraltar ...]

She continues:

no es cierto que la firma del acuerdo suponga un reconocimiento de Gibraltar ni mucho menos...  
[it is certainly not true that the signature of this agreement is a recognition of Gibraltar at all ...]

1030 And:

El tratado ha sido firmado, obvio es decirlo, por ministros del Reino Unido y de España, no por ninguna autoridad local Gibraltareña.

[The treaty has been signed, self-evidently, by Ministers of the United Kingdom and Spain, and not by any local authority.]

I know the Chief Minister will rely on his concordat; I am not making that point. I am making a much wider point, that what Spain does is say one thing in one tone – that they respect the people of Gibraltar, they want to show conviviality, a new respect for a new tone – but then acts in a way

1035 that is within the entire ballpark of the traditional way that Spain has always behaved towards Gibraltar.

1040 If Spain really wanted to, and was truly recognising Gibraltar, it could sign a deal – many people have done, in the analogous field of exchange of information – because this Tax Treaty contains provisions on exchange of information as well. Gibraltar has had a long track record now. Since the year 2000, when I was Minister for Financial Services, Gibraltar has systematically signed a whole list of international Treaties agreements with nations on the issue of analogous exchange of information. A number of those can be found on the OECD website. The constitutional status of Gibraltar has not been an impediment. The Chief Minister said, as part of one of his ... One of the points that he has raised before, when we have exchanged press releases on the issue of the Tax Treaty ... He has said the reason we have not been able to sign an agreement with Spain is because of the constitutional status of Gibraltar. No, Mr Speaker, that is not correct. That is not the reason. The constitutional status of Gibraltar has not been an impediment for us to sign any agreement with any other country except Spain, because it is not about our constitutional status; it is about the fact that they are unwilling to recognise Gibraltar. That is the fact. Otherwise, why would we have signed an agreement directly with the Government of Australia? Why would we have signed an agreement with the United States of America? The United States of America is willing to sign an agreement with Gibraltar, but not Spain, and there is a reason for that. The constitutional status of Gibraltar was not an impediment for us to sign an agreement with the United States of America, the biggest superpower in the world, and yet we are being told by the Member opposite that the constitutional status of Gibraltar is an impediment to sign with Spain.

1055 The hon. Member needs stop giving in to his natural tendency of trying to promote everything that he does as fantastic and trying to explain away things that are stunningly obvious, one of which is that the reason they are not signing is because they do not recognise us. That is the basic reason, and no other. There are so many treaties and agreements that we have signed with other countries that I commend any listener who wants to look at that information to look at the OECD website themselves, and they will see the number of agreements, which are there for everyone to see in glorious ... not technicolour, but black and white, blowing a real hole in the argument that this is anything but the usual Spanish unwillingness to recognise Gibraltar.

1065 Mr Speaker, what does this Agreement do? Well, beyond the structural and non-recognition of Gibraltar, this Agreement is nothing more than an attempt by Spain to gain economic controls and handles on the way we run our lives and the way we run our economy, in a way that threatens inward investment and undermines our economy in the future. That is what it is, and that is why this is another bad deal, and that is why Members on this side of the House are rightly concerned about the Government's willingness to become the people who bring this Agreement to domestic effect in the other motion that we will hear today.

1070 This is not an agreement like any other tax agreement. The OECD has published a model for tax treaties. It is a model that is well known to those who work in this trade, and it is a significant model. But this Agreement does not do that. The OECD Model Tax Convention on tax agreements – on which the Hon. Mr Clinton will no doubt talk to the House, on this motion, at much greater length than I will; I am making much broader points – is neutral and fair, which is everything that this Agreement is not. This Agreement is not neutral and fair.

1080 This Agreement, I remind people listening to this debate, hampers the development of our economy by making Gibraltar less attractive to do business from and attract future inward investment to. One of the unique selling points was always to attract people to Gibraltar who wanted to set up their business and perhaps wanted to bring in money and create jobs and new opportunities to this economy, and also wanted to enjoy the lifestyle in Spain, live in Spain and so on. This Tax Treaty will treat a lot of those people as if ... Even though the business itself is not doing any economic activity in Spain, the business itself is going to be treated as if it was tax-resident in Spain, even though it has no activity in Spain. How is that not going to hamper the development of our economy? How is that not a handle on our economy? That is exactly what Spain wants.

When Sra Laya talked about facing the crossroads, when she gave her recent intervention in January this year at the Congreso, she spoke about the crossroads of Brexit and said, 'We, can either have Gibraltar shut away in a self-sufficient bubble, or we can gain influence.' This is part of the strategy. Spain is dealing with this in a consistent way. This is part of the strategy to create influence and ensure that it obtains a degree of control in who is investing in Gibraltar: 'Let's create mechanisms that allow us to create' – by agreement with the Members opposite – 'by legislation that even though someone from outside comes over as an inward investor, goes to live in Spain, creates his business here, the business is taxed as if it was, in a legal fiction, resident in Spain.' It is massively intrusive, this Tax Treaty, to the lives of some Gibraltarians who, under this regime, now need to account not to the Spanish state because they live in Spain ... Look, if people live in Spain, they live in Spain, but Gibraltarians who come back to Gibraltar to live for a period of time, if they are living in Spain, are deemed to be Spanish tax residents.

This Tax Treaty creates a number of presumptions of law and evidence on Spanish tax residents which put individuals and companies to having to prove to Spanish tax authorities – by agreement of the Member opposite – that somehow they are not Spanish tax residents. And then this Tax Treaty treats Spanish nationals or companies setting up in Gibraltar ... If a Spanish company wants to set up in Gibraltar and employ 500 people and have no activity whatsoever in Spain, but is Spanish owned, that Spanish company is deemed to be a Spanish tax resident, even if it has no activity, because it is Spanish owned.

Mr Speaker, so that listeners who are following the debate can understand what I am talking about and why we say this Tax Treaty is so different to the OECD Model Tax Convention, in 2013 the UK signed an agreement with Spain for itself, so the UK and Spain have a tax treaty for themselves. If you compare the UK-Spain tax treaty with our Tax Treaty – the neutral and fair tax model of the OECD compared with the unfair, intrusive and harmful Tax Treaty that has been negotiated by Members opposite – it is obvious how the effects are damaging to Gibraltar. I will just highlight a few of those.

In the UK-Spain tax treaty there is no presumption of Spanish tax residency for individuals – none. Conversely, in the Gibraltar Treaty there is a clear presumption of Spanish tax residence for individuals that can affect people who actually live in Gibraltar. In the last couple of days, the Government has been forced to issue a press release about the impounding of cars. That situation is going to get worse, rather than better, when there are actual presumptions in legal agreements. The test of residents in the UK-Spain tax treaty is whether a person has a permanent home, or where his centre of vital interests is. When this cannot be determined, the general presumption is that the person is a tax resident of the country where he is a national. It is obvious, in terms of tax law. In relation to the Tax Treaty – which, in his infinite wisdom, he has negotiated – in Gibraltar, when issues are not conclusive individuals are presumed to be considered Spanish tax residents unless they provide reliable evidence to the contrary. So, even if they actually live here, there is a presumption against them – nothing like the neutral and fair OECD model. There is nothing in the UK-Spain tax treaty which states that Spanish nationals who move to the UK will only be considered Spanish tax residents. There is nothing there, and yet the Tax Treaty for Gibraltar – negotiated in his infinite wisdom – specifically says that Spanish citizens moving to Gibraltar 'shall in all cases only be considered tax residents of Spain'. There is nothing in the UK-Spain treaty that says that English people living in Spain who returning home to Bradford continue to pay tax when in Bradford as Spanish tax residents for four years after leaving Spain, yet in the Gibraltar Tax Treaty – negotiated in his infinite wisdom – any Gibraltarian who has been living in Spain for over four years and returns home, after arrival in Gibraltar and for the next four years, will continue to be a Spanish tax resident.

In the case of companies, the UK-Spain treaty makes clear that a company is tax resident where the effective management is situated. Conversely, in the Gibraltar Tax Treaty, Gibraltar companies can be considered tax resident in Spain if the shareholders live there. So, it is not about where the management is; if the shareholders live there, there is a presumption of Spanish tax residency for Gibraltar companies.

1140 The UK-Spain tax treaty makes clear that an English company would be taxed in England on its profits, unless it has a permanent establishment in Spain. Conversely, the Tax Treaty – negotiated in his infinite wisdom – makes certain Gibraltar companies tax residents of Spain, even where the permanent establishment and operations of the company are in Gibraltar. Additionally, the Tax Treaty states that Spanish companies that move to Gibraltar from the date of the Treaty ‘shall in all cases maintain tax residency only in Spain’.

1145 Mr Speaker, I am sure my colleague Mr Clinton will talk about other features of the Agreement, but that gives a snapshot for people listening about why this Tax Treaty is harmful. It is not like the OECD model of tax treaties. It is not that at all. When you do a comparison, we suffer badly. It is because Spain has scored goals against the hon. Member, starting from the fact that they consider him a pariah and do not want to sign any agreement with him, but are quite willing to sign the Agreement with the UK and score as many goals and obtain as many intrusions into our life and into our economy and into the way that we attract business to Gibraltar, to try to erode it because it has a political objective. This is not an accident, because with any other country in the world ... In the same way as the US were willing to sign an agreement with Gibraltar, I am sure the United States, if you wanted to negotiate a similar agreement, would not be bending us over a barrel trying to negotiate and erode our way of life in this way.

1155 There are political objectives at stake here. They are the same ones they have always had. Sometimes the tone changes, but we have to keep an eye out on the fact that the fundamentals, regrettably, have not changed. I am someone who believes and hopes that they will change, but so far there is no indication and this Tax Treaty is the hallmark of the Trojan horse.

1160 The fundamental principle in the OECD Model Tax Convention is that people should be taxed where they live and work, and companies should pay tax where they operate, where they perform, where they create value. That is the principle of the famous convention that is mentioned in the Tax Treaty – it has not got a catchy name – on base erosion and profit shifting. It says that companies need to ‘ensure that profits are taxed where economic activities generating the profits are performed and where value is created’, rather than where it is convenient to Spain because it wants to load the political reality.

1165 There are a number of presumptions, which I am sure Mr Clinton will talk about. I have had the benefit of some advance notice of his remarks, so I am not going to labour the point on presumptions, which I know Mr Clinton will deal with, but the reasons and summary of the issues that I have pointed out indicate very strongly that this is a Tax Treaty that can act as a disincentive to the attraction of business to Gibraltar, that allows Spain an intrusive presence in Gibraltar’s affairs. When we are not dealing with a friendly neighbour, we have always got to keep an eye out on that reality.

1170 One of the most important things I first heard the Father of the House say when I was a young teenager was that it was important to be economically sustainable before you could be politically sustainable. In other words, there was a link between those things. It is important to bear that in mind always in this community while we face a political threat. Even if we did not face a political threat, it is important to bear that in mind because we are a small place, and small territories and countries are fragile. I remember going to a Commonwealth conference on small countries that are not facing political claims, and one of the big threads in the discussion was the fragility of small territories with a population of less than a million people. We are always going to be fragile and susceptible to either environmental, political or economic factors. Overlaid with that, we have the political claim from Spain, so it is important to bear in mind, and when you look at these things, handing ... and handling

1180 We do not have a big territory, where we say our selling point to people is that they can set up a business in Gibraltar but they can live in the wider lands, the valleys and hills of Gibraltar, or they can live ... not in Spain, but we have a border with a different country, so they can live there. That is not the case, so, given that one of the unique selling points for Gibraltar was always the wider issues and the wider quality of life, we have to keep an eye out on the effect of these things, and

1190 that is where my view is that hon. Members opposite have fallen into serious error in relation to these issues.

Mr Speaker, when agreements were signed in Cordoba, they were explicitly between three governments and there were pictures to prove it. I was not a fan of some aspects of the Cordoba Agreements, but in relation to trilateralism as a concept I agreed with it, in the same way as I believe Members opposite agree with the issue of trilateralism. But here it is only the Chief Minister who believes that this was a tripartite process, and the only picture is not a picture of the Foreign Ministers with the Chief Minister up the Rock, like there was with Sir Peter Caruana; the only picture is in his mind, as a fantasy. That is the reality.

On 4th March 2019, in announcing the Tax Treaty, the Member opposite issued a press release to say:

The Tax Treaty has been negotiated between the Governments of Spain, Gibraltar and the UK ... This Treaty recognises the existence of a separate and distinct tax authority in Gibraltar.

1200 Spain issued a statement on the same day that said:

The tax agreement signed today by Minister Joseph Borrell has been bilaterally negotiated with the United Kingdom.

1205 It then goes on to explain that one of the reasons is to deal with the reduction and elimination of tax fraud and the adverse effects for the Treasury derived from the characteristics of Gibraltar's tax regime – in other words, again, the traditional caricature of Gibraltar – ending their statement:

With regard to legal persons and other Gibraltarian entities, their tax residency is established in Spain when they have a significant relationship with Spain, either due to the location of the majority of the assets or the obtaining of the majority of most of their income in our country, or when the majority of their owners or directors are tax residents of Spain ...

– something which no OECD Model Convention agreement does, but it is striking that here they are again emphasising the bilateralism of this Tax Treaty.

1210 I already read into *Hansard* the comments of Sra Laya about the bilateralism of this Agreement and how she dealt with the point when she said, '*No es cierto que la firma del acuerdo suponga un reconocimiento de Gibraltar ni mucho menos*'. I have already read that. On the very same day she was making these remarks, and in the context of the approval of the fact that Gibraltar was going to join the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS), Spain entered a reservation, in the usual way, into the Convention. Sorry, not the very same day, the next day, Spain entered a reservation, a declaration over the local character of the authorities of Gibraltar. So, rather than this being a great recognition, it is the opposite. Everything points to it being the opposite of what the hon. Member says. It is not a recognition. Spain has not recognised Gibraltar, much as I would like that to be the case. I would be shouting from the rooftops and celebrating – with a social gathering of six, of course, if it were possible – if it were true that we were being recognised, but that is far from the reality.

1220 The objectives of Spain are clear and have always been clear. Sra Laya has made repeated statements since the signing of the agreement, where she has said that Spain has made important advancements in fiscal sovereignty over Gibraltar:

El Acuerdo de Gibraltar resuelve la soberanía fiscal a favor de España.

In the *Financial Times*, she said, in February last year:

What we have done with the fiscal treaty is probably much more important than we realised for our sovereignty.

1225 In the Congreso itself she said, on 4th June:

tenemos una oportunidad única que no podemos dejar pasar para resolver una cuestión mayor relativa a la soberanía de España, que es la soberanía fiscal.

[we have a major opportunity that we cannot let pass to resolve a major question, important to the sovereignty of Spain, the fiscal sovereignty.]

1230 Mr Speaker, Spain's objectives have not changed, and the language with which she has described the process and what they are trying to achieve has not changed. They still use *paraíso fiscal* to describe Gibraltar. They still talk about fraud, money laundering and smuggling. Not only do they talk about it, the UK has been willing to subscribe to a protocol that, side by side with the objectives and all the pronouncements of how people describe it, makes it look as if there is an acceptance that that is indeed what is happening. There is no doubt that that is the language.

Mrs Laya has said in the Congress that one of the objectives of the negotiation was to ensure that Gibraltar could not consolidate itself into a fiscal paradise or an epicentre of money laundering in detriment to El Campo de Gibraltar. She goes on, when analysing the Tax Treaty:

las reglas favorecen a España. Este reconocimiento explícito de las bondades del acuerdo pone de manifiesto por tanto y a modo de conclusión anticipada, si me lo permiten, que estamos ante un buen acuerdo.

[the rules ...

1235 – in the Treaty, the Tax Agreement –

favour Spain. This explicit recognition itself manifests how this is a good agreement for Spain.]

She carried on:

These objectives are very beneficial for our country and this agreement creates the instruments necessary to obtain those benefits. Until now, we have not had a juridical instrument to defend the interests of the Spanish Tax Authority. For the first time –

**Chief Minister (Hon. F R Picardo):** The sigh was universal.

1240 **Hon. K Azopardi:** The hon. Member says, from a sitting position, that the sigh was universal. The sigh of a lot of people in this House, on this side, and the sigh of a lot of people listening to the debate and affected by the Tax Treaty is much deeper and meant, because of the effects of the harmful and intrusive Treaty that the Members opposite ... And the sigh would not have to be present at all had the hon. Members on that side not negotiated an intrusive and harmful Treaty, **(A Member: Hear, hear.)** because we would not be bothering the House with such a debate.

1245 Mrs Laya says:

For the first time in our history, this allows us to end an anachronistic fiscal situation tremendously prejudicial to the interests of Spain in its entirety.

1250 Mr Speaker, I do not know if the hon. Members were duped or have not even realised. We will listen to the Chief Minister, but are they seriously going to contend that in its analysis, when you look at the causes and effects of this Agreement, this is a good Agreement for Gibraltar, it is beneficial to Gibraltar, it does not affect our economy in any way and does not create these negative presumptions; even though it is unique and it is not like the OECD model, somehow it is a level above? That is how I expect the Chief Minister to put the argument, because, as everything they do is fantastic, I expect him to have improved the OECD Model Tax Convention and the next OECD Model Tax Convention that emerges from the OECD will be based on the Gibraltar model. Or is it that he was taken in by the glitz and glamour of the possible opportunity of maybe recreating the photographic opportunity at the top of the Rock that Sir Peter Caruana was in?

1255 *(Interjection by Hon. Chief Minister)*

Spain seeks a role in our affairs. They seek to encroach in our affairs, inch by inch, to influence. What happened to the Chief Minister's speech that was still ringing in our ears when we read the Tax Treaty: 'not one grain of sand, not one drop of water'? What happened to that? What happens now he is an apologist for the Spanish state? He is an apologist for the Spanish state because, weeks after the end of the transition period, now he is explaining to people – the fact that they have impounded their cars – 'Don't worry, it is actually nice, Spain; they are just doing what they ... it is perfectly okay,' not that the Spanish government is acting in the same way it does ...

They say they want to have a special relationship with Gibraltar going forward. Well, they have an opportunity. They have a country of 40 million people. They can instruct their officers to be kind, generous and flexible to the people of Gibraltar, instead of trying to victimise a couple of hundred people. What Spain wants is to barge into our laws and jurisdiction, and not only do they want to barge ... The problem with the Tax Treaty is that they were trying to shoulder barge the door down when the hon. Member opposite just opened it for them and said, 'Come in and have the controls.' So, what is next? Police and Customs, borders monitoring, all under his watch?

Respect has to be at the core of the new relationship, not guerrilla warfare on our rights as a people, not caveats, not objections on our recognition. Cosy fireside chats or WhatsApps with Spanish politicians are not really achieving any change, are they? If they are, where is the evidence of it? If they want a new climate, then they need to build – what I have said before – enduring trust and confidence, because otherwise, giving a hoodwink to better relationships and then instructing the Guardia Civil vessel to blare the national anthem into our waters or turn up in Ocean Village is ambivalence. That is not enduring trust and confidence. Real change requires real political leadership from Spain and then abandonment of the way it has traditionally done business with Gibraltar. Instead, what we are getting are the tired old themes and arguments, objectives to strangle our economic model in the same way as usual, based on the unreal, based on the surreal perception of what we do and our way of life – like a Luís Buñuel movie, finding a cow in the middle of your living room. That is what the Spanish equivalent of analysis is.

There is a read-across to the New Year's agreement, and we are concerned about that. This is a plan not conducted with the blunderbuss of El Algarrobo of the Curro Jiménez episodes, but by stealth. Spain has set itself a pattern. The socialist government is not Vox, it is not the PP. It sets a pattern, a pattern which is a Trojan horse. On the one hand, they speak softly, but actually they are very incisive about the achievements that they have created in this Tax Treaty, which is bilateral, full of pitfalls, and given for what? If that is the defence of a bad agreement, let it be said, because so far they have not.

All this chimes with the themes that we have been trying to put across for some time now, and especially since the New Year's Eve agreement, that there is a need for political honesty with people, to call a spade a spade and not describe something in a way it is not. No more misrepresentation, no more lies – to coin a phrase which was sung in his face:

España recuperá protagonismo respecto a Gibraltar.

That is what Gonzales Laya said on 20th January 2021. It is the stealth argument, the ability to recover a degree of influence, which is seen here – 'fiscal sovereignty', in her words, not mine. I call it intrusive and harmful. She believes it is part of the tool to be able to seek those controls, her consistent strategy – not Gonzalez Laya, Spain's consistent strategy – and he is allowing those inroads into our laws, our jurisdiction and our powers. This is a bad agreement for Gibraltar. It is his deal. This is not an agreement the GSD that I lead would have signed. (*Banging on desks*)

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**Mr Speaker:** I now put the question in terms of the motion moved by the Hon. K Azopardi.

**Hon. Chief Minister:** Well, Mr Speaker, if those who might have spent some time staring blankly at the screen at home now, or here, watching the hon. Gentleman might simply now wish to wake up, we might be able to get to the bottom of what this Tax Treaty really is about and not

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the nonsense that this motion has pretended to carve out for the hon. Gentleman to have the ability finally to hear his own voice.

1310 This motion is nothing more than a self-serving vehicle for politics. It is not anything else. There is no reason for this motion to be put. There is not any impending moment which requires the hon. Gentleman to put his motion. Last year, in February, when he put it, what was the need for this motion? It was nothing but a vehicle for his own political opportunism, which he has today driven at a snail's pace, in his usual torturous style, for which I congratulate him because he has taken us through all aspects of what it was that he wanted us to see as his vision of this Treaty in the most meticulous fashion, and slowly. And so I think it is fair to say to him that he has at least  
1315 been consistent. He has set out today no more and no less than exactly the same parameters that he set out in his manifesto in October 2019. The things that he has said today are the intrusive and harmful aspects of this Treaty are the things that he set out in October 2019, in a paragraph, I think on page 108 of his manifesto, which set out the things that were wrong with this Treaty. Nothing new.

1320 Mr Speaker, as the leader of the only British territory with a chance of a mobility agreement with Europe – in other words, not as the leader of the only British territory that does not have a deal with Europe, the leader of the only British territory that has the possibility of a mobility deal with Europe – of course everything that led to the Withdrawal Agreement, the Protocol of it, the subsequent negotiation, is connected. Or is it that the hon. Gentleman is suggesting that the  
1325 Government of Gibraltar has at any time suggested that all of the agreements in the MoUs and the Protocol are not connected? Of course we have not.

The hon. Gentleman says the Chief Minister has not got up and said the Tax Treaty, the MoUs, the Withdrawal Agreement and the Protocol were all connected – well, because the Chief Minister considers the people of Gibraltar clever enough to understand that. And why do I consider them  
1330 clever enough to understand that? Because all of these items are set out together in the Protocol, as the Leader of the Opposition actually demonstrated when he read the part of the Protocol that referred to the Tax Treaty. So, how can he say that we have, for one moment, not suggested that these things are all connected?

In fact, quite contrary to what we have heard so far, not only is this Tax Treaty not harmful or  
1335 intrusive, I will show this is a Treaty which is entered into on the basis of it being one that protects our sovereignty, that recognises our jurisdiction and in respect of which we will exercise full control. Do the hon. Members recognise those words: sovereignty, jurisdiction and control? Sovereignty protected, jurisdiction recognised, control about to be exercised. I will explain to them exactly how, and in doing so I am not going to fall into the trap that the hon. Gentleman sets with  
1340 the usual transparency that it is so huge that an elephant would fail to miss it. I am not going to become an advocate for Spain.

He is right about one thing. Spain needs to change its chip. She needs to have a different, more positive attitude to the people of Gibraltar even than she might on some occasions show a glimmer of, even than she showed during the period of Cordoba. Or doesn't he recall that after  
1345 the famous photograph at the top of the Rock, Sr Moratinos scurried into Spain and, when attacked by the mayor of one of the neighbouring towns, defended his trip to Gibraltar by saying he had come here to tell the former Chief Minister that Gibraltar was Spanish? Does he forget the parts that do not work for him? Does he forget that Sr Moratinos left Gibraltar, scuppered to a microphone at Cadena SER and said, 'Yes, yes, I have been to Gibraltar to tell them *Gibraltar es Español* from the top of the Rock'? That is the famous photograph that the hon. Gentleman today defends, and yet then condemned when he was the leader of the PDP, but I will come to that in a ... I will not say in a moment – in hour or so, I think.

1350 Mr Speaker, let me just say that if the hon. Gentleman thinks that the Deputy Chief Minister and I are in the business of massaging public opinion, it is only because we think we can give the people of Gibraltar a really happy ending, not for any other reason.  
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We have listened to him now for over 80 minutes. I have not had a worse 80 minutes since the Liverpool-Everton Derby at the weekend, I must tell him.

1360 This Treaty was signed in March 2019. That is a full two years ago, 24 months, and something happened between then and now. Just like the old film *A Funny Thing Happened on the Way to the Forum*, something happened between March 2019 and now. It is not that we left the European Union; we will come to the consequences of that. There has been an intervening plebiscite between that Treaty and now. That is to say there has been a General Election between then and now and it is hugely important that the people listening today understand that the things he has said today are, I credit him, identical to the things that he set out in his manifesto, identical to the things that he said in the leaders' debate and identical to the things that he was saying in the estates. He has not changed his argument. I credit him with that, but he must also credit the people of Gibraltar with an element of understanding and intelligence. I consider the electorate in Gibraltar to be the most perceptive and intelligent in the world. I would not, for one moment, think that I could pull the wool over any single one of the people of Gibraltar. He appears to think that the people of Gibraltar can be duped. He appears to think that we duped the people of Gibraltar, because he put those arguments during the course of the General Election campaign – I will deal with them again, now, as I dealt with them during the course of the General Election campaign – and he lost the General Election campaign. He went down to the worst loss of a second party in politics in Gibraltar in our history – he needs to remember that – and he came fourth from the bottom of the list of Members of this House. He was the Leader of the Opposition going into ... No, he was not, he was the leader of the party – I did not mean the Leader of the Opposition – going into the campaign, leading on these self-same arguments. Only Mr Clinton, Mr Phillips and Mr Reyes were less popular than him making these arguments. He has to remember that there was this intervening plebiscite. That is how far his arguments got him when he put them in the court of public opinion in Gibraltar.

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1385 When he says that my arguments are not persuasive, well, we are going to have the same argument here that we had in the leaders' debate and during the course of the General Election campaign. We met on three occasions as leaders and we exchanged many press releases on the subject after the Treaty was signed in March 2019 and during the course of the General Election campaign. Can he at least recognise that our arguments are the ones that persuaded? We put them in good faith and the people of Gibraltar accepted them in good faith, so when he says that our arguments are unpersuasive, they might be unpersuasive of him. Seventy-five per cent of the people of Gibraltar were not persuaded by him.

1390 I do not know what it is that makes him think that he can persuade Spain to return to the trilateral, that he can persuade Spain to drop its claim, that he can be more persuasive than Peter Caruana even was, than Fabian Picardo ever will be, or than Joe Bossano ever was. At least Fabian Picardo, Peter Caruana and Joe Bossano at different times have persuaded more than half of the electorate in Gibraltar. On his own, he is able to persuade about 4%, and leading the main party of opposition he persuades 25%. There is nothing to suggest that he is more persuasive than Joe Garcia, Joe Bossano, Fabian Picardo or Peter Caruana, with the very greatest of respect, because when his arguments are tested empirically in the fire of a General Election campaign, he loses. I would like to see him in the Ministerio de Asuntos Exteriores; I do not think he would survive five minutes.

1400 This motion is no more and no less than a rerunning of one of the arguments in the General Election and therefore a disrespect of the people of Gibraltar, because he must think either that the people of Gibraltar did not hear him the first time, or he is not prepared to accept their verdict, he is not prepared to accept the judgement of the people of Gibraltar. It is not that the people of Gibraltar delivered a result by a fine margin. We took, with our arguments, more than double the votes he took. Of course, one of the reasons that may have happened is not that he was making these arguments during the course of the General Election campaign. Indeed, he was making them before, from March 2019. Maybe one of the reasons it happened was that 72 hours before polls opened they changed their position. Or doesn't he remember that? Doesn't he remember the U-turn that they carried out in respect of the MoUs on the Tax Treaty? Well, he is shaking his head, but it was remarkable, cynical stuff, if I may say so. You spend six months pretending that you

1410 stand for one thing, so that you try to garner the votes of those who stand with you against this  
terrible Treaty and MoUs, and then 48 hours before a General Election, with a lot of the postal  
vote already sent and people perhaps switching off, you change your position and you say, 'Well,  
no, I accept the MoUs and I accept that Tax Treaty.

1415 Anyway, Mr Speaker, I think he wanted to persist with this sound-of-my-own-voice motion that  
he put yesterday. But another thing has happened since the General Election, or indeed at the  
time of the General Election and after, and that is that the former leader of the GSD has not just  
had an opinion that he gave, that he agreed to publish, that says the opposite of what the current  
leader of the GSD says – or is that he has forgotten? He has quoted everyone, but he has not  
1420 quoted Sir Peter Caruana. It is really quite remarkable that the leader today of the GSD comes  
here to quote the Foreign Minister of Spain and does not quote the former leader of the party,  
the former Chief Minister of Gibraltar. We published his legal opinion. I will send him the press  
release if he has forgotten – (*Interjection*) Mr Speaker, I will send him the press release with the  
part of the legal opinion that we published –

1425 **Hon. D J Bossino:** The press release was a précis.

**Hon. Chief Minister:** We published the legal opinion – I will send it to him – and he has not  
even quoted what he says is the précis. But if he did not want to quote the précis because he  
wants to read the whole opinion – I recall he has it, Mr Speaker – why didn't he quote what Sir  
1430 Peter said on *Viewpoint* outside of privilege? Or is it that he had forgotten that?

This legal opinion on the law ... There are two things here, the law and the politics, but on the  
law the former Chief Minister, Leader of this House – who some people in this place call the  
greatest Gibraltarian of all time; not me, although I have a high regard for him – that opinion, says  
there are no sovereignty concessions in the Tax Treaty. The Government does not usually publish  
1435 legal advice, but we authorised the disclosure of the advice because it went to sovereignty, and  
Sir Peter's legal opinion is that the Treaty had been entered into by the UK in accordance with the  
Constitution and with the freely given agreement of the Government of Gibraltar, with the  
necessary legislation to be enacted by the Gibraltar Parliament, which is what we are going to do  
after this motion. So, on the issue of form, no concession.

1440 Then, Sir Peter says:

Gibraltar's obligations under the Treaty will be administered by Gibraltar's authorities ...

And:

Spain is granted no political, administrative, executive, legislative or judicial competences. For those reasons, there  
are no legal concessions on sovereignty.

1445 That judgement of Sir Peter Caruana is obviously one not of somebody interested in winning  
votes. It is a better judgement, obviously, than that survey of another lawyer who wants to win  
votes. But surely we would rather all agree with the opinion of a Gibraltarian former Chief Minister  
than with the opinion of a current Spanish Foreign Minister.

1450 He might have forgotten, as he forgets so many things, but does he remember when he and I  
were with Sir Peter Caruana, then Peter Caruana, in 2011, on 7th December, in the leaders'  
debate? He was then leading the PDP. I put it to Sir Peter Caruana that Peter Hain, in a book that  
was shortly to be published, was going to suggest that he had been involved – not because he was  
consciously doing so – in the beginning of what led to the joint sovereignty process. Peter Caruana  
said to me, 'If Peter Hain says that, it would be untrue.' And he said another thing to me: 'If it  
comes to choosing Peter Hain' – of all people – 'and his word, or the Chief Minister of Gibraltar,'  
as he then was, that night in the leaders' debate, for the last 24 hours, 'who would you choose?'

1455 I did not hesitate. I said the Chief Minister of Gibraltar. He might remember, although of course he was a bit of a bit player in that leaders' debate, but that was my view.

1460 It is quite remarkable that the current leader of the GSD prefers to quote in this Parliament the position of the Minister for Foreign Affairs of Spain and not be the imposition on a legal analysis of one of the most senior silks in Gibraltar, a former Chief Minister of Gibraltar, his former leader and former leader of the party that he now needs. It is absolutely remarkable, and those who are going to follow his speech might like to factor that into the equation. Given that some of them are the people who have called Sir Peter the greatest Gibraltarian of all time, it will be quite remarkable now to see that they side with a serving Spanish politician and not with the man they refer to as the greatest Gibraltarian of all time, in respect of his legal opinion.

1465 In fact, Sir Peter has, since the General Election, gone further. He has subsequently expressed a political view, not just a legal view. I do not know whether the hon. Gentleman has also forgotten this: on *Viewpoint*, on 7th February 2020, Jonathan Scott, as the interviewer for GBC, asked Sir Peter Caruana ... The Hon. Mr Bossino can rest assured I will send him the transcript, if he wishes. Mr Scott said this:

You have said that you were satisfied that the Tax Treaty arranged as part of the Withdrawal Agreement made no significant concessions on sovereignty.

1470 Sir Peter Caruana answered, and I am going to quote him exactly so that nobody can suggest that I have misquoted:

Yes, I mean, I am going to be careful because I have given, professionally, an opinion, a legal opinion to the Gibraltar Government on that, so I am limiting myself to things that I have said publicly, and in any case, what my legal views on the matter are is neither here nor there. As an ex-Chief Minister of Gibraltar, if I had thought that my successor Government ... Even though I am out of politics now, if I had thought that a Government of Gibraltar had made any relevant concessions of sovereignty, or, better put, concessions in the relevant important aspects of sovereignty, namely the Britishness of our sovereignty, I would have protested and commented publicly, whether I had been asked to or not as a lawyer or otherwise. So, I mean, from the mere fact that I did not, I think people are entitled to deduce that I am of the view that it does not, and I am of the view that it does not.

That is what the former leader of the GSD said when ... Well, I say former leader – I think he is the former, former, former leader of the GSD. I lose count.

1475 In one breath he is telling us that Sir Peter was magnificent, when he tells us about the great GSD legacy today. The golden legacy that Mr Bossino sometimes refers to is the photograph, the Polaroid at the top of the Rock. Peter Caruana achieved the trilateral: magnificent. The photograph: magnificent. But he is not so magnificent when he tells you that you are wrong on the issue of sovereignty in the analysis of the Tax Treaty. Is that right? Well, the people of Gibraltar can see through this.

1480 But if we are going to talk about Cordoba, for Keith Azopardi, the leader of the PDP as he then was, those eight years of the GSD were awful. The first eight years of the GSD Government, from 1996 to 2003, were magnificent; the second eight years of the GSD Government – once they let in people who were not of GSD stock, all of that – from 2003 to 2011, were absolutely awful, except now the photograph was magnificent. But at the time, Keith Azopardi, the leader of the GSD, made comments about the Cordoba Agreements which were absolutely remarkable in the context of somebody is now leading the same party.

1485 To be fair to him, he has not changed his position. 'Azopardi warns against sharp-toothed wolf in sheep's clothing' – that is what he said about Cordoba then, except today he is saying that at the top of the Rock everything was hunky-dory, forgetting that the sharp-toothed wolf ran off to catch a microphone to say *Gibraltar es español*. At least the other guy at the time, the one who was not of GSD stock, was talking about a clash of visions, saying that Bossano and Azopardi were wrong about all of these things which suggested that Spain was not to be trusted and that we had to embark on a different course. Well, Mr Speaker, butter would not melt in the mouths of some at some times.

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1495 Frankly, what I think has to be understood – and my Government has never hidden, and we  
 have expressed, and is not just implicit, it is explicit – is that, as Sir Peter himself says, and has said  
 also to *Viewpoint*, though I do not have the direct quote, it was a very different time after 2003,  
 when we had together trounced the joint sovereignty arrangements. Or does he forget Joe  
 Bossano getting up and saying, ‘Before they get to him, they have to get through me,’ one of the  
 1500 most powerful political declarations of support to an incumbent Government from a Leader of the  
 Opposition there has ever been in democracy anywhere? ‘Before they get to him, they have to  
 get through me,’ – hardly the way that he might describe his support for me today. But in those  
 days we had just got beyond joint sovereignty, we were not leaving the European Union, there  
 was no clock ticking – a completely different negotiating position to the one we are in now. Or is  
 it that unless I get up and say, ‘Hey, Gibraltar is in a slightly weaker position because we are leaving  
 1505 the European Union on 31st December – wake up,’ I am not being honest? Unless I purposefully  
 denude the Government of Gibraltar of its negotiating tactical position and expose Gibraltar  
 entirely, I am not being honest – is that is what he is saying? I think he is far too clever to maintain  
 that position for a moment longer.

Let’s understand where we were, Mr Speaker. In those eight years between 2003 and 2011,  
 1510 the position was different. For four of those years, Mr Feetham, who now sits to his left, was a  
 Minister, Mr Bossino and Mr Clinton were variously, at different times, supporters of the GSD, in  
 the executive etc; and of course Mr Phillips was bad-mouthing the GSD, just as he was in the PDP.  
 But, my goodness, what a morass of inconsistencies we now find: the supporters of Cordoba  
 aligned with the opponents of Cordoba telling us that the photograph at the top of the Rock was  
 1515 somehow not a Trojan horse but a magnificent moment in diplomacy. I really find it difficult to  
 keep up with them.

Anyway, in 2011, when he was busy helping the GSD to lose the election, we were busy winning  
 it to stop a lot of what was going wrong in Gibraltar then, and since then, in part with this Tax  
 Treaty, we have changed the perception of Gibraltar in the context of our international financial  
 1520 affairs. We have enjoyed the benefit of being a part of the Withdrawal Agreement upon the  
 departure of the United Kingdom from the European Union, and we have enjoyed the benefit of  
 the transitional arrangements as well. If there is one thing that would have been a terrible position  
 for us to be in, it would have been the only territory in the continent of Europe that was out of  
 the EU while the UK was still in it, in transition. That would have been a very cold place to be  
 1525 indeed, and that is why, 48 hours before the election, they did the pirouette that they did, and I  
 will come to it in great detail because it must be real, lived in Technicolor.

With this Tax Treaty, with the much maligned MoUs and with diplomacy and hard work, but  
 with honesty and no pretence, we avoided a hard Brexit. That is the reality. It is what we all have  
 lived. The 32,000 souls that make up *HMS Gibraltar* have been in it together, and we have lived it  
 1530 together, the highs and lows, the cliff edges, until 31st December, and another cliff edge to come.

The arguments that hon. Members are putting about this Tax Treaty are not true, though. *They*  
 are the pretence, and a pretence of the worst sort. In order to understand just how bad a pretence  
 they are making and what they went to the people with and what they come back to the people  
 with today in this motion, to the heart of our democracy, let us look in detail at the arguments he  
 1535 has put. He has put them consistently.

In the 2019 GSD manifesto:

WE WILL REQUEST THE TERMINATION OF THE TAX TREATY  
 The Tax Treaty entered with Spain is bad for Gibraltar.

That statement is an expression of opinion, but actually what the Tax Treaty does is it provides  
 greater clarity and transparency to taxpayers, it ensures the beginning of the possibility of better  
 relations with Spain – but Spain needs to man up and be ready to have those better relations –  
 1540 and it removes us, and I will come to the detail of this in a moment, from the Spanish blacklist.  
 But additionally, it has allowed us to join the OECD BEPS, the inclusive framework. If we were not

1545 in BEPS, we would soon find many other doors closing to us, including one of the criteria to be put on the European Union blacklist if you are not in BEPS, and Spain, which is a founder member of the OECD, have us blacklisted to go into BEPs. That is what the Tax Treaty does, so his request to terminate the Tax Treaty, because he says it is bad, obviates all of that good, keeps us out of BEPS and puts us on the European Union blacklist: first failure to understand, first mistake, first opinion that the people of Gibraltar rejected and he is wrong to advance again today.

Next line from the GSD manifesto:

It taxes Gibraltarians returning home from Spain for four years as if they still lived in Spain even after coming home.

1550 Let me repeat that: it taxes Gibraltarians returning home from Spain – in other words, you and me when we go to El Pryca, when we return home from Spain. I am showing my age; I understand Pryca is no longer available, Mr Speaker – Carrefour. ‘It taxes Gibraltarians returning home from Spain for four years as if they still lived in Spain even after coming home.’ That statement is the statement of a political party; it is not the statement of any Member opposite. I do not know who wrote it. Let me tell the House I have set out who made the statement in order that I may retort to the statement in this way, in keeping with the Rules of the House: that statement is a lie. It is not true about Gibraltarians. It is only true about the very limited cases of Gibraltarians who have spent four consecutive years, at least, in Spain, in residence, before that can apply. This is not about Gibraltarians who have lived in Spain. You might live in Spain for a year, you might live in Spain for two years – you have to live in Spain for four years. Their statement is not that it taxes Gibraltarians returning from Spain who have lived there for longer than four years as if they were still living in Spain, so that statement is not true.

1560 But what is also not true – and on this I am going to put it to him, because he has said it today ... It is not true to say that this is unheard of. In fact, it is actually quite common. For example, a United States citizen continues to be taxed in the United States wherever he lives in the world, and I think the limit to shake it off, even if you hand in your passport and you take a different nationality, is 15 years. So, if an American citizen came to live in Gibraltar, spent the time here, took his nationality after three years if he married a Gibraltarian, for example, and surrendered his American nationality, he would be taxed by the United States for 15 years. So, where does he get that this is uncommon? Where does he get that? The United Kingdom does it. Or does he forget the old trick that you would move to Gibraltar six months before you sold your assets and not be subject to capital gains tax in the United Kingdom before we had the Double Taxation Agreement (DTA) with the United Kingdom. We did not require an agreement. Unilaterally the Chancellor undid that, not just in respect of Gibraltar, he undid it generally. A British citizen resident in the United Kingdom who moves abroad now suffers for I think up to five years the inability to shake off the liability to capital gains tax in the United Kingdom. So, where does he get that this is somehow the worst emanation of that rule in tax?

1575 Tax is borrowing, Mr Speaker. I hate tax. I hate paying it, I hate imposing it, I hate talking about it – it is boring – but if we are going to talk about it, let’s get it right, because the people of Gibraltar do not deserve to be told that something is unusual when it is actually common.

1580

**Hon. D A Feetham:** It is not common.

1585 **Hon. Chief Minister:** ‘It is not common,’ utters the oracle to his left, Mr Speaker, because of course there are only 400 million American citizens, so something that happens to 32,000 Gibraltarians is uncommon, when in fact it is already happening to 400 million United States citizens and 60 million United Kingdom citizens. Come on! Let’s put before the people of Gibraltar again the reality of the position, not the convenient position that the GSD would like to obtain, so that they can pretend that Joe Bossano and Joseph Garcia have somehow fallen trap to the Spanish Trojan horse that has gained something that no nation has ever gained anywhere else.

1590 The only horse here is my throat, and it is not Trojan.

The hostage to fortune in the GSD manifesto is exactly the next line:

It will deem some Gibraltarians

– ‘it’ being the Tax Treaty –

who actually live in Gibraltar as Spanish tax residents just because they may hold assets – like a holiday home – in Spain.

1595 They may as well have put a shining red light and a siren on this one, in their attempt to persuade anyone who owns a holiday home in Spain that they must vote GSD so that the GSD requests the end of the Treaty. That is what they are doing with that. That statement, whoever authored it – I do not know who authored it – is a lie. The Tax Treaty does not change Spanish tax legislation. It does not. The existence of an asset such as a holiday home may already make an individual a tax resident in Spain if they trigger the existing residency rules, but not otherwise. In other words, if you have what you call a holiday home and you spend 200 days there, that holiday home will make you a resident, not because you own a holiday home but because of the time that you spend there – not the value. They are going down the wrong thinking if they think that the value of the home, because it may be more than half of your assets, is somehow going to make you resident in Spain if you spend five days there. That is a misreading of the Treaty, if that is what they are pretending. Under the tie-breaker rules used to determine single residency, an individual may be resident in Spain if their only permanent home is in Spain. That is the reality, so another thing that they got wrong. But of course they got 25% of the vote. Knowing what Gibraltar is like, not even people with a holiday home in Spain believed them and voted for them. That is the reality. I know of many people with holiday homes in Spain who did not vote for them.

The next sentence that they put in their manifesto is:

It taxes Gibraltar companies who do not even operate in Spain as if they traded in Spain just because the shareholders or directors may live there.

1610 I do not know who wrote that sentence, but that statement is a lie about Gibraltar companies generally. What the Treaty has is a safeguard clause put in place to protect longstanding Gibraltar companies. Under a number of different tax systems it is absolutely normal – not just the Spanish one – for companies to be taxed where they are managed and controlled. That is the reality. It is a basic rule, Mr Speaker. *(Interjection)* And since we moved from the Exempt Company Regime, we do not seek to protect those companies who profess to operate in and from Gibraltar but do not have the necessary presence and substance to demonstrate this. Companies that are new entrants into the market after November 2019 are able to plan their tax affairs now in a transparent manner, being fully aware of the tax implications.

Next sentence:

It is a disincentive to inward investment and job creation.

1620 I am going to deal with that sentence in two ways, now and later in my intervention. I do not know who wrote that sentence, but whoever did was lying. There has been absolutely no evidence whatsoever, in the months after the GSD lost the last General Election until the pandemic hit, that there was any loss of inward investment or job creation. Actually, the Treaty provides clarity and certainty, which is what every business wants.

1625 Next sentence – there are not many left:

It taxes Spanish nationals or Spanish companies resident or operating in Gibraltar as if they were tax resident in Spain even when they do not live there or operate in Spain.

No prizes for guessing that that sentence is a lie. A Spanish person who is not resident in Spain but is resident, for example, in Portugal or in the United States, may be taxed in Portugal or in the United States. A Spanish company can only be resident in Spain. The position for Spanish companies has not changed. They were always due for tax in Spain. Anyway, since when was it  
1630 this Parliament's role to worry about the taxation of Spanish citizens? The hon. Gentleman has given us, out of his 80 minutes, 20 about the taxation of Spaniards. I was not elected by Spaniards; I was elected by Gibraltarians to look after their interests. I do not know whether he or somebody else, or his firm ... I do not know what it is that makes him so keen to defend the interests of Spaniards. What are the issues here? What are the issues that arise to Gibraltarian taxpayers, the  
1635 people who pay our salaries? And anyway, those are matters for Spanish nationals or Spanish companies to take legal advice on. I am very clear. I have said it since the beginning that I have been in politics. We do not believe that there is Spanish money hidden in Gibraltar and we do not wish to attract Spanish money to be hidden in Gibraltar. That is our politics, so if he is right and this Tax Treaty stops Spanish money being attracted to Gibraltar, it is entirely in keeping with our  
1640 policy position. I want to be extremely clear about this: we do not want that money in Gibraltar, we do not want Mr Valsedas in Gibraltar, we do not want Francisco Correa in Gibraltar, we do not want Marianna Rojoy in Gibraltar; we do not want any of that dirty money that found its way into accounts in other places.

Additionally, Spain can unilaterally decide to apply whatever measures it likes to its citizens. I  
1645 have just given him the example of the continued taxation of American citizens, the continuing taxation of British citizens being subject to capital gains tax. Spain can tax its citizens in any way that Spain likes, because if you carry the passport of a nation you suffer the rules of a particular nation, and if they say, 'If you carry our passport, wherever you live we will tax you' ... Well, that is the United States of America. It does not require Picardo to be duped, as he says, into signing  
1650 an agreement for that to be the case. But look, I am honest. I hold no brief for Spanish taxpayers; I hold my brief only for Gibraltar taxpayers. Is it also that he does not know that by being on the Spanish blacklist, in any event, Spanish citizens and Spanish residents suffer considerably when they want to move money in and out of Gibraltar, even if they work here already? So, the absence of the Tax Treaty, with us on the blacklist, was already causing a problem.

1655 The final sentence in their ... Oh, no, there are more. I thought it was the final sentence. One of the final sentences in their manifesto about the Tax Treaty:

All this means that the GSLP Government

– it is never the Liberals; it must be residual affection from the time he was a member –

have accepted a system that has allowed Spain to exercise tax jurisdiction over Gibraltarians, our residents and companies even when they live here and operate here exclusively.

That is a massive lie, Mr Speaker. I know that when I say things, the hon. Gentleman, perhaps  
1660 because he is the Leader of the Opposition, has to be sceptical. I salute that. I have no difficulty with that, so let me give him not Sir Peter Caruana, let me give him something else. Let me give him a partner of Ernst & Young – on GBC Television on 22nd March 2019, on *Newswatch*, interviewed by Jonathan Scott on the subject – Neil Rumford:

I guess that the first thing is that this Tax Treaty does not bring anyone into the Spanish tax net who is not already there under the current rules.

That is not Fabian Picardo, who he says has fallen for the Spanish ruse; that is not Sir Peter  
1665 Caruana, who obviously has a chequered history with him, even if not with the others. That is a partner of an accountancy firm. I wonder whether he forgot that when he wrote – or whoever wrote – this sentence of the manifesto.

1670 We have a territorial system of taxation in Gibraltar that is untouched by the Tax Treaty. We have two different systems, Spanish system and Gibraltar system, co-existing in this Treaty. It happens in many treaties. That is why, although it is complicated, you have to see how this system of exploitation of double non-taxation has been undone in the Treaty. That is what the Treaty is designed to do. It is complicated, but this is about working with our neighbour to stop the people who they think are cheating them of money from continuing to have those possibilities. That is what tax treaties do, whether you like your neighbour or you do not like your neighbour, whether your neighbour is being as mature as you wish they were, or not being as mature as you wish they were.

1675 Here is where the issue of inadvertence really comes up, not because we have inadvertently been duped – I can guarantee him we had the best advice, Mr Speaker, so we were not going to be duped – but Spain has, I am sure advertently, not inadvertently, recognised Gibraltar’s right to a separate tax system with its conceptual cornerstone of territoriality, despite the fact that Spain, as he might recall, has been aggressively denouncing that for decades, and yet Spain has accepted that a separate tax system exists in Gibraltar and it is based on the concept of territoriality.

1680 Has he forgotten when he was preparing for today that Spain has withdrawn its legal action in the European Court of Justice in November-December last year against the territorial nature of our system of taxation? As soon as they went through their parliamentary motions on the Treaty, they withdrew their action against our territorial system of taxation in the Court of Justice, an action that would have continued after our departure.

1685 Mr Speaker, this is not an application in court *ex parte*, where he is bound to put all of the arguments because the other side is not there and he has an obligation to say to the judge that which goes to his case and does not go to his case. Here, he can come and say only the things that go to his case, and I can come here and say the things only that go to my theory. But it is not honest if we do that, and it would have been better if he had recognised these things in the way that he presented his case. I will now deal with things which are not the things that I would like Spain to be doing. I am going to recognise them, of course I am. I have recognised them throughout, but he has not. He has only put his theory of the case. He has only found the things that support his position. He has not told the Parliament today, the people of Gibraltar watching, that actually Spain has accepted the territorial model of taxation of Gibraltar. People might remember what we went through 10-15 years ago: material selectivity and all of that. That is what that case was about. By this Tax Treaty, that is undone. Of course, when they withdrew their case in the European Court of Justice because they passed the Treaty in their parliament and the Treaty recognised our separate tax jurisdiction and our territorial system of taxation, they destroyed his case, and so that is why he has not wanted to refer to it today and demonstrated that the GSD – I am not saying him, here in this House; I am saying the GSD in its manifesto – misled or lied of the people of Gibraltar.

1690 And then they went further and they said in their manifesto:

Contrary to what the GSLP

1705 – again, “*a ti de dejan afuera*” –

say Spain have not recognized our rights.

1710 Well, Mr Speaker, that, too, is a lie. There are a number of examples in the Tax Treaty where Gibraltar’s rights are recognised, including in the provision of double taxation relief, where it is applied by the competent authority, which can only be Gibraltar. And then, of course, what I think is one of the most important parts of the Tax Treaty: the first time that a Spanish Minister has put his signature to a document that recognises the existence of something called the Gibraltarian Status Act. There are two aspects to that. First, the Gibraltarian Status Act is a parliamentary emanation in legislation as a statute from this Parliament. Indeed, I will go further: it is an

1715 emanation of the first Constitution under which there was a House of Assembly or Legislative  
Assembly, because it dates back to 1964, I believe, or earlier. Recognition of the Gibraltarian  
Status Act implies explicit recognition of the ability of the Parliament elected by the people of  
Gibraltar to make laws and, of that law in particular, to determine who is in the class of the  
homogeneous people of the non-self-governing territory of Gibraltar, in UN terms.

1720 I was explaining it at the time. It is not as if I did not explain it, so how can they say that it is not  
true that Spain has recognised our rights? They have recognised our right to legislate, they  
recognised our Parliament in which we legislate, and they have recognised the fruit of that  
legislation, which is the creation of a register of Gibraltarians which, under this Treaty, for the first  
time in our history, has international legal recognition. Forget by Spain – this is the first  
international legal recognition of the Gibraltarian Status Act giving a right not which is nationality  
but which is recognition in law in an international treaty. Of course, that is positive. Can't he say,  
1725 'Although you achieved that, I do not like the Treaty'? Or, 'Although you achieved that, I would  
have liked to have won the election'? How can you say, 'You have not achieved that'? If you say  
that, you are actually undoing an achievement of ourselves as a people on our collective journey,  
and a hugely important one, as Joe Bossano demonstrated in the UNC24 seminar, which I will  
come to in a minute, because these things have an effect beyond the Tax Treaty.

1730 Then they say:

This Treaty is all about creating an unfair system which the UK did not accept for itself when it signed its own tax  
agreement with Spain in relation to UK nationals and UK companies.

That is also a lie. This Treaty does not create a new tax system. Neil Rumford just told him:

There is no new tax system here, let alone an unfair one.

1735 The UK and Spain operate a residency-based system of taxation, so they have two systems  
which are similar. Their agreement is obviously going to be different from our agreement. Theirs  
as a residency-based system; ours is a source-based system. You have got to have a different  
agreement. The DTA between the UK and Spain is based on the OECD model.

1740 But really, seriously, do I have to spend time showing the hon. Gentleman that we are not the  
UK? I know that we like to think that we punch above our weight, and we do. I know that we have  
aspirations; we share them all. But does he really think that when we sit at the table, we are the  
UK? Does he think that I have the nuclear deterrents going around the world? If he does, he is  
with the editor *La Razón*. The editor of *La Razón* put a picture of *HMS Invincible* on the cover of  
*La Razón* with the headline *Picardo manda la armada contra la flota pesquera española* – with a  
photograph of *HMS Invincible*: 'Picardo sends the Armada against the Spanish fishing fleet'.  
*HMS Invincible* had been at the knacker's yard in Turkey for five years before the picture. Is it that  
he agrees, and he thinks that we are the United Kingdom with our nuclear deterrent, when we sit  
1745 down at the table with Spain to negotiate the Tax Treaty? The people of Gibraltar are a little bit  
more discerning than that, Mr Speaker.

1750 We have different issues, not least that the UK is not a low tax jurisdiction. When you have a  
low tax jurisdiction doing a deal with a high tax jurisdiction, the dynamic is different. When you  
have a residency-based taxation country doing an agreement with another country with a  
residency-based system, it is a different treaty to the one you have when you have two countries  
that are different. We could spend hours talking about this, but this does not go to whether or not  
this is a bad treaty or a good treaty.

The difference in those two treaties emphasises how bad this deal is.

They said:

And what have we received in exchange? Spain has still not taken Gibraltar off its financial centres blacklist.

That is the next part of the GSD's manifesto.

1755 Well, Mr Speaker, Spain has provided an undertaking to do so. I am going to go into the detail of that later in my address, because it is important that, for the benefit of *Hansard*, we have in the memorandum of notes of this Parliament, in the memory of this Parliament, what Spain has said in that respect. It is unfeasible that, with this Treaty now in operation, Spain can continue to claim that Gibraltar is a tax haven and can continue to list us as such, and they have said so themselves.  
1760 I will come to the direct quotes, so that they can write them down. Spain's removal of us is by decree and it is not an immediate result, but I will come to the detail of what Minister Laya has said about that.

1765 What is remarkable is that you have a Leader of the Opposition who comes here and selectively quotes one part of the Minister's speech and does not quote the other. That is almost verging ... Mr Speaker, I am not going to accuse him. That is verging on the dishonest. But, anyway, it is an adversarial system and I am here to put the record straight.

They say in their manifesto:

We are not willing to be blackmailed by Spain or to be fooled into entering bad deals with Spain like Mr Picardo has allowed himself to.

Do not worry, it is none of you; it is only me!

1770 Mr Speaker, I think it is greatly disrespectful to any of my parliamentary colleagues to suggest that I go off and do deals without sitting down with them in Cabinet and approving them every step of the way, especially in something as sensitive as the first treaty signed with Spain since Utrecht in relation to Gibraltar. So, that accusation, whether they like it or not, cannot be just about Picardo.

1775 In fact, the Treaty has actually received a significant amount of negative public and parliamentary scrutiny in Spain. The jury is actually out against the Tax Treaty in Spain – because it is so bad for Spain – in some circles, so I do not know what he is talking about. In every negotiation there is a toing and froing.

Does he really think that we have achieved nothing if we are removed from the blacklist?

1780 Does he really think we have achieved nothing if we have taken away from Spain the whip hand to say that we are a tax haven – 'But we have a Tax Treaty with you, how can you call us a tax haven?'

Does he really think that we have achieved nothing by getting into BEPS, without which we would be on the European blacklist?

1785 Does he really think that anybody would believe there has been absolutely nothing gained here?

And does he really think that he, Keith Azopardi, can turn up at a negotiation with Spain and dictate the terms of a new tax treaty, and that he would have dictated better terms this time round? That is what he thinks.

1790 I did not dictate any of this. I negotiated part of it, but I had a magnificent team of the top experts the Government of Gibraltar has, who know about tax more than I do and more than he or anybody on his side does. They are better negotiators than they were, but the best negotiator cannot dictate a treaty. Even Donald Trump could not dictate a treaty when he broke up the international rulebook. He could not even dictate a press release at the G20, as we saw if we are following the *Trump Takes on the World* programme on BBC. International diplomacy is not about  
1795 turning up and saying, 'Right, Mr Barba, pick up the pencil and write down what Gibraltar requires in this treaty.' What does he think? That he is really going to persuade the people of Gibraltar that? Of course not. That is why 75% of them slapped him in the face and told him they did not want him as Chief Minister.

They end their manifesto on this by saying:

In Government we will request the termination of the Treaty and its replacement by a neutral and fair double taxation agreement based on internationally accepted norms.

1800 Well, Mr Speaker, if I may say, with respect, to the hon. Gentleman, it is unlikely, for two reasons: first, because they are unlikely to be in government any time soon; and secondly, because it is unlikely that anybody is ever going to accept that. But I do note how he has nuanced the position in that sentence – or whoever wrote it – because that sentence does not commit to undoing the Tax Treaty. If he is pretending here today and he was pretending in the election campaign that, if elected, they would put an end to the Tax Treaty, when it came down to putting things in writing they did not have the gumption to say that. They say ‘we will request the termination of the treaty and its replacement by a neutral and fair double taxation agreement’. Come on! The people of Gibraltar are far too clever to be taken in by that.

1805  
1810 Indeed, Mr Speaker, one thing that I will tell him about the impounding of cars that he refers to is that this Treaty is not yet in effect, but when it is, it will be a tool to assist those who have their cars impounded, because then the Tax Office in Gibraltar will be able to show that somebody is a tax resident of Gibraltar. At the moment, our certifications are not accepted; under this, they will be. Therefore, the sooner we bring this Treaty into effect, the sooner we can start to assist those who have unfairly had their cars impounded, although some, we have reported to us, have actually answered the questions ‘Do you have a property in Spain?’ and ‘Are you resident in Spain?’ – remember you cannot go into Spain at different times unless you are a resident of Spain ... They have said, ‘Yes, I am,’ and they have said, ‘What are you doing driving a Gibraltar car, then?’ Tax is difficult. You have to get this right. With this Treaty, we can help those who have had their cars impounded; without it, *he* would not be able to help.

1815  
1820 So, what was said in their manifesto was massively rejected for good reason, because I have shown that it is misleading, untrue and wrong, and today he has put the same arguments, regurgitated in exactly the same way, peppered with a few current quotes that do not give the whole of the sentences uttered by some of the people who have uttered them, but I will give the whole of those quotes.

1825 Mr Speaker, what struck me about his position and the position a month later, after the General Election, in Spain, in the Spanish General Election, is that there were only two parties in Spain’s multi-party democracy and Gibraltar, two parties out of all of them – only two parties wanted both a rejection of the Tax Treaty between Gibraltar and Spain and to make abortion illegal. In the whole of Gibraltar we had three parties contesting, in Spain they had 10 or 15 parties. Only two parties had those two policies, undo the Tax Treaty and rescind the laws on abortion: Vox and the GSD. “*Con quién te vi, te compare, díleme con quien vas y te dire quien eres*” (Laughter) Vox and the GSD. That is remarkable, Mr Speaker. And so, when the hon. Gentleman says that they achieved trilateralism and that we have let it down, we have to understand that everything that they say, like with Vox, has to be put under the microscope.

1835 On the one hand, they say, ‘Fabian, you never achieved the photograph at the top of the Rock,’ but they do not say, ‘Well done, because you achieved the photograph *a duo* in the Campo de Gibraltar.’ Maybe it is because I was wearing my mask and they did not see that it was me.

1840 The Deputy Chief Minister and I have said repeatedly that there has been variable geometry in these negotiations, where sometimes there have been three parties and sometimes there have been two. Sometimes those two have been the United Kingdom and Spain, and sometimes they have been Gibraltar and Spain, and each of the parties has described that geometry in different ways – I accept that – but the United Kingdom has been consistent and Gibraltar has been consistent.

1845 When the hon. Gentleman tries to draw parallels with the New Year’s Eve agreement, he is treading on particularly dangerous ground. He says that I have to be honest about the Tax Treaty, I have to be honest about the New Year’s Eve agreement.

I know that the hon. Gentleman keeps looking at the clock. I have only got about another two hours to go, (*Interjection*) seriously.

1850 I want to be entirely honest with the people of Gibraltar always, 100%, warts and all. People sometimes do not like it. I have just gone through the arguments in the GSD manifesto and I have demonstrated that they were not honest, but I hope that, sitting through today, people will understand that when the GSD cry foul, they are not being honest, and they have to analyse every word of what they say. And it is not me saying that. As I have already shown, the former Chief Minister, their former leader, Sir Peter Caruana, takes a different position on the legality of  
1855 sovereignty and the politics of sovereignty in the Tax Treaty.

So, having had his arguments rejected in the General Election, having had his former leader reject the arguments also, what legitimacy is there in this motion? There is a right to bring the motion, of course there is, but if he brings the motion, he has to understand I am going to reply. Do I think it was right to bring this motion? I think not.

1860 What does the Chamber of Commerce think of the arguments that he has put? He talks about an intrusive treaty that is harmful. He talks about investment being undone by the treaty and fewer jobs. Those are the things he says in his manifesto, and here he talks about 'a disincentive to inward investment and job creation'. I have told him what an independent accountant thought about his idea of what the Tax Treaty did – he did not agree with him. One would have thought  
1865 that if the Government – the GSLP, not the GSLP Liberals; the GSLP or Picardo on his own, not all the 10 – had done something which was a disincentive to inward investment and job creation, the first ones to come out against it would be the Chamber of Commerce. An organisation that is made up of businesses and that looks out for businesses would be against that treaty, I would have thought, but the Chamber does not share his view. The Chamber does not think that Spain  
1870 has scored goals against Gibraltar. What the Chamber said, is this:

The Chief Minister warrants our continued support. Unquestionably his Brexit negotiations have been in Gibraltar's best interests, including the Tax treaty. His efforts to establish a more positive narrative with Madrid and to keep Westminster 'on side' need to be recognised. They are both magnificent achievements.

That is the Annual Report of the Chamber for 2018, published after the Treaty in March, and that is their judgement, the judgement of the body that is designed to protect business and look out for business. So, what he says is bad, the Chamber of Commerce says is good. Business wants  
1875 certainty. It wants incentives to inward investment and the protection of jobs. This agreement is not perfect, but, warts and all, they judge it a good thing, 'magnificent'. That is what business likes.

He is wrong. The people of Gibraltar have told him he is wrong, Sir Peter Caruana has told him he is wrong and the Chamber of Commerce has told him he is wrong. I know he does not care if I tell him he is wrong, but all those others have told him he is wrong. I do not always agree with the Chamber of Commerce. Sometimes the Chamber might get it wrong. We have said so when we  
1880 think they are wrong. He must say that he thinks the Chamber of Commerce is wrong. But it is not just Picardo and not just the GSLP, or even the Liberals. Look at all the entities arrayed who have a different view of this Treaty. Will he at least accept that he is not going to pray in aid the Chamber of Commerce in future, if ever they come out on his side, given that he does not like their judgement today? In the future, if he comes here and says, 'The Chamber is very concerned about  
1885 the way that you have set the rates,' or whatever it is that they might say, I would say, 'Well, at least the Chamber still thinks that my Tax Treaty is magnificent.' He says in his motion and his manifesto that the Tax Treaty is not good for Gibraltar, but the representatives of Gibraltar business say it is good.

Mr Speaker, not only have we not surrendered sovereignty, not only do we not have a  
1890 disincentive to business; we have enhanced our recognition and we have enhanced our co-operation with our neighbouring state. We are normalising our relationships. We are depriving the hard right wing in Spain of the whips with which to beat Gibraltar, and that is the Gibraltar that we will leave to our children. What's not to like?

1895 He is calling black white. It is really, in my view, at its most fundamental, unfair, because he is  
trying to misrepresent to the public a position for his personal political gain. Not having been able  
to win the argument in the General Election campaign, he has tried to bring it here again, to try  
to confuse in a way that might somehow make him some partisan points. I do not know whether  
he thinks that people will think him more nationalistic because of the way that he has phrased his  
manifesto and phrased his motion, I do not know whether people, he thinks, might garner him  
1900 some support as a result, but he has to accept that the person making the arguments today for  
the GSD was sitting in the Council of Ministers when the GSD allowed the Spanish fishermen to  
fish in our waters, the famous fishing agreement that allowed people to fish, although it was  
contrary to our law. So, now he is nationalist – he has no credibility on these issues.

1905 He needs to remember that he is no longer in the PDP. He is in the once-proud GSD and not in  
the always-failing PDP. Maybe he has got the part of the GSD that he did not want, although I  
guess when he looks behind him he sees the PDP, when he looks to his left he sees the Labour  
Party, and when he looks to his right he sees the Liberal Party, however uncomfortably that label  
now rests with the theology of the person sitting to his right. (*Interjection*)

1910 Perhaps the question of why this motion now, after the election defeat, is really more about  
somehow shoring up his own political position and trying to get out of the political virtual reality  
that he has on one side or the other. When he looks behind him, he sees a person who sees himself  
as a potential challenger, although none of us see him as a potential challenger. When he looks to  
his left, he sees somebody who still sees himself as a potential challenger, although everybody  
sees him as the past, not GSD stock and a failed leader. And when he looks to his right, he sees a  
1915 man who he thinks might perhaps, maybe, one day see himself as a challenger, and who others  
think of in a more popular way than him.

1920 Frankly, although I regard one of those with more affection than I do the others, the Hon. the  
Leader of the Opposition needs to stop seeing himself as the Light Brigade volleyed and thundered  
left and right, and start to look out for Gibraltar a little, stop trying to protect his leadership,  
understand that he is the leader of the GSD, not the PDP, and that the GSD is the party that started  
life supporting the Brussels Agreement and then came out against it. It is the party that allowed  
illegal fishing in our waters and now comes out against it. It is the party that supported and did  
the Cordoba Agreements, which put Gibraltarians under the control of Spanish law enforcement  
officers in Gibraltar, and now says it is potentially against Frontex control. And on top of that, they  
1925 spent £84 million on the Airport, which they built as a result of the Cordoba Agreements, with  
nothing to show for it. At least with the Tax Treaty we have got the BEPS benefit from it already,  
before it has even come into effect, and a commitment to take us off the blacklist, which I will  
deal with in a minute. To be fair, he was even, as Leader of the PDP, against Cordoba.

1930 The issue of how this Treaty is signed is one that should be less controversial. First of all, I come  
back to the fact that even Peter Caruana has said it has been dealt with properly. Second, the  
question of letters of entrustment. Of course they work; we have signed many treaties with letters  
of entrustment. Spain is not prepared to accept that we sign a treaty with our letters of  
entrustment basis. We understand that. Is it that he thinks that we do not understand that? But  
it is not just us; they were not prepared to accept a letter of entrustment for Aruba either. The  
1935 treaty with Aruba is signed by the Netherlands. The hon. Gentleman needs to have a slightly wider  
world view. What matters to us more than anything else is Gibraltar, but he needs to have a  
slightly wider world view.

1940 He does not want to talk, of course, about the thing that completely undoes his argument,  
which is the concordat. It was obvious in the way that he presented his argument. I do not want  
to talk about the concordat. The concordat is a reverse entrustment. In other words, the United  
Kingdom did not sign the Tax Treaty or the MoUs until it received a signed requirement from  
Gibraltar to do so, acting for Gibraltar. I know he does not like the argument because it undoes  
his argument, but that is a reality – it is signed.

1945 The one thing I thought really quite remarkable in his intervention this afternoon was his  
reference to the documents that were signed in Cordoba. No documents were ever signed in

Cordoba. I do not know whether he realises the mistake that he has made. He said ‘the documents that were signed in Cordoba’. The Cordoba Agreements were political agreements. There were no signatures because Spain refused to sign anything with Gibraltar. And so it goes to the heart of his argument. He thinks that they achieved trilateralism and they signed documents in Cordoba. They never signed documents in Cordoba. It is a beginner’s error. It is huge. It is massive. A signed document has the nature of public international law. A political agreement, which can be as damaging, like the Brussels Agreement and Lisbon, does not have the character of public international law – a fatal flaw in every single one of the arguments that he put, which completely lobotomises every one of the rest of his arguments.

One thing that I am always going to be clear about, however, is that we are never going to defend that somebody who is subject to Spanish taxation should not pay tax in Spain. We have been very clear about that. Even in the time when Sr Margallo was Foreign Minister I would say, when he made the argument that people were evading tax in Spain, ‘The Government of Gibraltar does not support that anybody who is a resident of Spain should not pay tax in Spain. They *must* pay tax in Spain.’ That is what this Agreement does. It helps to determine whether you are resident in Spain, or not.

But what are we going to do – not now, after we do this motion? After we defeat his motion, what are we going to do? We are going to take another motion, a motion that will put into Schedule 11 of the Income Tax Act 2010 the Spanish Tax Treaty. In doing so, not only do we have the recognition of the Parliament because of the Gibraltarian Status Act; this Parliament will press the button to start the effect of the Spanish Tax Treaty because it cannot come into effect unless we pass the motion, which is the resolution required under our law to give effect to the Spanish Tax Treaty – another recognition of our rights and a recognition of our jurisdiction and our total control. The Treaty will have no effect, it will be sterile, unless it is in our law, because the Income Tax Commissioner is not subject to any law other than our law. Sovereignty protected, jurisdiction recognised, control exercised.

Mr Speaker, this Parliament is the place where the popular sovereignty of the people of Gibraltar resides, so how can he be making the argument that there is something in the Treaty that somehow denudes us of jurisdiction or control? If he were to succeed in persuading Members of this House not to support the inclusion of the Treaty in a Gazette notice tomorrow, the Tax Treaty will not come into effect – the best description and exercise of our sovereignty, our jurisdiction and our control. It is that simple. It is a direct demonstration of the fact that control vests here of the tax affairs of Gibraltar, and we are going to be here together when we exercise that control. So, after that, I hope he does not continue making these arguments, because he will have been present when we have actually seen the people of Gibraltar, through their Government, exercise the lever to bring the Tax Treaty into effect.

Is it perfect? Of course it is not perfect. Nobody has ever said it is perfect. Why is he saying that we pretend that everything is perfect? I am telling you the things that are in the Agreement which I think are good for Gibraltar. Of course I am telling you that; I have negotiated the things that are good for Gibraltar. Is he saying that I have to point out what is good and what is bad? Isn’t he the Leader of the Opposition? Isn’t he supposed to point out what is bad? I also give an indication of the things that I do not like, but he has to accept that I am not here to do his work.

I am happy with the Agreement that has been reached. It is a balance. I think it is good for Gibraltar. It protects us as a separate jurisdiction, an autonomous tax jurisdiction. That is hugely important. It recognises the concept of the Gibraltarian. Hon. Members have heard me say this already. I was required to write to David Lidington before they would sign it. All of these things were set out by us before the General Election, also. People agreed with us. In particular, they agreed with the end of those post-boxing arrangements. This is now direct, Gibraltar tax authorities and Spanish tax authorities. They agreed. They were saying that we have failed and fallen for the Trojan horse. They agreed that the address for the Commissioner of Income Tax in Gibraltar, the address for the Financial Services Commission, the address for everything in

Gibraltar was 1 King Charles Street, London, SW1, and that happened through the Cordoba process, straight through the Cordoba process. There was no change.

2000 And, by the way, it is not that we lost the trilateral. They lost the trilateral because no sooner was Trinidad Jiménez Minister for Foreign Affairs of Spain than there were no other meetings of the trilateral. The trilateral was at an end under the socialist Government. Or is that he forgets that? In wanting to blame me and the GSLP for this, he forgets that when he was in the PDP he used to complain to the GSD that they had lost the trilateral in the end.

2005 Mr Speaker, if hon. Members are bored, I am sorry to tell them that if they put arguments, they are going to get responses to every single one of them.

Let us be honest. Of course it is true that we do not trust Spain. I am not here for one moment as an apologist for Spain. I am not here for one moment to say today that Spain is good, that Spain is fantastic, let's do deals with Spain. I am not here for that. I am the hawk, Bossano the hawk, Garcia the hawk. The hawks are here. We do not believe that Spain is good; we believe that Spain has been bad to Gibraltar. We do not trust Spain, but let's all wake up and smell the coffee: Spain does not trust us either. There has to be a recognition of that. Spain does not trust us because Spain believes that we have failed to comply with agreements in the past. Why? Because if somebody has said to Spain, 'Let's do this now, and slowly the people of Gibraltar will accept sovereignty etc.,' Spain has said, after a while, 'Sovereignty is not happening.'

2015 That is why it is important to be honest. In our conversations with Spain, we say the same thing in the room as we say outside the room. I see the same thing when the cameras are not rolling as I say when the cameras are rolling. Whatever deal we do, we do not ever want to be Spanish, but we want to be friends, and so, having built negotiating trust – no more than that, negotiating trust; trust with the people with whom we are negotiating – it is incumbent upon us to now build the transactional trust.

2020 Spain has recently accepted that Gibraltar has met the 32% unilateral commitment on tobacco pricing. In fact, we are at something like 30% difference. Spain has actually ... If the hon. Member wants to want to go out, I am quite happy to have a recess for a few minutes. I will finish the sentence and then I will do the recess. Spain has actually accepted that, for BEPS, they committed to lifting the veto and that we should become members of BEPS. We have become members of BEPS, even before the Tax Treaty has come into effect. Slowly, we are building transactional trust.

2025 Mr Speaker, I am conscious that you, and other Members, have been in the Chair since 3 p.m., and the hon. Gentleman whose motion I am answering needs to move about, so, out of respect, I would propose that the House recess for 15 minutes.

2030

**Mr Speaker:** The House will now recess for 15 minutes. We will be back at 20 past.

*The House recessed at 7.06 p.m. and resumed its sitting at 7.25 p.m.*

### **International Agreement on Taxation and the Protection of Financial Interests – Debate continued**

2035 **Hon. Chief Minister:** Mr Speaker, I was making the point that we have to build trust on both sides. Absolutely Spain has failed to build trust in Gibraltar. We must also understand that Spain does not trust us. We must build trust slowly. But we are the people of goodwill, good faith and good old-fashioned hard work. We are the ones who have always said that we wanted co-operation. We are the ones who want to comply with commitments and want to see Spain comply with commitments, but let's be clear: what we have negotiated enables us to pull out if Spain fails to comply. So, if Spain does not take us off the blacklist, we can pull out.

2040 You cannot pull out £84 million that you invested in an airport when the other side failed to build the part that they said they were going to build. You cannot pull it out. But that is what

comes when you rely on unsigned commitments. That is what the GSD's trust in Spain was. They accuse me and the GSLP Liberal Government of trusting Spain in giving things in the Tax Treaty. Well, we say we will be able to pull out of the Tax Treaty if they do not do the things that they said they were going to do. What are they going to advise us to do in respect of Cordoba? Spain simply  
2045 pulled out, and yet we were left holding the £84 million baby. Comedy gold, if it were not for the price tag, so hon. Members can hardly lecture us on trust. We have signed a document. We will act, they will act. If they do not act, we withdraw. No £84 million. It is that simple.

I do hope Spain is going to comply with the obligations and take us off blacklists, and I will take hon. Members now to the exact words where they say that. And I hope that they will not just take  
2050 us off blacklists; I hope they will give us information, because we want information about some people who we believe may be cheating our exchequer. What will certainly not build trust is if you say one thing one day and then you say something another day, whether it is with Spain, with the United Kingdom or even with our own people.

Hon. Members actually used to be the ones who lectured on that. I remember hearing the  
2055 lecture from Sir Peter on cherry picking. The 2007 leaders' debate was all about cherry picking and international law, and one does not pick the bits that one likes. There was no international law. There was nothing signed at Cordoba, as the Hon. the Leader of the Opposition mistakenly said a moment ago. I remember Mr Feetham giving the same lecture, in apparently the same voice as Sir Peter Caruana, on cherry picking. But what you cannot do is say that, when you see Spain doing  
2060 the opposite. Spain cherry picked the Cordoba Agreements. They did not build the other part of the Airport. They are still taking the money off the Spanish pensioners, the opposite of what we were told by the hon. Members when they were in government.

One thing we cannot do is tell a state whether or not they put us on a blacklist. They put us on  
2065 the blacklist – unfair or not unfair is a matter for them – but now they have entered into agreements to remove us, and that is on what we will judge trust. But we will not take lectures from them sitting opposite on trust. The one thing that they have demonstrated is the inability to build trust, even with the people of Gibraltar, because on this key issue, this fundamental issue, an issue so important that they put it in their manifesto and fought it in the election campaign – despite losing the argument in the election campaign, they have put a motion now – they actually  
2070 did a pirouette. They did a U-turn like never before in Gibraltar politics.

The hon. Lady was with me in the leaders' debate with the hon. Gentleman (*Interjection*) when we were debating what had happened that week, the last week of the General Election campaign. It was like political *Strictly Come Dancing*, it really was, except here the votes from the professional judges agreed 100% with the votes from the audience. They fell when they did that pirouette, and they were out of the competition to run Gibraltar. Their cha-cha-cha on the MoUs was not up to  
2075 it, their tango on the concordat tantalised no one, and their rhumba on the Tax Treaty showed far too much leg, only to end up being much less exciting than anyone had ever imagined. (*Interjection and laughter*)

Will anyone forget the position that they took on the MoUs and the Tax Treaty? They had said  
2080 repeatedly that they were opposed to the four memorandums of understanding, they said repeatedly they would seek to terminate the Tax Treaty, they consistently argued that the MoUs were harmful to Gibraltar and that they gave us Spain in Gibraltar's affairs; all the things that they have repeated today. It is very easy to say that when you are in opposition. You can say what you like when you are in opposition. If you are not responsible, you can say what you like. But of course  
2085 in the last week of the General Election campaign hon. Members obviously thought so much of themselves that they thought that they might win, and they thought, 'Hang on a minute, we have got to be careful, we can no longer sustain this.' We were clear that they were not going to win, so we did not understand why they changed their position.

In a GBC debate on Monday, 14th October 2019, 72 hours before the election, the Hon.  
2090 Mr Bossino told a programme where he was being quizzed by Gibraltar's editors that the GSD would be willing to accept the MoUs and the Tax Treaty if a Brexit deal was reached between the

United Kingdom and the European Union and a transition period followed. The report in the *Gibraltar Chronicle* says this about it:

Mr Bossino said these negotiations could have instead been ‘used as leverage and the perfect opportunity’ for Gibraltar to negotiate the movement of people other than cross-frontier workers which was already covered by Spain.

2095 You see, I read the bits that I do not like as well as the bits that I do like; I do not do selective quoting.

Mr Bossino said it is the GSD leader Keith Azopardi’s position that Gibraltar would benefit from a ‘backstop’ agreement on freedom of movement across the border.

‘What we say is that a deal is better than none,’ Mr Bossino added.

‘We would accept, if we were elected into government, the MoUs as they currently stand should the Withdrawal Agreement be passed or approved or should there be a deal of sorts.’

Bang! First U-turn.

With reference to the tax treaty, Mr Bossino accepted that it is linked to the Withdrawal Agreement.

Bang! The thing that they say was a huge mystery that nobody had ever told them. Again, a direct contradiction of Mr Azopardi, who has told GBC that he does not accept that they were.

2100 The article goes on:

He [Mr Bossino] said that in the event of a ‘no-deal’ Brexit, the GSD will accept the tax treaty until the end of the transition period until December 2020, but going forward, the party would want to ‘terminate’ the treaty after that.

So, when they were on the precipice they changed their minds, really a significant shift in position by the GSD literally at the last minute, the Monday night at nine o’clock before the election. I suppose that they sent Mr Bossino out to do the U-turn because he is the most popular of all of them; maybe this was some Machiavellian plan to try to dent his popularity.

2105 That fateful night on GBC was undoubtedly the most dramatic change of position on any subject that Gibraltar has ever seen a political party perform, at such a late stage at least. To see that change of position 48 hours before the polls opened was a real demonstration of the admission by the GSD that they did not understand Brexit, which was the key election issue. It was a dramatic change of tack, and this motion is just their attempt to tack back. In October 2019 they changed their position, in February 2020 they put this motion to tack back. Inconsistent: one day, one position where they say no to the MoU and the Tax Treaty; the next, ‘We accept the MoUs and we will keep the Tax Treaty. In their manifesto they said no to the Tax Treaty, in the programme on GBC they said yes to it, at least for a limited time; and now, in the motion, they say no to it again. This is a ‘Yeah but, no but, yeah but, no but’ on gym bunny steroids. I wonder whether they are getting their pills confused on that side.

2110 This is the sort of thing that will not build trust, not just with Spain or the United Kingdom; it will not build trust with the electorate. A total pirouette on something so fundamental, and then now, again, on this motion another pirouette – or a *plié*, to continue with the dancing terms. They bend, then they try to get back to where they were, one pirouette after another, but they are just left in a total spin, such a total spin that they cannot even spin themselves out of it. It is clear that Mr Bossino was not as adept as his *pointes* as others. On this, they have no stylus. They were not able to do their transition and they got all mixed up in their danza. It is a good thing that at least on this side we have got GAMPAs to keep us on the straight and narrow. I look forward to continuing to see them practising their pirouettes in their leg warmers in the coming months, because whether it is pirouettes, leg warmers or cowboy boots – each to their own – they really do need to do a lot more practising.

2125

2130 The reality – although we might laugh here, because this is just a motion that they are going to lose – is this is actually serious stuff. This is serious stuff and they are being, in my view, in my respectful submission, cynical, cynical, cynical. One day they go into an election campaign saying no to the MoUs and the Tax Treaty, three days before the election they change their position, and two months after the election they change back. Really, I do not think that that is a serious way to do politics.

2135 But if they do not like my opinions, if they do not like the opinions of Sir Peter Caruana, if they do not like the opinions of Neil Rumford of Ernst & Young, if they do not like all the opinions of the Chamber of Commerce, if they do not like the partisan opinion – whether it is my party’s opinion or their party’s opinion, Sir Peter’s – and if they do not like the independent opinion, what about the opinion of Sir Joe? Sometimes, in Budget speeches etc., they might get up and quote golden rules and pretend that somehow Sir Joe’s golden rule is not being followed by Picardo’s GSLP – all of the games that they try and play. I do not know what it is that they are trying to get  
2140 at, I do not know whether they are making a Yoda-Luke point or whether they even see it in those terms, but what happens when that force awakens? Well, unless they have not been following the debate, they know that the Father of the House is not with them. They can surely find no solace in his teachings on this.

2145 When they attacked us on this subject in March 2019, the month when the Treaty was done, a full two years ago, position clear he made in responding to accusation them from. As that other fictional sage might have put it ... Sir Joda said this, in a Government press release at the time and he gave an interview afterwards:

There are no concessions in this Tax Treaty on sovereignty, jurisdiction or control. The GSLP would not agree to any concessions. I fought the concessions made in the Brussels Agreement and in the Airport Agreement under the AACR. I fought the concessions made in the Cordoba Agreements by the GSD, especially on the Airport on which the GSD then spent £84m and for which we have not had anything in return. I would not accept any concessions being made by a Government I am a member of. This is an agreement in which Spain recognises the Gibraltar population, our national competent authorities our laws and our institutions. Under the GSD, we had instead the fictional ‘post boxing arrangements’ via London because Spain wanted to pretend that we did not exist. So I am satisfied that the GSD are wrong to say anything in this amounts to any concession on sovereignty, jurisdiction or control.

2150 It is not often that Sir Joe Bossano and Sir Peter Caruana can be so clear and so obviously in agreement. In fact, Sir Joe went even further at the United Nations seminar in Grenada in May 2019, when he was detailing, for those delegates attending, the history of the issues between the UK, Spain and Gibraltar, and, no doubt with the Spanish delegate in the room, he delivered coolly and calmly what I am going to now relate to the House, because I think it is so perfectly analysed by Sir Joe that it is worth setting out for posterity in *Hansard*. Sir Joe said this:

Predictably, Spain attacked our fiscal system,

– he was talking about the history of the dispute –

the same system they had said we would be able to continue with if we accepted them as joint colonial power with the UK, the joint sovereignty offer still on the table. Spain repeated the same message at subsequent UN meetings. What we have done since is try to meet their concerns as if they were genuine, although we do not accept that we have a fiscal system that in any manner or form damages the Spanish economy.

The 2018 General Assembly Consensus has recognised and welcomed that we are all making an effort to improve relations. To this end we have agreed with Spain to exchange information and criteria for tax residence. If it means the end of the accusations that somehow we are draining the tax revenues of Spain and harming the economy of the surrounding hinterland when the opposite is true, then we are happy to reassure them by agreeing these measures.

The Treaty provides different treatment on the basis of nationality in respect of persons who move from Spain to Gibraltar. In the case of Spanish nationals they will continue to be treated, for tax purposes, as if they were still resident in Spain. This will apply indefinitely. Other nationalities will continue to pay tax in Spain for four years after

they move to Gibraltar provided that they have been in Spain for one whole year before the move. Gibraltarians need to have been resident for four years in Spain to continue to be liable after they return to Gibraltar.

The committee should note that the Gibraltarian is identified as a distinct nationality in an international treaty signed by Spain, which is an encouraging sign of what the nature of our relationship should be.

There are very few Gibraltarians living in Spain and not all of them will want to move Gibraltar. There are, however, many other nationalities and Spanish nationals. Clearly the greatest deterrent to settling in Gibraltar is in the case of Spanish nationals. Therefore, it seems that the Spanish government does not wish to see its citizens taking up residence in Gibraltar. Members of C24 may not be aware that way back in 1969, 50 years ago, when the Frontier was closed, one of the complaints was that they could not live in Gibraltar. It was true, there was a housing shortage and many of our own people were also living in Spain and had to abandon their homes to be accommodated in Gibraltar as best they could – the equivalent of being expelled, but in 1969, not in 1704.

We have also entered into an MoU committing ourselves to keeping the retail price of tobacco products at a differential to mainland Spain and the Balearics prices. This differential will be 32% below theirs. The price differential does not apply in respect of the Canary Islands or the Spanish non-colonial enclaves in North Africa, since prices there are substantially below the mainland.

Let me remind members, however, that the level of direct and indirect taxes is irrelevant as a consideration in the context of the decolonisation process and something used by Spain since the 1960s in an effort to put us in a bad light before this committee .

Mr Chairman, Her Majesty's Government of Gibraltar has no wish to have Spanish residents break the tax laws of Spain by not declaring the earnings they may receive from our economic activities in Gibraltar, if that is what the Spanish law requires of them.

Spain now recognises our tax authorities and our tax laws independent from those of the UK. This is evidence that we are not a municipality and that the territorial Parliament enjoys the fiscal independence of a state. Perhaps for this reason the Government in Spain says this international Tax Treaty is with the UK, not with Gibraltar. I know that this is a sensitive issue for the Kingdom of Spain and I don't want to do anything to step on their toes or embarrass their distinguished representative here. True that we have an international treaty that has been signed by Spain's Minister for Foreign Affairs and the Deputy Prime Minister of the United Kingdom. This is because international treaties are things that the 17 non-self-governing territories cannot sign. But if they, Spain, need to say it is the UK that has done the Treaty, well, let them continue saying it. But you know, Mr Chairman, and I know that this is not true, because if it were true it would mean that our fiscal independence in the Constitution of Gibraltar over taxation, both direct and indirect, would have been removed from our level of self- government. This independence is something that we have had since the first Constitution of 1950. It was the first Legislative Council that legislated to provide for Income Tax in 1951. So it would mean that the Deputy Prime Minister of the United Kingdom, if the Spanish interpretation were correct, had taken a step to regress our level of self-government, taking us back to the position pre-1950, almost to when we were placed on your list in 1946. If that were the case, clearly I would not be speaking in the tone that I am speaking or making the remarks that I am making, Mr Chairman; I would be breathing fire and brimstone at the imposition of colonial rule and the breach of the provisions of 1541.

Mr Speaker, Sir Joe could not be more explicit [Inaudible] that they should learn from.

2155 Just before the election, when they did their pirouette – he has not just boxers in his family, he has dancers; the hon. Gentleman performed the pirouette expertly for all the rest of them – it looked like they had learnt from Sir Joe, but now they are taking a different position again. And let's be clear, that position which they are taking is contrary not just to me, it is also contrary to Sir Joe's position, contrary to Sir Peter's position, contrary to Ernst & Young's position and contrary to the position of the Chamber. Why? Why is it that all of us are wrong? It is not that we are wrong; it is that they are wrong.

2160 I am not here for one moment to defend Spain, but there have been developments, even today. Today there have been developments. In the Senate this morning, Foreign Minister Laya has spoken, in a speech that I will detail to the House, and we have received a communication today. I am surprised the hon. Gentleman is not up to date, because this was this morning. This was his motion; he should have been on inquiry. There was "commission *mixta*" in the Spanish Senate. I am surprised he was not aware. He has quoted everything that she said in the other meetings of the Spanish Cortes; I am surprised he was not ready to quote her today.

2165 Today, the Commissioner of Income Tax has received a communication from the OECD, which the House, or at least those of us on this side of the House, will welcome. I have been advised by the Commissioner of Income Tax, who I recognise is in the House with us, that Spain has now notified its intention to exchange information with Gibraltar under both the Multilateral Competent Authority Agreements for both Common Reporting Standard (CRS) financial account

2175 information and the country-by-country reporting, referred to as CRS MCAA and CEC MCAA  
respectively. This has been done by a diplomatic note dated 17th February 2021 and by lodging  
the relevant section 7(1)(f) and section 8(1)(e) notifications, a positive move towards our use of  
the OECD's Convention on Mutual Administrative Assistance in Tax Matters for the purposes of  
the Tax Treaty, since these exchanges are equivalent to their EU counterparts DAC2, which is  
2180 Directive 2014/107EU, and DAC4, which is Directive 2016/88EU. Another reason, bang up to the  
minute, that proves that this Treaty is a good thing. Remember, exchange of information is not  
we give, it is we exchange: we give, they give. So, they are recognising us, to take from us and to  
give to us – another good reason this Tax Treaty delivers. Look, we have got to say it: the Spanish  
have done what they needed to do, transactional trust starting to emerge, although not for one  
moment would I defend the way that Spain has acted in the past and sometimes still acts now.

2185 But who agrees with them that the Tax Treaty is a bad thing? I have said before it is not  
Sir Peter, it is not Sir Joe, it is not Neil Rumford from Ernst & Young and it is not the Chamber; it is  
certainly not me. Who agrees with them that the Tax Treaty is a bad thing? The Spanish headline  
that reads 'Partido Popular joins Vox against the treaty to combat fiscal fraud in Gibraltar'. Vox  
and the Partido Popular agree with them that the Tax Treaty is a bad thing. This is what a Member  
2190 of Parliament for Vox, Mr Agustín Rosety – well known to people in Gibraltar, for no good reason –  
says in June 2020 in the Spanish Cortes. I will read only the English translation of what he said to  
the President of their parliament:

The International Agreement on Taxation and Protection of Financial Interest with the United Kingdom in relation  
to Gibraltar is a Treaty that is a cowardly surrender and an unworthy recognition of the colonial situation of  
Gibraltar. With the signing of the Tax Treaty, Spain whitewashes the tax haven and recognises for the first time in  
300 years the jurisdiction and competence of the local authorities of Gibraltar. This recognition for the participation  
of Spain weakens our legitimate right of sovereignty, giving rise to Fabian Picardo to claim before the United Nations  
that the people of Gibraltar are a nation, as he has already done. This is the result of the unworthy position of the  
Spanish Government.

Why didn't he quote him? Or José Manuel Marín of Vox, who, in the Spanish Senate, in the  
Foreign Affairs Commission on 16th September, said this:

In addition to the above, with the signing of Tax Treaty, Spain whitewashes Gibraltar and recognises for the first  
time in 300 years the jurisdiction and competence of the Gibraltarian authorities, and it does so not only on the  
land that we gave up in Utrecht but also in the southern half of the isthmus that the United Kingdom has  
illegitimately usurped. This recognition by Spain weakens our international position on legitimate rights of  
sovereignty, giving rise to Fabian Picardo to claim before the United Nations as a people the population of Gibraltar.  
This agreement only serves to launder the tax haven of Gibraltar from which *Llanito* law firms and lawyers run their  
dark financial centre. That is why our position is to vote no to the Treaty, which is the same as voting yes to the  
sovereignty and dignity of our country. We do not want this pernicious Treaty to enter into force.

2195 If he is going to say, 'Well, that's just the Opposition, they are irrelevant,' he has to remember  
who he is in this Parliament and what people might think of the things he says.

Why don't they adopt this position, if they have adopted Vox's position on abortion?

And what about what the Partido Popular says? María Valentina Martínez Ferro of the Partido  
Popular, 20th June in the Cortes:

I will tell you, ladies and gentlemen of the Government, Madam Minister, what is disheartening is that the first  
treaty that you sign with the United Kingdom is an agreement by which you recognise the existence of a set of  
administrative and fiscal institutions in the Rock without passing or touching or having a mention of the importance  
of restoring territorial integrity. With respect to the treaty at hand, this agreement consolidates a fiscal regime  
against which all previous Governments have fought regardless of their political colour. It is the first treaty that  
Spain signs with the United Kingdom since the Treaty of Utrecht in 1713, and what it does is to consecrate the  
existing fiscal Eden in Gibraltar that has grown at the cost of suffocating the Campo de Gibraltar. If Gibraltar is not  
included today on the list of tax havens of the European Union, it is because that list only included third countries  
and the United Kingdom is part of the European Union. After Brexit, it meets all the requirements to be directly  
included in the list of tax havens, which also directly extorts the European economy and taxation.

2200 Remember, Mr Speaker, I referred earlier to the article in the *Guardian* and to the reference to all other UK Overseas Territories now, and the Channel Islands, being at risk of being put on the European blacklist.

She carried on:

This Agreement has no mention whatsoever of the compensation of Gibraltar tax rates, and, far from eliminating this tax haven, what it consolidates is the tax exemption for offshore companies. It also recognises certain state structures and also the co-ordination committee that establishes that Spain and the representatives of Gibraltar will be on equal terms, these appointed by the United Kingdom. In this way, Spain and Gibraltar are put on an equal footing and any possibility of continuing our claims before international organisations is eliminated.

2205 That is the official Opposition, like them. So, if this is irrelevant because they are just the Opposition, they are as irrelevant as them.

That is what Vox and the Partido Popular say the Treaty does. It is not what we say exactly, because we do not agree with them in many things, but Joe Bossano's analysis and Peter Caruana's analysis – the one I referred to them – is almost identical. It is not often you get Joe Bossano, Peter Caruana, the Partido Popular and Vox saying some aspect of the same thing, but Peter Caruana and Joe Bossano are saying it is a good thing and keep it, and Vox is saying it is a bad thing and get rid of it, which is what they are saying.

2210 What does the Partido Socialista Obrero Español say? They are the party of government now. Alfonso Rodríguez Gómez de Celis, in the Congress, in the same debate in June 2020, said this:

With this Agreement, ladies and gentlemen, after 30 years of having Gibraltar on the list of tax havens in Spain, thanks to this Agreement it becomes an ally to fight against tax fraud through transparency and co-operation, to clear the scene.

2215 What does Miguel Ángel Vázquez Bermúdez, in the Senate on 16th September, say for PSOE:

With this Agreement, Gibraltar becomes an ally for Spain in the prosecution of tax fraud. What is inaugurated is a new era of transparency and co-operation that is good for Spaniards who live and reside in the Campo de Gibraltar. You have lived your lives behind Gibraltar's back for too long. When you turn your back on a potential collaborator, you can hardly demand loyal co-operation afterwards. With this, we are making a leap towards that loyal co-operation on the part of Gibraltar. Let's normalise, let's promote collaboration – and that does not mean giving up anything – and this Treaty is just a first step. Therefore, let's go deeper into the neighbourhood and co-existence to neighbourly relations and co-existence. It will give positive results because it will determine the economic relations, it will provide transparency and legal certainty as to the activity of entrepreneurs from both sides of the Frontier, including workers. The status of the Spanish worker will begin to resemble those of other Spanish workers in Portugal, Andorra or France. They will no longer pay the consequences of the non-recognition by the Spanish part of the Gibraltar Treasury, and, in the same way, investors from Gibraltar will feel safe to invest in Spain. In short, what we do now beyond the retreat of the Partido Popular and the Francoist or nostalgic vision of Vox is to take a huge leap forward. We are committed to co-existence and co-operation, to move forwards and to shared prosperity. It is a necessary essential instrument to bring order and stability to the area and to our relationships.

PSOE, but not the Government.

2220 What does a former Spanish Foreign Minister say? When we took over in December 2011, days after we were sworn in, a new Spanish Foreign Minister was sworn in: José Manuel García-Margallo. He was Foreign Minister for five years of the time that we were in office and he still continues to be an antagonist in relation to Gibraltar. What does Sr Margallo say? "*Sánchez blanquea Gibraltar*" was his opinion article in *ABC*. On 3rd June 2020, he said:

Taking advantage of the coronavirus, an agreement that consolidates a tax regime has been made with Gibraltar, one of the most popular offshore financial centres among the large international investors and a mecca of online gambling, and all of this has crept into Congress. As a result of this Agreement, Gibraltar will continue to be, after this Agreement, a territory free of indirect taxes, added-value special taxes and in which companies will only pay for the benefits derived from activities carried out within the Rock, but not for those obtained outside. From now on, who are we going to claim to? Gibraltar is a tax haven, like the crown of a pine tree that is home to more than 25,000 banking institutions

– if only –

and more than 80,000 companies,

– if only –

many of them virtual.

2225 Sr Margallo then has a number of different interventions. I am not going to go through all of them – I do not think he deserves it – but there are a couple that are relevant, which must go down in our *Hansard*. On 10th August 2020, he said this in *Vox Populi*:

The serious thing has not been that meeting between Gonzales Laya and the Chief Minister, but the tax agreement that is currently being processed. It is an international agreement that creates a co-ordination committee in which the Spanish and Gibraltarian authorities are on an equal footing. It is an agreement in which Gibraltar does not deliver anything and Spain delivers everything. The agreement lays down rules to say who is resident in Spain and who is in Gibraltar, to avoid fictitious residences, but now Gibraltar says that it will comply with the Tax Information Exchange Agreements automatically and the agreements to avoid the erosion of tax bases. Those are obligations to the OECD, and if he fails to fulfil them he will be blacklisted and expelled from that community. They are going to remove Gibraltar from the list of tax havens it is on.

On 30th October in *El Mundo*, Mr Margallo says this:

To make matters worse, Spain has withdrawn an appeal before the European courts to end the practices that make Gibraltar one of the most appreciated tax havens by international fraudsters. Who is going to establish a company in the Campo when they can now do it in Gibraltar?

And, finally, on 5th January 2021, in *El Español*:

This is a point of no return. Of course it means giving up sovereignty forever.

2230 I think that is a fitting epitaph to what I have to say about Sr Margallo and I do not think I need to say anything else.

2235 What really matters is what the Spanish government says. The hon. Gentleman has read a part of what the Spanish government has said by reading what Sra Laya said. What I am now going to read he could not be aware of, and of course for that reason it would be unfair for me to say that he should have quoted it, but I am going to read this into the record of *Hansard* because I think it is important that it should be known publicly and it should be permanently on the record of our Parliament. On 18th January 2021, our Ambassador in Madrid, Hugh Elliot, received a letter from the Secretary of State to the European Union, Sr Juan González-Barba. It says this:

*Estimado Embajador* By note verbal of 9th October 2020, we reported that the Spanish Parliament had concluded the ratification procedure of the Tax Co-operation Agreement between Spain and the United Kingdom and we indicated that we were waiting for the United Kingdom to also complete its ratification procedure for the entry into force of the Agreement. In the current circumstances, it is convenient that this entry into force occurs as soon as possible. The effective application of the Agreement is the basis for the exclusion of Gibraltar from the list of tax havens, and for this purpose Spain will adopt appropriate measures within the current legal framework so that Gibraltar is no longer considered a tax haven in Spanish legislation within two years from its entry into force.

2240 If that sounds like I am disclosing something that the hon. Gentleman could not know, and I would have forgiven him, the current Spanish Foreign Minister, the lady for whom I have already expressed a regard given the sensitivity she has had in some of the aspects of her treatment of Gibraltar, although she is a Spanish Minister putting a Spanish position, said this. This is public. It was on 20th January 2021. That is more than a month ago and I think that the hon. Gentleman should have read this when he read the other part of what she said:

So, I think, frankly, in terms of taxation, I think we can see clear progress, which is the reason why, when this Tax Treaty is signed, Spain will remove Gibraltar from its list, which is a Spanish list that is not European, which Gibraltar was never on,

– that is to say Gibraltar was never on the list of European tax havens –

but when this Treaty is signed, Spain will be ready to remove Gibraltar from the list of tax havens because a problem will have been answered. Look, we can continue to have Gibraltar on the list of paradises and Gibraltar can continue to behave as a tax haven. It seems to me that this does not help us. It does not help our citizens or help our companies. What does help them is that we agree on rules of fair play, fair competition in tax matters, which is modestly what this Government has done with the Tax Treaty and what it will continue to do with the negotiation between the European Union and the United Kingdom regarding Gibraltar.

2245 Frankly, I think it is equally important, in prosecuting the case that the hon. Gentleman has made, that the House should have the benefit of the letter from the Secretary of State for the European Union to the Ambassador, which hon. Members did not have and I have now read – perhaps it will change their minds – but also the public position of the Spanish Minister, and this morning, in the Spanish Senate, she said this:

Second, on the Gibraltar issue

2250 – she was dealing with that issue –

in particular the Tax Treaty, the Tax Treaty does not whitewash, the Tax Treaty does not recognise sovereignties beyond what a Tax Treaty does, which is to provide a response to tax dumping.

That is her position.

We can continue another 300 years using grand words to express our aspirations for Gibraltar, but we can, in addition to doing that, give them a concrete answer to concrete problems. Tax dumping is a specific problem and this Government wants to give a concrete answer to this specific problem, and hence the Tax Treaty that I hope all hon. Members can approve.

I do not agree with a lot of what she says there, of course I do not, but there is the commitment, on 20th January 2021, in public, to removal from the blacklist, and in the letter to the Ambassador. So, when all is said and done, it seems that there is, in fact, a lot of progress, contrary to what hon. Members said in their manifesto, contrary to what they said in the election campaign and contrary to what they say in this motion, which they put in February of last year. The facts have answered the arguments that they put. That is the Gibraltar that we are delivering with this Treaty, a Gibraltar where every Member of the House looking at this Treaty honestly and genuinely ... understanding how it is that an individual can be subject to taxation and how he can get himself

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2260 into a net of taxation and how can get himself out of a net of taxation.

For all those reasons, this Government will not support the motion that the hon. Gentleman has put. We are not even going to amend it into a form that we could support and that he might not be able to support. We will vote it down because it deserves to be voted down, and we will do so in order to give effect to the will of the people as they expressed it at the last General Election. The people voted down the terms of the GSD manifesto, which are in effect identical to the terms of this motion. Depending on what the hon. Lady does, we may either vote it down with the Government's majority, or we may vote it down with an overwhelming majority. We may do it with our landslide, which is representative of double the votes that they got at the General Election, or we may do it with the overwhelming landslide of three times the popular vote, which was the result by which he lost the last General Election. One way or the other, the motion and its mover will be defeated today once again, as their arguments were in October 2019, either by a lot or by a huge lot when it comes to the share of the vote that we each represented in this House.

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2275 So, Mr Speaker, for very good reason I do not commend the motion before the House; I commend its wholesale rejection. (*Banging on desks*)

**Mr Speaker:** The Hon. Marlene Hassan Nahon.

2280 **Hon. Ms M D Hassan Nahon:** Thank you, Mr Speaker.

This motion, to us, is so objectionable that I do not even know where to actually begin to deconstruct it. It simply looks atrocious from all possible angles. I even find it hard to make up my mind as to the intentions of the Hon. Leader of the Opposition, because it seems that he has confused our Parliament with some kind of playhouse and brought to us an avant-garde theatrical performance for our entertainment.

2285 Maybe we should take the motion at face value and consider it an honest attempt at bringing real political initiatives to this Chamber, which would beg the question how on earth could this motion ever materialise, because the motion suggests that we pull out of a treaty that we are not a party to, but asking the UK to pull out unilaterally. It then sets out the conditions that are to replace the aforementioned treaty once both parties are back at the table, which of course both would immediately accept. For this to happen, a series of conditions must be met, conditions that are completely outside our realm of power, outside our sphere of influence – heck, even outside our wildest dreams, in many ways. We would need the UK to want to pull out of a treaty they have signed only a year and a half ago, a year ago, unilaterally. We would then need the UK to want to negotiate yet another treaty on our behalf with Spain, an ally and an important trade partner. We would need Spain, having been unilaterally pushed out of a recent agreement, to want to negotiate another treaty. Actually, on this, I am wrong. They would not negotiate. They would simply sit down and accept the conditions set out by the Leader of the Opposition and the GSD. And then, let's not forget that this cannot have any impact on the precarious situation that we have at the border at the moment with favourable post-Brexit conditions being granted to Gibraltar on the back of a temporary agreement that Government will now try to transpose into a treaty. Mr Speaker, if we were not at such a delicate historical crossroads, this would make for a pretty good comedy script for *Yes, Minister*.

2295 The outcome the Leader of the Opposition sets out is not only impossible but would damage Gibraltar's reputation dramatically. It would make us look capricious and unreliable, if not politically unstable. It would damage our standing, particularly in the eyes of Spain and the EU, two parties we are in the process of negotiating a vital treaty with and with whom we are attempting to build a new relationship, built on trust and common prosperity. It would also keep Gibraltar on Spain's list of tax havens, as well as potentially land us on the EU and OECD blacklists, something this Treaty helps prevent. This would further damage our reputation and undermine our economy at a time of profound economic crisis.

2300 To put it simply, it would be political suicide, so how can something so sterile and careless be brought to this House in this way? To display this level of incompetence would be so damaging for the Leader of the Opposition and his party that one cannot accept that this motion is to be taken seriously at all. This is pure political fiction. It is disingenuous to the point that were these ideas to be disseminated around the community – and I mean the idea that there is any truth whatsoever in this ridiculous, pie-in-the-sky narrative – it would be very damaging for the future of Gibraltar. You do not just feed the culture of entitlement with pay rises, berths and parking; you feed the culture of entitlement when you lie to the people of Gibraltar and tell them that you could rip up the Tax Treaty, like the GSD did at the last General Election, and you feed a culture of political entitlement when you convince people that Gibraltar can politically have its cake and eat it at a time of uncertainty.

2310 Mr Speaker, this is not a display of incompetence; this is a display of demagoguery and political dishonesty of the kind that I have not yet experienced in this Chamber, and poorly executed at that. Not once have the Leader of the Opposition or the GSD actually given us a road map of how this would be achieved. For such a solid promise of overturning it, for such a crucial manifesto

2330 commitment, explain the process or keep quiet. You have to explain the process. It is their motion, Mr Speaker. They need to explain exactly how these changes would happen when they speak with such certainty and they run their electoral campaign on it. It is like claiming, when you have a house, 'I am going to build you a better house,' and tearing it all down ... 'I just don't have the tools, I cannot find any of the concrete, I cannot find any of the materials, but I insist that I am going to do it.' It is one thing to say you do not like something, and another thing to insist that you can change it when you actually cannot.

2335 And then the Leader of the Opposition talks about going backwards and not forwards. We are on a completely new playing field. We have been forced out of Europe. Is there no awareness of where we actually are? We have to get real and consider the universe of the possible. We all want to reach for the stars, but we have to keep our feet on the ground. We have to stay clear of delusional goals which are going to misguide the electorate by mismanaging expectations. This is a very dangerous game, and it is dangerous when it is played by any of the sides, whether it is the Government or the Opposition side.

2340 The GSD and the Leader of the Opposition are right about one thing: Governments cannot accept anything generally, on this and on Brexit, other than a complete victory, and concessions are necessary. We have to be honest, in the same way as we have to be honest about the fact that taxes are not boring. They are the lifeblood of our healthcare and our education, and I do not think it is a great example to say that one hates paying for them, especially when you are a socialist. 2345 And honesty is for both sides. When we talk about abortion and parties and the Government side tells the GSD that they are the only party with the Vox, let's not forget they all laughed about the abortion issue, but none of them had the gumption to actually pass the legislation. They passed the legislation when they put a clause on the referendum in order to pander to their own lobbies on the right, so let's not play the populist game and then say that nothing is going on.

2350 However, I do sincerely hope that this matter is put to rest in this session and that we can effectively, at some point, convey a more honest and realistic picture of our political reality to the people of Gibraltar, because to continue down this path will show that the GSD, for all his talk of statesmanship and responsibility, prefers the path of populism to that of the greater good and favours the electoral future of their party to the future of Gibraltar.

2355 All these arguments do not detract from the fact that the Treaty signed by the UK on behalf of the Government of Gibraltar is far from ideal. We know that. The Treaty is clearly one sided in many ways, with harsh impositions particularly on Spanish residents wishing to reside in Gibraltar or those who have resided there temporarily and wish to return. However, the Treaty does address some of the tax irregularities that were happening on our watch that no Member of this 2360 Chamber should be willing to defend, even if it does so in a way that is far from equitable.

As we have said in the past, we all understand that the outcome of negotiations always reflects the balance of power at the table, and it would be either disingenuous or naive to pretend otherwise. Whether we like it or not, we find ourselves in a position of relative weakness that demands we make painful concessions, and this is one which we and my party have been willing 2365 to accept, so I will be voting against this motion and I hereby express my frustration at the fact that we find ourselves, at this difficult moment, debating these useless theatrics instead of working to fix the real problems of our people.

Thank you. *(Banging on desks)*

2370 **Mr Speaker:** The Hon. Dr Joseph Garcia.

**Deputy Chief Minister (Hon. Dr J Garcia):** Mr Speaker, I am grateful for the opportunity to contribute to the debate on the Tax Treaty initiated on the motion tabled by the Leader of the 2375 Opposition. In so doing, I intend to focus more on the political than on the technical, and I am conscious that some of the ground has already been covered by my hon. Friend the Chief Minister.

2380 Let me start by stating the obvious. The Opposition are entitled to expound their own view, however misguided it may be, on this or on any other issue; that is the basis on which democracy has been built here in this country and elsewhere, so nobody is challenging that basic constitutional proposition. Nonetheless, their approach to the Tax Treaty does give rise to serious concerns, and this in turn does raise a huge question mark over their judgement, because on this issue they have chosen to put the politics first and they have done so in a manner which is neither positive nor constructive. This makes it all the more essential for the Government to counter the arguments that they have put forward.

2385 The truth is that over the last couple of years the Opposition have pitched the tone of their criticism on the Tax Treaty far too high. They have taken their critique well over the top. In this way, an exceptionally specialised, complex and technical question has been almost distorted beyond recognition. Their discourse is in sharp contrast with the hon. Lady, who has delivered a generally more sensible, measured and logical position, which the House just heard a few moments ago.

2390 I want to emphasise one point at the very outset and to repeat what has already been said, because it is important to put this polemic in its proper context. The Treaty we are debating today will be of no consequence to the vast majority of the people of Gibraltar. It will have zero effect for most of us. When focusing the discussion, we cannot lose sight of the very basic fact that the impact of the Treaty is reduced, that its application is limited, that its provisions are ring-fenced and that it applies, therefore, only to a very narrow category of citizens as set out in the actual text itself.

2400 The Treaty was signed, as the motion says, on 4th March 2019, and from the moment of publication the hon. Members opposite decided to generate a political controversy. They did this week after week, month after month, in statement after statement, in article after article and in interview after interview.

2405 Their approach, as the House knows, had a wider focus than just the actual Treaty itself. It started with a package of MoUs which had being concluded a few months earlier. Those MoUs and the Tax Treaty comprised the architecture for our orderly departure from the European Union, and so, politically, at that moment in time they stood against everything. The Government, according to them, had got it all wrong, everything, so they set out their stall to the public, and we set out ours.

2410 This was, as my hon. Friend the Chief Minister has said, a burning issue in the run up to the last General Election. It was dominant during the actual election campaign itself. Indeed, it was set out as such in their own manifesto, where the termination of the Tax Treaty was described as a core commitment. This was listed in the first point under the section headed 'Your Money' on page 5, and where their arguments against the Treaty were set out in more detail on page 65. But the electorate was not convinced by their arguments, and on Thursday, 17th October 2019, the people of Gibraltar delivered their verdict.

2415 That outcome was an endorsement of our policies, the policies of the Government, of the way we handled our departure from the European Union and our ability to deal with the future relationship still to come. That election will go down in history as the Brexit General Election, and those policies – our policies – included the Tax Treaty. So, the hostility to the Tax Treaty was a flagship policy for them. They chose to make it an issue and the majority of the electorate overall agreed with us and not with them, by a huge majority.

2420 The notion that sovereignty considerations were somehow put at risk by the Treaty has already been given short shrift by the United Kingdom, who sided on our behalf; obviously by this Government, who are the ones who negotiated it; and, more importantly, by the electorate itself, which did not support their view. But the industry remains as unconvinced by their arguments as the electorate. As the Chief Minister, my coalition Minister, has said already, the Chamber of Commerce itself, in its annual report for 2018, made it very clear that the Tax Treaty was in the best interests of Gibraltar.

2430 In all that commercial and business argument it is important to bear in mind that our main market in financial services is the United Kingdom, not the European Union and still less Spain. The industry has been crystal clear with the Government on this particular point, and this was reflected in the original Brexit impact assessment that was conducted within weeks of the 2016 referendum. As the House knows, that access to the UK was protected early on in the Brexit process.

2435 So, the Opposition have been wrong to suggest that the Treaty will damage business and scare away investment. Nothing could be further from the truth. The Treaty provides the very foundations upon which trade and investment can build, and some of those essential ingredients for businesses, like certainty, security, clear rules and agreed legal structure, the elimination of double taxation and provision for the resolution of tax residency disputes. All of these will be delivered by the Tax Treaty. In addition, as the House has heard, Spain has dropped its objection  
2440 to Gibraltar's membership of BEPS, and that happened within four months of the signing of the Treaty. These are significant gains which should not be belittled. Citizens and companies will finally know where they stand. Administrative and legal certainty will replace ambiguity and doubt. This framework can only be good for business. Moreover, as hon. Members have heard, Spain has committed to remove Gibraltar from the Spanish blacklist. Here, too, the gains are obvious.

2445 But what was their alternative on offer for business? In the event that Members opposite had won the last General Election, they would have sought to terminate the Tax Treaty on 1st January 2021, on the very day that the transition period came to an end. That is what they told the electorate they would do. Therefore, with Gibraltar seeking a new relationship with the European Union, with that future deal delicately poised in the balance, with business and citizens concerned  
2450 about a possible cliff-edge scenario, they would have terminated the Treaty and pushed Gibraltar off the cliff. What consequences for business then? It is all very well to be critical of what others have done; they also need to ponder on the consequences of their own proposals, on the alternative reality that their own policy would have unleashed, and it is clear then that their judgement, their choice, their course of action does not stand up to scrutiny.

2455 We must never lose sight of this wider European dimension. The Tax Treaty and the MoUs laid the ground for Gibraltar's inclusion in the UK-EU Withdrawal Agreement. They provided a framework for our orderly departure from the European Union, for inclusion in the transitional period. The alternative – their alternative – would have been our abrupt exit from the European Union before the United Kingdom itself, so Gibraltar would have crashed out alone, and that  
2460 would have been the worst possible scenario, the worst for business, the worst for citizens, the worst for investment, the worst for the economy, the worst for movement across the border, the worst for Gibraltar as a whole. I would therefore submit to the House that the Tax Treaty cannot be debated in isolation, as the hon. Lady has said. Both the background and the consequences need to be factored into the discussion, and the truth is that their policy would have catapulted  
2465 Gibraltar into an alternative world which would have been singularly unattractive: no Withdrawal Agreement, no transition, no security, no legal certainty and no orderly departure.

For decades, successive Governments of Gibraltar have sought to agree a Tax Treaty with Spain. For years, we have battled against unfair accusations that Gibraltar was a haven for Spanish cash. Many in Spain have come to believe their own propaganda and this has framed their  
2470 mindset. But we know that we have nothing to hide, and that is our strength. The signing of the Tax Treaty already sent this clear message. Its entry into force will reaffirm that further still.

The Treaty brings with it important political gains, too. The first is a formal recognition of the structures and institutions of Gibraltar, and this includes, as we have heard, the Gibraltarian Status Act, with everything that that symbolises, the very concept of registered Gibraltarians, the  
2475 Gibraltar tax authorities, the Registrar of Companies in Gibraltar and the Gibraltar Land Registry.

Hon. Members opposite have argued that Spain could use the Treaty as a tool against Gibraltar. This brings me to my second point, which is the exact opposite. I will explain. It has been common over many years for Spanish governments to counter our own international lobbying with third parties, in the same way as we have countered theirs. We have often faced a tactic where they

2480 seek to cloud the clarity of our argument on the central issues with other unrelated factors. This has become obvious, for example, at the United Nations. Spain's scattergun approach has often included the environment, tobacco, law enforcement issues, taxation, and information exchange.

My point is that from this political perspective the Tax Treaty is also very useful. We have been able to show that there is no basis for the unfair and untrue allegations traditionally made against  
2485 Gibraltar. The Treaty is a political and legal demonstration of Gibraltar's willingness to co-operate with Spain and also Spain's own willingness to co-operate with Gibraltar. The same with the MoUs. They allow the Government to illustrate the point that Gibraltar is a co-operative, law-abiding jurisdiction committed to international standards, no matter what anyone may say to the contrary.

2490 So, the Tax Treaty and the MoU *are* our new tools. This new reality has already had a significant impact on third parties. My point is this: the Tax Treaty has delivered additional political benefits to Gibraltar. Those benefits may not be immediately obvious and some have nothing to do with the detail of tax, but it is undeniable that Gibraltar has made important reputational gains.

Mr Speaker, the Opposition were extremely critical of both the Tax Treaty and the MoUs before  
2495 and during the last General Election. In the last days of the campaign, as my hon. Friend the Chief Minister has said, and at the last minute, they declared that they would honour the MoUs which they had previously denounced. They should now reconsider their approach to the Tax Treaty as well.

Thank you. (*Banging on desks*)

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**Mr Speaker:** The Hon. Roy Clinton.

**Hon. R M Clinton;** Thank you, Mr Speaker.

As hon. Members may expect, my contribution will be more technical than political, but before  
2505 I go into my technical analysis of the Tax Treaty I would just like to address some of the general points that have been made by the Chief Minister and indeed the hon. Lady.

First of all, I have to say that I agree with the Chief Minister on two points, the first being that tax is difficult, and the second that this is serious stuff and certainly not, as the hon. Lady would characterise it, the stuff of comedy – but then she does redeem herself when she says that tax is  
2510 not boring, contrary to what the Chief Minister has asserted.

The motion before us today by the Leader of the Opposition, which is dated 26th February 2020, is not the first time we have had a motion before this House. The Chief Minister seems to forget that he himself brought a motion to the House dated 14th March 2019. In fact, I tried to amend his motion back in March 2019 and it became the subject of a ruling by Speaker Canepa that because it was worded in neutral terms I could not amend it. But this was a Government motion that could be taken at any point in time if the Government so wished, and yet from  
2515 14th March 2019 – and bear in mind that COVID did not even exist in our vocabulary at the time – up to the date of the General Election in October 2019, the Chief Minister did not see fit to actually debate his own neutral motion. And so we, in this House, have been deprived of any opportunity to debate the contents of that Tax Treaty in March 2019. I do not understand why the Chief  
2520 Minister is so taken aback by the Leader of the Opposition's motion when he was not willing, or perhaps did not have the courage, to take his own Government motion in 2019, which perhaps would have been more time relevant and perhaps would not have been as politically convenient before a General Election.

2525 There has been reference made to Sir Peter Caruana's legal opinion, but Sir Peter, in, at least, the element that was published, was very narrow. He was asked 'whether the Tax Treaty contains any legal concessions on sovereignty'. Sir Peter was not asked 'How does this Treaty compare with an OECD model treaty? What are the variations on that Treaty?' Perhaps they did not want to ask him because he is not an internationally recognised tax expert but a lawyer – and, yes, a very good  
2530 lawyer. To quote the former Chief Minister of Gibraltar and the former leader of his party on a

very narrow legal point and then pretend that this covers all the sins of the Tax Treaty is really stretching the point.

2535 As regards BEPS, it is perhaps supremely ironic that it is Spain that was vetoing our membership of BEPS. Of course we would have wanted to join BEPS, and I am glad that we have, but it is an irony that cannot be lost on anybody that we were not allowed to join the very body that wants to prevent base tax erosion by our neighbour, Spain, which accuses us of being a tax haven, and yet it was Spain itself vetoing our membership, so I would not really chalk that up as a great victory, but rather a bit of a bizarre one.

2540 Mr Speaker, I will speak a bit about US citizens, since the Chief Minister is so fond of talking about the US tax system and their 400 million citizens. Just as we have a different system of taxation, on a territorial basis, and the UK and Spain has a residence basis, the United States has its own tax system, which is based on citizenship, so to compare all three together is to mix apples, pears and oranges; they are all different things. To suggest that we somehow have to be a nuclear power in order to have a fair tax treaty is to completely ignore the work of the OECD in producing model treaties which all countries can agree to and sign up to, subject to relevant modifications as necessary. It is an agreed template, it is a boilerplate; all you have to do is change the parties and a few terms. You do not have to be a nuclear power to enter into a fair and balanced tax treaty.

2550 Mr Speaker, I have something to say about Spain's blacklists, and also as to whether this Treaty is in fact balanced, as the Chief Minister has suggested. Of course, there are others in other places who take a different view.

2555 A lot has been said of the Chamber of Commerce, and the Deputy Chief Minister kindly quoted from their 2018 annual report, no doubt from page 7, but he forgot to mention that they also say the Treaty comes at a cost. Yes, Mr Speaker, it says here quite clearly 'it comes at a cost'. Maybe the Chamber are willing to pay that cost, but we really need to understand what the implications of this Treaty actually are.

2560 What I hope to at least demonstrate to the House ... I obviously will not be able to convince Members opposite, or even the hon. Lady, but what I hope to show is that our concerns on this Treaty are not the result of political Machiavellian plots or pure popular type soapbox politics. This is a genuine concern that we have on this side of the House as to the technical content, let alone the political ramifications of the Treaty. If we are just to ignore the technical contents because it is much easier to do that and make political comments without actually going to the nuts and bolts of the Treaty, which is where the sins lie ... The sins lie in the detail. The devil it is in the detail.

2565 So, let me start. The Leader of the Opposition outlined our view that this Treaty is intrusive and harmful to Gibraltar's interests, a Treaty that the House of Lords, in the report of its European Union Committee on 10th April 2019, describes as being asymmetrical; not me, the House of Lords calls it asymmetrical, and yet the Chief Minister calls it balanced. Okay, he has the Chamber on his side and we have the House of Lords on our side. We will chalk up a list.

2570 **Hon. Chief Minister:** Sir Peter Caruana.

**Hon. R M Clinton:** Yes, a great international lawyer on tax.

2575 I do not intend to dwell on the lack of parliamentary scrutiny on this matter and the fact that it is now almost two years to the day since the Treaty was signed, on 4th March 2019; I intend to turn to the Treaty itself, its contents and what has been said by the government of Spain about it, as well as tax experts, to demonstrate its manifest unfairness and intrusion into our affairs. But first – and this is critically important – let me briefly discuss tax treaties and tax systems in general, so that we can put the Treaty into context. I appreciate that this will perhaps be taxing to the Chief Minister's brain cells, but I will go slowly. (*Interjection*) I will go even slower now.

2580 Tax systems come in four broad types. You have relationship, which is citizen based; residential; territorial; and zero tax. That is four different types. The adoption of a system or type of system will vary significantly across countries and it is important to understand the differences,

and so I am going to take the House on Tax 101, so that we all understand what we are talking about.

2585 A citizenship-based tax system effectively follows the passport that you hold. The United States is virtually unique in adopting this system. So, a US national, for example, living in France will pay French tax, but under a double tax treaty with the US can offset this against their US tax liability. No matter where they reside in the world, a US citizen, so long as they hold a US passport, will be required to submit US tax returns. It is a quirk of the US tax code, but I was once told in a FATCA  
2590 seminar – which was riveting – that in fact everybody in the world technically is subject to US tax unless you happen to be exempt by virtue of not being a US citizen. That is the citizenship-based tax system, and the only other country I know of that adopts it, I think, is either Ethiopia or Eritrea in Africa.

The residential system is the most common and can be summed up simply as if you live in a country you pay tax, and if you do not live in the country you do not. Many countries use a  
2595 benchmark of 183 days and the sense of economic life and activity as a guide to establish tax residency. The United Kingdom and Spain, for example, use this type of system to tax worldwide income. Leaving such tax residency can be complicated, but it is not impossible once certain tests have been passed and time periods have elapsed.

2600 The territorial system only taxes residents on income earned or derived within the territory of the country. Singapore, Hong Kong and, of course, Gibraltar have adopted such a system.

The zero tax, as it implies, does not subject residents to taxation, although there may be other forms of indirect tax in the form of duties and property taxes or import duties. Examples of such countries are the Cayman Islands, the Bahamas and, in Europe, Monaco.

2605 As regards the matter of tax treaties, it is a truth almost universally accepted that the best way to address matters of taxation between countries is to use the framework developed by the OECD known as the OECD Model Tax Convention, or Treaty. The OECD provide the following background in setting out the rationale for having model treaties:

International jurisdictional double taxation, generally defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter for identical periods, has harmful effects on the international exchange of goods and services and cross-border movements of capital, technology and persons. In recognition of the need to remove this obstacle, the development of economic relations between countries, as well as the importance of clarifying and standardising the fiscal situation of taxpayers who are engaged in activities in other countries, the OECD Model Tax Convention on Income and on Capital provides a means to settle on a uniform basis the most common problems that arise in the field of international double taxation.

2610 And so, Mr Speaker, you do not need nuclear submarines to get a fair treaty.

In answer to two prior questions, the Chief Minister has asserted and confirmed that the Treaty that we have had before us is not a conventional double tax treaty, and having studied it I agree entirely. It is certainly not an OECD model tax treaty, such as, for example, exists between the United Kingdom and Spain and now between the United Kingdom and Gibraltar. Again, I would  
2615 draw attention, and I will draw attention to it later that we now do have a Double Tax Treaty with the United Kingdom following the OECD model, and in that respect I would say that when the Chief Minister has made comments along the lines of ‘Spain has the residential system, therefore we cannot have an OECD model tax treaty,’ I would remind him that the UK has a residential system and we have a territorial system, yet we have an OECD model tax treaty with the UK, so  
2620 why could we not have the same with Spain?

As regards tax havens, my understanding – I am happy to be corrected – is that Royal Spanish Decree 108/1991 of 5th July 1991 provided that countries and territories are automatically excluded from the blacklist when they sign a tax exchange of information agreement or tax treaty containing an exchange of information clause with Spain. Exclusions are effective on the date the  
2625 agreement or treaty enters into force. This removes the application of anti-avoidance provisions and other restrictive punitive measures, although, as I have said, I am happy to be corrected if I am wrong in anything I have said. They do not have to rely on vague promises. The Government

2630 should only have agreed to a model double tax treaty. You do not need to get signed letters or letters from various Spanish Ministers promising to remove us from a blacklist in two years' time if we are good. We would automatically be removed by Spanish law if we simply had a model double tax treaty. So, it is not much of a victory when all you had to do was enter into a model treaty.

2635 What we have before us is a bespoke Tax Treaty, which is outside normal OECD model tax conventions, and so we have to study it very carefully to understand why certain clauses exist, what has influenced their inclusion and what is their objective.

The Spanish government is really quite clear that this Treaty is not about fair taxation. The Spanish Council of Ministers on 15th March 2019 stated:

Throughout 2018, within the framework of the withdrawal process of the United Kingdom from the European Union, Spain has negotiated with the United Kingdom an international agreements on taxation and protection of financial interests in relation to Gibraltar. These negotiations culminated on 1st March 2019 with the agreement of reference, which has as its main objectives to eliminate tax fraud and the detrimental effects derived from the characteristics of the Gibraltar tax regime, establish clear rules to resolve more easily conflicts of tax residence of individuals and avoid the use of companies subject to the tax regime in Gibraltar by tax residence in Spain, or for the realisation of economic activities in Spain.

2640 This language is not just insulting to Gibraltar, but its accusations are completely unjustified. It is also evident that pressure was applied by Spain, in the context of Brexit, to arrive at this Treaty. This Treaty, I will go on to demonstrate, is not in Gibraltar's interest. It is intrusive, harmful and, politically, frankly inexplicable.

I am glad you find it all so amusing, but anyway –

2645 **Hon. Chief Minister:** You are amusing.

**Hon. R M Clinton:** Yes, well, you've got another hour or so of this.

Talking about tax transparency, I quote from the tax facts of a major international accountancy firm in Gibraltar for 2018-19. In fact, it is *E&Y*, which the Chief Minister is so fond of. They state:

Gibraltar was one of the 'Early Adopters' that gave a formal commitment to the OECD Common Reporting Standard on the automatic exchange of information. It is on the G20-instigated OECD 'White List,' having signed a total of 27 tax information exchange agreements (TIEAs)

– which I am sure has increased –

to date (25 of which are in force).

Gibraltar has enacted legislation to put in place a number of tax transparency measures, including:

US and UK ('CDOT') FATCA

The EU 'Common Reporting Standard' or 'DAC'

EU Council Directive 2011/16/EU on administrative co-operation

The OECD and Council of Europe Convention on Mutual Administrative Assistance in Tax Matters.

2650 And the country-by-country reporting initiative by the OECD.

2655 We have ticked all the boxes, I do not think there are any more for us to tick, so what on earth does Spain want us to do to get off their blacklist? Gibraltar has proactively, positively and demonstrably engaged with the international community on tax transparency. Spain already has available to it OECD and EU mechanisms for tax administrative assistance and co-operation. The Kingdom of Spain only has to acknowledge that. Instead, it keeps us on its blacklist and now insists on imposing upon us a punitive Treaty of what it calls taxation and protection of financial interests.

So, let's consider the Treaty article by article, for which I have drawn on the Government's own summary notes which were published on 7th March 2019, and also the notice published by the Spanish Council of Ministers on 15th March 2019.

2660 Article 1 talks about the protection of financial interests and good governance. This is described as providing for static alignment of EU standards and legislation on tax transparency, administrative co-operation on tax, harmful tax practices, and anti-money laundering. On the face of it, it seems reasonable. 'Static alignment', according to the Government's notes, refers to 'the application of standards and legislation up to date of EU exit and then maintaining those same standards and legislation thereon'.

2665 However – and this is interesting – the Spanish Council of Ministers says:

The United Kingdom has not agreed to maintain this dynamic adaptation of its legislation beyond the transitional period in general with all member states will do so bilaterally with Spain, as set out in Article 3.

Article 3 of the Treaty – I am using the Government's own notes – requires:

Dynamic alignment on exchange of information, whereby measures equivalent to the various EU directives currently supporting the sharing of information for tax and anti-money laundering purposes are maintained beyond the date of EU exit.

2670 Gibraltar, in Article 3, is therefore bound to maintain EU legislation in an equivalent manner beyond transition, something the UK itself is not willing to commit to. It begs the question why: why was the UK willing to commit to Spain, in respect of Gibraltar, something that it would not do for itself with other EU countries?

Article 2 is 'Tax residency of natural and legal persons, entities and other legal structures or arrangements', and I fear this will probably be the most complex part of the Treaty. I will try and make it as simple as possible in navigating and trying to explain its context in the Treaty.

2675 This particular article, Article 2, is probably the most important because it sets out who is to be subject to Spanish tax and it is complex in the methodology that is used to determine the question. The three main clauses in Article 2 are as follows: (1) it addresses the tax treatment of natural persons; (2) it considers the tax treatment of legal persons, entities and other legal structures or arrangements, and (3) it sets out the method for elimination of double taxation.

2680 This is important because all the analysis that I have seen to date talks about how the Treaty might work in practice, but I have not seen much in the way of analysis contrasting the Treaty with current Spanish tax law, and so I propose to set out the current Spanish tax position, clauses 1 and 2, and then compare that to what has been included in the Treaty and the basis for it. I will then examine the provision for the elimination of double tax in the Treaty under clause 3.

2685 So, let's look at clause 1, natural persons. Again, we are looking at how to determine residency for tax purposes. I have extracted the following quotes from the website of Agencia Tributaria as follows. The question they pose in their assembled Q&A is 'When is an individual considered a Spanish resident, and when is he or she a non-resident?':

An individual is resident in Spanish territory when any one of the following circumstances apply.

- (1) They have stayed longer than 183 days in the Spanish territory over the calendar year. In order to determine the permanence in Spanish territory, occasional absences are included, except if the taxpayer accredits the residency in another country. In the case of countries or territories labelled as tax havens, the tax administration can demand proof of staying in that tax haven over a period of 183 days within the calendar year.
- (2) They situate the main base or centre of their activities or economic activities directly or indirectly in Spain.
- (3) They have dependants, not legally separated spouse and/or underage children who are usually resident in Spain. This latter situation accepts evidence to the contrary. Individuals of Spanish nationality who accredit new fiscal residence in a country or territory labelled as a tax haven

2690 – and this is important –

will not lose their status as taxpayers for individual Income Tax. This rule is on application during the tax period in which a change of residence occurs and for the next four years or tax periods. Otherwise, where none of the previous situations apply, an individual is considered as non-resident in Spain.

Mr Speaker, I would ask Members to remember well the existing reference I just gave to tax havens and how Spain treats them unfavourably, as we will be revisiting this later.

Let's now consider what has actually been inserted into our Tax Treaty:

(a) Natural persons shall be tax resident in Spain or in Gibraltar in accordance with their domestic law, including rules regarding the issuance of tax certificates confirming residency and subject to the following rules only in cases of tax residency conflicts;

(b) Where by reason of the provisions in paragraph (1)(a) natural persons are resident of both Parties then their status shall be determined as follows:

– and this is a series of tests, what are normally called tie-breaker tests –

(i) Natural persons shall be tax resident only in Spain when any of the following circumstances exist:

A. They spend over 183 overnight stays of the calendar year in Spain. In determining the count of overnight stays, sporadic absences in neither Spain nor Gibraltar shall be added to the time where these individuals spend the majority of their overnight stays;

B. In the event that, pursuant to the Spanish tax legislation, their spouse (from whom they are not legally separated) or the natural person with whom a similar relationship has been established, and/or any dependent ascendants or descendants, resides or reside habitually in Spain;

C. The only permanent home at their disposal is in Spain; or

D. Two thirds of their net assets, determined pursuant to Spanish Tax legislation, whether held directly or indirectly, are located in Spain;

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And then, in subclause (ii):

When the provisions of paragraph (1)(b)(i)

– i.e. the tests A, B, C and D –

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are not conclusive, natural persons shall be considered tax residents only in Spain, unless they are able to provide reliable evidence that they have a permanent home for their exclusive use in Gibraltar and remain in Gibraltar over 183 days;

So, we have four tests as to Spanish tax residency, as opposed to the three listed on the Agencia website, although it could, of course, be argued that C and D should be combined together to determine the main base. But taken separately, they can operate in a perverse way.

Test A, I think we can agree, is identical to that set out by Agencia Tributaria.

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Test B – and this is where we start to see some variations – whilst similar to that set out by Agencia Tributaria, goes further by including the words 'or the natural person with whom a similar relationship has been established'. Does this mean long-term relationships? Who is caught? And then they also include 'dependent ascendants', i.e. parents. This raises some interesting questions, because since when do tax residents who are dependent parents determine our own tax position? It does not make any sense, and I would like the Government to explain, if anybody there can, why this is different to Spanish tax legislation. Why has the wording been changed on the tax tests for residents? Of course, it is all hilarious to them, Mr Speaker, but maybe not so hilarious to the people who get caught by it.

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Tests C and D are particularly prescriptive in what is meant to determine the main base or centre of economic activities. What is meant by 'permanent home'? Does renting in Gibraltar count as permanent, as opposed to owning a weekend home in Spain? How did the two-thirds test to ownership of Spanish assets arise? Does that apply to ownership of traded bonds and shares on the Stock Exchange?

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We will come to the catch-all subclause (ii), in which, rather than default to a non-resident position if tests A to D are inconclusive as per Agencia, the Treaty instead defaults to a presumption of Spanish tax residence, and then, to add insult to injury, it actually says 'unless they are able to provide reliable evidence that they have a permanent home for their exclusive use in

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2725 Gibraltar and remain in Gibraltar over 183 days'. This is the identical language when residence is ascribed to a tax haven, in which case Agencia Tributaria says the tax administration can demand proof of staying in that tax haven over a period of 183 days within the calendar year.

The Spanish Council of Ministers then says:

The burden of proof to a taxpayer who is resident in Gibraltar is established.

2730 The burden is on the people in Gibraltar. This contrasts completely with the UK-Spain double tax treaty, whereby tax residence is determined by a cascading series of tests, starting with the location of permanent home, followed by centre of vital interests, followed by habitual abode and ending with nationality, under Article 4, clause (2)(c), unless you happen to have dual nationality – that is where it ends. The OECD model tax treaty, in the event of the inability of the so-called tie-breaker questions to resolve the matter, usually ends with nationality. In this Treaty, they enter a presumption of Spanish tax residency, not nationality. This is perverse, and regrettably I have to say it only gets worse.

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Subclause (c) sets out special rules for determining residency, regardless of previous criteria, namely:

- (i) Spanish nationals who move their residency to Gibraltar after the date on which this Agreement is signed

– i.e. 4th March 2019 –

shall in all cases only be considered tax residents of Spain;

- (ii) Non-Spanish nationals who provide proof of their new residency in Gibraltar shall not lose tax residency in Spain. This rule shall apply in the tax period in which the change of residency is made and during the four subsequent tax years. This paragraph shall not apply to non-Spanish nationals that spend less than one complete tax year in Spain or registered Gibraltarians that spend less than 4 years in Spain;

2740 These provisions effectively enshrine the tax haven penalties that Spain already imposes into this Treaty.

Let me remind Members that currently, according to Agencia in respect of clause (2) – and I quote in bold here, Mr Speaker, because this is important:

Individuals of Spanish nationality who accredit their new physical residence in a country or territory labelled as a tax haven will not lose their status as taxpayers for individual income tax. This rule is of application during a tax period in which the change of residence occurs and for the next four tax years.

2745 That sounds incredibly familiar. That sounds exactly like the clause that we have had imposed upon us in respect of non-Spaniards moving to Gibraltar. This rule has now been reworked, so it is instead now applied to non-Spanish nationals, moving to Gibraltar – not Spanish nationals, non-Spanish nationals – with a minor derogation for registered Gibraltarians. These rules are being made up just to prejudice Gibraltar. It does not even exist in their tax code.

The Spanish Council of Ministers are particularly pleased with this clause, and they say with almost palpable pride:

Additionally, special residence rules are included for Spanish nationals, in line with tax agreement between in France and Monaco for not allowing their nationals to be tax resident in Monaco,

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– or, in our case, Gibraltar –

to those who change their residence after the signature of the agreement.

This is incredible. As I have already outlined in the basic analysis of different types of tax systems, Monaco is a zero tax jurisdiction, unlike Gibraltar. Furthermore, the relationship between

2755 Monaco and France can hardly be described or compared to that of Spain and Gibraltar. Monaco is in a customs union with France. Monaco guarantees a defence and even provides banking supervision. It is, in effect, a protectorate of France. Are we a protectorate of Spain? Is that what we are talking about? It is highly unreasonable to try to extend the provisions of the Monaco-France tax arrangements to Gibraltar, as if we were in the relationship that Monaco has with  
2760 France. It is perhaps a step too far.

And so this is a novel tax position for Spanish nationals who effectively are moving to Gibraltar after the date of the signing of this Treaty, i.e. as from 4th March 2019. And this is the bit I find really hard to understand – they will, for tax purposes, be deemed to be in Spanish territory, and subject to Spanish tax in perpetuity, once the Treaty is ratified.

2765 According to the 2012 census report, there were only 675 Spanish nationals resident in Gibraltar out of a total population of 32,194. That is about 0.021%, hardly a threat to Hacienda, and perhaps it is for this reason that the Father of the House is so relaxed about this provision. But it is nonsensical from a tax point of view and contrary to their current tax law provisions if that Spanish national moving to a listed tax haven only requires tax returns for an additional four years.  
2770 And yet in this Treaty they are in the tax net for perpetuity. I think the Chief Minister said, ‘Oh, well, they can leave the tax net.’ How? They are in it for perpetuity.

Mr Sancho Alvarez, the Director of International Tax at a Seville law firm, at the University of Cadiz summer course which was hosted in Gibraltar in July 2019 called the Treaty, and I quote, ‘imprecise, vague and includes ambiguous concepts’. In his view, it widened the Spanish tax net  
2775 beyond the remit of existing domestic law. He also expressed surprise at the idea that Spaniards moving to Gibraltar would forever be subject to Spanish tax, which would be unjustified under domestic Spanish tax.

Mr Speaker, this can only be described as a serious technical surrender of tax sovereignty to Spain. We complain of maritime incursions, yet this Government, on 4th March 2019, has on paper  
2780 surrendered our tax sovereignty to Spain by giving recognition to such perpetual tax provision in respect of Gibraltar in respect of Spanish nationals. This is a concession to Spain and the Government must answer for it. It is unforgivable, and frankly I can hear them laughing in Madrid at this Government’s stupidity. I did have the words ‘crass stupidity’ but I may as well [inaudible]

In his Press Release 189/2019 on 19th March 2019, headed ‘No concessions in Tax Treaty’, the  
2785 Chief Minister compounds his mistake by saying:

The fact that Spanish nationals remain Spanish tax resident is nothing novel in international tax. For example, nationals of the United States of America remain tax resident in America for up to fifteen years after they depart the United States. These are measures designed to deter tax avoidance and they do not go to the tax sovereignty of the nation to which any such US national may have moved.

This statement is contextually wrong. As I have already explained, the United States operates a citizenship tax system on a worldwide, almost unique basis. Of course, it does not make it easy for US citizens to renounce their citizenship and any tax liability. On the other hand, the Kingdom of Spain – and I think the Chief Minister agrees – operates a residence-based tax system. What  
2790 this Treaty provides is entirely novel for foreign territory in regard to Spanish nationals, that they should become permanently tax resident in Gibraltar. This is a completely unwarranted concession that sets a dangerous precedent as to our tax sovereignty and of course is a clear signal of Spain’s ultimate intentions.

The House of Lords has described this Treaty as symmetrical – one-sided, he may say otherwise, biased, skewed ... I am sure there are plenty of other words we can use to describe it.  
2795 And there is more, not just on individuals.

Finally, as regards individuals, if it were not enough, the Treaty then says, under clause (e):

Gibraltar's special tax residency schemes for High Net Worth Individuals (HNWI), Category 2 Individuals (Cat 2), High Executive Possessing Specialist Skills (HEPSS) or any other equivalent scheme that may be created in the future, shall not of itself, constitute proof of tax residency in Gibraltar for the purposes of this Agreement.

2800 I think that, if I recall correctly, reappears in the framework agreement. If that is not meddling in our tax regime, I really do not know what is. That would never have appeared in a model OECD Tax Treaty and the Government knows it. I do not see an equivalent clause in the Treaty being applied in reverse to Spain or any such scheme it may create of its own volition.

I move on to clause (2), which is about legal persons, entities and other legal structures and arrangements. I have again extracted the following from the website of Agencia Tributaria, which reads as follows:

Which legal persons are considered Spanish residents, and which are non-residents?

An organisation is considered to be resident in Spain when one of the following requirements is satisfied: (1) that it is constituted according to Spanish law,

2805 – i.e. a Spanish company –

(2) that its registered address is in Spanish territory,

– i.e. it could have a branch –

or (3) that its effective headquarters are based in Spanish territory.

– or what we would call management and control –

Otherwise, those organisations that do not satisfy any of the three foregoing requirements are considered to be tax resident.

So, (1) a Spanish company, (2) a branch, or (3) the management are in Spain. Those are the only three conditions.

The tax administration considers an organisation based in a tax-free country or territory as resident in Spain when its main assets directly or indirectly consist of assets located or rights that are fulfilled or exercised in Spain or when its main activity is carried out therein illicit unless it accredits that its direction and effective management and control take place in that country or territory and its incorporation and operations have a valid economic motivation or substantive business reasons other than the simple management of securities or other assets.

2810 So, let's now consider what is being inserted into our Tax Treaty. Clause (2) says:

(2) The following rules for determining tax residency apply:

– we are talking about legal persons –

(a) Legal persons, entities and other legal structures or arrangements, established and managed in Gibraltar, or governed by its legislation, shall be considered to have residency only in Spain when any of the following circumstances exist:

– any, Mr Speaker –

(i) The majority of the assets, whether directly or indirectly owned, are located in Spain or consist of rights that may or must be exercised in Spain;

(ii) The majority of the income accrued in a calendar year derives from sources in Spain, pursuant to article 13 of the codifying legislation of the Non-resident Income Tax Act of the Spanish tax legislation as may be amended from time to time;

(iii) The majority of the natural persons in charge of effective management are tax resident in Spain;

(iv) The majority of the interests in the capital or equity, voting or profit-sharing rights are under the direct or indirect control of either natural persons who are tax residents in Spain or legal persons, entities and other legal structures or arrangements linked to tax residents in Spain;

2815 These four provisions bear very little resemblance to Spain's own criteria in their domestic law for establishing tax residence of companies. In addition, clauses (iii) and (iv) are really entirely novel in establishing tax residence of a company and seem aimed solely at prejudicing Gibraltar's legitimate business.

The Spanish Council of Ministers freely admit:

The last two cases have been a great difficulty for the British, so they insisted on establishing a series of exceptions for the existing companies that carried out activities almost exclusively in Gibraltar and are effectively taxed that territory, with design of exceptions on the cut-off date (16th November 2018, when the technical content of this Agreement is agreed upon) have been complex.

2820 Incidentally, the cut-off date of 16th November 2018 which appears in the Treaty is explained by Spain and not by this Government. Ordinarily, I would have expected a future cut-off date, not a past date.

2825 Mr Speaker, as we all freely admit, tax is complex, but when it comes to the taxation of corporate vehicles or legal personality vehicles, there are conventions, and taxation specialists refer to a place of effective management and control when it comes to determining tax residency. Location of effective mind and management is the accepted key to this question, not the tax residence of managers or owners. This is just making a nonsense of this Treaty and evidently the UK fully appreciated and has tried to resist these measures by introducing exemptions. In order to get round this absurdity, exceptions have had to be included in the Treaty so that existing businesses are not prejudiced. This requires a meeting of five conditions and supplying of information to the Income Tax Office, and the Government's summary note explains this as follows:

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In order to be able to avail themselves of this exclusionary clause in the Agreement, in the event that they are caught by the residency rules regarding effective management and control in Spain, entities incorporated in Gibraltar before 16 November 2018 will need to provide this information to the Income Tax Office.

Submission of this information will ensure exclusion is available going forward in the event the entity is inadvertently caught by the residency rules on effective management and control by tax residents in Spain.

In order to ensure that every entity in Gibraltar, incorporated before 16 November 2018 is safeguarded against this potential eventuality, the Income Tax Office will be legislating the requirement to submit an information return to this effect.

This is an incredibly convoluted way of getting around the ridiculous requirement from Spain.

2835 So, what now for our Income Tax Act 2010? Will section 74 now need to be amended where it defines, for tax purposes, 'ordinarily resident means when applied to any company, a company whose management and control is in Gibraltar'? What has supremacy now, Mr Speaker? The Treaty signed by the UK and Spain, or our domestic tax legislation passed by this Parliament?

2840 The Government is proposing to legislate to force companies to declare information as to income generated in Spain. If primary legislation is brought to this House to give effect to any of the provisions of this Treaty, I will say now I will oppose it. Such legislation undermines the sovereignty of this Parliament, as the Treaty requires legislative reforms which are imposed upon us by the signatories to the Treaty and not of our free will.

The summary note from the Government then says:

Under the Agreement Gibraltar has agreed to supply Spain with a list of all those entities that would be deemed resident in Spain, on the basis of the rules on effective management and control by tax residents in Spain and meet all the tests set out in the exclusionary clause. The list supplied to Spain by 31 March 2020, shall include beneficial ownership and governance details.

2845 Mr Speaker, OECD model tax treaties do not talk about these things. Our Income Tax Office is thus, therefore, to become an agency of Hacienda and we are to bear the cost of it. This Government has enshrined in this Treaty the ridiculous idea that a Gibraltar company incorporated after 16th November 2018 and owned or controlled by individuals who might

happen to be Spanish tax resident is to be deemed Spanish tax resident with no exceptions. Neither are Spanish companies allowed to redomicile to Gibraltar. For example, if a FinTech start-up Gibraltar company sets up in Gibraltar with absolutely no activity in Spain but, say, owned by a Dutch national who happens to be tax resident in Spain, in the Spanish hinterland, the company will be treated as being Spanish tax resident, even though it carries on no activities in Spain. The Chief Minister talks about the shared arc of prosperity in the Campo, but this is an attack on Gibraltar's ability to attract new business where owners or managers might choose to live in Spain, for their own personal reasons, while managing or owning their business legitimately in Gibraltar. What does the Government say to that?

I asked this question of a Spanish tax expert, so I have the House of Lords and I have Agencia Tributaria themselves and now I have a Spanish tax expert. At a seminar held in Gibraltar on 4th February 2020 – and EY7 seminar, of which Fabian is so fond – and I asked him, 'Nate, is this provision normal under Spanish tax law?' and, after very brief reflection I have to say, he said simply, 'No,' and he gave the example that the owner of a French company who is personally tax resident in Spain would not make that French company automatically taxable in Spain. This is international tax convention. Mind, management and control is where companies are determined to be tax resident. What this Treaty has done is come up with a completely novel way of tackling a question that has already been answered.

Of course the House of Lords says this Treaty is asymmetrical. No country in its right mind would agree to such a measure. I do not see France, Spain or England agreeing to such clauses in their treaties. These provisions are patently absurd. Just by way of example, the UK-Spanish OECD model tax treaty says the following under their article for residency:

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

Yes, that is the normal text that is applied internationally, not what we have in this Treaty. It is really that simple. This Treaty is nonsense and it is dangerous in respect of companies carrying out legitimate business in and from Gibraltar. It makes no sense whatsoever.

Mr Speaker, if I have not yet convinced the House that this Treaty should never have been signed, let's now look at clause (3). Clause (3) talks about the elimination of double taxation, and here, quite remarkably, we have just one sentence, which reads as follows:

The competent authorities

– whoever they may be –

shall eliminate, where relevant, double taxation pursuant to the provisions of their domestic law.

The UK-Spain double tax treaty, as you can imagine, has substantially more text than this and sets out specific provisions. This clause is feeble at best. For example, what is meant by 'where relevant', and who decides what is that relevance? We are in the hands of Spanish tax law to do with Gibraltar as it wishes, and this is an unsatisfactory position without specific provisions to eliminate double tax having been set out in any detail. Let me illustrate the difference with the Spanish-UK double tax treaty, which, in its Article 22 on elimination of double tax says:

1. In Spain, double taxation shall be avoided following either the provisions of its internal legislation or the following provisions in accordance with the internal legislation of Spain:

a) Where a resident of Spain derives income or owns elements of capital which, in accordance with the provisions of this Convention, may be taxed in the United Kingdom, Spain shall allow:

– shall allow –

- (i) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in the United Kingdom;
- (ii) as a deduction from the tax on the capital of that resident, an amount equal to the tax paid in the United Kingdom on the same elements of capital;
- (iii) the deduction of the underlying corporation tax, which shall be given in accordance with the internal legislation of Spain.

It then sets out the opposite position of the United Kingdom on the same precise terms. If you look at Article 22 of the Spanish-UK tax treaty, it is what I would have expected to see in clause (3), not just an ambiguous one-liner.

2885 Mr Speaker, I, as I am sure the rest of the House, am rapidly losing the will to continue to read this Treaty for all that it ill brings us.

So Mr Speaker, Article 3, when it talks about the administrative cooperation in tax matters, whereas the Spanish government in the past has always had access to legitimate tax information and assistance via EU directives on tax assistance, some of the measures in this Treaty appear to make Gibraltar subservient to Spain's interests and demands.

2890 I will not go into depth on the exchange of information, but I note that Spain will enjoy free access to records of Companies House and the Land Registry. It is quite remarkable, because it is a privilege that Members of this House do not enjoy. Nor do I see much in the way of reciprocal access to information in Spain or their records. It is all very depressing, frankly, and obviously biased in favour of Spain. In fact, I would venture to suggest Spain drafted the Treaty, because it actually reads better in Spanish than in English. I very much wonder what input Gibraltar had into the actual provisions of this Treaty. It is almost as if they were told, 'What do you want? Put it on a piece of paper and we'll sign it.'

2895 Mr Speaker, Articles 4 and 5 on Liaison bodies and a Joint Coordination Committee beg the question as to who will determine the composition and who has the final say on tax disputes? That is not defined.

The remaining Articles 6 to 8, Mr Speaker, are administrative, although I would again point out that I would have expected the provisions to be future dated, and not backdated.

2905 It is supremely ironic that the first formal tax treaty we have, or we did have, was not with the UK but with Spain. I would need to ask the Government when it sought and obtained independent expert tax – not legal; *tax* – advice on the Treaty in respect of both the proposed Spanish Tax Treaty and tax treaties in general. If so, Mr Speaker, I would ask from whom? And will the Government provide us with a copy to this House? If no independent advice was sought, I would ask why.

2910 I trust the Chief Minister will now accept that this Treaty is not in Gibraltar's interests, being demonstrably harmful and intrusive.

Mr Speaker, the Father of the House will forgive me, but he will be brought into this, as no doubt he expects! The Father of the House may wish to consider the implications of his statement when he said on 19th March 2019 that, and I quote, 'I would not accept any concessions being made by Government, which I am a member of.'

2915 Mr Speaker, I was surprised that in his speech to the UN decolonisation seminar held in Grenada in May 2019, from which the Chief Minister has quoted extensively – I will quote only a small section of it – the Father of the House said the following, and I quote:

The treaty provides different treatment on the basis of nationality in respect of persons who move from Spain to Gibraltar. In the case of Spanish nationals they will continue to be treated for tax purposes as if they were still resident in Spain. This will apply indefinitely ...

2920 Mr Speaker, I repeat: 'as if they were still resident in Spain – indefinitely'. Is that not a clear concession to Spain? Is that not a clear giving up conceptually of a part of our jurisdiction and control? How on earth is this acceptable to the Father of the House? No doubt he will give us his answer in due course.

The only explanation I can think of rationally is that in some mathematics of it in his head, he may think, 'Ah well, we may make more money out of it this way than not', but that is to ignore

2925 what has actually been said here. There are all sorts of implications in terms of social affairs of Gibraltar; in terms of if a person comes to Gibraltar, marries a Gibraltarian, they are forever going to be subject to Spanish tax. Is that something we are willing to accept? I look forward to the Father of the House's explanation.

2930 This Government, as I have proven, has made clear concessions to Spain on this tax and it is frankly politically inexplicable – unless, of course, Mr Speaker, unreasonable pressure has been brought to bear on the Government in the context of Brexit. If this is or was the case, then the people of Gibraltar deserve to know the truth, and not the fiction that the Chief Minister is peddling in respect of this Treaty.

2935 If the Chief Minister was motivated by the desire to remove Gibraltar from a Spanish tax haven blacklist, what he has actually managed to achieve is to enshrine in a treaty those very negative measures that were directed against us, that Spain chose unilaterally to classify us as a tax haven.

2940 Mr Speaker, in summary, this Treaty is not a handshake of friendship and co-operation. I do not see visions of sunny uplands and shared prosperity. What we should have had before us is a model OECD tax treaty, which would have been fair and balanced. That is in answer to the hon. Lady, what our alternative is: the alternative is to have a model OECD tax treaty which is fair, balanced and equal.

2945 Rather, Mr Speaker, in this instrument we have been reduced to an unacceptable state of what I can only describe as submission and surrender. This is an instrument of surrender, Mr Speaker. We should have had nothing more or nothing less than a standard OECD model treaty and why we do not have one is something the Government has to answer for.

So, Mr Speaker, I oppose the 4th March 2019 Treaty as presented. I urge all hon. Members to do the same. I will obviously be voting in favour of the Leader of the Opposition's motion.

Thank you, Mr Speaker. *(Banging on desks)*

2950 **Hon. Chief Minister:** Mr Speaker, if I can suggest that we might recess for 10 minutes and then continue with the House's debate.

**Mr Speaker:** The House will recess for 10 minutes.

*The House recessed at 9.40 p.m. and resumed its sitting at 9.50 p.m.*

**International Agreement on Taxation and the Protection of Financial Interests –  
Debate concluded –  
Motion not carried**

2955 **Mr Speaker:** The Hon. Sir Joe Bossano. *(Interjection)* I beg your pardon. The Hon. Albert Isola.

**Minister for Digital, Financial Services and Public Utilities (Hon. A J Isola):** Mr Speaker, I would be delighted to be called Sir Joe in everything other than my looks!

2960 I would like to start on behalf of the business community in congratulating the Chief Minister, the Deputy Chief Minister and his team, and the Financial Secretary, who put this Tax Treaty together because, for the reasons that I will come into now, I believe it is good for the business community. I believe it is good for Gibraltar and I do not agree with almost anything that Members opposite have said other than, of course, my friend, the Lady, with whom I had much to share our views on.

2965 Mr Speaker, if I can start by dealing with some of the things that were said by Mr Clinton. I am grateful to the hon. Member for having taken us through and reading to us the Tax Treaty, which confirmed what the Chief Minister had said a couple of hours earlier, that tax is really boring. I

think Mr Clinton saw that point through very clearly for all of us who managed to stay awake whilst listening to him.

2970 Mr Clinton tells us that Spain should sign an OECD standard model treaty with Gibraltar and remove us from the blacklist. Perfectly reasonable. Why don't they? Why didn't the GSD in 16 years manage to do just that? Well, Mr Speaker, because unless he is living in cuckoo-land, he must come to the conclusion that it is simply not possible.

2975 Mr Speaker, the warning signs are up also for the New Year's Eve Agreement. The approach from the Members opposite is clearly going to be exactly the same. In fact, from the discussions we have already had in this House, it is obvious that the Leader of the Opposition has a view that that agreement also cedes some form of control, despite everything that we have heard today from my friend, the Chief Minister and the Deputy Chief Minister.

2980 This Treaty is about political courage, political conviction; deciding which way we as a jurisdiction want to go – forwards or backwards. But to come to this House and to tell the people of Gibraltar, as you did before the last election, that you would tear up the Tax Treaty, that you will now tear up the New Year's Eve Agreement when it comes – because you are telling us that already – this is a bit like the Hon. Mr Feetham many years ago, talking about the Future Job Strategy, calling it the 'Fail Job Strategy' even before it had started. It is exactly the same. And look  
2985 how many people we have got unemployed today.

This is prejudging something for political ends, which have nothing to do with the reality of what we actually face as a community seeking to move forward in the years to come.

2990 The Leader of the Opposition started off by talking about 'how could the Government have agreed to have language like fraud, money-laundering and smuggling in the first statement which described the Tax Treaty?' It may surprise the hon. Member to learn that we have, in the whole of Europe and many other countries around the world, agreed to things such as the AMLD – the Anti-Money Laundering Directive. That is what these things do. Moneyval is about fraud, it is about tax evasion. If you look at our national risk assessment, we are on our third iteration of that now – that is what this is all about. It is about exchange of information. It is about transparency.  
2995 It is about fighting fraud and tax evasion.

How can we take offence to a press release that Spain issues on day one that deals with precisely the issues that the Tax Treaty and many others are deemed and expecting to be tackling? That is exactly what they do, and yet both Mr Clinton and the mover of the motion refer to it as 'optics versus reality'. 'Not a good call of the Government to accept this language' – as if we have  
3000 anything to do with accepting the language of the Kingdom of Spain.

The characterisation of Gibraltar, which this Government has agreed to: well, I would refer the hon. Members to have a read, if they have not read it already, of the national risk assessment. 2020 was our third version, and you will see that it identifies all of the areas where the risk occurs and how we can work together to tackle it.

3005 The Hon. the Leader of the Opposition said that the Tax Treaty was bad for Gibraltar. Mr Speaker, the references to business that have been made by Mr Azopardi and by Mr Clinton in terms of saying how bad this is going to be for business do not match the reality. By that I mean that when Cordoba was signed – there has been a lot of discussion about Cordoba today – immediately after Cordoba, what is today Gibraltar Finance, in those days the Finance Centre, was  
3010 shipped off to Madrid to organise breakfast seminars to promote Gibraltar, quite rightly, as a financial services jurisdiction. There was a lot of excitement about suddenly being able to do business with Spain. Crikey! Now with Cordoba, we have a relationship with Spain, we can actually start doing business with them. The Chief Minister at the time – the same gentleman who has given that legal opinion that there is no breach of our sovereignty in terms of this Tax Treaty –  
3015 sent his marketing division to Madrid and had breakfast seminar after breakfast after breakfast seminar. What happened? *Nothing*. Absolutely nothing! Why not? Because they all said the same thing: until you get off the blacklist and until you have a tax treaty, you cannot do business with Spain.

3020 That is the GSD initiative: business development. Absolutely right. But what was the hand  
brake? We were on the blacklist. I am not one of those people like Mr Clinton that believes that  
we could have sent a nice letter and they would have taken us off the blacklist. In the real world,  
we all know, it does not work that way. In the real world, we all know, we do not have the same  
clout that the UK does to sign a tax treaty on an OECD model. Let us be serious! Let us be realistic  
with ourselves, as the hon. Lady said, absolutely rightly.

3025 What is the position with business? We embarked following what the previous Government  
did on a journey of compliance of adhering to international standards of implementing all EU  
directives in the areas of financial services and other areas, because we believed that that was the  
best way forward for our business community. The Brexit failure, which I think is what the Leader  
of the Opposition called the MoUs, the Tax Treaty and everything else – good God! Out of touch  
3030 is how I would put it in the nicest possible way.

*Talk* to the business community, because market access to the United Kingdom, where over  
92% of our business was in 2016, and a lot more of it is today, is very valuable to our community –  
very valuable.

3035 ‘Bad Brexit; we did a bad deal.’ Market access to the UK? That did not work out too badly.  
Market access for our gaming firms. 2016 – Brexit; 2021 – 3,400 jobs in the gaming sector in  
Gibraltar today. When they left government in 2011, telling the community in that election  
campaign that the gaming community were really worried because this Government did not have  
a clue; today Brexit, Covid and everything else that has been thrown at us – still 1,400 jobs over  
what they left in 2011. It is remarkable. So that is a success, not a failure, with the greatest of  
3040 respect to the hon. Member.

But of course, let us be more recent. Tell me about the last six months of 2020. The Gibraltar  
Financial Services Commission has had its record number of applications in its history. Bad for  
business, the Tax Treaty? Numbers going to be going out the window? Employees leaving Gib?  
Well, their interpretation of what is bad for business and ours are very different, because for us  
3045 coming off a blacklist, signing a tax treaty with Spain is a very, very big plus. And that is what the  
business community of Gibraltar believes.

Of course, what else does it do? It actually enables us to go around the world and enter into  
tax treaties with other countries. I can tell you that I have been to many embassies talking about  
tax treaties and they have all said the same thing: for as long as you are on the blacklist of Spain,  
3050 it is very difficult for us because they do, as the Hon. the Deputy Chief Minister referred, put us  
under some pressure and therefore, as a result, we cannot do it.

We have now got a tax treaty with the UK, a tax treaty with Spain. We are now very well placed  
to set up a genuine tax treaty network, which will be of enormous value and benefit to our  
business, and especially our financial services community.

3055 Of course, just imagine the loss of memory, to believe that we were ... The judgement really is:  
do you want to have no tax treaty and stay on the blacklist; or do you want to be in a position  
where you can have a tax treaty with Spain and be removed from the blacklist? That is the  
question.

3060 The detail and the reading of the Tax Treaty is relevant, of course it is, but the real issue in  
terms of our jurisdiction is where Gibraltar will be placed, because I can tell you that if you asked  
the community six or seven years ago, ‘A register of beneficial ownership – do you want it?’, they  
would have said ‘No, no – it’s bad for business!’ That is what they would have said. Any of the  
areas of compliance that we have had to adhere to in the last seven years, they would have all  
said to you, it is bad for business. Ask them today: now they tell you, when they go marketing, the  
3065 first thing they do is they say, ‘We’re compliant with that, and we’re complaint with that, and we  
have already got our public register of beneficial ownership.’ Why? Because it shows we are  
applying international standards.

Today, in today’s world of quality business, which we are now enjoying so much of, it is not  
going to come here if you are going to be having issues with blacklists. We are no longer in the EU.

3070 There is a greater risk of that happening. So whatever we can do to put ourselves in the best position possible is good for business.

I remember vividly the challenges of material and regional selectivity to our tax system. I remember the challenge to our Income Tax Act. If those had succeeded, our business community would have been shut.

3075 The hon. Member seems to be very confident now. There were three or four threats – there was even a threat just three years ago emanating from the European Union, just at the time of the referendum – any one of which would have had catastrophic consequences on our business community. All engineered by where? All engineered by Spain. Today Spain is going to remove us from their blacklist and commit to working with us in a normal way. If that is not something that is good for business, if that is not something that is good for our community, then, Mr Speaker, I  
3080 honestly do not know what is.

I have absolutely no doubt whatsoever that the Tax Treaty that our Chief Minister and his team have negotiated is an excellent prospect for increasing our business in Gibraltar across all spectrums, not just in terms of Main Street but in terms of our own little Wall Street in financial services and, of course, our very important gaming community. For those reasons I will support the Chief Minister and the Government in opposing this motion and voting vehemently against it.

Thank you, Mr Speaker. (*Banging on desks*)

**Mr Speaker:** The Hon. Daniel Feetham.

3090

**Hon. D A Feetham:** Mr Speaker, I am going to be making three points, and I am going to be keeping my contribution brief because we have been here already for many hours.

In the years that I have been a Member of this House I have heard the Hon. the Chief Minister deliver and make points that are good, that are bad and that are sometimes very ugly; often all three in the same speech, and, indeed, if it is very ugly, often directed to those of us that he perceives to have slighted him in some way in the previous week or months.

3095 But I have not, Mr Speaker – very rarely have I – heard him deliver or make a point so devoid of intellectual integrity as the point that he made, Mr Speaker, when answering the criticism about why Gibraltarians continue to pay tax, even after four years, if they come back to Gibraltar. That is one of the points, the first point that I wish to focus on.

3100 Mr Speaker, he sought to justify what is, quite frankly, the unjustifiable by reference to some example about the United States and saying, ‘Oh, but in the United States, they impose tax based on nationality and even if that person were to leave the United States and go somewhere else or even renounce their nationality, they continue to pay tax to the United States for a number of years, even after they have renounced their nationality.’

3105 But Mr Speaker, does he not realise that the fundamental distinction between the analogy that he seeks to draw with the United States and Gibraltarians continuing to pay tax even after they have stopped residing in Spain is that the United States is not seeking to impose tax on Spaniards or on Argentinians or on Canadians? We are talking about the Spanish Government seeking to continue to charge tax to Gibraltarians even after they have ceased residing in Spain. That is the fundamental distinction. His analogy in relation to the United States is a complete and utter, Mr Speaker – with respect to the hon. Gentleman – *red herring*.

3110 Of course, we have all spent an enormous amount of hours discussing this Treaty at macro level and getting into the detail of it and the technicalities of it. But there is a real story here of a very real way in which real people can be affected by this Tax Treaty – Gibraltarians, Mr Speaker – in a very unfair and detrimental way.

3115 Let me explain. When the hon. Members opposite won the 2011 election, they stood on a platform, on a manifesto, that promised that Gibraltarians who had been forced to live in Spain because they could not afford to live in Gibraltar would go on to a special list so that they would effectively ... their special circumstances would be taken into account when attempting to obtain  
3120 Government housing here in Gibraltar.

3125 Within a year of winning the election, they disregarded the policy, saying, 'There is no demand.'  
Well, actually, Mr Speaker, it is a very real situation for many Gibraltarians, that they cannot afford  
to live here in Gibraltar because of the prices of the property market, both sale, but in particular  
rental, and they have to go and live in Spain and are waiting, Mr Speaker, in Spain, for the  
Government to allocate them Government housing. It happens, Mr Speaker.

3130 I will give the House an example that I have raised in the past. It happens in a situation where,  
for example, couples divorce. One of the parents stay with the home because that parent is often  
the care giver, and the spouse who has left the matrimonial home needs to find alternative  
accommodation, so very often because they cannot afford accommodation here in Gibraltar,  
pending an application for Government housing – so they want to return back to Gibraltar – they  
have to go to Spain. For those people to come back to Gibraltar when they are allocated a  
Government house, or because their financial situation perhaps improves, and they are able then  
3135 of having to pay taxes to a foreign country, Mr Speaker – a *foreign country* – for four years after  
they reside here in Gibraltar, is, in my respectful view, appalling. Absolutely appalling, and it  
cannot be justified, in my respectful submission and in my respectful view.

Look, it is no answer and it is going to be no consolation to those people, Mr Speaker, for the  
Hon. the Chief Minister to then say, 'Ah, but there is a legal opinion from the greatest Gibraltarian  
3140 of our time that the sovereignty of Gibraltar is not impacted by the Tax Treaty.' Look, they are  
complaining about a very real situation, Mr Speaker, and I will say this about the argument about  
the sovereignty of Gibraltar not being affected: if the effect of this Treaty was that the very next  
day of its signing, we would wake up with some sovereignty concession, well, the hon. Gentleman  
might as well emigrate from Gibraltar. That is not the point that any of us are actually making  
3145 here, that this Treaty is a concession on sovereignty – legal sovereignty, yes.

It may impact – as it does, and I will come to my second point in a minute – on our legislation  
and therefore it is an intrusion, in fact, on legislation that this Parliament has introduced. It is  
nothing to do with sovereignty, Mr Speaker. I think that when we talk about the Tax Treaty, we  
should not lose sight of the fact that there are Gibraltarians who have been thrown under a  
3150 veritable bus by this Tax Treaty. That is the reality, Mr Speaker.

The second point that I make is this. (*Interjection*) The second point ... well, look, I have to sit  
down here and listen to some of the stuff that the Chief Minister utters on many occasions in my  
direction, and I have to just take it on the chin. (*Interjection*) Now it is my turn to at least make a  
contribution on this important matter.

3155 The second point that I would make is this: this is not a double taxation treaty. What this is, for  
all the reasons that have been developed by my hon. and learned Friend, the Leader of the  
Opposition and the extraordinarily erudite intervention of my friend, Mr Clinton, is a tax avoidance  
treaty, but it is a tax avoidance treaty for the benefit of Spain. That is what it is. That is what it is,  
and that is why it is skewed so much to the benefit of Spain. This is not about double taxation.  
3160 This is about the reality, the substance of this. This is an anti-avoidance tax treaty for the benefit  
of Spain.

Look, I could understand the argument – I really could – at an intellectual level and at a political  
level. I understand the arguments advanced by the Deputy Chief Minister and I understand some  
of the arguments advanced by Mr Isola, which essentially amount to this: they say, 'Yes, this is ...'  
3165 As I understand their arguments, they do not express it in this way, but it really amounts to this:  
'This is something that we have had to swallow. We do not really like it, but the reality is we have  
done it in order to get ourselves off a blacklist and in order to help us with our negotiations in  
relation to Brexit and the new relationship, and all of that.'

3170 If the Government from the very beginning had actually presented it in those terms – much  
more eloquently than that, I would hazard a guess, the Hon. the Chief Minister presenting this –  
but if he had presented this from that perspective, saying 'Look, we don't like it; this is a really  
skewed in Spain's directorate, but we're getting this; we're getting this; we're getting this and  
really, that is the reality of the situation.' Look, there may have been still criticism on our side in

3175 relation to concessions that have been made, that it skewed this, that and the other, but I have to say it would have been far more politically honest for the Government to have presented it in that way, and they have not sought to do so, Mr Speaker.

3180 In relation to double taxation agreements, essentially what you have is you have a treaty and you have a set of rules. In that set of rules, if you fall within one set of rules, then you will be determined to be tax resident in, say, for example, state aid; if you fall in relation to some other set of rules, you fall under the tax net of state being. Where there is a grey area – in other words, for example, where people are actually residing in two countries – there is usually what is called a tiebreaker, and that decides in which tax net you are effectively going to fall, if it is country A or country B.

3185 Our tax laws, for many years, essentially proceed on that basis that if your mind and management – this is corporates now, companies I am talking about – are within Gibraltar ... I think the statute uses the term ‘management and control’, but lawyers and accountants talk about mind and management. If effectively, for example, your directors are here in Gibraltar, your mind and management are here in Gibraltar, then you fall under the Gibraltar tax net. That is a salient principle in our legislation.

3190 Effectively, what this Tax Treaty does is that it drives a coach and horses through that cardinal principle, and essentially by reference to Articles 2(2)(a)(i) to (iv) – if you fall within (2)(a)(i) to (iv), despite the fact that your mind and management may be in Gibraltar and therefore under Gibraltar law, you fall under the Gibraltar tax net, you are going to fall under the Spanish tax net.

3195 Look, there is no doubt that effectively what this Treaty is doing is interfering with legislation that this Parliament has introduced. It is amending actually legislation that this Parliament has introduced and altering what are long-established rules about where you pay your taxes, skewed in favour of Spain. That is the criticism that my hon. Friend Mr Clinton has been making and look you can say this is a pragmatic decision that the Government have taken faced with the situation that the Government has been faced with, but there is no doubt that Mr Clinton is absolutely right in his assessment of effectively the substance of the Treaty.

3200 The third point, and I end on this point, but it has been and it is now becoming a fad – it is becoming very fashionable nowadays, it has to be said – that at times led by the hon. Lady, but it is becoming very fashionable nowadays to all of a sudden say, ‘Well, look, we’ve got to accept what is put before us, because we are in a very weak position, and Gibraltar is in a very weak position, and beggars cannot be choosers.’ I am sorry, I just cannot accept that argument! That is the argument that Margallo deploys in Spain when he says, ‘Gibraltar is a fruit ripe for the picking and the Spanish Government ought to take advantage of Gibraltar’s weak position.’

3205 It does not matter what our position is, Mr Speaker. If something is unpalatable to us as a people, in terms of concessions that we are being asked to make. That is going to be a no, irrespective of what our position is, Mr Speaker, and I do not accept that our position is as weak as some people portray our position to be.

3210 Therefore, I end perhaps on this note. I have a lot of sympathy for the Government and sometimes – although it pains me to say so – for the Chief Minister. When essentially he says, ‘Look, Gibraltar will prosper and we are going to do well, whether we end up with solution A or we do not end up with a solution at all’ – the Government has got to take that position! The Government has *got* to take that position because the moment there is a whiff of weakness from Gibraltar – and I have never, *ever* in the years that I have been in this Parliament sniffed weakness from anybody, except in the statements that I have been listening to in recent months from some quarters, Mr Speaker ... Because to show weakness is to invite pressure and we in Gibraltar *cannot* afford to invite pressure at this moment in time.

3220 Thank you very much, Mr Speaker. (*Banging on desks*)

**Mr Speaker:** The Hon. Sir Joe Bossano.

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**Minister for Economic Development, Enterprise, Telecommunications and the Gibraltar Savings Bank (Hon. Sir JJ Bossano):** I think, Mr Speaker, that I can say without fear of contradiction that I do not need lessons on weakness from anybody! I can tell the hon. Member that, since I have been much longer than him here, I have seen lots of weakness in this House from many people.

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To say that we were put in a difficult position is not to show weakness. It is in fact to face reality, and we were put in a weak position by the betrayal of the people with whom 96% of us voted to stay. They were the people who betrayed us. The people in Brussels who gave Spain not just the veto they have as a member state, as one of the 27, but a second veto. Not content with a second veto, they gave them a third veto over the transition period, and when they were asked why they were doing it, they did not say, 'Because Gibraltar doesn't deserve it because it was only 96% and not 99%.' No! They said, 'Well look, the UK is going; Spain is staying, so what matters is not who is right or wrong.' It was not a political decision or a value judgement or a question of fairness. It was just a question of well, we support the guy who is staying, not the guy who is going. That is the world in which we live.

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So what is it that the Hon. Mr Clinton does not understand? He says he cannot explain why Spain says that we are money-laundering when we have complied with everything. My hon. colleague has said, 'Have we followed the policy of complying with everything?' – as if that made any difference to anybody on the other side!

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Margallo was quite clear. I reflected in the speech I made to the United Nations: if Spain says to us, 'You're money laundering and smuggling and you are breaking every rule, and your system is killing the economy of the hinterland. However, if you put the Spanish flag on the Rock, then you can carry on doing it!' – well, you explain that to me politically. That is the situation that we have.

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And in that situation we were put in a position where the worst thing that could have happened ... we would have had nowhere to hide, no way to explain to our people what had happened after the 96%, if we had had the Partido Popular in power, and instead of saying we want to have some kind of treaty on tax, the position would have been 'You have to talk sovereignty.' If you do not talk sovereignty, you are out of the European Union, the moment the transition period starts ... that will be the position we faced with the Partido Popular in power.

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That is what the Partido Popular does not forgive the PSOE for: for not having continued with that. That was the one-in-300-year opportunity that they saw: the United Kingdom leaving and then saying we are now going to use the veto on the transition period. And the veto on the transition period is that you either go back to the Brussels agreement and we start bilateral talks on decolonisation by a transfer of sovereignty or you are not in the transition period.

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Imagine the potential that that had: 92% of our market is in the United Kingdom; not the other 8%. But we are excluded from the 8% and we are excluded from the 92% because they would still be in the EU. They would be an EU member, and we would be out, so you could not sell into the EU and the EU included the UK.

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So something totally out of our control, something that, whatever standing up to pressure the Hon. Mr Feetham will want to preach to us about, would have been completely out of our hands, because the level of pressure was not going to be decided by anything we did, the UK did or anything else. It was going to be decided by the electorate in Spain, whether the electorate in Spain kept the Partido Popular in power or there was a change. That is where we were lucky.

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We were lucky that the change happened and the government that came in decided not to make sovereignty, and sovereignty negotiations, the key element in any future relationship between us and the United Kingdom and Spain and the EU. Instead, they went down the road which clearly was their defence in Spain, of what they were going to get instead of sovereignty. What they were going to get instead of sovereignty was to stop their fictitious image, which they themselves have created and which they may well believe.

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So the explanation as to why they have gone down the road that they did is very simple. The one thing that PSOE could not do was to say, 'We are not going to put sovereignty on the table;

we are not going to put anything on the table. We will go and ask Mr Clinton “Will you give us the standard OECD agreement?” and okay, we tell them and say look what a great achievement!  
3280 Having got all the aces and having these people naked and crawling, we have extracted from them the OECD agreement! That is an option that the Hon. Mr Clinton thinks was available to anybody – to them if they had been in Government or to anybody anywhere.

In terms of political analysis, he could not understand the explanation. Well, the explanation is that if Spain had been willing to do an OECD agreement with us, they did not need to wait for  
3285 Brexit. They did not do it because they were not prepared to do it – now, then or at any time. The only government, in the time that I have been in this House, that has been willing to do something that was not 150% to Spain’s advantage is the one that is there now. We do not know what that is going to be in the future, so we must not take it for granted. The fact that we have been able to do what we have been able to do will always be available to us. We could be facing a much nastier  
3290 government, much tougher government, in terms of what they see is in Spain’s interests.

So how bad is this thing that we have done that the hon. Members opposite say we are describing as a magnificent achievement? It is an incredible achievement. My colleagues on this side who have spoken have not said what a wonderful agreement it is. But I am telling you it is a wonderful agreement. I am astonished at how wonderful this is!

3295 The Spanish government has not put a Trojan horse. The Spanish government has insisted that we discriminate against Spanish nationals. I have reluctantly had to agree against Spanish nationals! When I explain it to people I say, well, look, if the Spanish government wants us to discriminate against Spanish nationals, who are we to disagree with them?

So when the hon. Member says four years, well, look, you have got a tax treatment where, of  
3300 the different nationalities that may be living in Spain, the one that is treated best is the Gibraltarian – or is it that he has not noticed that? (*Interjection*) Oh, he has noticed that, in fact, it is easier for the Gibraltarian to escape the tax situation, because he can get out of it before the time limits kick in. Whereas with any other nationality it is one year; with the Gibraltarian it is for four years.

3305 Well, look, contrary to what the Hon. Mr Feetham said, the people who have been living in Spain have been allowed to apply for housing on the basis that they are there without wanting to be there. Right? The last thing we need in Gibraltar is a situation where people are better off living in Spain than in Gibraltar, which is what it was one when we first parted ways with our neighbour. When they closed the frontier in 1969, we had the bulk of our people that were in the lowest  
3310 incomes living in the only place where they could make ends meet.

So the answer is not: in order to make sure that people are not put into that situation, what we have to do is not do this deal, and the deal breaker is the limited number of Gibraltarians who are living on the other side. So we do not do the deal, we stay on the blacklist, we then find Spain will not do a deal on Schengen, so it does not matter, we have a hard Brexit because we are going  
3315 to be ... tough and we have protected the people who are now caught on the other side and cannot cross the border any more, because the border is closed.

Well, no, the answer is that we have to do something about a market for private rental in Gibraltar which is abusive and excessive, so that people, while they are waiting for Government housing, are able to live in Gibraltar. That is the answer, and that is the answer to the question.  
3320 The question is not we are abandoning a huge proportion of our population and the alternatives to abandoning them will have been to say no to the Spaniards – ‘No, you mustn’t do that. This is an incursion into Gibraltar’s sovereignty, so we do not accept it,’ so there is no deal and then there is a closed frontier. Then what do they do, the ones that are over there? They will be there and they will not be able to come, because they cannot get across the frontier so they are stuck there –  
3325 not only with paying tax; they are stuck there, having to pay tax, if they manage to get a job in Spain, because by that time they will have lost their job in Gibraltar.

The debate we have had in this House is not realistic because the content of much of this debate from the other Members on the other side was not: ‘There were a lot of things that you could have done better, and got more, and you haven’t done them.’

3330 The idea of saying, 'If we win the election we are going to stop this' is either based on the premise that you are not going to win the election, so there is no risk that you will be required to do it – which is probably the real answer – or you must have some magic formula that suddenly allows you to go to the Spanish government and say 'Look, either you give me this, or else ...'

3335 We are not in that position. We have never been in the position to do that, because whenever Spain has done something to hurt Gibraltar, it is Big Brother in London who has had to say, 'You stop doing it, or else' – not us. And in this situation, we have actually a level of support from the United Kingdom where, if we analyse where we are, one of the things that we have managed to obtain is that what we did not have before we entered into the EU, in the UK we now have.

3340 Before we entered into the EU in 1973, when we were negotiating whether we stayed out or we went in, one of the things that we managed to get then, which has been replicated now, was that we were able to say to the United Kingdom, 'Okay, but wait a minute. Going into the EU means that everybody in the EU will be having access to the United Kingdom, and we do not have that access.' The first problem in fact was: what about medical care? Other people could go to the UK and get medical care, other EU nationals. We could not do it because the mechanism was going  
3345 from one member state to another member state.

The Foreign Office invented this concept of saying, 'As far as the other members are concerned, when you go there, you are coming from the UK. And as far as we are concerned in the UK, when you come here, you are coming from another member state, so you are deemed to be another member state for community rights.' The first law that treated us as a separate nation was a law  
3350 signed by Aurelio Montegriffo, which was a reciprocal health agreement signed by the Minister of Health for the UK and Aurelio Montegriffo here in Gibraltar, which said for the purpose of medical services, we are two separate independent states. That was the first benefit we had from the EU—through the EU, but it was the first benefit.

3355 What has happened since? That relationship has survived our departure, so all the things that we obtained in access to the UK because we were EU members, we are retaining in access to the UK after we stop being EU members – and that is all we need.

3360 Where is all this damage to the economy? The hon. mover specifically said that this was a Trojan horse, that this was something that would damage the economic structure. Well, I do not know what the economic structure is. I happen to be the one that is responsible for it, but I do not see what there is there, that damages us, because in fact if we have a situation in Gibraltar where, in order to attract people to invest in our economy, they have to have access to living in the hinterland and not pay Spanish taxes, then the economy is flawed.

3365 We have to have an economy that is self-sustaining. We have to use this opportunity now to make sure that we are in a position to be able to stand up to any Spanish government by not being overdependent on Spain; and they are helping us! They are helping us with this Treaty because the more integration of Spanish businesses and Spanish professionals into the economy, the more dependent we would be on any break in that relationship. The process of osmosis is that the easier it is for you do business into Gibraltar from Spain, the easier the osmosis.

3370 Why have they put themselves in that situation? Why have they given us this advantage? Well, I suspect that the advantage that they have given us is not something that they perceive as an advantage; it is something that they perceive as them being the only ones who have stopped the drain on the Spanish economy caused by the fiscal advantages that Gibraltar offers. It is as if they think that there are lots of people in Spain who are using Gibraltar to hide their money – which is complete nonsense, because if you are going to hide your money, you go as far away as you can  
3375 to hide it; you do not hide it just round the corner! But they believe it. It is their propaganda, and they believe their own propaganda.

3380 So all they can say to Margallo is, 'Well, okay, we have not discussed sovereignty but they are not hiding their money in Gibraltar any more because we have got the list of everybody who has got money there, and they are not there. Our people cannot go into Gibraltar and take their business to Gibraltar and drain our own economy of inward investment because it gets shifted.' So all the things that could justify the discrimination against Spanish nationals, insisted upon by

their own government, can only be understood on the premise that we will be so attractive to Spanish nationals that they will be queueing up to come here with suitcases of money.

3385 If that is what they believe they have stopped, and if that is the propaganda they have been feeding their population for years, well then the PSOE now has a story to tell which is: 'Okay, we have not said we are not going to talk about sovereignty. We have pushed it into the long grass, but the thing that kept Gibraltar going, which was the outflow of money from the Spanish economy, that we have stopped.' That is their story line. That is what gets reflected in the quotes that we hear.

3390 But the reality in the real world is that what they have done – either because they believe it and they think they have stopped something, or because whether they believe it or not they know everybody else believes it, so the political effect and the beneficial effect is going to be the same – means that we now have a situation where the potential that they might have had for an economic takeover of sections of our economy, from Spanish-based companies or from individuals settling  
3395 in Spain and coming here in big numbers, that they have successfully stopped for us. For which I am very grateful. Because if we had tried to do it, we would have been pilloried as being racist and discriminatory against the Spaniards, by making them pay tax for the rest of their lives if they came and worked here!

3400 So there is no greater disincentive than to say, 'Well, look, if you work in Gibraltar, you have to pay tax,' which is something that they should have been doing all the time ... I know people who have been suddenly surprised – other community nationals, not Spanish nationals – to find out that the system in Spain that was being implemented was that they had to declare that income from Gibraltar and that they would get credited the tax they have already paid here. But that has always been the case.

3405 But it is just like there have been hundreds of thousands of pensioners from the United Kingdom living up the coast who have never paid a penny of tax and suddenly get surprised: they say, 'They are taxing us because of Brexit.' No, they are taxing you because they have discovered you are here and because as a community national they did not keep tabs on you!

3410 The reality of this is that, okay, we might not have done it if there had been no Brexit, and we might not have done it in the circumstances of being at risk of being left totally out of the withdrawal agreement and the transition period.

3415 The transition period would have been a disaster for us. We have been lucky that when we got to that point, Margallo was no longer there, because there is absolutely no question about it: the fact that he is still moaning about not having been able to do it ... A couple of weeks ago in the European Parliament, he was complaining about the dereliction of duty of the socialist government when they were putting everybody else on the blacklist, and they were not putting us on it because Spain said, 'There is no need to put Gibraltar on the blacklist, where you are putting the Channel Islands and you are putting all the other Overseas Territories, because they have got a tax agreement with us where now we know that we can stop anything being used in  
3420 terms of tax advantages in Gibraltar from a Spanish point of view.'

3425 In effect what the Spanish are saying is, 'Look, if Gibraltar makes a living by having a low tax rate and by having tax advantages, as long as you do not do it in respect of the Spanish economy and for the benefit of people who reside in Spain, we do not mind who you do it with anywhere else in the world, because if you do it with somebody else in the world, then the wealth that is captured in Gibraltar, some of it will trickle across the frontier. But if you are doing it to us, then the trickle is in the opposite direction.'

3430 That is the only way that one can make sense of how it is that this has been changed. To say, 'I wouldn't have signed it' without somebody justifying to me why I should move away from the OECD, well the answer is not that beggars cannot be choosers, but the fact is that if that is what you want to do, then you have to say ... and 'Even if you close the frontier, I will still not do it unless you sign an OECD thing.' I have no problem putting the first brick in the brick wall. I do not know how many other bricks will be put by anybody else, but I have no problem. But I do not think many of us would survive long if that was the situation.

3435 So the truth of the matter is that from the perspective of my analysis of what is good for Gibraltar's sovereignty and for Gibraltar's protection against a possible takeover of our economy, I think that the job that has been done with this Tax Treaty cannot be improved upon.

3440 Therefore, I have no hesitation in recommending the rejection of the motion from the Opposition, and no hesitation in telling my fellow citizens that this is a good thing from the point of view of the protection of Gibraltar and that the effect on the economy is nil. It has no effect on the economy. (*Banging on desks*)

**Mr Speaker:** Does any other hon. Member wish to make a contribution, before I ask the mover of the motion to respond?

3445 The Hon. the Leader of the Opposition.

**Hon. K Azopardi:** Mr Speaker, I am grateful; and for all the Members contributing to this long debate – the longest that we have had since the election.

3450 There is a selection of points that I have identified, as I have taken some notes. I will start with ... I suppose, the easiest way for me to take these points is to do so sequentially and deal with the speeches of hon. Members in that way.

3455 Mr Speaker, I know that the Chief Minister feels hurt whenever I make a contribution, because invariably at the moment he usually brings out the PDP and the drama that you get – I do not know if it is a false drama or a real drama – in his contributions does tend to come out as well in those moments. I have to say that I found his speech, in terms of substance, in dealing with the points that we had actually made of the comparisons between the UK treaty and the Gibraltar treaty, fairly hollow, satirical, lacking in substance and, as usual, full of twists and turns, but to quote Orwell, it gets to the stage that the truth is erased and the lie becomes the truth. When the hon. Member starts parodying the manifesto on a line-by-line basis, pretending that what we said to the people of Gibraltar was somehow fiction when it is absolute fact, you then fall into that kind of category, Mr Speaker.

3460 The Chief Minister repeatedly, not just today, has said before on other occasions that they are the hawks. The hawks are on that side, Mr Speaker. I have to say that I am not sure that he is a hawk. He may be another bird, but I am not sure if he is a hawk. Maybe he is a parrot and not a hawk! Maybe he is even the hawk's parrot, because certainly I recognise that he has a hawk to the left. Maybe he is the hawk's parrot. But parrots are parrots: they have a very good ability to imitate and repeat and so on, but it does not make them an elephant just because they can make an elephant noise. They still are a parrot at the end of the day. (*Interjection*) Yes!

3470 Mr Speaker, the idea that the new treaty is going to make the situation that we have seen recently on the impounding of cars better and not worse: I think that must be pure fiction, surely, because under the agreement itself there is a specific provision that requires a list of car registration numbers to be transferred to Spain. So, we will see about that.

3475 The hon. Member in his initial remarks was expressing a degree of surprise about the motion being taken – why this motion was being taken and so on. The Hon. Mr Clinton has already explained that originally there was a motion on the Order Paper before the 2019 election, and indeed, it was never taken, despite the fact that there were about five or six months before the 2019 election, when the motion was tabled on 14th March, it was actually never taken. There was a desire by the Government to bury what it deemed, at that stage, an uncomfortable debate before the election.

3480 All we have done now is to have an opportunity to debate something which should have been debated in the first place and ultimately needed to be debated anyway, because we have recognised – and his own subsequent motion recognises – in the discussions that we have had on the amendment to the legislation and so on and so forth, that in future there will be the tabling of agreements of a similar type, if not the same type, because this might be a fairly unique agreement, hopefully – otherwise, we really want unto ourselves out of all business around the world, not just Spanish business. It needs to be debated by resolution and so on and so forth. So

all we are doing is doing what should have been done ages ago, and the fact that it is two years on, again, that is not really our fault, is it? Because we tabled this motion before Covid happened and, as hon. Members are fond of saying, Covid has interrupted proceedings and we had agreed to take this motion – in fact, we had agreed to take it in June or July – and it was at the  
 3490 Government’s request that we decided, because they were involved at a very sensitive moment in the Brexit negotiations ... Something that the hon. Member has forgotten to mention is that in this last summer we were asked by them not to take the Tax Treaty motion. We agreed to take it at a subsequent time in September, but when September came, it was still a sensitive time and we have allowed and given space to the debate. So the fact that we are here now is hardly the  
 3495 issue.

As my hon. and learned colleague to my left indicates, the comparison with the US, as this is not ... When I made the point about Gibraltarians being taxed when they return to their homeland, if they have lived in Spain for four years – that is an anomaly, it is not in the OECD model convention and so on and so forth – the hon. Gentleman retorts that well, it happens with the US  
 3500 and it is not ... Well, as the Hon. Mr Clinton has said, it is a unique system in the US. As the hon. and learned colleague Mr Feetham to my left has indicated already, we are not talking about the same thing. We are not talking about following the passport.

Spain is free to tax its citizens, if it wishes to, as they transmit their residents to Belgium, France or Germany. But that is not what we are talking about. We are talking about Gibraltarians, not Spaniards. It is a completely different scenario. What I take umbrage at is that my people, on  
 3505 returning to their homeland, should be taxed by Spain as if they were still Spanish residents. That is the point, so it is completely different.

One of the big points that the Hon. the Chief Minister made about: ‘Well, I can quote this interview from a person in EY who said that there were no differences in Spanish tax law as a  
 3510 result of the agreement’ – well, I think that has been devastated by Mr Clinton’s analysis, firstly; and secondly, with all due respect to the person he quoted, that is not what Spain thinks!

Mrs Laya, whom I quoted extensively in my first contribution, believes that it is only now, as a historic opportunity, that this is the first time that they are obtaining the tools to do precisely what they want. So if they really thought that they were simply applying Spanish law and there were no  
 3515 changes, well they would not need this Treaty. It would have been the easiest thing in the world: ‘I already have the tools. Spanish law allows me to do all the things that are in the Treaty.’ That is simply fiction! That is not true. No one believes that. Spain does not believe that. Spain does not believe that Spanish law allows them to do the stuff that is in the Treaty. Simple as that.

Mr Speaker, the hon. Member, I will tell him this. I think I have said it once before. I will tell  
 3520 him again, because we are nearly at mid-term in this legislature, and so we have a couple of years to go, so he should know that he can raise the PDP as long as he wants in this House. I have no issue with it. If he thinks it is some kind of source of embarrassment or sensitivity for me, he should rest assured that I am not ashamed of the PDP. I am proud. I have no my problem with that issue.

That period where ... I never cease to be an ideological Social Democrat, because I also said  
 3525 that as well. So if you are going to be fair about the description of that period, you should also say that I always used to say that I was an ideological Social Democrat. I have had my differences with Peter Caruana – absolutely. Everyone knows about it; it is part of the public record, but, as I have said before, I had the guts to go my own way and stand on issues of principle – something that the hon. Member perhaps did not, when he was machinating from a party that he is no longer a  
 3530 member of, and tried to engineer the departure of other people and show them the door and then try to climb the greasy slope (*Interjection*) – the greasy pole, sorry – the greasy pole, lubricated from top to bottom, (*Laughter and interjection*) so that he could achieve the leadership of the party that he was not a member of, but somebody else in this House was a member of.

At least I know that the historical record, Mr Speaker, will show that at least in my political  
 3535 career I have stood on issues of principle and that what I have not done is do what the hon. Member does. I am not going to take lectures from him on principle, I have to say.

3540 He prays in aid the enemies of Gibraltar, VOX, in some way, and he says there are two parties that agreed. Well, I am going to throw that analogy back to him. There are indeed two parties that agree on the consequences of the Tax Treaty: VOX; and the GSLP/Liberals, because you both agree that it is a wonderful treaty for Gibraltar. So if there is going to be any comparison with VOX, that is where we are, surely.

3545 I have been quoting his good friend, Mrs Laya, whom he met. I did not think I should quote VOX because I find that a lot of what VOX say supremely embarrassing to the people of Gibraltar and repugnant – not just to the people of Gibraltar; to the people of *Spain*, probably a lot of things that they say are repugnant! (*Interjection by Hon. Chief Minister*) I find a lot of things ... The hon. Member can interject about matters that are not relevant to that, but if we had really wanted to be fair in the debate ... and this is why I think the tone sometimes degenerates, because the hon. Member makes asides that are based on pure fiction in the hope that the fiction then becomes the truth, because some people will believe him because he is the Chief Minister of Gibraltar, and they will take it at face value without checking the facts. But I can tell him that unfortunately – and however fond of him I am – there are moments like that where sometimes he crosses lines and undermines the respect that people should have in politicians by making jibes like that that are ill thought through and give politicians a bad name because we lower the tone in a way that is unnecessary. (*Interjection*)

3555 Mr Speaker, the hon. Member has said, and so has Dr Garcia, in particular – he did go on at length about the issue of the election result, as if the election result provides a sort of safety net on every single issue that we have: because we went to an election between the motion that was tabled and not taken by him, because he parked it to try to bury it because it was inconvenient, and the motion that we take today, and because we had an intervening election, therefore that that provides a kind of cleansing on every single issue.

3560 The hon. Member has been in politics long enough, and he is intelligent enough to know that people are voting on a panoply of bases come election time. Some people are voting because they like the housing policy. Some people vote for other reasons because they are teachers and they like the pay rise. Other people voted for different reasons because they were 17 days away from Brexit and they did not want to make a change, but they might want to make a change next time. There are all sorts of reasons why people voted at the last election.

3570 But to say that because the Government was re-elected, it then means that it was an endorsement of every single policy position, I think is extremely naïve and I do not believe the hon. Member believes that. I do not believe that he actually believes that. Indeed, if that were true, it would mean that we would have to basically consult our respective manifestos and then not have a debate on anything, any issue in the respective manifestos, from the point of the election on because you would have a mandate on every single issue, so we would basically have to sit down and not raise any issue. I just do not believe the hon. Member really, on reflection, even considers that is true.

3575 Mr Speaker, we did not change our position on the issue of the Tax Treaty nor on the MoUs. We said that we considered the MoUs that were negotiated in the withdrawal agreement were a bad package, a bad agreement. We consider the Tax Treaty to be a bad treaty, but we were in an election campaign when we were 17 days away from Brexit. What we said was that if the people of Gibraltar had decided to vote us in, the reality is that with 17 days' notice, you cannot change bad agreements that we would have inherited. So we said we would work with them, even though they were bad agreements, until such time at the end of the transitional period, you would have an opportunity to then replace the Tax Treaty. That is what we said. Because the MoUs would fall away – as the hon. Member knows. Most of them except the citizens' rights one, where he gave freedom of movement for frontier workers all the way on an enduring basis – all of them would fall away, so all we would have to do is work with them so that we could then negotiate a good deal for the people of Gibraltar and then replace the Tax Treaty, and that was our position.

3585 Mr Speaker, the opinion that he says he published, but actually he cannot demonstrate he did publish – what he published was an extract of Sir Peter Caruana – that opinion, as has been said

3590 by the hon. and learned Mr Feetham, was in fact not even on point. Sorry, I think it was said by Mr Clinton. It was on a completely different basis.

He was asked whether there was any an issue that affected legal sovereignty. We are not making any point that legal sovereignty – sovereignty of the title of our land – is affected by the Tax Treaty. We have never said that, in any of our press releases. What we said is that it is intrusive. It is harmful. It affects our economy. It affects Gibraltarians. It affects companies. It affects inward investment. In accordance with the words of Sra Laya, it affects *fiscal* sovereignty – it promotes fiscal sovereignty. It does not affect legal sovereignty; it is a different concept, different issue, so a complete red herring to say that the opinion of Sir Peter Caruana is on all fours on any leg of this debate. I am not going to waste any more time on that issue. I have to say it was one of his weakest points on substance.

3600 Mr Speaker, the contribution by my hon. colleague Mr Clinton has at length explained that the Tax Treaty sees differences in what the Spanish tax law says and does. So I rest and rely on that contribution in respect of that, I have to say.

The Tax Treaty affects and taxes companies based not on management and control, as the hon. Member seems to pretend. It does so on the basis of shareholding, too, and that is a fact. He just needs to read the Tax Treaty, and I am surprised he skirts that issue, because it is one of the more important ones which affects inward investment of non-Spanish companies. One of the things that I find most surprising actually is that they do not focus on that.

The contribution of the Hon. Mr Isola also ignores that: that unless the Finance Centre is now marketing Gibraltar in a different way, one of its USPs always used to be the fact that you attract people to Gibraltar – we are not talking about Spanish business; we are talking about British business, South African business, Australian-owned business, people who want to start their business, employing people in Gibraltar, create jobs and wealth in Gibraltar, but they want to live in Spain. Those people will be affected by the Tax Treaty. That is not just *those* people who are being affected by the Tax Treaty. The point is not that *they* will be affected by the Tax Treaty. That is not the point, and that is what you are missing. That is not the point. It is that the whole of Gibraltar and the economy is going to be affected, because it acts as a disincentive for anyone wanting to set up a company and do business in Gibraltar when that company has no economic activity in Spain, for the company to be treated as a tax resident based on the shareholding and not based on where substantively it has management and control and the actual operation. That does not happen under any other treaty, and that is the point. I am surprised that rather naively, they do not focus on that, thinking that this is all about Spanish business. It is not about Spanish business! I heard what the hon. Member said, but it is not about that at all.

Nothing has been said to unpick the differences and unfairness that we pointed out with the UK and Spain treaties, so there they are; and the fact that the Tax Treaty in some way recognises the people of Gibraltar is a point that the hon. Member made at length. Honestly, when you look at the reference to the Gibraltarian status, it does not even recognise the people of Gibraltar. It makes a reference to the definition of ‘Gibraltarian’ meaning a natural person defined by section 4, generally British citizens who have resided in Gibraltar. It is so obtuse and tenuous as an argument to justify that there has been some kind of recognition of the people of Gibraltar to be just completely off the charts.

3630 I have to say, if that were true, surely then all we have to do now is go to the United Nations and say, we need to have our self-determination based on the fact that it has already been recognised in the Tax Treaty. Good luck to you!

3635 Mr Speaker, I heard his humorous reference to *La Razón* and the reference to *la armada*. I certainly was not making any allusions like that. I think the only delusions of power that I saw more recently was when he stormed the Iranian tanker, the *Grace 1*, but that is the only maritime allusion that I remember.

It is unlikely that anyone will accept the replacement of the Treaty, is how I took a note of what the hon. Member said. Well, Mr Speaker, he used to say that the Tax Treaty could be terminated.

3640 He said that he could be, so presumably it can be terminated and replaced by something else. It can be kept in place but also terminated and replaced.

He said on 21st September 2020:

The Chief Minister says he will be extraordinarily tough and immovable on Gibraltar's red lines [...] in the negotiations [on frontier] fluidity ...

Reflecting on negotiations to join Schengen and possibly a customs union, Fabian Picardo said a neutral solution needs to be found that is acceptable to both sides – but warned it takes 'two to tango'.

3645 Another dancing ... I can see that this must be a private kind of thing going on. I do not want to ask too much about what he gets up to. Clearly, there is a ballerina in him! (*Interjection*) Yes. As soon as he ... It is probably wise, if there is a ballerina in him.

He dismissed GSD criticism on missing a negotiating opportunity by having signed the MoU's, saying we still have these 'aces' available, including the Tax Treaty which can be terminated if the conditions are not met.

It is clear that he has said publicly that it can be terminated. He said it in March 2019, so I do not know why he is so aghast that we see say that it can be terminated too because he has said it publicly, so I just do not understand why he thinks it is so heinous for us to say that the Tax Treaty should be replaced by something else.

3650 Mr Speaker, when I turn to other contributors and starting with the hon. Lady, I have to say, and the hon. Lady knows that I am fond of her, but I found her contribution today ... She said that she was disappointed by mine and, indeed, not only by mine but by the delivery. Well, I am sorry to have disappointed her, but I have to say that I was deeply disappointed by the *content* of her contribution, because it suggested to me that she had not even read the agreement, or at least not digested it or understood it.

3655 One of the things that she said is: 'What was the road map and how can it be terminated? We can't even terminate it!' Let us start and analyse that because Article 7 of the Tax Treaty says:

Either Party may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year. In such an event, the Agreement shall cease to have effect ...

3660 and so on and so forth. It carries on, on what basis: 'in respect of taxes chargeable for any tax year'. So you can give notice of termination: it is provided for in the agreement. It is not a surprise and as soon as an international agreement provides for that, it can be used by either party.

3665 Why do we say it can be done? Because the Chief Minister says he has got a Concordat. He gave permission to David Lidington to sign the agreement, and at the time that this was announced, he said that the day that he decides to terminate the agreement, he will then instruct the UK to terminate the agreement if he wishes. So, therefore, the mechanism is there. All we have said, is that mechanism should be invoked so as to replace it with a neutral and fair tax treaty. As a matter of principle, that is unimpeachable and it cannot be argued against.

3670 It cannot be argued against because the moment that you argue against that proposition ... 'This Tax Treaty cannot be terminated' – if that is the argument, that it cannot be terminated – well then, on what basis is it ever going to pretend to terminate the EU-UK treaty because he does not like the fact that Spanish police officers are going to be here after four years? Presumably that would be relied on, on the same basis, because there will be some kind of safety net clause that allows him to terminate after four years, i.e. the UK on instruction from Gibraltar under the Concordat. Presumably it is on the same basis.

3675 The reality is that it is a question of balance. It is a choice between the bad agreement and its replacement. One of the most *stunning* things I think I heard in the hon. Lady's contribution and with respect, Dr Garcia's contribution – in his, a bit softer – the idea that somehow we should just simply adopt some kind of attitude of because we do not like it, it is unstatesmanlike to take the view that this is a bad agreement, just because we do not become the cheerleaders of the

3680 Government. Is that real? Is that a real democratic debate that we are having on? Are we serious about standing up in this House and saying things like that?

I have to say also that the words that will be loud and clear and will have been heard by people – and I invite the hon. Lady to reflect a bit further, but maybe that *is* her position – is when she said that concessions are necessary and that the demands are that we make painful concessions and that her party accepts that. I am not sure ... Well, I am pretty sure I do not share those views of the hon. Lady, but those words will ring loud and clear to people who will have heard them.

3690 Mr Speaker, the Treaty will have an effect on a lot of people, because it will affect the economy and inward investment. The Hon. Dr Garcia takes that position, and I respect that he believes that. That is not our view. Our view is different. He suggests in some way that we cannot be picking and choosing aspects of the agreement that we like and do not like. Well, at the end of the day, they are the party that, after Cordoba, said that they could pick and choose – cherry-picking of the Cordoba Agreement. So I am not really too sure why it is sauce for the goose and sauce for the gander.

3695 In relation to Mr Isola, I think he must have not heard me properly, because I certainly did not say that we would tear up the framework agreement – which were his words. Look, I have spoken publicly about the framework agreement and the need for honesty in the political debate. I have said that there are aspects of it that we do not like. I said that it is not binding and therefore we are giving the Government space to negotiate something.

3700 But first of all, it is not binding, so it is not a question of tearing it up because it has no effect; but I have not suggested publicly nor today that we should tear up a framework agreement.

What I suggested was that there were aspects of it, consistent with what I have said, that bear scrutiny and give rise to concerns. That is all we have said, and I think the hon. Member either misunderstood what I said or, in the heat of debate, rather exaggerated the significance of what he said.

3705 Then he went on to talk about market access to the UK, but with all due respect, again, the only thing I would say to him there is that market access to the UK does not really have anything to do with what we are talking about today, which is the Tax Treaty. Of course we want market access to the UK, but how does that point have anything to do with the issues that we are raising here today on this issue.

3710 We understand the desire to be off a blacklist. We understand it and his contribution ... and the Father of the House's contribution was at least more realistic in some respects. We understand it. I think the point that we were making is that a presence on the blacklist ... If someone portrays this as some kind of, 'We have done this deal because we wanted to be off the blacklist', it is a question of balance and judgment at the end of the day as to whether this is acceptable or not, and in our judgement, when we look at this deal, we think this is a bad agreement that has economic effects, and it is not about Spanish companies and so on; it is more than that.

3715 But we share the view that it is better to be off every single blacklist in the world, if we can. I think the frustration that we have – which surely on this we can agree – is that our presence on a blacklist in Spain is politically motivated, because it is not about whether in substance we are doing anything wrong. That is the reality. It is the usual caricature with Spain, and it is the same as when I was on that side of the House with the hon. Member's portfolio, I remember the FATF published a list and put us on the *whitelist*, and when it was reported in the Spanish press, it was reported that we were on the *blacklist*. What more political motivation than that? That the guys just changed you from one column to the other, to tell the world that we were on the blacklist, when we were on the whitelist! It is unbelievable, but that is what we are dealing with. That is what we are dealing with.

3720 I am grateful to hear the Hon. Father of the House's contribution, but let me start here on this point with him: he said that this debate has been unrealistic in part. Well, I am not sure if I would concede that to him, but if it has been unrealistic in parts, it has been unrealistic because it has been made *by them* as unrealistic up until largely his contribution, because at least in his

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contribution he recognised that this was the price for a Brexit transitional deal in so many words. That is how I understood it: that it was part of a package and it had never been said before. Certainly, I never heard that from the Chief Minister. Not today; I have never heard it ever that the Tax Treaty was a price that we were being told was necessary, without which there would not be a withdrawal agreement or transitional period. Never heard that; no one has ever said that, and if that is the case, at least that would be a more honest perspective on the issue.

Then it is a question of balance, and put that into the stew and mix it around and then decide where you want to fall. But that is not what we have ever been told. That is also a reality.

Mr Speaker, I know he was very clear about where he stands on the attraction of Spanish business to Gibraltar, and that is fine! That is fine, Mr Speaker. That is not where I am coming from, Mr Speaker. I am not worried about Spanish people being taxed in Gibraltar. Let me be clear that if Spain wants to have this campaign to make sure the Spanish businesses do not invest in Gibraltar, it is regrettable, I have to say, but that is not where I am coming from.

Where I am coming from is that this Tax Treaty affects Gibraltarians negatively. Not only does it do that, but it affects people who want to invest in Gibraltar, non-Spaniards, negatively and those businesses that are set up in Gibraltar negatively. I believe that by focusing on that issue – with all due respect, because I show him the deference and respect that he merits as the Father of the House and his honesty in saying that it is a wonderful agreement – against that background, I think he underplays the points and that it may have a much deeper effect than he forecasts. I hope he is right, but I think he may be wrong in assessing how the mood is with people who want to invest in Gibraltar and when he says that we want these people to stay here, but yes, of course we all do, but the reality is that do those people actually come to Gibraltar to stay, i.e. live here? They may be wanting to come up and start their businesses here. But whether they want their lifestyle completely pinned to Gibraltar, I am not sure. I think that is the point and concern that we have on this side of the House.

So, for all those reasons, Mr Speaker, our view is and remains that this is a harmful and intrusive tax treaty. It should be replaced by an OECD model convention, which is more neutral and fair. We understand the difficulties of that process, but we think that there is something that would be better for Gibraltar. *(Banging on desks)*

**Mr Speaker:** I now put the question –

**Hon. Chief Minister:** Mr Speaker, I call for a division.

*A division was called for and voting resulted as follows:*

**FOR**

Hon. K Azopardi  
 Hon. D J Bossino  
 Hon. R M Clinton  
 Hon. D A Feetham  
 Hon. E J Phillips  
 Hon. E J Reyes

**AGAINST**

Hon. P J Balban  
 Hon. Sir J J Bossano  
 Hon. Dr J E Cortes  
 Hon. V Daryanani  
 Hon. Dr J J Garcia  
 Hon. Ms M D Hassan Nahon  
 Hon. A J Isola  
 Hon. S E Linares  
 Hon. F R Picardo  
 Hon. Miss S J Sacramento

**ABSENT**

Hon. G H Licudi

**Mr Speaker:** There were 6 Members in favour, 10 Members against. There was one who was absent. The motion proposed by the Hon. K Azopardi has been defeated.

**SUSPENSION OF STANDING ORDERS**

**Standing Order 7(1) and 19 suspended  
to proceed with Government motions**

**Clerk:** Suspension of Standing Orders. The Hon. The Chief Minister.

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**Chief Minister (Hon. F R Picardo):** Mr Speaker, I hereby give notice under Standing Order 59 to proceed with the suspension of Standing Order 19, in order to proceed with a Government motion. *(Interjection)* Oh the other one first, sorry. I see Mr Speaker, wrong part of the crib, sorry.

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

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**Mr Speaker:** Those in favour? **(Members: Aye.)** Those against? Carried.

**Hon. Chief Minister:** And now Mr Speaker, I beg to give notice under Standing Order 59 to proceed with the suspension of Standing Order 19, in order to proceed with a Government motion.

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**Mr Speaker:** Those in favour? **(Members: Aye.)** Those against? Carried.

**GOVERNMENT MOTION**

**International Tax Agreement with Spain –  
Addition to Schedule 11 of the Income Tax Act 2010 –  
Motion carried**

**Clerk:** The Hon. The Chief Minister.

3785

**Chief Minister (Hon. F R Picardo):** Mr Speaker, I have the honour to move the motion standing in my name, which reads as follows:

*THIS HOUSE RESOLVES THAT, pursuant to Section 3A(4)(A) of the Income Tax Act 2010 (The Act) the International Agreement on Taxation and the Protection of Financial Interests Between the Kingdom Of Spain and the United Kingdom of Great Britain and Northern Ireland Regarding Gibraltar be added to Schedule 11 of the Act as an International Tax Agreement.*

Mr Speaker, the need for this motion arises from the agreement between the Leader of the Opposition and the Government that we would provide for the need for motions to have to be put in order to enable a treaty to become part of our law. The relevant legal provision, the amendment, which was 3A(4)(A), was the one that we passed at the last session of the House. So Mr Speaker, what the Hon. the Leader of the Opposition and I agreed was that we would take his motion, which was, if I can call it, a political motion on this particular Treaty, the Spanish Tax Treaty, before we then took this motion, which is the motion that we will have to take on all such treaties and in some instances may be more technical than it is political.

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Mr Speaker, given the hour and the fact that we have done a very detailed analysis of the Treaty in question, I do not want to keep the House. I have a very detailed note which I wanted to take the House through, which sets out the more technical thinking in respect of all the aspects of the Treaty. What I am going to do, Mr Speaker, is I am going to publish this note, which will enable hon. Members to have the benefit of it and will enable, of course, all who will be interested in the

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technical aspects to have the benefit of it. On that basis, Mr Speaker, we can at any later date, of course, once again come back and consider any aspect by way of motion, which hon. Members or indeed the Government may want to put, either by agreement or adversarially.

3805 Mr Speaker, the fact is that the Treaty that we are entering into is seminal. The House has now decided by 10 to six, by 75% of those who voted at the last election being represented voting against the motion that the hon. Gentleman put that we should have this Treaty. So the Treaty now becomes a part of our law.

3810 In dealing with it, Mr Speaker, the Government has set out the purpose of the Treaty as we see it, not just politically, but also economically; why there was a need for a treaty – a lot of this is also what we debated but more technically; Spain’s aims in negotiating the treaty at a technical level and Gibraltar’s aims in negotiating the treaty at a technical level; an analysis of the tax rules of Gibraltar and the tax rules in Spain that we will be seeing being the most relevant ones and the interaction of the rules and the a perceived advantage that is given to Spain in the context of the analysis that hon. Members do, which we think is erroneous; the different legal basis for taxation  
3815 in Spain and Gibraltar; the human rights issue and the asymmetry that has arisen in the context of the discussion; and a detailed analysis of international cases that are relevant in analysis of tax treaties; the type of model that is the basis for this Treaty and the benefits to Gibraltar of entering into this Treaty – most of the ones that we have gone through today, and some very technical ones which will be important for professionals in practice to be aware of, and so it is right that this  
3820 note should be available to them and this note will be published tomorrow; issues relating to individuals and corporates, Mr Speaker, which will be relevant *entities*, as they are sometimes also referred to in the Treaty; the double taxation relief provisions and how they are relevant and how exchange of information will work and how the blacklist issues have been dealt with, Mr Speaker; and finally, the last point I would have made, if I had gone through this in any other greater detail,  
3825 was simply to reflect on the asymmetric political positions that we are seeing in Gibraltar and in Spain. The opposition in Spain see the Spanish Tax Treaty as a massive concession by the Spanish government and the opposition in Gibraltar see it as a massive concession on behalf of the Gibraltar Government; yet both cannot be right, Mr Speaker.

3830 So I am conscious that the hour is late and therefore I think it is probably in everyone’s interests that instead of going in detail through that note, I just refer the House to it, and it will be published. I think it may be helpful if it is made available to all Members so that they can have it. It is a Government Press Release in any event, like everything that we would say here.

3835 Mr Speaker, this detailed analysis in particular is not so much political as it is technical, and I want to thank John Lester, Terrence Rocca and Albert Mena for their input in preparing the technical aspects of today’s debate, in particular what would have been at the detail of this debate.

3840 Mr Speaker, the House has decided, and I think it is important to reflect on that, that we should be moving to this motion. I would not have moved the motion this evening if the Government had been defeated on the first version. In other words, if the Hon. Leader of the Opposition’s motion had succeeded, we would not have moved to this motion, but we have seen the Leader of the Opposition lose his motion. Therefore, the view of the House is that we proceed to this motion.

3845 Mr Speaker, if I can just say that there are a couple of points that I think are important to clarify even now, because the *Hansard* will reflect things that have been said, and as we now move to bring the motion into effect, I just want to clarify very quickly a couple of points that have arisen in the context of the earlier debate so that they do not rest unanswered in the context of now this movement of the Treaty into the Act, because what this motion does is it enables the Treaty now to go into the Act by way of a notice that will be published in tomorrow’s Gazette.

3850 I will be more than five minutes, Mr Speaker, and I will be very quick in saying that the Government, of course, does not accept that the analysis that was done in respect of sovereignty by Sir Peter Caruana as an adviser to the Government was dry or that indeed, it was lacking in any way because he is not an expert in taxes, as Roy Clinton has said. Indeed, his analysis on *Viewpoint*,

which I took the House through, was actually political and not just legal, and so the House has had the benefit of that analysis.

3855 Mr Speaker, I do not accept that there is anything in the Treaty that I am now by this motion moving to make a part of Gibraltar law that creates anything which is onerous in respect of  
3860 Gibraltarians which does not exist elsewhere in other laws. The Hon. Mr Feetham has not understood my point – I am used to that – in the context of, for example, United States citizens, because the point is not just in relation to citizenship – Mr Azopardi made the point as well, and he was also, with respect, wrong because stickiness is not just in relation to nationality. Stickiness  
3865 can also arise from residents. A country can tell somebody who is a resident, ‘Now that you have become a resident, whatever nationality you are, my law permits me to chase you around the world for x many years, even after you become a resident.’ There are plenty of examples of that. So, Mr Speaker, no Gibraltarian will *ever* be thrown under a bus by the Government of Gibraltar that I lead; far from it.

3870 The point that the hon. Gentleman is making is wrong. Most – the vast majority of – Gibraltarians who live in the area around Gibraltar are not registered as living in Spain. They are registered as living in Gibraltar, and they have what they call second homes in Spain, and they now have to be very careful, not because of anything to do with the treaty, but because of our departure from the European Union because there is more friction in their moving into and out of  
3875 Spain, that if they are spending more than 180 days in Spain, they may be determined to be living in Spain, but they have to do that for four years before that stickiness attaches. I know *very* few people will be affected by that.

So I do not accept the second of Mr Feetham’s points. It is important that as we move to put this Treaty now in our statute book, that is reflected in the way that we do so.

3880 Mr Speaker, on the issue of weakness, we are not moving this Treaty into our statute book because we are weak in any way, and we have had to accept it. As the Hon. the Father of the House has said that no one will get a whiff of weakness from us. They may understand, as he has explained, as the Deputy Chief Minister has explained, and as I have explained in the past, the need to do something because of political reality, but not that there was any requirement to do something out of weakness.

3885 Mr Speaker, the Hon. the Leader of the Opposition, in summing up on his motion, made a number of points that I will not reply to in the context of now dealing with this, because that would not be appropriate, but I do just want to deal with one or two that relate to the Treaty itself as we put it on to our statute book. Ignoring those political points that he made, Mr Speaker, which I would dearly love to reply to, what I would say, Mr Speaker, is that it would be wrong for  
3890 the Hon. the Leader of the Opposition to get away with making people believe that the Tax Treaty is not inextricably linked to the Withdrawal Agreement and that the Government has somehow obviated that, because as a matter of law – and now we are dealing with a motion that makes this a part of our law – the protocol to the Withdrawal Agreement is a piece of EU law and a piece of EU law that is directly effective in Gibraltar. Indeed, the Hon. the Deputy Minister brought a Bill to the House which made the Withdrawal Agreement a part of our law, and that part of our law in its protocol on Gibraltar refers to this Treaty. So there is absolutely no question of the two not having been linked or us having in any way ignored that.

3895 On the point of termination, which I think is an important one, Mr Speaker, to deal with, because as we put this Treaty into our law, we need to be open about how we might be able to take it out of our law if appropriate, I wanted to simply say that in this more technical part of the debate there should not be the confusion that I say the hon. Gentleman might have given rise to in the way that I think he resiled from his original position. So the point that he made in his final contribution in, I think unfairly, answering the hon. Lady, was about termination. The points he  
3900 had made in his original intervention, which the hon. Lady was replying to and which I was replying to, were about requesting replacement. So I want to be clear: we are now moving to put this Treaty into our statute book. Tomorrow, I will sign a Gazette notice that puts it into our statute book. If it were necessary, for the circumstances I have already highlighted, or, indeed, if any other

3905 Government in future determined that they wished to do so, for whatever circumstances that are appropriate, it is possible to terminate this Treaty. There is no difference between us on that – on the basis of the analysis that he did at the end: you *can* terminate this Treaty.

3910 What you cannot do, Mr Speaker – and that is the legal part, and it is important that it be reflected in this part of the *Hansard* – what you cannot do is the nonsense of, ‘I will request a replacement.’ That is political. That is what I was making my argument against; it is what the hon. Lady was talking about.

One thing is to say, ‘Is there a mechanism for legal termination?’ It is there and no one must believe that the Government has argued that there is not.

3915 The other thing is: is there the political ability to terminate this Treaty or to request its replacement simply by terminating it? If you terminate the Treaty, you terminate the Treaty. The political circumstances which might enable you to request its replacement are ones which we do not see as being realistic and, Mr Speaker, therefore we were against the motion and what he put in the motion.

3920 But it is important because we are putting this into our statute book that everybody know that the current Government – circumstances we have already set out – or a future Government can terminate the Treaty on the basis of the legal analysis that we have done and the basis of the legal analysis that the hon. Gentleman did at the end, which was contrary to the political analysis that he was doing at the beginning.

3925 Mr Speaker, I am conscious that this is now my motion. There is a lot that the hon. Gentleman said that I wrote down, which I would dearly love to reply to. I believe that most of those other points are political points that he made in respect of his motion, and therefore, I do not want to try your patience, Mr Speaker, by replying to his reply, which I think would be unfair, but I do think it was important I deal with those dry, more technical points as we now move to approve this motion, which will enable me tomorrow to sign the notice to bring the Gazette that will bring into effect the Tax Treaty.

3930 I so move, Mr Speaker.

**Mr Speaker:** I now propose the Question in the terms of the motion moved by the Hon. the Chief Minister.

The Leader of the Opposition?

3935 The Hon. Marlene Hassan Nahon?

The Hon. the Chief Minister.

3940 **Hon. Chief Minister:** I am grateful to hon. Members for not feeling that they have to respond. I think I have tried to be fair in being as dry and technical in the context of this part of the debate as possible. I have no doubt that once our note on this part of the process is public, we may have an opportunity for further debate, but at this stage I therefore commend the motion to the House.

**Mr Speaker:** I now put the question in terms of the motion proposed by the Hon. the Chief Minister. Those in favour?

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**Hon. R M Clinton:** I call for a division.

*A division was called for and voting resulted as follows:*

**FOR**

Hon. P J Balban  
Hon. Sir J J Bossano  
Hon. Dr J E Cortes  
Hon. V Daryanani  
Hon. Dr J J Garcia  
Hon. Ms M D Hassan Nahon  
Hon. A J Isola  
Hon. S E Linares  
Hon. F R Picardo  
Hon. Miss S J Sacramento

**AGAINST**

Hon. K Azopardi  
Hon. D J Bossino  
Hon. R M Clinton  
Hon. D A Feetham  
Hon. E J Phillips  
Hon. E J Reyes

**ABSENT**

Hon. G H Licudi

**Mr Speaker:** Ten Members voted in favour of the Chief Minister's motion; six voted against. There was one abstention, so the motion is carried. (*Interjections*) I beg your pardon: one absent.

3950 **Hon. Chief Minister:** Mr Speaker, I am grateful. It has been a long session today. I think this will be a session that will be relevant in the political history of Gibraltar in ways that we might not yet be able to imagine. I hope that history will ensure that those of us who have supported this Treaty becoming a part of our law are proved to have been right in the way that we have approached the negotiations for our departure from the European Union and now our future relationship with the  
3955 European Union.

**ADJOURNMENT**

**Chief Minister (Hon. F R Picardo):** Mr Speaker, I move that the House should now adjourn to 3 p.m. on Tuesday, 16th March.

3960 I give notice that on that day it is my intention to try to return to the natural rhythm of things, as we have tried to set out, although it has been difficult in the past a couple of years, of dealing with Questions in the third week of the month and we will start with Questions at 3 p.m. on Tuesday, 16th March.

**Mr Speaker:** I now propose the Question, which is that this House do now adjourn to Tuesday, 16th March at 3 p.m.

3965 I now put the question, which is that this House do now adjourn to Tuesday, 16th March at 3 p.m. Those in favour? (**Members:** Aye.) Those against? Carried.

This House will now adjourn to Tuesday, 16th March at 3 p.m.

*The House adjourned at 11.47 p.m.*