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SECOND INTERNATIONAL DECADE FOR THE ERADICATION OF COLONIALISM

Pacific Regional Seminar on the implementation of the Second
International Decade for the Eradication of
Colonialism: priorities for action

Yanuca, Fiji
28 to 30 November 2006

STATEMENT BY

SPAIN

STATEMENT BY THE REPRESENTATIVE OF SPAIN

PACIFIC SEMINAR ON THE IMPLEMENTATION OF THE SECOND
INTERNATIONAL DECADE FOR THE ERADICATION OF COLONIALISM:
PRIORITIES FOR ACTION
(Fiji, 28 to 30 November 2006)

Mr. Chairman:

Distinguished delegates:

At the outset, I wish to thank you for the opportunity to take the floor in this Regional Seminar, which should allow us to exchange points of views and information on the decolonization process, to whose goals we all subscribe.

I do not deem it necessary to reiterate the well-known position of my Government regarding Gibraltar. Nevertheless, I would like to focus my statement on two related issues: on the one hand, the way in which Spain is complying with the mandate of the General Assembly of the United Nations and with the goals set in this Second International Decade for the Eradication of Colonialism, and on the other hand, to clarify the presentation of some issues relating to the recently concluded constitutional reform of Gibraltar.

Spain is of course interested in making progress in the decolonization of Gibraltar as long as it is in accordance with the UN doctrine.

Since 1964, the UN has continuously underscored that, in the particular case of Gibraltar, decolonization should come about not as a result of an exercise of the right of self-determination by the inhabitants of Gibraltar, but as a result of a negotiation between Spain and the UK. The Fourth Committee of the General Assembly has most recently reflected this in the draft decision on this issue adopted by consensus last October, which will have to be endorsed by the General Assembly in December.

The Spanish Government, in the context of any negotiation on this question, is ready to listen to the interests and aspirations of the people of Gibraltar. Without elaborating on the nature and origin of the current population of the Rock, it is clear that no agreement on the territory could be easily implemented against its aspirations. However, taking into account the interests and aspirations of the population does not imply that the solution to the dispute on Gibraltar should not be negotiated and agreed upon in an appropriate manner between Spain and the United Kingdom.

My Government understands that the UK, by joining the consensus embodied in the above-mentioned draft decision, also recognizes that the UN doctrine on Gibraltar, in accordance with the Charter and the relevant General Assembly resolutions, is fully in force. In the draft decision, the General Assembly urges both Governments to agree on a final solution to the dispute in the spirit of the 1984 Brussels Declaration, which is in turn based in that of Lisbon of 1980, whereby the Governments of Spain and the United Kingdom committed themselves, and I quote, "to resolve the problem of Gibraltar in the spirit of friendship and in accordance with the relevant UN resolutions".

In other words, the UK accepts that the decolonization of Gibraltar must be accomplished with Spain's consent. For that reason, the final outcome of this process cannot be a result of the exercise of the right of self-determination by the people of Gibraltar. In this respect, I wish to highlight that the UK, in its March 1999 White Book entitled "Partnership for Progress and Prosperity: Britain and the Overseas Territories", admits that in the decolonization case of Gibraltar, there is a particular element, which does not apply with other territories, namely, that the British title over Gibraltar is based on the Treaty of Utrecht.

This approach, which confirms the particularity of Gibraltar, has been implicitly endorsed by this forum in last year's Seminar's Conclusions, whose paragraph 11 reads "In the decolonization process, and where there are no disputes over sovereignty, there is no other alternative to the principle of self-determination, which is also a fundamental human right."

Mr. Chairman:

We believe that this Second International Decade for the Eradication of Colonialism should offer a legitimate incentive to advance in the decolonization of those territories that are still on the list of the Special Committee. As the Permanent Representative of Spain had the opportunity to state at last October's Fourth Committee session, Spain is fully committed to advance in the UN mandate for the decolonization of Gibraltar. However, we understand that for that process to bear fruit, there must be a favorable climate to address all the issues in a serene manner.

This approach has been the reason behind the establishment of a tripartite Forum of Dialogue on Gibraltar pursuant to the joint communiqué of 27 October 2004. The Forum of Dialogue has counted since its inception on the enthusiasm and support of the three participants. In fact, I would like to recall that even the Opposition Leader of Gibraltar, Mr. Bossano, at the Seminar held in Canouan last year, referred to the Forum of Dialogue as a "gust of fresh air" and highlighted the importance of the step taken by the Spanish Government.

After sixteen months of intense work, a first package of specific agreements was concluded on 18 September last. They focus on specific questions that can be beneficial for the population of Gibraltar and its surrounding region. We are certainly pleased, not only with this outcome but also with the fact that no one has had to renounce his respective positions of principle in order to reach results. The agreements have been adopted "without prejudice to the respective positions on sovereignty," and it has been agreed by the three participants in the Forum that "the references to the sovereignty are bilateral to Spain and the UK." This clause safeguards not only the Spanish position, but also the settled doctrine of the UN on the decolonization of Gibraltar.

Having said this, there are a few recent events that might be intentionally misinterpreted by some as a change in the "statu quo" in the question of Gibraltar, and would consequently constitute a breach in the operational framework that has made possible the Forum of Dialogue. We do not concur with this view.

The talks between the Foreign and Commonwealth Office and the representatives of political parties and of the Government of Gibraltar with a view to reforming the constitutional decree of 1969, came to an end in March of this year. The text arising out of these talks will be the subject of a referendum organized by the Government of Gibraltar and to be held on 30 November.

In Spain's view, and without making an assessment of the new constitutional text, this can only be interpreted as an internal rearrangement of powers within the United Kingdom and Gibraltar for the purpose of improving the effectiveness of the internal rule of the territory. Consequently, it is our understanding that this constitutional reform cannot have implications in the decolonization process of this non self-governing territory, which was included in the UN list of non self-governing territories in 1946, at the request of the United Kingdom.

Finally, I wish to refer to the referendum that will be held in Gibraltar on 30 November, which is a purely local initiative with no involvement of the British Government in its organization. This referendum, whose legality is arguable—since the Government of Gibraltar does not have the legal competence to organize referenda—is being presented as "an exercise of self-determination". In this regard, I would like to underline that the British Government, in a response given in Parliament on 4 July this year, stated that this exercise implies "self-determination" restricted to its purely "internal" dimension, with no consequences in its external context, i.e. in the international sphere. But allow me to bring to your attention one more element that allows us to assess this referendum appropriately: Since even military men and civil servants of Her British Majesty Government having lived more than ten years in Gibraltar are entitled to vote it, can this referendum be understood as an exercise of self-determination?

Despite all the arguments presented until now, if anyone could claim that pursuant to the new constitutional text, Gibraltar will cease to be a non-autonomous territory, this would imply deviating from the UN doctrine on this matter, thereby infringing on the historical rights of Spain over this territory, as set forth in the Treaty of Utrecht. For this reason, since the United Kingdom has acknowledged that article 10 of the Treaty of Utrecht is fully in force (as stated in the dispatch which will be published along with the constitutional decree), affirming that Gibraltar has completed its decolonization would amount to a legal fraud aimed at impeding the exercise of the historical rights of Spain over Gibraltar as recognized in the said Treaty.

In this regard, I do not wish to conclude my statement without mentioning an issue on which the UN doctrine has been well established through the resolutions of the General Assembly, namely the full applicability of the principles of national unity and territorial integrity to the case of Gibraltar. It is an inalienable principle enshrined in the Charter and in subsequent General Assembly resolutions. In the case of Gibraltar, this would be the reality even if we were to consider only the Isthmus that links it to the mainland. This Isthmus, as you all know, and as it is recalled in a letter of 28 March 2006 addressed by the Spanish Minister of Foreign Affairs and Cooperation to his British counterpart "was not ceded by Spain to the United Kingdom, neither pursuant to the Treaty of Utrecht, nor afterwards".

Mr. Chairman,

Allow me to finish by saying that my Government wishes to continue to work actively in the decolonization of Gibraltar. We are confident that the United Kingdom will also take on its responsibilities in this process. We have the firm intention to implement the agreements of the Forum of Dialogue and to continue to work within it. Even if we are pleased to note that the constitutional reform of Gibraltar is a good text for the governability of this territory, we would like to remind the members of the Special Committee and the participants in this Seminar, that this element has no relevance whatsoever to the decolonization of Gibraltar and to the objectives of the Second International Decade for the Eradication of Colonialism.

Thank you, Mr. Chairman.