



**GOVERNMENT OF GIBRALTAR
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PRESS RELEASE

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Attached is the full text of the Chief Minister's address at the United Nations Committee of 24 on 8 June 2004.

Mr Chairman,

May I start by congratulating you on your appointment to the Chair of this important Committee. I am joined today by Daniel Feetham, Leader of the Gibraltar Labour Party, a rival political party to my own, who is nevertheless here with me today to demonstrate the unity that exists in Gibraltar on these issues.

In your opening statement at the recent Pacific Regional Seminar held in your own country, Papua New Guinea, you said that the role of the Special Committee has been to assist the people in the Non-Self Governing Territories in determining their political future without external interference. You also said that "in order to discharge its duties and assist the people in the Territories achieve self determination the Committee needs to take action."

I, and the people of Gibraltar agree wholeheartedly with you. But despite coming here every year to seek the Committee's assistance and action, the Committee does not in fact engage in action on the Gibraltar case, and indeed, does not even reflect our statements and views in its annual resolutions.

You concluded your statement by saying that you looked forward to the constructive participation of the peoples of the Non-Self Governing Territories. The people of the listed Non Self Governing Territory of Gibraltar cannot do more to that end. Their Government, and of recent years Opposition, address you (and the Fourth Committee) every year; their parliament has passed unanimous resolutions seeking your involvement, visit and support; the people have petitioned you directly; we have invited you to visit Gibraltar; we have urged you to establish an action programme and we have urged you to recommend referral of the disputed legal issues to the International Court of Justice for an advisory opinion; we have urged you to uphold our right to self-determination; we have urged you, at the very least, to declare the right of the people of Gibraltar to participate directly and fully in talks about Gibraltar's future; we have put to you political and legal arguments which we believe to be unanswerable in international law in support of our position and in contradiction of Spain's. Yet we have received no positive response or action, indeed we have received no response or action at all from the Special Committee, which limits itself to an annual repetition of the same, old resolution which wholly ignores the rights, aspirations and position of the only party whom your mandate requires you to protect – the colonial people of the Non Self Governing Territory of Gibraltar.

This is the decolonisation Committee. It is your frequently and consistently stated position that in the process of decolonisation there is no alternative to the principle of self-determination. Gibraltar is one of your listed non-self governing territories. This Committee is not the political Committee of the UN. It has no mandate to administer Sovereignty disputes. But it does have a mandate, indeed a sacred trust to advance the decolonisation of all its remaining listed territories – and that, as your own doctrine (and indeed International Court of Justice jurisprudence) dictates can only be done by the principle of self determination.

And herein lies one of the problems that we all face in the management of the question of Gibraltar. For too long now Spain has been allowed to equate the

decolonisation of Gibraltar with her anachronistic claim to our Sovereignty, and, worse still, to add distortion to the confusion of principles, by maintaining that because there is a sovereignty claim by her, the self determination rights of a colonial people are cancelled and overridden. There is no proper basis for this in law or in UN doctrine. It is a misconceived and self serving invention by the Kingdom of Spain. Territorial Sovereignty and decolonisation are wholly separate things. Whatever may be the merits of Spain's sovereignty claim – and we believe it has none (but we are prepared to have the question referred to the International Court of Justice, which Spain is not) – it cannot override the right of a colonial people to self determination.

Of course, a sovereignty claim could survive the exercise by us of our right to self determination– but that is wholly different to the self determination right being extinguished by the mere existence of the sovereignty claim.

And so, Mr Chairman, since you rightly want the Committee to take action in the remaining cases, one first step that the Committee should take in the case of Gibraltar is to pause and reassess its annual resolution and the justification for it, which I believe has become a mere ritual and a habit, and a bad one at that. It certainly does absolutely nothing to assist the colonial people of Gibraltar. So the question then is this: In the case of Gibraltar, does the Committee see itself as the guardian and promotor of the political rights of its colonial people as a listed non-self governing territory, or does the Committee see itself as a referee in a Sovereignty dispute between our administering power and our neighbour?

Mr Chairman, Excellencies, over the last 10 years we have comprehensively deployed the arguments in our addresses to you. I will not repeat them again. They are available to any Distinguished Representative who wants to revisit them. I would urge you all to do so. We have demonstrated how under international law and the doctrine of the UN the principle of self determination applies to the decolonisation of all the listed Non Self Governing Territories, including Gibraltar; we have demonstrated how the application of the principle of territorial integrity in the case of a colony like Gibraltar is wholly misconceived; we have demonstrated how Spain's factual characterisation of Gibraltar distorts and misrepresents the true facts; we have demonstrated how Spain maintains opposite positions in the case of Gibraltar and in the cases of her own territories in North Africa, Ceuta, Mellilla and others; we have demonstrated that it is simply untenable to argue that Gibraltar does not enjoy the right to self determination in international law, which of course is why Spain refuses to refer the matter to the International Court of Justice.

However, Mr Chairman, with your indulgence, I would like to review the Committee's position in relation to each of the specific actions which we have requested.

As I have just said, we have asked the Special Committee to recommend that the Fourth Committee should refer the Gibraltar case to the International Court of Justice for an advisory opinion.

There are only two possibilities. Either the correct principle applicable to our decolonisation is our right to self determination, or Spain's right to her territorial integrity. Either, as we say, the people of Gibraltar enjoy in international law, the right to self determination, or, as Spain says, we do not. If we do, then the solemn duty of this Committee is to help us to uphold and exercise those rights. If we do not in international law enjoy those rights, then it would suit everyone for that to be established and known as soon as possible. This is not us trying to convert a political issue into a legal issue. Spain herself declares her case to be based on international law and nothing else. Only the International Courts of Justice can authoritatively opine on the proper and correct position in international law. What is intolerable is that we should be kept out of rights if they exist. Surely this Committee must at least be willing to help us have the existence or not of our rights in international law established, so that they should not be wrongly denied to us if they exist? That is all we ask. And so, I repeat the question, does the Committee see its role as to assist and protect the colonial people of Gibraltar or as the monitor of progress in negotiations for the resolution of a sovereignty dispute between the UK and Spain?

In assessing the justice of our request, you may wish to ask yourselves this: - if Spain is so certain of the correctness of the legal principles which she asserts and upon which she relies why does Spain refuse to refer to the International Court of Justice?

The second action sought by us is a visit by the Special Committee to Gibraltar. Gibraltar's Parliament has unanimously passed motions calling for it. The people of Gibraltar have directly appealed to the Special Committee requesting such a visit. In October last year I delivered to this Committee, through the Secretariat, a popular petition signed by 80% of the Gibraltar electorate. That petition read as follows:-

"We, the undersigned citizens of Gibraltar, concerned by the persistent failure to recognise the inalienable right of the people of Gibraltar to self determination, hereby petition and call upon the United Nations Special Committee on Decolonisation to visit Gibraltar.

In our view, such a visit is vital to enable the Special Committee:-

- (1) to see and assess for itself the economic, social, political and cultural reality of Gibraltar and the unique and separate identity of its people;
- (2) to see and assess for itself the worthiness of the people of Gibraltar to enjoy and exercise the right to self determination; and
- (3) to assess for itself the wishes and aspirations of the people of Gibraltar in relation to the political future of their homeland."

We have received no response from the Committee to any of the invitations and requests for the Committee to visit issued by the Government, Parliament and people of Gibraltar. The people of Gibraltar do not understand that the Committee should not wish to know and see for itself the true facts of Gibraltar before it makes its judgements and decisions. Our Administering Power, the UK has no

objection to the visit, saying that it is a matter for the Committee. We have even offered to pay for it. So what can be the reason for not visiting?

Spain of course, objects, because she knows that clarity and transparency would be fatal to her untenable case. Just as she objects to the applicable legal principles being clarified and established by objecting to a referral of the case to the International Court of Justice, so, too, she objects to the true facts of the case being known to the Committee by objecting to its visit!

Spain openly admits that this is the reason for her objection to a visit. The representative of the Kingdom of Spain had this to say when addressing the Fourth Committee on the 8th October 2003 about Gibraltar's invitation for a visit by the Committee:-

"The principal objective of a visit by the Committee would presumably be for the Gibraltar Government to obtain implicit or explicit support for its thesis, contrary to the principal of territorial integrity traditionally defended by this Assembly in accordance with international law" (That is alleged international law, which Spain is unwilling to test).

I think that it would not be unfair to paraphrase that statement in this way: -

"Committee, don't go to Gibraltar, because if you do you may then discover that the basis upon which I (Spain) have obtained decisions from you until now is wrong and not true, and you may correct your decisions, and that does not suit me."

The Spanish Representative also said: "It is worth remembering that, to send a visiting mission of the Committee in cases where a sovereignty dispute exists, as is the case of Gibraltar, there is required not only the consent of the Administering Power, but also the consent of the other party to the Sovereignty dispute. In this respect I wish to underline that Spain opposes the sending of a visiting mission of the Committee of 24 to Gibraltar."

Mr Chairman this is a simple invention by Spain of non-existent UN doctrine as and when it suits her. I said earlier that Spain sought to confuse issues of decolonisation and Sovereignty dispute and this is a classical example. It is not the doctrine or practice of the UN that where sovereignty of a colony is claimed by a third party, the rights and competences of the colonial administering power under the Charter are to be shared with the third party claimant! This is simply a nonsense. Where is that stated? Only the UK's consent is required and that has been given.

Spain's position, Mr Chairman, is not even logical and coherent. Spain does not oppose the decolonisation of Gibraltar. She wants its decolonisation too, just as we do. She simply believes that it should be done by applying the principle of territorial integrity and not the principle of self-determination. So she seeks and canvasses your support for our decolonisation but she wants that support from you without your having the benefit of an objective assessment of what should be

the international legal principles correctly applicable to this case (so she opposes the references to the International Court of Justice) and also without your having the benefit of knowing and assessing for yourselves the true facts of Gibraltar (so she opposes your fact finding mission to Gibraltar). Surely Spain cannot have its cake and eat it in this way? She has openly said it herself, she does not want you to visit in case this results in your support for the principle of self determination!

And so, Mr Chairman, I repeat my question. Does the Committee see its role as assisting the people of the Non Self Governing Territory of Gibraltar or as a referee in a sovereignty dispute between the UK and Spain? I urge you once again to send a visiting mission to Gibraltar, at our expense if necessary.

The Third action that we have repeatedly requested of you is that you should stop supporting and calling in your annual resolution on the Gibraltar question for the continuation of bilateral negotiations between our administering power and the claimant of our sovereignty aimed at overcoming all the differences between them over Gibraltar.

Intentionally or unintentionally, this call for bilateral negotiations between UK and Spain betrays our right to self determination (with which such bilateral dialogue is wholly incompatible) and represents instead the language of a Sovereignty dispute between two member states as if the people of the territory had no political rights of their own. If that is what you think Gibraltar is a case of, why has it been on your list of Non Self Governing Territories since 1946?

Using this bilateral dialogue device, the UK and Spain in 2001 entered into negotiations aimed at concluding an agreement between them based on joint sovereignty, despite complete and total opposition from all quarters in Gibraltar. In our subsequent internationally supervised referendum held in November 2002, more than 98% rejected the principle of joint sovereignty. That, despite Spain's attempts to characterise the referendum as having no legal value, appears to have politically killed the project stone dead.

But, Mr Chairman, the Special Committee knows these things because we reported them to you last year and they are reported in the Secretariat's very good Working Paper on Gibraltar. The reason for my mentioning it today is to illustrate the total futility of bilateral dialogue between Spain and UK in this case. Why do I say this?

As also reported in your Working Paper on Gibraltar, the British Government said publicly, in Spain, in June 2003, after our resounding referendum result that "the chances of achieving an agreement for the future of Gibraltar which is not accepted by the Gibraltarians are simply zero". Well, Mr Chairman, what then is the point of continuing with a bilateral process of dialogue in which those very same Gibraltarians, whose agreement is acknowledged to be essential, are not properly and fully represented? The Spanish Government's public response to that British Government statement was:

“There has been an official announcement by the British Government which says that we continue collaborating. There has been no spectacular progress, because we are at a very advanced phase of the negotiations where details are being discussed and nothing is closed. However, I insist that we have complete confidence in the engagement by the United Kingdom.”

Well, there you are Mr Chairman. Doesn't life look different depending upon *who* is describing the view? One of them says that there is zero chance of an agreement which is not accepted by the Gibraltarians, who had just rejected it by nearly 99%. The other replies that negotiations are advanced and that they are discussing details!

You see, Mr Chairman, Excellencies this bilateral process of dialogue between the UK and Spain is not just a violation of our right to self determination, it is actually a sham – wholly ineffective, incapable (according to the UK itself) of achieving anything.

And so I ask Mr Chairman, is the role of this Committee to assist the colonial people to uphold their rights, or is it to act as a neutral observer in a sovereignty dispute between the UK and Spain?

When Spain seeks to discredit us (as it did in its address to you last year) by saying that I have repeatedly been invited and refused to take part in talks under the “two flags, three voices” formula (which incidentally we developed and have advocated, in the face of resolute Spanish rejection between 1996 and 2001) she fails to be fully candid with you. She does not tell you that the reason for my refusal is that under the version of the formula for participation offered to me, UK and Spain were specifically free to reach agreements at those talks without our conformity and consent, therefore rendering my presence simply formalistic and to lend democratic credibility to a process of dialogue over the result of which we had no real influence or say. That is not proper dialogue, but rather a crude political trap.

We will never agree to take part in dialogue structured bilaterally between our colonial power and the sovereignty claimant, because this structure intrinsically betrays our political rights as a people. Nor will we take part in dialogue in which the UK and Spain can strike political deals, even in principle, about our rights and our future, above our heads, behind our backs or without our agreement.

Mr Chairman, we would very much value dialogue with Spain, but for us the principle of consent and our right as a people to decide our own future is paramount. No dialogue could be fruitful or possible for us to take part in, whose purpose and structure was inconsistent with these principles. Dialogue must be on an open agenda basis. Gibraltar must be able to take part fully, properly and safely. And most importantly, it must not have pre-determined outcomes or objectives. This means that the purpose of the dialogue cannot be to negotiate a total or partial transfer of sovereignty to Spain against our wishes.

Mr Chairman, you have rightly called for action in order to discharge the Committee's duties and assist the people in all the Territories to achieve self

determination. So, for how much longer is the Committee's action in relation to Gibraltar going to be limited to rubber stamping a sterile, ritualistic and ineffective bilateral process of dialogue between our administering power and our neighbour, which far from assisting the people of the Territory, actually undermines us?

What we ask the Committee to do by way of programme of action in the Gibraltar case is simple, sincere, open and transparent. How can anyone object to it? We call for:-

1. The Committee to visit Gibraltar to see and judge the facts for itself, so that no party can gain an advantage from misrepresenting them. What innocent and honest reason could any party have to oppose that?
2. The Committee to recommend to Fourth Committee that, since there is disagreement between the parties as to the applicable international law principles, and this is holding back a solution, the case should be referred to the International Court of Justice for an advisory opinion on those principles. What innocent and honest reason could any party have to oppose that?
3. That your resolution should be changed to reflect a call for the Government of Gibraltar on behalf of the people of Gibraltar, to be fully, properly and safely able to be present in any talks affecting Gibraltar, our homeland of 300 years. How can a Committee mandated to protect us, as a colonial people, object to that? And, in any case, the current bilateral process is futile and a waste of time, because one of the two parties to it says that no agreement is possible without us.

Mr Chairman, there are a number of issues affecting Gibraltar upon which the Committee may welcome the information that I will now very briefly provide.

1. During the last few weeks Spain has severely disrupted our tourist trade by banning from Spanish ports any cruise ships that sails to it from Gibraltar. Spain has since lifted this restriction but has publicly said that the lifting is on the basis of a three months moratorium. This is not enough, and I would urge the Kingdom of Spain to declare the lifting of the ban to be indefinite, in the interest of cross border relations, and so that her behaviour is consistent with Her Representative's declaration at the recent Pacific Seminar that "Spain is committed to making possible a secure, stable and prosperous future for Gibraltar."
2. The European Union Commission has recently made a ruling the effect of which, if it is allowed to stand, is that Gibraltar is to be treated as a region of our administering power, the United Kingdom and therefore is obliged to have the same tax system and tax rates as the UK, despite the fact that that would gravely undermine the viability of our economy and our society. The ruling is to be challenged in the European Court of Justice by both the UK and Gibraltar Governments. But I wish to report to the Committee the Commission's ruling because, apart from other legal deficiencies, it is incompatible with the Charter of the UN. The UN Declaration of Principles set out in Resolution 2625 (XXV) of 24th October 1970 states that "The territory of

a colony or other non self-governing territory, has under the Charter, a status separate and distinct from the territory of the State Administering it." It is therefore a violation of the UN Charter to seek to treat a colony as a region of its administering power.

3. Mr Chairman, it is high time that Gibraltar was decolonised. This year we mark 300 years of British Sovereignty and commemorate and celebrate 300 years of development as a people and as a community. The time has come to take Gibraltar to the next level of the journey of its political development towards the greatest possible measure of self government.

To this end, last December Gibraltar formally tabled Constitutional Reform and Modernisation proposals to the UK, and it has been agreed with the UK that formal discussion and negotiation of these will begin in the Autumn of this year.

4. Finally Mr Chairman, later this week, Gibraltar participates, for the first time in voting for elections to the European Parliament. To win that right Gibraltar had to take and win a case to the European Court of Human Rights. Given the effort that is has required to obtain this right I have no doubt that the people of Gibraltar will wish to exercise their right to vote this week.

Mr Chairman, Excellencies, thank you for giving us, once again, this annual opportunity to address you. This is very welcome and we are grateful for it, but, by itself it is not enough. I respectfully urge the Committee to become engaged in the case of Gibraltar through an action programme such as I have outlined. The people of Gibraltar, once again, wait to see whether our intervention this year will have some effect, or whether, as in past years, it is followed by passing the same old, tired and ineffectual annual resolution. Mr Chairman, with the respect that this Committee knows that we have for it, that is not action towards decolonisation. That is inaction. Those of us who support the Committee's existence and its work nevertheless believe that if it is to make any impact in the remaining listed cases, it must show a willingness, indeed a determination, to engage in complex and difficult cases, to act even when member states place obstacles and difficulties in its path, and not to push these cases to one side because they are complex and difficult or involve a dispute between two member states.