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**PRESS RELEASE**

No. 133/2007

Date.5 June 2007

Attached is the full text of the Chief Minister's address at the United Nations Committee of 24 on 5 June 2007.

Madam Chairperson, first of all, congratulations to you on your appointment to the Chair of this Special Committee. Please also allow me to express my regret for not, in the end, having been able to attend the recent Seminar in Grenada myself. Gibraltar was ably represented however by my deputy Chief Minister, Joe Holliday. By all accounts, it was a good Seminar for which I should also like to thank the Government and people of Grenada.

Madam Chair, I will not take up the Committee's time by taking you through the detail of our position and our arguments, or those of the Kingdom of Spain. They are all, now, equally well known and understood here.

Reduced to a "nutshell", our position is that the peoples of all listed non-self governing territories, including Gibraltar, have under the Charter of the UN, an inalienable right to self-determination, and in the decolonisation process there is, under international law, no alternative to the principle of self-determination. This is not subject to any exception in the case of territories where there is a sovereignty dispute. The Treaty of Utrecht of 1713 is wholly irrelevant in this regard, and, in any event, the mere existence of a territorial sovereignty claim by a neighbour does not, and cannot, defeat this fundamental human and Charter right to self-determination. This is especially true when the sovereignty claim is unadjudicated, and in this connection, I would remind the Special Committee of our frequent invitation to Spain to agree to refer her sovereignty claim to the International Court of Justice for an advisory opinion – a challenge which Spain systematically refuses to accept.

Ask yourselves therefore whether the mere existence of such a claim, which even the claimant refuses to test for validity in international law, can nevertheless have the effect of overriding the fundamental Charter, human and political rights of the people of a non-self governing territory? The answer, objectively speaking is, I think, clear and obvious.

The Kingdom of Spain for its part persists in the assertion that the Treaty of Utrecht of 1713 gives her rights which she alleges are incompatible with the decolonisation of Gibraltar by means of self-determination, and that accordingly Gibraltar can only be decolonised by means of a "horse trade" of the sovereignty of my homeland between the so-called administering power and Spain.

Our positions on these issues are therefore not reconcilable, and the people of Gibraltar will never succumb to the undemocratic proposition that anyone other than we ourselves should decide our own sovereignty and our own political future, freely and in accordance with our human and political rights to self-determination. The Sovereignty of our homeland is not a matter for transaction between the UK and Spain. It finally vests in Great Britain, and is claimed by Spain, but for all meaningful purposes it is at the disposal only of the people of Gibraltar.

Madam Chair, if the Special Committee has real seriousness of purpose and intent in finishing its work – ever, let alone in the 2 ½ years that remain of this Decolonisation Decade – then it must, with the very greatest of respect come to terms with certain basic questions and realities.

The first is this: is it the Special Committee's view that there are only three legitimate, acceptable and effective forms of decolonisation, namely: independence, integration and free association? Or, does the Special Committee accept that a fourth way was declared by the General Assembly in Resolution 2625 (XXV) of 24<sup>th</sup> October 1970, namely that any status freely determined by the people of the territory in an act of self-determination is a valid model of decolonisation? The Special Committee cannot avoid taking and clearly stating a position on this important question, and should now do so.

The second issue is this: does this Special Committee recognise that the circumstances and aspirations of the remaining 16 listed non-self governing territories cannot be ignored in this respect, in favour of a rigid adherence to historical models which the remaining Territories may not want, or which may be inappropriate to their circumstances?

The point that I am making is that this Committee must now open its mind to other, alternative and realistic decolonisation models (other than independence, free association/or integration) for these remaining territories. If it does not, it will never finish its work and it will be disregarding the freely and informed wishes of the people concerned. We support the Committee's insistence on ensuring that the apparent will of the people is indeed, truly and genuinely their freely determined and informed will. But we cannot support a dogmatic insistence by the Committee on imposing its doctrines, over and on the freely and informed will of the peoples of the Territories. Colonialism is as much a state of mind as it is about extent of self-governance.

In this respect, Madam Chair, I was heartened to see reports of your own remarks at the Grenada Seminar, recognising that it was clear that different Territories had different needs, expectations, and concerns, and that it was incumbent upon the Special Committee to recognise that Spectrum, and its duty to find ways to deal with that reality on a case by case basis, always keeping as paramount consideration the wishes and well being of the peoples of the Non-Self Governing Territories. I agree entirely with you Madam Chair, and would respectfully commend your views to the other members of the Special Committee.

The people of Gibraltar do not want independence. We value our sovereignty and constitutional links with Great Britain and wish to retain them, albeit in the modern relationship that is not colonial in nature that we now enjoy with them. I understand that many of you, given your own histories, experiences and opinions may be challenged by these sentiments, will not understand how this can be so – and may as a result even doubt whether it can be the genuine, freely expressed and informed will of the people of Gibraltar. I assure you that it is – and you may test it whenever you like, by whatever means and process you like.

So what does this mean? Does it mean that in your eyes, Gibraltar can never be decolonised? We are a small country, 30,000 people and 7½ square kilometres. But we are socially and economically prosperous and totally financially self-sufficient. We enjoy one of the highest GDP's per capita in the world. I dare say that we might, therefore, enjoy more real and meaningful independence than many so-called independent countries.

Independence is not the clear cut concept in the modern world that it was at the time of the establishment of your decolonisation doctrines. Who is truly independent in today's world? What does independence mean in practice? Why then make a holy grail of a concept that has already become distorted by other global political and economic factors and realities even for larger countries?

Do not many independent countries now give up some of their previously cherished independence to collective regional decision making structures, for example, the European Union? The ingredients of the concept of modern day independence have changed. If Spain (and the other EU Member States) remains an independent country, even though she has chosen to surrender to the European Union Institutions a large chunk of her power and control over her own national affairs, why is Gibraltar a colony just because we choose a Constitutional relationship with the UK, that gives the UK much less power over our affairs than Spain has surrendered over her own affairs to the EU? These concepts evolve with time, and the Special Committee must adjust its position to accommodate such evolution.

It is against all this background that a cross party Gibraltar delegation has negotiated a new Constitution with the UK. This new Constitution minimises the few remaining powers that are not exercisable by the elected Government of Gibraltar – and those that are not, is by the freely expressed and informed will of the people of Gibraltar who voted in a referendum in November 2006 to approve and accept this New Constitution. The United Kingdom has recognised and accepted that this Referendum, that was organised by the Government of Gibraltar, with the unanimous approval of the Gibraltar Parliament and under rules unanimously approved by the Gibraltar Parliament, constituted an act of self-determination in the context of our UN Charter right to self-determination.

Spain remains in a 'state of denial' over the factual, political and democratic relevance of this Referendum by saying, as she did at the Grenada Seminar, that there is no 'known legal

basis' for this referendum. The known basis for the referendum is the mandate and authority of a unanimous vote of our OWN democratically elected parliament. The insinuation by Spain that this Referendum may have been illegal is preposterous and the UK has already informed the Kingdom of Spain that the referendum was a lawful and proper expression of the free will of the people of Gibraltar.

The new Constitution is now in place and in operation. It maximises our self Government in all areas of Governance except defence, external affairs and internal security which, under our own Constitution vest in the Governor as a matter of distribution of powers. All other matters are the competence of the Gibraltar Government, the Gibraltar Parliament or other Gibraltar legal institutions. The old power of United Kingdom Ministers to disallow legislation passed by the Gibraltar Parliament has been abolished. The so-called "Administering Power", the UK, administers absolutely nothing in Gibraltar.

Like many other small countries for whose external affairs and defence the UK remains responsible, such as Jersey, Guernsey and the Isle of Man, and which, like Gibraltar are not part of the UK – and whom no one regards as colonies – Her Majesty the Queen, as Queen of Gibraltar and not as Queen of the United Kingdom, retains residual power to make laws for Gibraltar. This is practically never used, and never without consultation with the Government of Gibraltar.

So, our new Constitution, while giving us practically full self-government, is clearly not a constitution for a sovereign independent State, nor is it intended to be. Nor, in the Gibraltar Government's view should the UN require it to be. This is the status and relationship with the UK that the people of Gibraltar want. It is not a colonial relationship, Gibraltar and its people do not feel colonial. The UK neither feels itself to be, nor behaves like a colonial power in Gibraltar, nor could it do so even if it wanted to. Anyone who visits and becomes familiar with Gibraltar will see that this is indeed the case.

We consider that through adopting a Constitution that creates a modern relationship with the UK, which is not colonial in nature we have ceased to be a colony and are thus decolonised. It is important here not to confuse the words modernisation and modern. Of course "modernisation" may be insufficient because it does not go far enough. But "modern" cannot mean colonial because no-one could consider a colonial relationship to be "modern". "Modernisation" is a matter of degree, but if a Constitution creates "a modern" relationship, it cannot also be a colonial relationship. No colonial relationship could be said to be modern.

Spain says that the New Constitution is irrelevant to our decolonisation because it is relevant only to our internal government organisation and institutions. Spain may think and say as she pleases, but the inescapable reality is that according to both the UK and Gibraltar the New Constitution establishes something that was not there before it, namely a modern and mature relationship between the UK and Gibraltar. Since this Constitution changes the nature of the relationship between the UK and Gibraltar, it cannot rationally be said that it does not result in a change in that relationship. Clearly it does.

Madam Chair, we do not think that the United Nations should concern itself any further with the decolonisation of Gibraltar save for what remains to be done here for your purposes, namely our so-called "de-listing". How that can be brought about is a matter for UN procedures and criteria. We believe that these are unrealistic and inappropriate to the extent that they appear or purport to prevent delisting of any case where the ex-administering power retains any sort of reserve power to legislate, regardless of the circumstances of use and real nature of that power. We would urge the UN to revisit and reconsider these criteria. However, as I will explain in a moment, that is not the case in Gibraltar. Under our Constitution the Administering Power, that is the UK, retains no right or power to legislate in Gibraltar.

But in any event, whatever may be the position that the UN chooses to take in this regard does not alter the political and factual reality that Gibraltar has to every other effect ceased to be a colony, is not a colony, is not considered by its ex administering power to be a colony and does not think of itself or feel or look like a colony. These are inescapable realities which

the UN can choose to ignore, but which do not therefore or thereby cease to be realities. For us decolonisation is a matter of objective fact, circumstances and realities, and not defined exclusively by whether or not we can persuade you to de-list us under your particular criteria.

Madam Chair, I have already said that on a proper analysis, our ex-administering power does not, under our Constitution, retain a legislative or executive role or power in Gibraltar. In her attempts to undermine the significance and effect of our new Constitution, Spain has recourse to a number of arguments which are simply wrong. She points to various aspects of our Constitution in an attempt to demonstrate the continuing power of the UK and what Spain calls "the administering authorities in the person of the Governor". These remarks, most recently made by the Spanish Representative at the Grenada Seminar, demonstrate a clear lack of understanding by Spain of the Constitutional model and of the proper legal analysis of the relationship that it creates. The United Kingdom Government has no powers in Gibraltar under our Constitution. It has no legislative powers and it has no executive powers.

Under our system of Government, as in much of the Commonwealth, Her Majesty Queen Elizabeth the Second is the head of State and the source of all executive and legislative authority in Gibraltar. In exactly the same way as in the UK itself, Australia, Canada and the other Commonwealth countries. The Queen is separately Queen of all territories recognising and acknowledging Her as Head of State, including Gibraltar.

Powers vested by the Constitution of Gibraltar in the Governor are vested in him as Representative of Her Majesty Queen Elizabeth the Second in her capacity as Queen of Gibraltar, and not in Her capacity as Queen of the United Kingdom. The Governor is not the representative in Gibraltar of the Crown in right of the Government of the United Kingdom.

Spain's argument is based on a failure to understand that the Crown is not one and non-divisible, and that when Queen Elizabeth the Second or her representative in a Territory, the Governor, acts, they do not do so as the Crown of the United Kingdom, or as representatives of the UK Government. So, when the Governor exercise a power under our Constitution, he is not exercising a power on behalf of or in the name of, or a power of the administering power.

Even in those limited circumstances when the Queen Acts through a Secretary of State of the UK Government to issue an instruction to the Governor of Gibraltar, he does so, not on behalf of the United Kingdom Government, nor in his capacity as a Minister of the UK Government, but rather as the mouthpiece of the Queen, as Queen of Gibraltar, not as Queen of the United Kingdom. He is passing on her instructions as Queen of Gibraltar, not acting as Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom on behalf of or for the UK Government. It is not the act of the UK Government. The Government of the United Kingdom is not the government of or in Gibraltar and has no powers of Government in Gibraltar. It is absolutely essential to understand this.

And so the Governor is not the Governor of the Administering Power. He is the representative in Gibraltar of the Queen as our head of state, as is the Governor General in any Commonwealth Country because our sovereignty vests in Her, not in the UK Government. Thus the UK Government has no power or authority in Gibraltar under the Constitution to instruct the Governor or otherwise. Such power and authority can only be exercised by the Queen who, in this context is (and is only) the Queen of Gibraltar, not of the UK. The UK and its Government exercise no power in Gibraltar because it possesses no power to exercise.

These important and fundamental constitutional legal principles were definitively established in 2005 by the Appellate Committee of the House of Lords, the Highest Court in the UK in the case of Secretary of State for Foreign and Commonwealth Affairs and Quark Fishing Limited. They are therefore principles of UK law which bind the UK Government in every respect. This is the true nature of the constitutional relationship between Gibraltar and the UK, and it is not

possible to properly apply your delisting criteria to Gibraltar without understanding the true nature of that relationship.

Accordingly on each occasion that Spain points to powers of the Governor or of the Administering Power as demonstrating that Gibraltar must therefore still be a colony because these are powers of the administering power, she is completely wrong in law, based on a failure to properly understand the constitutional status of the Queen as our head of state, of the Governor and the Constitutional relationship between the UK and its Overseas Territories, in consequence of which Spain systematically misrepresents the position.

In an extreme example of this erroneous argument, the Spanish Representative at the Grenada Seminar pointed to a controversy that currently exists in Gibraltar in connection with the wish of the lawyers in Gibraltar to see the removal from Office of the Chief Justice of Gibraltar. Spain pointed to the fact that the lawyers had approached the Governor (whom Spain referred to as "the highest representative of the administering power"). The Governor is not the representative (highest or lowest) of the Administering Power. Nor has he exercised any veto power recognised in the new Constitution in regard to the Judicial Service Commission, as falsely stated by the Representative of Spain.

Those of you who are from the Commonwealth, indeed from any democratic country, will know that elected Governments are not normally the authority for the removal of judges from office. This is a fundamental element of the independence of the judiciary. That authority usually vests in the head of State. In our case the Head of State is Queen Elizabeth the Second, Queen of Gibraltar, whose representative in Gibraltar is the Governor. It is in that capacity that the Governor is quite properly and rightly involved, and not on behalf of the Administering Power at all. Interestingly, even in that capacity the Governor is now, under our New Constitution, obliged to act on the advice of a Gibraltar Judicial Services Commission appointed under Gibraltar legislation, and not in his own discretion or power.

Accordingly Madam Chair, nothing in our New Constitution is indicative of continuing colonialism in Gibraltar and, indeed, nothing prevents you from delisting Gibraltar under your own criteria.

Madam Chair, I was astonished to see reports of the Spanish Representative's reference in Grenada to what he referred to as "as excerpt from a leader in the Gibraltar press". He quoted it saying that it illustrates what he meant about Gibraltar still being a colony because of the powers of the Governor.

Madam Chair, you may remember the Spanish representative quoting it:

"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 that 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 beholder to our colonial masters!"

Madam Chair, it is deeply regrettable that the distinguished representative of the Kingdom of Spain should have misinformed the Grenada Seminar in this way. The above excerpt that he quoted was not, as he wrongly stated, to the Seminar "a leader in the Gibraltar press" but rather an anonymous letter posted under a pseudonym by a letter writer on an internet website. Not "a leader" and not even a "press" comment. A copy of it is attached to the text of my speech which has been circulated so that member of the Committee can see for themselves what it is.

Madam Chair, I have had sight of the draft as at 11:30am on 24<sup>th</sup> May of the conclusions and recommendations of the Grenada Seminar. A number of them are said not to apply to territories where there is a dispute over sovereignty. These are:

- (1) In the process of decolonisation there is no alternative to the principle of self-determination, which is also a fundamental human right. Square bracketed in the draft. (No7)
- (2) Participants of Territories to participate in the development of work programmes. (No9)
- (3) In order to enhance information exchange "Special Committee focal points" may be established. (No10)
- (4) Electoral assistance available regarding any act of self-determination. (No19)
- (5) Visits and special missions to the Territory by the Special Committee. (No21)

Madam Chair, Recommendation No25 calls on the Special Committee to adopt the Report of the Grenada Seminar and include it in your report to the General Assembly. That paragraph also says that the recommendations of the Seminar are "important expressions of the will of the people of the territories". This statement is simply untrue and therefore must not be adopted by you. No people of NO territories has expressed the view that the people of Gibraltar (a territory subject to a sovereignty dispute) should be denied self-determination, the ability to participate in development of work programmes, the establishment of Special Committee focal points, electoral assistance for acts of self-determination or visits by the Special Committee. These views, inserted into the report of the Seminar at the bidding of self interested member states and their friends and allies in the drafting committee at the Seminar, cannot be misrepresented, and cannot masquerade, as "the important expressions of the will of the people" of non self governing territories. They are not. Madam Chair, you were there. Did you hear these propositions stated as the "important expression of the will of the people of the territories?" This is a matter of integrity of process.

Furthermore, Madam Chair, if the Special Committee adopts those extraordinary propositions, what you will be saying is that the people of Gibraltar do not enjoy the right to self-determination. If that is your position, how are you ever going to finish your work. How will you ever be able to de-list Gibraltar (and the Falkland Islands for that matter)? Are you saying that you will not de-list us until Spain's territorial integrity as at 1704 is restored by the transfer of the Sovereignty of our homeland to Spain against our wishes?

Finally, Madam Chair, I thank you for your congratulations at Grenada on the establishment of the Trilateral Forum of dialogue between the Governments of Gibraltar, Spain and the UK. My Government regards it as one of its most important achievements. This valuable and most useful trilateral forum is viable for all sides. Each of the three Governments takes part in its own right and on the same basis. The agenda is open, and nothing can be agreed unless all three Governments agree. The Forum is working well. In September last year it produced its first batch of mutually beneficial agreements relating to our airport and aviation issues, cross border traffic fluidity, cross border telecommunications issues and long standing issues relating to pensions of Spanish workers in Gibraltar.

The Gibraltar Government looks forward to the continuation of this dialogue and to reaching more mutually beneficial agreements with Spain in this forum.

In the Grenada Seminar, the Spanish Representative said that Spain hoped that the dialogue would contribute to creating serene and favourable conditions that will allow us to address the question of Sovereignty at an appropriate time. The dialogue in the new Trilateral Forum is open agenda, and therefore Spain is indeed free to raise the question of Sovereignty, as we are free to continue to raise the question of our right to self-determination, and to continue to make clear our position on Sovereignty. This new trilateral dialogue process is the only process of dialogue now effectively available to discuss Gibraltar issues. There is no on-going bilateral process of dialogue or negotiation between the UK and Spain about our sovereignty. Indeed, we have a formal commitment from the UK that it will not enter into any sovereignty negotiations with Spain with which we are not content. The Sovereignty of Gibraltar cannot be disposed of without the consent and wishes of the people of Gibraltar. That will never change, and an acknowledgement by Spain of that inescapable fact would contribute much serenity.