

July 2008

The Hon Mike Gapes MP  
Chairman  
Foreign Affairs Committee  
House of Commons  
Westminster  
London

I understand, from the press, that following my evidence to the Committee on 5<sup>th</sup> March 2008, the Spanish Ambassador to the United Kingdom has written to you asserting that my evidence to you in relation to Spain's position on the sovereignty of Gibraltar waters, was incorrect. It was not.

In my evidence (in answer to Q 218 from Mr Pope) I said, as follows: -  
"The underlying fundamental issue is that Spain claims that Gibraltar has no sovereign territorial waters – a claim that is unsustainable, because there is a 1952 United Nations Convention on territorial waters, which gives every spot on the planet the treaty right to territorial waters for a minimum of 12 miles. Spain subscribed to that treaty, making no reservation (my underlining for emphasis) whatsoever in relation to the Gibraltar question. International law makes Spain's denial of territorial waters in Gibraltar completely unsustainable in law". Save that I misrecalled the year of the treaty, which is indeed 1958 (as Spain says) and not 1952 (as I said) my statement is correct, as to both content and effect in international law.

The Ambassador's letter is carefully worded, and, in fact, does not challenge the statement that I made. What it does, is to deny my statement by reference to language that I did not use. In consequence, the Ambassador's assertion that the position in law is not as I asserted it to be, is incorrect.

The crux of the matter is my use of the word "reservation", while the Ambassador uses the words "Declaration" or "statement". These are wholly different things, with very different legal effects in international law.

The Ambassador said as follows: -

“Spain does not recognize as having ceded to the United Kingdom any spaces other than those included in Article X of the Treaty of Utrecht.

Consequently, and with regard to the waters surrounding Gibraltar, when ratifying the United Nations Convention on the Law of the Sea, on 5 December 1984, the Spanish Government stated (my underlining, for emphasis) “that this act cannot be construed as recognition of any right or status regarding the maritime space of Gibraltar that are not included in Article X of the Treaty of Utrecht of 13 July 1713 concluded between the Crowns of Spain and Great Britain”. (This same statement was also made by the Spanish Government when ratifying the previous United Nations Conventions on the Territorial Sea and Contiguous Zone of 1958 (not 1952).”

The Spanish Ambassador then went on to say that upon Spain’s ratification of the UN Law of the Sea Convention of 1984, it also declared that it did not consider that Resolution III of the Third United Nations Conference on the Law of the Sea is applicable to the colony of Gibraltar.

My statement was to the effect that Spain had made “no reservation”. That statement is correct. Unlike a reservation, a unilateral statement or declaration does not, in international law, have the effect of varying the meaning or effect of a treaty, or of exempting a signatory from the legal effect of the Treaty. Spain did not enter a reservation, she made only statements or declarations. She is not therefore relieved of the Treaty provisions, as they apply (which they do) to Gibraltar.

Article 1 of the 1958 Convention on the Territorial Sea and the Contiguous Zone provides that:

“The sovereignty of a State extends beyond its land territory and its internal waters to a belt of sea adjacent to its coast, described as the territorial sea”.

Spain did not enter a reservation to this provision when she acceded to the convention on 25 February 1971. She made “statements” or “declarations”. Accordingly, article 1, which fully binds Spain in international law in the case of Gibraltar, entitles the UK to sovereignty of “a belt of sea adjacent to” the coast of Gibraltar.

Spain’s statements and declarations (not being reservations) are totally ineffective in law to bring about the opposite result, or to reserve her position in relation to the matter. The fact that Spain asserts that she ceded no waters to Britain under the Treaty of Utrecht, is irrelevant to the legal effect of Article 1 of

the 1958 Convention, which entitles Britain of Sovereignty of a territorial sea by automatic virtue of Sovereignty of the “land territory”.

The 1982 United Nations Convention on the Laws of the Sea provides in Article 3 that:

“Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from the baselines determined in accordance with this Convention”.

The UK has declared 3 miles in the case of Gibraltar.

Again, Spain did not enter a reservation. Indeed, she was not legally at liberty to do so under the terms of the Convention itself, Article 309 of which specifically prohibits reservations and exceptions. Article 309 reads:

“ No reservations or exceptions may be made to this convention unless expressly permitted by other articles of this convention”.

Article 310 of the Convention allows States to make declarations or statements regarding its application at the time of signing, ratifying or acceding to the Convention, which do not purport to exclude or modify the legal effect of the provisions of the Convention.

Article 310 reads: -

“Declarations and statements. Article 309 does not preclude a State, when signing, ratifying or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonization of its laws and regulations with the provisions of this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Convention in their application to that State”.

The following propositions are thus clear and unchallengeable.

- (1) The 1958 Convention on the Territorial Seas and Contiguous Zone has been applied to Gibraltar. It provides (Article 1) that the Sovereignty of a State extends beyond its land territory to a belt of sea adjacent to its coast. Spain did not enter any reservation to the above, such as would relieve her of the legal effects of this provision. The Treaty of Utrecht is totally irrelevant to the legal effect of the 1958 Convention.
- (2) Accordingly, British Sovereignty of Gibraltar’s “land territory” entitles it to Sovereignty of “a sea belt adjacent to its coast.” Britain has declared 3 miles.

- (3) The United Nations Law of the Sea Convention of 1982 has been extended to Gibraltar. It provides (Article 3) that every state has the right to establish the breadth of its territorial sea upto a limit not exceeding 12 nautical miles. The 3 miles declared by Britain is thus squarely within the entitlement bestowed by the Convention. Spain has not entered a reservation to the above, and indeed she was precluded from doing so by the terms of the 1982 Convention (Article 309).
- (4) Spain did make statements and declarations but, Article 310 of the 1982 Convention makes it clear that such statements and declarations cannot exclude or modify the legal effect of the provisions of the Convention in their application to Spain.
- (5) Accordingly, by virtue of these Conventions the UK has a treaty right to territorial waters in Gibraltar not exceeding 12 miles. The UK has declared 3 miles. Spain's statements and declarations have no legal effect in altering this position. Her political assertions to the contrary are thus unsustainable in international law, as I informed the Committee.

Accordingly, certain of the facts communicated to the Committee by the Spanish Ambassador are incorrect, as are the legal effect of the erroneous facts contained in his letter.

I remain at the disposal of the Committee to further clarify any of these issues.

Peter R Caruana  
Chief Minister