

UNITED NATIONS



NATIONS UNIES

Distr. RESTRICTED
CRS/2007/CRP.7

ORIGINAL: ENGLISH

SECOND INTERNATIONAL DECADE FOR THE ERADICATION OF COLONIALISM

Caribbean Regional Seminar on the Implementation of the
Second International Decade for the Eradication of
Colonialism : next steps in decolonization

St. George's, Grenada .
22 to 24 May 2007

Statement by the representative of Spain

STATEMENT BY THE REPRESENTATIVE OF SPAIN

Ms. Chairperson,

One more year, I am pleased to address the participants in a Regional Seminar on behalf of my Government. This forum gives us an opportunity to strengthen our efforts, following the calls by the General Assembly on all Member States, to advance in the Plan of Action of the Second International Decade for the Eradication of Colonialism.

Since the convening of the Yanuca Regional Seminar in November 2006, there have been some new developments in relation to Gibraltar, the only European territory which is still pending of a decolonization process.

The constitutional reform of this non self-governing territory concluded with the new constitutional Decree (Order in Council) coming into effect on 2 January 2007, following its adoption by the Privy Council of the United Kingdom on 14 December 2006. On that same date, the Decree was forwarded to the British Governor of Gibraltar with a Dispatch of the Secretary of State of the Foreign and Commonwealth Office. These acts by the administering Power gave the new constitutional text of Gibraltar its legal force. I had the opportunity to analyze that text in detail at the Yanuca Seminar.

The new constitutional text was submitted to the people of Gibraltar on 30 November 2006 by means of a consultation organized by the Government of Gibraltar without any known legal basis. In spite of that, the British Government has recognized this action as an "exercise of the right to self-determination" of the people of Gibraltar. However, it is worth remembering that this recognition has been formulated with clear limitations that were not correctly reflected in the letter sent to the UN Secretary General by the Permanent Representative of the UK to the United Nations on 22 January 2007. According to the parliamentary response of the Minister for Europe from the Foreign and Commonwealth Office of 4 July 2006 and to the Dispatch addressed to the Governor, this so-called right to self-determination of the people of Gibraltar would be limited for the

following reasons:

1. It was not promoted in accordance with the other principles and rights of the Charter of the United Nations;
2. Article X of the Treaty of Utrecht gives Spain a right of refusal over Gibraltar should the United Kingdom renounce its sovereignty;
3. The new constitutional text does not diminish British sovereignty over Gibraltar and simply gives Gibraltar more control over its "internal affairs".

In short, the British Government is recognizing a so-called right of Gibraltar to self-determination that is limited to its "internal" aspect and does not alter the historical rights of Spain over the territory.

If, by ignoring all our arguments on the new constitutional text and the limited value of the exercise of the alleged right to self-determination of Gibraltar, one were to assert that Gibraltar has ceased to be a non self-governing territory, that would imply deviating from all the UN doctrine on this matter and infringing on Spain's rights over the Territory. Whether the United Kingdom recognizes that Article X of the Treaty of Utrecht is in full force (as stated in the Dispatch addressed to the British Governor of Gibraltar and annexed to the Constitution), affirming that Gibraltar has concluded its decolonization process would be tantamount to a legal fraud that would frustrate or impede Spain's exercise of its historical rights over Gibraltar as recognized by that Treaty.

Moreover, Gibraltar continues to be a British Overseas Territory for all purposes. Or, in other words, a non self-governing territory under British sovereignty, over which the United Kingdom retain important powers which show that Gibraltar has not reached the "maximum possible level of self-government" which would allow to conclude that colonial dependency has come to an end.

Since the new Constitution came into force in early 2007, there have been opportunities to confirm the importance of the powers retained by the administering authorities in the person of the Governor. This was highlighted in April this year, when a crisis erupted in the Gibraltar judicial sphere.

As I underlined in the previous Seminar, doubts have been cast over the new constitutional text by a group of British experts (as stated in a report presented on 16 November 2006), in reference to the principle of separation of powers. The problems that arose in April in the Judiciary led to a crisis between the Chief Justice of Gibraltar and the Bar of the Colony resulting in an intervention by the Governor. It is striking that it was precisely him (the highest representative of the administering Power in an entity which claims to have exercised the right to self-determination) the authority which resolved this judicial crisis by using the veto power recognized in the new constitutional Decree in regard to the so-called "Judicial Service Commissions".

In this regard, allow me to quote an excerpt from a leader in the Gibraltar press from April which illustrates what I mean:

"Without commenting on who is right and who is wrong in the current crisis that the Judiciary finds itself in, one thing is strikingly clear –it is the British, our colonial masters, who may have to step in, act as referee and sort the row.

I believe this affair calls into question the Chief Minister's assertion that this "new" Constitution heralds a new and mature non-colonial relationship with Britain. Not six months since its introduction, we are once again beholden to our colonial masters."

In conclusion, the new constitutional text that the United Kingdom has granted to Gibraltar could be qualified as a text that permits a "modern and mature" relationship between the UK and Gibraltar. But, by the same token, it has not changed the international status of Gibraltar nor does it have any relevance in relation to its pending decolonization process, which -according to the UN-, could only come about through a negotiation between Spain and the United Kingdom. For that reason, nobody could contend that the recently concluded constitutional reform has "de facto" decolonized Gibraltar.

According to some biased interpretations, the pending decolonization process of Gibraltar and the dispute over sovereignty between Spain and the UK are two different and separated issues. As the doctrine of the United Nations has put clearly, this is radically untrue. Paragraph

29 of the Yanuca Seminar report says that "in the process of decolonization, and where there are no disputes over sovereignty, there is no alternative to the principle of self-determination, which is also a fundamental human right". The acknowledgement of a dispute in the case of the decolonization of Gibraltar has also been admitted in numerous texts by the UK. For example, in the White Book of March 1999, "*Partnership for Progress and Prosperity: Britain and the Overseas Territories*", it is stated that, in the decolonization of Gibraltar, there is a particular circumstance that does not concur in other territories, given that the British title over the Rock is based on the Treaty of Utrecht.

This implies that the doctrine of the UN on the decolonization of Gibraltar -including in regard to visiting missions-, is completely different to that applicable to other non self-governing territories, where self-determination is the only relevant principle.

Ms. Chairperson,

Turning to another subject, I would like to comment on the latest developments in the Forum for Dialogue on Gibraltar. As it was already said on several occasions before the Special Committee and the Fourth Committee, Spain continues to be fully committed to this process, which was established in October 2004. Since the last Seminar, we have focused on the implementation of the specific agreements reached at the first Ministerial meeting in Córdoba, on 18 September 2006. These agreements, whose aim is to benefit the people of Gibraltar and that of the surrounding region, are being implemented in a punctual and completely satisfactory manner for Spain, the United Kingdom and the Government of Gibraltar. This should contribute to creating serene and favorable conditions that will allow us to address the questions of sovereignty at an appropriate time.

Until now, the dispute over the sovereignty of Gibraltar has never been discussed in the Forum for Dialogue, and it has been made clear that the Córdoba agreements do not prejudge positions about sovereignty and that references to this matter are of a bilateral nature between Spain and the UK.

Spain hopes that the Córdoba agreements and the satisfactory conclusion of the constitutional reform can allow us to advance in the search of a definitive solution to the question of Gibraltar.

Ms. Chairperson,

Before concluding, I would like to bring up another aspect that has been the focus of previous regional Seminars on decolonization: the direct link between the military presence of the administering Power in the territory and the perpetuation of the colonial rule.

At the Regional Seminar held in Yanuca in 2006, as stated in paragraph 53 of its conclusions, "*the participants noted with concern the military installations and activities of the administering Powers in Non-Self-Governing Territories, which run counter to the rights and interests of the people concerned and which create serious health and environmental hazards*". In the case of Gibraltar, the UK continues to be interested in maintaining its military activities and facilities in the Colony. Among other strategic interests that justify the perpetuation of this colonial situation, it is worth mentioning the port calls by nuclear submarines and the communication and intelligence facilities. London keeps approximately 560 military men and 1030 civilians in Gibraltar, all employed by the British Ministry of Defense. The United Kingdom earmarks a very important amount (more than 63 million British Pounds in 2006) to expenses related to the operation and investment in military activities and facilities in the Rock.

For all the above reasons, I can only be surprised by the fact that in the Working Paper on Gibraltar prepared by the UN Secretariat in 2007, all references to the United Kingdom's military presence in Gibraltar, as well as to the expenditure that this generates for the British Government, have been omitted. Given its relevance in the framework of decolonization, it would be advisable to re-insert these references in future annual documents.

Ms. Chairperson,

Spain has already stressed in previous Regional Seminars its interest in making headway in the decolonization process of Gibraltar. I also

believe that, in view of what I have stated so far, my Government is contributing, as much as possible, to prevent the colonial reality in Gibraltar from affecting negatively its inhabitants and those of the surrounding region. We consider this is a positive element to be taken into account.

Nevertheless, I must add that in 2006 there has not been any development that could allow us to affirm that there has been progress in the bilateral negotiations on the dispute, and, ultimately, in the decolonization process of Gibraltar.

We trust that, despite its stated position of non-cooperation with the Special Committee based on the perception of its criteria as being outdated, the UK will, at the appropriate moment, take on its obligation to engage in negotiations with Spain in order to reach a definitive solution to the question of Gibraltar. In that solution, the interests and aspirations of the people of Gibraltar will undoubtedly have to be taken into account. In addition to the obligations arising from the Treaty of Utrecht and from the resolutions and decisions adopted by the General Assembly of the United Nations by consensus, the UK cannot also ignore its commitments with Spain in this issue since the early 1980s.

I thank you, Ms. Chairperson.

St. George's, Grenada, May 2007