

## **GIBRALTAR GOVERNMENT RESPONSE TO “PLP BRIEF ON GIBRALTAR AND THE BRUSSELS PROCESS”**

On the 18<sup>th</sup> March 2002 a document entitled “PLP Brief on Gibraltar and the Brussels Process” was issued to Labour Members of Parliament. The Gibraltar Government believes that the Brief was incomplete and may thus have resulted in MPs obtaining an incorrect impression in some respects.

This response deals with the following issues:-

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## KEY POINTS

- The people of Gibraltar, like all colonial peoples before them, enjoy the inalienable right to self-determination, that is, the right to decide their own future.
- Bilateral Anglo-Spanish agreements about the principles applicable to Gibraltar's future, sovereignty and status, entered into against the wishes of the people of Gibraltar betrays Gibraltarians' right to self-determination.
- Spain has failed to accept, and refuses to accept, the principle of consent in respect of the future of Gibraltar (unlike the Republic of Ireland in the case of Northern Ireland).
- As the Foreign Affairs Committee of the House of Commons has recognised and lamented in a comprehensive report, Spain is allowed by HMG and the EU to get away with impunity with systematic breaches of Gibraltar's EU rights and her own EU obligations in her behaviour towards Gibraltar. Now these very long-standing breaches are being offered as reasons to justify a sovereignty deal that the people of Gibraltar do not want.
- The future of Gibraltar is secure, stable and prosperous without the need for a sovereignty deal with Spain against our wishes.
- The Government of Gibraltar favours and seeks dialogue with Spain (and has done so since 1996), on a fully open-agenda basis, and within the democratic parameters that nothing is agreed by UK and Spain over Gibraltar's head and in a way that survives rejection by the people of Gibraltar in a referendum.
- Gibraltar is not participating in the current talks because the UK Foreign Office refuses to agree not to enter into agreements above the Gibraltar Government's head AND intends to make an in principle agreement (including sovereignty concessions to Spain) above Gibraltar's head, and against its wishes, which will stay on the table even after a referendum rejection by the people of Gibraltar. Gibraltar calls this is a "done deal"!
- It is true that no deal will be implemented in practice if Gibraltar rejects it. But the referendum would not apply to the political principles conceded to Spain about Sovereignty and Gibraltarians' other political rights. That will remain on the table as the agreed Anglo/Spanish position on "the best way forward" even if the Gibraltarians reject it in referendum!
- In these circumstances to accuse Gibraltar of practising the policy of the "empty chair!" is just unfair spin.
- Opinion polls in Gibraltar, the UK and Spain show that people in all three places are massively opposed to the principle of joint sovereignty.

## **BACKGROUND TO THE GIBRALTAR ISSUE**

Spain ceded Gibraltar to Britain in perpetuity by Treaty in 1713 (Treaty of Utrecht). That treaty has been subsequently ratified in further treaties.

Spain's claim to Gibraltar is therefore in flagrant breach of the Treaty of Utrecht. Despite this, Spain argues that a clause in the Treaty of Utrecht (1713) has the effect of denying Gibraltarians the right to determine their own future, and that the decolonisation of Gibraltar must therefore be brought about by the return of Gibraltar by UK to Spain, in bilateral negotiations with the UK, regardless of the wishes of the people of Gibraltar.

We completely reject this. There is no basis for the view in modern international law that the Treaty of Utrecht denies or curtails Gibraltarian's right to self-determination. We have asked the UK and Spain to refer this vital issue to the International Court of Justice for an advisory opinion. Yet both the UK and Spain refuse to do so. Why?

Gibraltarians believe that we enjoy the same right to self determination as all colonial peoples, and as is recognised in the Falkland Islands Constitution. Mr Blair says that the sovereignty of the Falkland Islands is not negotiable. So why is Gibraltar's sovereignty negotiable, when Britain's sovereignty of Gibraltar is even stronger since it is based on secure treaty rights?

### **Self determination**

Properly analysed in accordance with modern democratic principles, the so-called "Gibraltar issue" is not a bilateral dispute between the UK and Spain over sovereignty of a "disputed territory". It is an issue about the democratic right of 30,000 British, European, colonial peoples in the 21<sup>st</sup> Century to self-determination, i.e. the right to freely decide their own future without pressure, harassment or duress.

Yet Gibraltar is told by Foreign Office Minister Peter Hain, and others in the FCO, that our current status is "not sustainable" and if we do not agree to the deal we "will be left behind" (whatever that may be intended to mean), "our economy will wither", "we will be on our own" and our affairs will in future be "dealt with by a third secretary in the FCO".

In contrast Jack Straw says that if we reject the deal the UK will "stand by its legal, political and moral responsibilities to Gibraltar".

How are these conflicting messages and attitudes reconcilable with each other. The people of Gibraltar interpret such statements as very thinly veiled threats, thereby depriving Gibraltarians of real freedom in making choices.

Gibraltar's economy is stable, secure and prosperous. It costs the UK taxpayer nothing. But our economy is now increasingly being undermined more by UK Foreign Office statements than by Spanish statements or actions!

## **Decolonisation and Constitutional Reform :-**

Gibraltar wants a modern, sustainable, non-colonial constitutional relationship with the UK, and to this end the Gibraltar House of Assembly has drawn up constitutional reform proposals to maximise self government by the people of Gibraltar, in keeping with the UK Government's White Paper on Overseas Territories.

The PLP Brief says that "the UK's position has consistently been that the aspirations and interests of the people of Gibraltar must be taken into account." This is incorrect. Only Spain has historically limited itself to taking into account Gibraltar's interests (as opposed to wishes). The UK position has always been that the wishes of the people of Gibraltar have to be respected. Spain refuses to accept Gibraltar's right to have its wishes respected.

### **The proposed deal is not compatible with our right to self-determination.**

As recently as 6<sup>th</sup> November 2002, Peter Hain said, in answer to a Parliamentary Question from David Crausby MP, about Gibraltar's right to self-determination:-

"However, HMG's position on this issue has been consistent since the mid-1960s. We believe that Gibraltar's right to self-determination is not constrained by the Treaty of Utrecht except insofar as Article X gives Spain the right of first refusal should Britain ever renounce sovereignty."

Gibraltarians disagree that our right to self-determination is curtailed as the FCO thinks. But this is academic since we do not wish to give up British Sovereignty. But bilateral Anglo-Spanish negotiations and agreements in relation to the principles affecting our rights, our future and our sovereignty, above our heads and against our wishes are wholly incompatible with our right to self-determination, even to the extent that Peter Hain admits we enjoy it.

How can the people of Gibraltar be said to have the right to decide their own future, if the UK Government compromises the principles affecting their sovereignty and other political rights, over their heads and against their wishes?

**All UK Government statements on this issue, emphasise that nothing will be implemented without Gibraltarians consent. But the issue is not whether the UK Government implements the agreement (we accept that they will not), but that they should not enter into it, against the wishes of the people of Gibraltar, for these reasons.**

Under the Gibraltar Constitution preamble Britain is committed to not entering into arrangements whereby sovereignty passes against the wishes of the Gibraltarians. We believe that a "done deal" in which UK makes sovereignty concessions to Spain in principle against Gibraltar's wishes is a breach of this assurance, even if not implemented in practice. It is intended that the declaration of principles will remain on the table as the "agreed Anglo-Spanish" position, even after a referendum rejection (see below).

It is interesting to note that while Spain pressures the UK to negotiate the Sovereignty of Gibraltar, Spain herself maintains two enclaves in North Africa (Ceuta and Melilla) which Morocco claims and Spain refuses even to discuss.

## WHAT THE FOREIGN OFFICE INTENDS TO DO

The PLP brief says that the UK stands by its commitment to hold a referendum on any proposals which affect the sovereignty of the Rock. It also says that “there can be no implementation of any agreed proposals without the consent of the people of Gibraltar”. We accept that this is the case. But it is NOT THE WHOLE STORY.....

### THE DONE DEAL:

The UK Government says that it intends, by this summer, to conclude a bilateral agreement with Spain, including the issue of sovereignty. This agreement will contain a framework or declaration of agreed principles relating to Gibraltar, including sovereignty concessions to Spain (“the Agreed Principles”).

In a second phase, there will be discussions to produce proposals based on the Agreed Principles.

Of course, once the Agreed Principles are entered into, subsequent dialogue will necessarily be preconditioned by whatever sovereignty concessions (joint sovereignty) have already been made in principle. Dialogue will thus no longer be on an open agenda basis.

The proposals based on the Agreed Principles (but not the Agreed Principles themselves) will be put to the people of Gibraltar in a referendum. As the PLP brief says if these proposals are rejected in referendum the proposals will not be implemented in practice.

But the Agreed Principles (including whatever sovereignty concessions are made to Spain) will remain on the table, even after a referendum rejection of the proposals, as the agreed UK/Spanish position of “the best way forward”.

Gibraltar believes that anything that stays on the table after a referendum rejection (e.g. agreement on principles) IS a done deal against the wishes of the people of Gibraltar that will adversely affect our future rights and aspirations for all time.

This done deal on principles will:-

- 1) For all time legitimise the wholly anachronistic and undemocratic Spanish Sovereignty claim;
- 2) Betray the right of the people of Gibraltar to self determination;
- 3) Limit and condition our future rights and options;
- 4) Possibly undermine exclusive and perpetual British sovereignty under the Treaty of Utrecht;
- 5) Hang over Gibraltar's head like a sword of Damocles for all time.
- 6) Reward Spain's long-standing campaign of restrictions and harassment against Gibraltar.

As if all this were not bad enough, in the meantime Spain refuses to accept the democratic principle of consent and openly says (Sr Aznar and Sr Pique recent public statements) that she will never renounce her claim to full integration of and full sovereignty over Gibraltar!

## **DOES THE CHIEF MINISTER REFUSE TO TAKE PART IN DIALOGUE?**

Absolutely not. It is wholly disingenuous to suggest otherwise. Since its election in 1996 the present Gibraltar Government has tried to engage Spain in viable and constructive dialogue on an open agenda basis and is happy to take part in such dialogue.

The Gibraltar Government is content that any proposals be put to the people, provided the result is fully respected. This means no agreements between UK and Spain that survives a referendum. Respect for our wishes cannot (as is intended by HMG) be divided into

- (1) Practical implementation (for which our wishes are respected, and
- (2) Concessions of principles affecting our rights and future (which are entered into over our heads and regardless of our wishes as expressed in referendum).

## **WHY IS THE CHIEF MINISTER NOT TAKING PART IN THE TALKS?**

Even though the Foreign Office has recently agreed the detail relating to Gibraltar having a separate voice at talks through the “two flags, three voices formula, the FCO still refuses to give the Gibraltar Government an assurance that nothing will be agreed over the Gibraltar Government’s head, especially nothing the political effect of which would survive a referendum rejection by the people of Gibraltar.

This makes the dialogue, as presently formulated, unsafe and unviable for Gibraltar, and is the reason why the Chief Minister is not attending.

The PLP Brief says that the Chief Minister wants a veto on all issues discussed. This is not true. The Chief Minister does not object to any issue being discussed and to any proposals being put to Gibraltarians in referendum (even if the Gibraltar Government disagrees with them), so long as the result of that referendum is fully respected and nothing that is so rejected stays on the table.

Gibraltar only seek equality of treatment at the talks, which are, after all, about our homeland and our rights and wishes as a people. It is the case that at these talks, nothing can be agreed unless Spain agrees to it. Does that mean that Spain has a veto? If so, why should Spain have better rights, and a stronger position, in talks about the future of Gibraltar than the elected Government of Gibraltar itself? How is this compatible with our right to self-determination?

Spain makes no secret of what is afoot here. Her Foreign Ministry has publicly stated that “Caruana has to understand that his status at the talks will be such that he will not be allowed to decide on the design of the house” (the agreement of principles), “but will be limited to expressing his opinion about the colour of the bedroom walls” (the subsequent details of the proposals).

Spain openly says that the Chief Minister is invited to attend talks “only to express his opinions”. It is politically unrealistic to expect the Gibraltar Government to participate in talks about the future of Gibraltar in which it is limited to “expressing its opinion” while the UK and Spain conclude agreements above its head about principles affecting our future (which to boot will survive referendum rejection).

## **WHAT DO PEOPLE THINK ABOUT WHATS GOING ON?**

### **Unity in Gibraltar**

The Gibraltar Government's position of not attending such talks is supported by practically the whole population, by all political parties, by all Trade Unions in Gibraltar, business representative organisations, the Women's Association, the Senior Citizen's Association, the Student's Association and all other social representative organisations in Gibraltar.

On 18<sup>th</sup> March 2002, 25000 people (that is practically the whole population of Gibraltar) participated in a public demonstration under the banner:-

“No in-principle concessions against our wishes.  
Yes to reasonable dialogue”.

### **In the UK and Spain**

A recent Mori Poll shows that 79% of people in the UK think that the people of Gibraltar have the right to decide about the future of Gibraltar. In a recent opinion poll by the Spanish National Newspaper La Vanguardia only 3% of Spaniards favoured joint sovereignty. 42% favoured allowing Gibraltarians to decide their own future.

### **What do UK Trade Unions think?**

On 26<sup>th</sup> March 2002 Bill Morris (General Secretary, T&GWU), Nigel de Gruchy (General Secretary, NASUWT) and Paul Noon (General Secretary, Prospect) whose unions represent all unionised labour in Gibraltar, published an open letter which said:-

“We share the view that the people of Gibraltar deserve better than to see an agreement between Britain and Spain which would leave Gibraltar isolated. Ministers have promised a referendum, but they must go further and guarantee that there will be no inter-governmental agreement or Anglo-Spanish declaration of principles which does not have the support of Gibraltarians.

Our members on the Rock support dialogue but this cannot be on the basis of an agreement over their heads which undermines British sovereignty or the Treaty of Utrecht. Britain would not behave in this way towards the Falklands.

The suggestion that the Government may have bigger issues at stake in its relations with Spain and its liberalisation agenda should not lead it to sacrifice the interests of British citizens in Gibraltar.”