



ORGANISATION DU TRAITÉ DE L'ATLANTIQUE NORD
NORTH ATLANTIC TREATY ORGANIZATION

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To: Permanent Representatives

From: Secretary General

GIBRALTAR

I circulate herewith as a basis for discussion the following documents:

- (i) the text of the substantive paragraphs of the Spanish Note. The English version is based on the official translation of the Note addressed to the United States Government: the French version on an unofficial translation of the Note addressed to the French Government. In each case the text omits the final sentences, which vary according to the addressees. (Annex I);
- (ii) a memorandum prepared by the Legal Adviser on the status of Gibraltar vis-à-vis NATO. (Annex II).

2. The United Kingdom Delegation has already circulated the statement and further interventions made by Sir Evelyn Shuckburgh in the Private Council on January 26th.

3. It is not my intention at this stage to comment on the substance of the problem. However, I would wish to draw the attention of the Council to the fact that so far as can at present be ascertained, the Spanish Authorities made no objection to the use of the port or airfield of Gibraltar by the Allies of the United Kingdom during the Second World War. Nor did they object to the use of the port by Britain's Allies during the First World War.

(Signed) Manlio BROSIO

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SPANISH NOTE ON GIBRALTAR TO THE UNITED STATES

The Ministry of Foreign Affairs presents its compliments to the Embassy of the United States at Madrid and has the honor to inform it as follows:

1. Inasmuch as Great Britain was established at the fortress of Gibraltar by virtue of the cession made by Spain in conformity with the Treaty of Utrecht of July 13, 1713, Gibraltar's status is conditioned by the terms of Article 10 of that Treaty. Since that time, Great Britain has endeavored unilaterally to alter the conditions of that cession, converting the fortress into a colony, extending the area of the port to the adjacent Spanish territorial waters, and, in violation of Spanish sovereignty, occupying approximately one square kilometer of Spanish territory, which was never ceded, in the so-called neutral zone, where Great Britain has constructed the airfield which it uses indiscriminately for both civilian and military purposes, thereby running counter to the very raison d'etre of the neutral zone, which requires that it be demilitarised. Recently, it has been making another attempt to alter the status of the base unilaterally, after putting it in the service of the Alliance to which Great Britain is a party.

The diplomatic history of Gibraltar is summed up in a collection of documents submitted to the Spanish Cortes by the Spanish Government. Copies of those documents, accompanied by an unofficial translation in the English language, are enclosed.

2. The Spanish Government has been asking the United Kingdom to enter into negotiations to bring the status of Gibraltar into line with present-day circumstances. The Committee of 24, in a unanimous opinion of October 16, 1964, and the United Nations General Assembly, in a resolution of December 16, 1965, for which the United States voted, recommended that such negotiations be held.

3. The British Government has actually been avoiding the holding of such negotiations and keeps the problem at the international level, which has given grounds for the representative of the USSR at the United Nations to affirm that Gibraltar is a military base in the service of NATO and that it should be dismantled. He has been supported by the representatives of Byelorussian SSR, Ukrainian SSR, Poland, Hungary, Czechoslovakia, Rumania, and Bulgaria.

4. The action by Great Britain in Gibraltar to evade unilaterally the conditions of the cession imposed by Spain in the Treaty of Utrecht, on the one hand, and the position of the USSR and its Warsaw Pact Allies, on the other hand, compel the Spanish Government duly to appraise the possible consequences of the establishment on its territory of a military base in the service of an organization to which Spain does not belong.

Consequently, in order to avert misunderstandings in connection with the problems raised by Gibraltar's present situation, and to escape the servitudes implicitly resulting from that situation, the Spanish Government finds itself compelled to inform the Government of the United States that it does not consider Gibraltar a NATO base, and that, therefore, it will not consent to the use by the member countries of that organization of any facility under Spain's control; and it formulates here and now all reservations with respect to any NATO action using Gibraltar as a base.

STATUS OF GIBRALTAR VIS-A-VIS NATO

Note by the Legal Adviser

The recent Spanish Note on Gibraltar raises the question of whether there is a "NATO base" in Gibraltar. In fact, the term is not one which can properly be used in the context of the Atlantic Alliance. There are only:

- A - military bases within the NATO area;
- B - bases constructed with NATO infrastructure funds;
- C - bases used by the forces of NATO countries, and
- D - NATO headquarters.

2. As a Crown Colony, Gibraltar is part of the territory under United Kingdom jurisdiction in Europe. As such, it appears that the Rock and the forces on it, whether British or otherwise, are covered by the provisions of articles 5 and 6 of the North Atlantic Treaty. This, at any rate, was the view taken by the British Representative in the Council of Deputies on the 24th May, 1951, when he said that "during the preliminary discussions in Washington, it had been agreed that Malta and Gibraltar would be covered by the Treaty". (Meeting of Deputies of the 24th May, 1951, paragraph 14.) Gibraltar is thus a base within the NATO area.

3. Moreover, NATO has put some £616,000 sterling into common infrastructure works in Gibraltar. About half of the work carried out on this basis is accounted for by radio and telecommunications installations, and the other half by apparatus for distilling sea water and the appropriate storage reservoirs.

4. As a British base within the NATO area, Gibraltar is, of course, utilised by the armed forces of other countries of the Alliance. The conditions of use are laid down bilaterally between the United Kingdom and the countries concerned.

Paragraph 9 of MC 53(Final) lays down that "the British bases in the Mediterranean are national bases. Their defence is the direct responsibility of the British authorities who will give SACEUR all the necessary facilities to enable him to carry out his mission effectively". Similar wording in regard to the use of the bases in time of war is used in paragraph 6 (b) of Annex I of MC 36/2(Revised)(Final) of the 20th May, 1960.

In this sense, Gibraltar is, therefore, a British base the defence of which is the responsibility of the United Kingdom which, however, may, of course, place certain facilities at the disposal of its allies.

5. Finally, it should be noted that an interallied NATO Headquarters, COMGIBMED, is located in Gibraltar (see SGM-523-54 and C-M(54)63).

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6. In conclusion, it would appear that Gibraltar is a British base situated within the NATO area. Common infrastructure works have been financed there internationally. The United Kingdom has made certain existing facilities available to its allies on a bilateral basis. A NATO Headquarters is located there. But Gibraltar is not a "NATO base", because strictly speaking, there is no such thing.

(Signed) G. GUILLAUME

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