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Twenty-third session

IMPLEMENTATION OF THE DECLARATION ON THE GRANTING  
OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES\*

GIBRALTAR

Report of the Secretary-General

Addendum

1. Following the submission on 18 July 1968 of the addendum to his report (A/7121/Add.3) in pursuance of General Assembly resolution 2353 (XXII) of 19 December 1967 on the question of Gibraltar, further communications on the question have been received from Spain and the United Kingdom of Great Britain and Northern Ireland.
2. On 25 July, the Deputy Permanent Representative of Spain to the United Nations addressed to the Secretary-General the following communication:

"In my note No. 143 of 15 July, reproduced in document A/7121/Add.3, I informed you, inter alia, that:

'Consideration of a new Constitution for Gibraltar was announced unilaterally by the London Government. Such a Constitution, adopted in disregard of the decisions of the United Nations and consequently without Spain being consulted, would be meaningless for my country.'

"The United Kingdom Government, in a further violation of United Nations resolutions, and specifically of resolution 2353 (XXII), has indeed unilaterally convened and held the Constitutional Conference.

"Consequently, my Government wishes to make its position with regard to this Conference perfectly clear:

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\* Item 22 of the provisional agenda.

"(1) In the light of the information furnished by the United Kingdom, it is obvious that the purpose of this Conference is the adoption of a new Constitution for Gibraltar in which the United Kingdom military and colonial presence in the Territory will be reaffirmed, an action in direct conflict with General Assembly resolution 2353 (XXII), which stated that the colonial situation in Gibraltar would be ended only when the territorial integrity and national unity of Spain were restored.

"(2) The Spanish Government understands the anxiety which the inhabitants of Gibraltar must feel about their future and the future of their descendants, impelling them to seek assurances from the Power which has control over them.

"There is no question that Her Majesty's Government will be unable to grant them the security they are seeking as long as it continues to invoke the Treaty of Utrecht of 1713 in order to justify its presence on the Rock.

"The Treaty of Utrecht makes no mention of even the existence of the present civilian population which has grown up in the shadow of the Gibraltar military base, and it constitutes the essence of a colonial situation which the United Nations has condemned.

"The United Nations has, however, recommended that the interests of the Gibraltarians should be the subject of negotiation between Spain and the United Kingdom, with a view to safeguarding those interests upon the termination of that colonial situation, thus providing a political means for settling the future of the Gibraltarians.

"Spain has accepted the solution advocated by the United Nations and is prepared to annul the Treaty in negotiations with the United Kingdom in which the interests of the Gibraltarians would be established and protected.

"(3) In contrast, Her Majesty's Government has refused to accept the solution advocated by the United Nations and is claiming, through domestic legislative provisions, to give the Gibraltarians a feeling of security which must be wholly false, since if these provisions do not alter the 'status' of the Rock they perpetuate a colonial situation which has been condemned by the United Nations and to which Spain is opposed, and, if they alter that status they will have unilaterally amended an international Treaty signed by Spain and Great Britain and converted Gibraltar into a portion of Spanish territory occupied illegally and militarily by a foreign Power, with the very serious consequences which that new situation would imply.

"Accordingly the Spanish Government feels it must state that the new Constitution which the United Kingdom is preparing for Gibraltar will constitute a gratuitously unfriendly act towards Spain, defiance

of the decisions of the United Nations and a further obstacle to the solution of the future of the Gibraltarians, whose security is solely dependent, as the United Nations has rightly stressed, on agreement between Spain and the United Kingdom.

"I should be grateful if you would circulate this note to all delegations as a General Assembly document."

3. On 6 August, the Acting Permanent Representative of the United Kingdom to the United Nations addressed to the Secretary-General the following communication:

"In his letter of 15 July,<sup>1/</sup> and again in his letter of 25 July reproducing the statement issued by the Spanish Ministry of Foreign Affairs on 24 July, the Deputy Permanent Representative of Spain has put forward certain observations on Lord Caradon's letter of 21 June to Your Excellency<sup>2/</sup> and on the constitutional talks held in Gibraltar between 16 and 24 July. As both letters of the Deputy Permanent Representative of Spain contain a number of serious distortions, I should like to put the record straight.

"In doing so, I wish to reaffirm that the United Kingdom Government's attitude to resolution 2353 (XXII) remains as set out in Lord Caradon's letter of 21 June. The Deputy Permanent Representative of Spain has referred in this connexion to what should be done about a situation in which a founding Member of the United Nations rejects the recommendations made by the Organization. He also wrongly describes resolution 2353 (XXII) as a decision of the United Nations. The United Kingdom as a founding Member is not only acquainted with the distinction between a General Assembly resolution, which has the force of a recommendation, and a decision which is binding on Member States, but is also fully aware of the obligations laid on Member States by the United Nations Charter. As Your Excellency is aware, we have a solemn and contractual obligation under Article 73 of the United Nations Charter to safeguard the interests of the inhabitants of Non-Self-Governing Territories for which we are responsible. This is an obligation we are honoured to be required to discharge, and if, as in the present case, there is an apparent conflict between the Charter and a General Assembly resolution, it is of course the obligation under the Charter which must prevail. I am confident that this doctrine, which is legally incontestable, is accepted by other Members of the United Nations.

"In regard to the constitutional talks, the discussions held in Gibraltar last month resulted in agreement on the outlines of a new

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<sup>1/</sup> See A/7121/Add.3.

<sup>2/</sup> See A/7121/Add.2.

Constitution. The new constitutional arrangements have regard to the views freely and democratically expressed by the representatives of the Gibraltarian community. They are designed to take account of the particular circumstances of Gibraltar. I should like to stress that the new Constitution will not in any way alter the international status of Gibraltar, nor does it in any way create fresh obstacles to the eventual achievement of a solution satisfactory to the Governments both of Britain and of Spain and acceptable to the people of Gibraltar.

"But it is the Spanish Government which now pretends that the new Constitution, with its reaffirmation of the fundamental human rights which the Gibraltarians already enjoy, will be invalid. The attitude of the Spanish Government is explicable only against the background that during the Anglo-Spanish talks in Madrid in March, the Spanish delegation declined to discuss this subject and dismissed it as a secondary issue.

"In the last resort, as Lord Caradon said in his letter of 21 June, the most important aspect of this matter is the human one. The United Kingdom Government remains fully determined to safeguard the interests of the Gibraltarians. But at the same time, it looks forward to the moment when the Government of Spain will realize that its policy of crude pressure is misguided and understand that the road to a satisfactory settlement is not to be found in efforts to undermine Gibraltarian morale, nor in distracting attention from the fact that its tactics are evidently designed to harm the Gibraltarians directly or indirectly. The United Kingdom Government thus looks forward to the time when the Spanish Government comes to see the distrust and dislike that its policy has created among the people of Gibraltar and the need for patient endeavour to eradicate these feelings. When this happens, there could be a real prospect for constructive talks, for which the United Kingdom Government remains ready.

"I should be grateful if Your Excellency would arrange for this letter to be circulated as a General Assembly document."

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