

**STATEMENT BY THE GSLP/LIBERAL OPPOSITION 148/2006**  
**27 November 2006**

EMBARGOED UNTIL MONDAY 27 NOVEMBER

The Government knows very well that when we joined the Select Committee in 1999 we agreed to be there on the basis that what we wanted was to finish up with a Constitution that was capable of decolonising Gibraltar and changing our international status.

The modernisation of the internal machinery was for us a secondary consideration and we were prepared to go along with whatever the Government proposed in that area.

Much of the changes were those that had been put to the UK before by Mr Caruana to Robin Cook and which had been rejected.

There followed a lengthy exercise of going through the existing Constitution line by line with a majority of the changes coming from the Government side.

On the various occasions when we came close to breaking up, it was not because of differences over details of the text but because of our concerns that there was no attempt to involve the UN in the exercise of constructing a decolonising Constitution. Indeed, it was the Government's failure to bring the UN into the picture that led us to submit the proposals to the UN ourselves from the Opposition.

It has always been clear and a matter of public knowledge that Mr Caruana was prepared to settle for modernisation if he could not achieve decolonisation and we were not.

Therefore any amendments attributed to Opposition demands were minimal during the meetings of the Select Committee with long interruptions in-between and the seven and a half days of negotiations spread over one and half years with the Foreign Office.

Against this background, it has to be understood that on the question of the judiciary, our position was and is that the independence of the judiciary is not part of the requirements for decolonisation. In other words, this is something to pursue

irrespective of whether the territory is decolonised and achieves a new international status, or whether its Constitution is merely modernized and approved in an opinion poll with its international status unchanged.

In the context of the modernizations being carried out by the UK in the other British colonies, the most recent example, is the new Constitution introduced in the Turks and Caicos Islands a few months ago.

This provides for the setting up of a commission for judicial appointments composed of three members, one appointed by the Governor, one nominated by the Premier and one by the Leader of the Opposition. The two political appointments from the Government and the Opposition have to be nominees who are Commonwealth judges.

This shows that it is possible, even in a territory that remains a colony, never mind one that is being decolonised, to provide for a majority of judicial input and to have a level of balance as between Government and Opposition which has never been thought of in Gibraltar in all the time that this matter has been studied since 1997.

Moreover, already in the existing 1969 Gibraltar Constitution the provisions on the power of the Governor to remove a judge of the Supreme Court for inability to discharge his functions or some other valid reason including misbehaviour, include the following requirements:

- (1) The setting of a tribunal and;
- (2) If the tribunal recommends that action be taken, the matter has to be referred first to the Judicial Committee of the Privy Council through London before action is taken.

If these independent arrangements as to “removals” have been considered satisfactory by the Foreign Office and sufficient to maintain the independence of the judiciary in Gibraltar since 1969 and in at least another one of its colonies, then there is no reason why something similarly totally independent could not have been included in the proposed section 57 of the new Gibraltar

Constitution as to “discipline” of the junior judiciary if that meets the concerns of the judiciary in that respect.

Needless to say, the Opposition Members have not been involved in finessing the details of the Constitution as regards to the judiciary in London. The discussions on this point were primarily conducted by Mr Hendry on the Foreign Office side, and by Mr Caruana on the Gibraltar side. The record of this meeting has still not been made available to the Opposition.

This shows that it is possible to improve the level of modernisation in the current proposals, which by no means are incapable of improvement, and that whether one chooses to describe our constitution as modern and mature does not alter one iota whether it leads to decolonisation or not.

It is a case in point since nobody is suggesting that the modernisation in any of the other British colonies brings about automatically the decolonisation of those territories and a change in their international status.

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