



House of Commons
Foreign Affairs Committee

Gibraltar

Eleventh Report



House of Commons
Foreign Affairs Committee

Gibraltar

Eleventh Report

*Report, together with formal minutes and
written evidence*

*Ordered by The House of Commons
to be printed 15 July 2003*

The Foreign Affairs Committee

The Foreign Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Office of the Foreign and Commonwealth Office and its associated public bodies.

Current membership

Rt Hon Donald Anderson MP (Labour, Swansea East) (Chairman)
David Chidgey MP (Liberal Democrat, Eastleigh)
Fabian Hamilton MP (Labour, Leeds North East)
Eric Illsley MP (Labour, Barnsley Central)
Andrew Mackinlay MP (Labour, Thurrock)
John Maples MP (Conservative, Stratford-on-Avon)
Bill Oler MP (Labour, Nuneaton)
Richard Ottaway (Conservative, Croydon South)
Greg Pope MP (Labour, Hyndburn)
Rt Hon Sir John Stanley MP (Conservative, Tonbridge and Malling)
Gisela Stuart MP (Labour, Birmingham Edgbaston)

The following member was also a member of the committee during the parliament.

Sir Patrick Cormack MP (Conservative, Staffordshire South)

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/parliamentary_committees/foreign_affairs_committee.cfm. A list of Reports of the Committee in the present Parliament is in the inside front cover of this volume.

Committee staff

The current staff of the Committee are Steve Priestley (Clerk), Geoffrey Farrar (Second Clerk), Elizabeth Sellwood (Committee Specialist), Jane Appleton (Committee Assistant), Sheryl Dinsdale (Secretary) and Andrew Boyd (Senior Office Clerk).

Contacts

All correspondence should be addressed to the Clerks of the Foreign Affairs Committee, Committee Office, House of Commons, London SW1A 0AA. The telephone numbers for general enquiries are 020 7219 6106/6105/6394; the Committee's email address is foraffcom@parliament.uk.

Contents

Report	<i>Page</i>
Conclusions and recommendations	3
Introduction	5
The negotiations with Spain	6
Joint sovereignty—a done deal or a dead duck?	6
Two flags, three voices	9
The United Kingdom as Gibraltar’s advocate in the world	12
Gibraltar in Europe	14
Representation in the European Parliament	14
The Convention on the Future of Europe	15
The pensions ‘scam’	17
Gibraltar’s external links	20
Telephone links with Gibraltar	20
Air, maritime and land links with Gibraltar	21
<i>Air links</i>	21
<i>Maritime links</i>	22
<i>Land links</i>	23
Gibraltar and NATO	23
Formal minutes	25
List of written evidence	27

Conclusions and recommendations

1. We recommend that the FCO withdraw its unacceptable joint sovereignty proposal, and then get on establishing normal and co-operative relations between Spain and Gibraltar as should be the case between member states of the European Union and their dependent territories. (Paragraph 12)
2. We recommend that the Government explain clearly and in full why it offered Gibraltar a voice in meetings under the Brussels process, but did not renew its previous undertaking not to agree to any new arrangements involving Gibraltar discussed at such meetings without the specific endorsement of the Government of Gibraltar. (Paragraph 21)
3. We recommend that the Government invite the Government of Gibraltar to participate in any further talks on the future of Gibraltar, whether or not under the Brussels process, under the formula offered in 1997. (Paragraph 22)
4. We conclude that there are positive indications that the British Government is now sticking up for Gibraltar, and is no longer prepared to allow unjustified allegations to go unchallenged. We recommend that the Government adopt this practice as a matter of policy. (Paragraph 30)
5. We recommend that the Government explain how Spain's apparent opposition to enfranchisement of the Gibraltar electorate in respect of elections to the European Parliament prevented the Government from implementing the judgment of the European Court of Human Rights in the first place; and what it understands to be the grounds on which Spain is now threatening to take action against the enfranchisement process under Article 227. (Paragraph 35)
6. We recommend that the Government set out in its response to this Report: (a) the implications for Gibraltar of the proposals contained in the draft Constitution published by the Convention; (b) how it intends to represent the interests of Gibraltar at the forthcoming Inter-Governmental Conference; and (c) how it will ensure that the United Kingdom's freedom to pursue bilateral relations with Gibraltar—and with the overseas territories generally—in its and their best interests is not compromised by decisions taken at the IGC. (Paragraph 40)
7. We recommend that the British and Gibraltar Governments renew their efforts to find a solution to the pensions issue and that the FCO in its Response to this Report set out in detail how it proposes to resolve this matter. (Paragraph 50)
8. We recommend that the Government set out in clear terms in its Response to this Report its policy on using United Kingdom telephone numbers for lines in Gibraltar. (Paragraph 58)
9. We recommend that the Government urgently complete its review of landing charges at Gibraltar Airport—and announce the results—as soon as may be practicable. (Paragraph 63)

10. We recommend that in its response to this Report the Government set out what it is doing to persuade the Spanish Government to honour its agreement to restore maritime links between Spain and Gibraltar. (Paragraph 66)
11. We recommend that in its response to this Report the Government set out the latest statistics on delays at the border between Gibraltar and Spain—making clear the basis on which those figures have been compiled—and state how it proposes to ensure that delays at the border between Gibraltar and Spain are no greater than at the land borders between Schengen and non-Schengen EU states. (Paragraph 69)
12. We conclude that it is unacceptable that prohibitions on direct military movements and military communications between the territories of two NATO allies should continue to exist. We recommend that the British Government seek to bring the full weight of NATO to bear on the Spanish Government to have these prohibitions lifted. (Paragraph 71)

Introduction

1. This is the fifth substantive Report on Gibraltar of the Foreign Affairs Committee in four years.¹ Much has happened in that period, not least the decision of the British Government to negotiate with Spain a deal to share sovereignty over the territory. Strong public interest in the fate of Gibraltar, and the lack of any formal representation of Gibraltar in the British political system, have convinced us we are right to take such a close interest. Of all the subjects into which this Committee has inquired in recent years, Gibraltar has probably found us further from agreement with the Government than on any other issue. Notwithstanding recent indications of a belated recognition by Ministers of the futility of pursuing shared sovereignty against the firm opposition of the Government and people of Gibraltar, we believe that the Government has misjudged and mishandled the Gibraltar question, and we will continue to scrutinise it closely.

2. Below, we follow up our Report of November 2002 by pursuing a number of points on which we felt that the Government's Response was particularly unsatisfactory. For convenience, we reproduce in each section the relevant conclusions and recommendations, together with the relevant Government responses.

3. We have not heard further oral evidence in preparing this Report. However, we did receive further written evidence—published in this volume—and we held an informal meeting with the new Governor of Gibraltar, Sir Francis Richards, just before he took up his duties. We are grateful to Sir Francis and to those who submitted written evidence.

¹ The others were the Fourth Report of Session 1998–99, HC 366; the Ninth Report of Session 1999–2000, HC 863; the Sixth Report of Session 2000–01, HC 319; and the Eleventh Report of Session 2001–02, HC 973, published in November 2002. The Government Response to the Eleventh Report was published in February 2003 as Cm 5714.

The negotiations with Spain

Joint sovereignty—a done deal or a dead duck?

4. In our Eleventh Report of last Session—referred to from now on as the ‘previous Report’—we concluded that

... the Government was wrong to negotiate joint sovereignty, when it must have known that there was no prospect whatsoever that any agreement on the future of Gibraltar which included joint sovereignty could be made acceptable to the people of Gibraltar, and when the outcome is likely to be the worst of all worlds—the dashing of raised expectations in Spain, and a complete loss of trust in the British Government by the people of Gibraltar.²

5. The Government replied

We do not agree. The Government’s objective has always been to reach an agreement that it could commend to the people of Gibraltar; an agreement that offered the prospect of a secure, stable and prosperous future for Gibraltarians. As was recognised by Baroness Thatcher and Lord Howe in 1984, any negotiations to that end would need to tackle the issue of sovereignty. But, as the Foreign Secretary made clear in his 12 July statement, the sovereignty issue would only form one part of any agreement. Other principles—such as more internal self-government, the retention of British traditions, customs and way of life, the retention of British nationality, the freedom to retain institutions that the people of Gibraltar might want—would also form part of the agreement we have been discussing with Spain. As the Foreign Secretary made clear to the House on 12 July, if and when we were able to reach agreement with Spain on such a framework, we would publish it in a joint declaration—a statement of intent by the two Governments. Thereafter, in the second phase, there would be further detailed negotiations—in which the Government of Gibraltar would again be invited to participate fully—to produce a comprehensive package, including a new draft treaty, based on the principles set out in the joint declaration. The United Kingdom would ratify such a treaty only after securing the consent of the Gibraltarians in a referendum. The Government believes that further dialogue is needed with Spain and with Gibraltar if progress is to be made.³

6. The FCO apparently believes that, notwithstanding the expressed view against the principles embodied in the Anglo-Spanish deal of almost 99 per cent of the Gibraltarian electorate in a referendum declared to be fair by United Kingdom Members of Parliament and other neutral observers, “further dialogue... with Spain and Gibraltar” will produce “progress.” We disagree. As we stated in our previous Report,⁴ we see no prospect of the

2 Eleventh Report from the Foreign Affairs Committee, Session 2001–02, *Gibraltar*, HC 973, para 31

3 Cm 5714

4 Eleventh Report from the Foreign Affairs Committee, Session 2001–02, *Gibraltar*, HC 973, para 17

people of Gibraltar agreeing to joint sovereignty. That is why, in paragraph 52 of our previous Report, we concluded that

... the British Government now faces an unenviable choice. On the one hand, it can continue to negotiate on the issue of joint sovereignty and reach a bilateral agreement with Spain which may be in the wider British interest, but which will not be acceptable to the Government or people of Gibraltar. On the other hand, it can withdraw its joint sovereignty proposal—with the risk that Spain will react negatively, both bilaterally and against Gibraltar—re-establish trust and good relations with the Government and people of Gibraltar, encourage Spain to do the same, and only then attempt to negotiate an agreement with Spain, with a representative of Gibraltar participating as a full negotiating party (whether under the British flag or not). We further conclude that this dilemma is entirely of the Government's own making.⁵

7. The FCO replied that

The Government's position remains as set out by the Secretary of State to Parliament on 12 July. It continues to believe that a process of discussion with Spain and with the people of Gibraltar is right because it is in the interests of people in Gibraltar, in the United Kingdom and in Spain. There remain real issues which have to be discussed with both. Whether those discussions take place next week, next month, or next year, it is clear that the issues are not going to go away. We would do no one a service by ignoring them or simply hoping that they will disappear.⁶

8. Spain is a close ally of the United Kingdom, as it proved during the Iraq crisis. It has a legitimate interest in Gibraltar, and we entirely accept that there are “real issues which... are not going to go away.” We do not suggest they should be ignored, and we do not believe they will simply disappear. But the people of Gibraltar are not going to go away, and their expressed view that joint sovereignty is not a solution to the real issues cannot be ignored. The Government did itself no good at all by hoping that the people of Gibraltar would change their mind, when it was clear they would not. For as long as the Government refused to abandon the joint sovereignty proposal, the people of Gibraltar continued to believe that it represented, in the words of their Chief Minister, a “done deal.”

9. We were interested, therefore, to read the recent remarks of the Minister for Europe, Dr MacShane, in interviews with the Spanish dailies *El Pais* and *El Mundo*, acknowledging that a “long period of calm and friendly relations with Spain”—perhaps as long as 30 years—is required before any change in the status of Gibraltar is likely to be acceptable to its people, and that at the moment the chances of a deal are “simply zero.”⁷ We stated as much in our previous Report,⁸ and we are pleased to note that the Prime Minister has endorsed Dr MacShane's remarks:

5 Eleventh Report from the Foreign Affairs Committee, Session 2001–02, *Gibraltar*, HC 973, para 52

6 Cm 5714

7 See, e.g., *Daily Telegraph*, 9 June 2003, “Britain abandons Gibraltar talks” and *The Guardian*, 9 June 2003, “Gibraltar talks have failed, UK tells Spain”.

8 Eleventh Report from the Foreign Affairs Committee, Session 2001–02, *Gibraltar*, HC 973, para 17

The Minister certainly did speak for the Government. However, what he actually said was that there could be no question of any deal going through without the consent of the people of Gibraltar. We have always made that clear. That remains the position. I have said it myself, and the Minister for Europe said it too.⁹

10. More recently, the Prime Minister went further, by giving an interview to *El Pais* in which he said:

Well I support very much the process of dialogue that we have engaged in, and we have got to carry on talking. Look, a resolution of this issue is in your interest, our interest and in the interests of the people in Gibraltar. The only thing that everyone always has to understand is that there is a resolution of the British House of Commons that any constitutional change can only be done with the consent of the people of Gibraltar. And I can tell you quite frankly, even if I wanted to—which I don't—but even if I did, you could not alter that resolution of the British House of Commons. ... And the British relationship with Spain is immensely important today. It would be absurd for us to have that relationship governed by disagreement over Gibraltar. Now obviously the Spanish government has a very strong position on it and it makes that position very clear to us, and that is why I think it is important that we carry on working on this and trying to achieve a solution, but recognise it should not be the totality of British-Spanish relations, because that would be just not to be living frankly in the 21st century.¹⁰

11. It would appear from all this that the joint sovereignty talks have been shelved. However, Prime Minister Aznar is reported to have asked for the assistance of President Bush in pursuing Spain's continuing interest in the issue;¹¹ the Spanish Foreign Minister has claimed that she has been assured that the Brussels Process talks are still on;¹² and recent replies to Parliamentary Questions by FCO Ministers suggest that the joint sovereignty deal remains on the table.¹³

12. There is now an unresolved tension between the Minister for Europe's remarks that the chances of a deal are "simply zero"; and the Prime Minister's Delphic reference to "trying to achieve a solution", as well as the Government's restatement of the Secretary of State's July 2002 position that the United Kingdom and Spain "are in broad agreement on many of the principles that should underpin a lasting settlement. They include the principle that Britain and Spain should share sovereignty over Gibraltar..."¹⁴ This tension must be resolved. In our view, the reality is that the joint sovereignty deal is not only wrong in principle, it is simply unenforceable. The Government should recognise explicitly that the deal is dead, and should arrange for it a speedy burial. **We recommend that the FCO withdraw its unacceptable joint sovereignty proposal, and then get on establishing normal and co-operative relations between Spain and Gibraltar as should be the case between member states of the European Union and their dependent territories.**

9 HC Deb, 11 June, col 670

10 *El Pais*, 9 July 2003

11 See, eg, *Daily Telegraph*, 20 June 2003

12 See "Palacio Says Britain Has Said They Will continue Discussions over Gibraltar", *Gibraltar News*, 9 June 2003

13 HC Deb, 17 June 2003, col 141W

14 HC Deb, 12 July 2002, col 1165

Two flags, three voices

13. One of the central issues at stake in discussions on the future of Gibraltar has been the role to be played in talks under the Brussels Process by the Government of Gibraltar. The formula ‘two flags, three voices’ has been used to describe the arrangement whereby the Government of Gibraltar may attend the discussions as a part of the United Kingdom team, but contributing its distinctive voice, representing the particular interests of Gibraltar. Disagreement has centred on whether the talks should be held on the basis that the consent of all three voices should be required for any proposal to be adopted—sometimes referred to as a Gibraltar Government “veto”; or whether the two flags (i.e., the Spanish and British Governments) should be able to agree proposals notwithstanding a lack of assent by the Government of Gibraltar, with any proposal affecting the sovereignty of Gibraltar being put to its people in a subsequent referendum. In the event, it was the latter position which was adopted by the Government in the Brussels Process talks of 2002.

14. When considering this issue in our previous Report, we concluded that

... it was politically impossible for the Gibraltar Government to participate in the Brussels Process talks without also having the power to limit the outcome of those talks.¹⁵

The FCO responded that

... the Government made clear that it wanted the involvement of the Government of Gibraltar in the Brussels Process talks from the start so that they could help shape the outcome. For that reason, it was made clear to the Chief Minister that he would be consulted throughout the process; he could be present at all Brussels Process meetings under the two flags, three voices format (a seat at the table alongside the Foreign Secretary as part of the British Delegation, with the right to speak on any issue); he should not have to declare his final opinion on the package until the negotiations were complete; and at all times the 1969 Constitutional commitment remained, guaranteeing that there would be no change in the sovereignty of Gibraltar without the consent of the people of Gibraltar.¹⁶

15. The Chief Minister of the Government of Gibraltar told us that previous Foreign Secretaries had taken a different line on talks. Both Mr Straw’s immediate predecessors had, said Mr Caruana, promised the Government of Gibraltar that the British Government would not agree to any new arrangements involving Gibraltar discussed at such meetings without the specific endorsement of the Government of Gibraltar.¹⁷ Mr Caruana’s recollection was confirmed for us by one of those Foreign Secretaries, Sir Malcolm Rifkind.¹⁸ Mr Caruana also supplied us with copies of the correspondence,¹⁹ from which we note that neither Sir Malcolm nor his successor, Robin Cook, accepted that Gibraltar should have a ‘voice’ at the talks. The “endorsement” which each of them was prepared to

15 Eleventh Report from the Foreign Affairs Committee, Session 2001–02, *Gibraltar*, HC 973, para 41

16 Cm 5714

17 Eleventh Report from the Foreign Affairs Committee, Session 2001–02, *Gibraltar*, HC 973, Ev 27

18 Ev 2

19 Ev 13

seek was to have been made outside the talks themselves, as part of an arrangement between the United Kingdom and Gibraltar Governments, without the involvement of the Spanish Government. What Mr Straw offered thus represented both an advance on and a retreat from that position: a voice, but not a veto.

16. Last year, we called on the Government to

... explain whether previous Governments had, as it appears from the evidence, made a commitment to the Gibraltar Government to seek the Chief Minister's specific endorsement before entering into any new arrangements affecting Gibraltar at the Brussels Process talks, and, if this is indeed the case, why the current Government decided not to renew that commitment.²⁰

17. The Government responded that

It is not for this Government to explain the actions of its predecessors. When talks were relaunched in 2001, the present Government made clear that we wanted the participation of the Chief Minister. We believe that the arrangements put in place²¹ would have satisfied his legitimate concern to participate in safety and dignity. The Chief Minister, as he makes clear in his own memorandum to the Committee,²² did not feel that these arrangements satisfied his concerns and he insisted on an explicit veto over every issue discussed at the talks. As the Foreign Secretary said to the Committee in evidence on 19 June, it would not have been possible to enter negotiations on that basis.²³

18. This response fails to explain why the Government changed its stance after December 1997, when Robin Cook wrote to Mr Caruana assuring him that "I will not agree to any new arrangements on any matter involving Gibraltar at the talks without your specific endorsement."²⁴ The Secretary of State told us last year that the Government of Gibraltar was seeking "some kind of complete veto over the final outcome of any negotiations between three parties."²⁵ This does not strike us as unreasonable. Both Spain and the United Kingdom had available to them a "complete veto", by virtue of their ability to withhold their agreement. Why the third participant in the talks should not have been offered a similar 'veto' has not been satisfactorily explained.

19. In the absence of an explanation, we postulate three theories:

- that the Government attempted to persuade the Spanish side to accept that the Government of Gibraltar should have a 'veto', but failed to secure its agreement;
- that the Government genuinely believed that the two flags, three voices formula was a fair and reasonable basis on which to proceed, and did not press the Spanish side on the matter of a veto;

20 Eleventh Report from the Foreign Affairs Committee, Session 2001–02, *Gibraltar*, HC 973, para 39

21 Described in Appendix 9 to the Minutes of Evidence of the Eleventh Report

22 Eleventh Report, from the Foreign Affairs Committee, Session 2001–02, *Gibraltar*, HC 973, Appendix 14

23 Cm 5714

24 Eleventh Report from the Foreign Affairs Committee, Session 2001–02, *Gibraltar*, HC 973, Ev 27

25 Eleventh Report from the Foreign Affairs Committee, Session 2001–02, *Gibraltar*, HC 973, Q29

- that the Government did not wish the Government of Gibraltar to possess a veto, in case it used it.

20. The Chief Minister of the Government of Gibraltar has suggested that the last of these was the case, and that Mr Straw “resiled from” the position taken by his predecessors “because it would have prevented him from concluding the intended ‘done deal’ declaration of principles.”²⁶

21. We do not intend to speculate which—if any—of the theories we advance above may be correct; we would prefer the Government to explain its own actions. **We recommend that the Government explain clearly and in full why it offered Gibraltar a voice in meetings under the Brussels process, but did not renew its previous undertaking not to agree to any new arrangements involving Gibraltar discussed at such meetings without the specific endorsement of the Government of Gibraltar.**

22. In the expectation that talks with Spain on issues other than sovereignty should and will continue, we wish to set out our view of how they should be conducted. The Government came unstuck when it reached an understanding with Spain, which was subsequently rejected by the people of Gibraltar in a referendum organised by the Government of Gibraltar. There is no point in the Government repeating this mistake. **We recommend that the Government invite the Government of Gibraltar to participate in any further talks on the future of Gibraltar, whether or not under the Brussels process, under the formula offered in 1997.**

The United Kingdom as Gibraltar's advocate in the world

23. As a British Overseas Territory, Gibraltar is not a nation state. It is not a member of the United Nations; neither is it an EU member state. In these and in other international fora, Gibraltar's interests are represented by the United Kingdom. British Government Ministers—and the United Kingdom Parliament—therefore have a particular responsibility towards the people of Gibraltar. We on the Foreign Affairs Committee readily accept this responsibility.

24. In successive Reports, we have drawn attention to failures by the United Kingdom adequately to meet that responsibility, for example by failing to rebut some of Spain's unfounded allegations against Gibraltar.²⁷ Our concern was all the greater when, in the course of our last inquiry, the Secretary of State accused the Government of Gibraltar of failing to publish its national income accounts.²⁸

25. We concluded in our previous Report that

... by publicly questioning the probity of the Gibraltar Government during the course of the relaunched Brussels Process talks, the British Government has unwisely increased tension and suspicion of its motives within Gibraltar.²⁹

26. The Government's response was that it has

... consistently made clear the importance it places on good governance in all our Overseas Territories. Pursuit of this objective is in the interests of Gibraltar as well as HMG.³⁰

27. The response did not address the point. We went on to conclude that

... it is highly ironic that the British Government has given credence to complaints by Spain about law enforcement and the supervision of financial services in Gibraltar, given that these areas are the responsibility, not of the Gibraltar Government, but of the British Government and of the Financial Services Commission appointed by it.³¹

28. The Government responded that

This conclusion is based on a misunderstanding about the role of HMG in the public administration of Gibraltar. In practice, Gibraltar has a significant degree of responsibility within these areas. In the case of financial services, the Gibraltar Financial Services Commission is charged with the responsibility of supervising

27 Eleventh Report from the Foreign Affairs Committee, Session 2001–02, *Gibraltar*, HC 973, paras 46–50; Fourth Report from the Foreign Affairs Committee, Session 1998–99, *Gibraltar*, HC 366, para 57

28 Eleventh Report from the Foreign Affairs Committee, Session 2001–02, *Gibraltar*, HC 973, para 89

29 *Ibid*, para 45

30 Cm 5714

31 Eleventh Report from the Foreign Affairs Committee, Session 2001–02, *Gibraltar*, HC 973, para 47

institutions carrying on financial business in or from within Gibraltar. The Commission, while appointed by the Governor with the approval of the Secretary of State, is an independent body. While no-one can afford to be complacent, it is the Government's view that the Gibraltar finance industry is properly regulated.³²

29. The Committee did not misunderstand the role of HMG in the public administration of Gibraltar. The Governor, not the Government of Gibraltar, appoints the Financial Services Commission, with the approval of the Secretary of State, not that of the Chief Minister. The situation is exactly as stated in our previous Report, that the British Government and the Commission appointed by it have responsibility for financial regulation in Gibraltar, while the British Government and the Royal Gibraltar Police, whose Commissioner it appoints,³³ have responsibility for law enforcement. It is disingenuous of the Government to claim otherwise.

30. There is now a new Governor in Gibraltar who, we trust, will do all in his power both to ensure that the Government of Gibraltar continues to fulfil its obligations, and that the British Government represents the interests of Gibraltar on the international stage. We were heartened that, even before the arrival of the new Governor, a robust stance was taken against groundless allegations by Spain's EU Transport Commissioner concerning the wreck of the MV Prestige last November off the coast off Galicia.³⁴ **We conclude that there are positive indications that the British Government is now sticking up for Gibraltar, and is no longer prepared to allow unjustified allegations to go unchallenged. We recommend that the Government adopt this practice as a matter of policy.**

32 Cm 5714

33 HC Deb, 29 Jan 2002, col 234W

34 See, for example, "Spain and UK spar over tanker", *BBC*, at <http://news.bbc.co.uk/1/hi/world/europe/2485811.stm>

Gibraltar in Europe

Representation in the European Parliament

31. Following a 1999 ruling by the European Court of Human Rights, the United Kingdom has been under an obligation to allow electors in Gibraltar to participate in elections to the European Parliament. In 2001, the then Minister for Europe, Peter Hain, announced in evidence to this Committee that the Government would legislate to this effect.³⁵ The Bill to achieve this has now completed its passage through Parliament;³⁶ a consultation paper has been published as part of the process of deciding which constituency Gibraltar will be part of;³⁷ and Gibraltarians will be able to vote in the 2004 elections to the European Parliament.

32. In our previous Report, we welcomed the Government's action. Only one aspect of it caused us concern. This was Mr Hain's statement to us that "Spain has dropped its opposition... That is why we have been able to proceed."³⁸ We could not understand how Spain's opposition could have prevented the Government from implementing a judgment of the European Court. We therefore recommended that

... the Government... explain what measures any European Union member state could take to obstruct unilateral action by the United Kingdom to enfranchise the Gibraltar electorate.³⁹

33. The response to this was

The Government is under legal obligation to give effect to the 1999 ECHR ruling in *Matthews v UK*. We would have preferred to do this by amending the 1976 EC Act, but were unable to secure the necessary unanimous agreement of the Council. The Government therefore decided in November 2001 to enfranchise Gibraltar by domestic legislation. The Government is aware of the possibility of a case being brought against this unilateral action, but considers its introduction of the domestic legislation to be fully in accordance with the principles of EC law. The Council has already taken note of the UK's decision to take this course.⁴⁰

34. This response failed to supply the information we sought. However, there have since been indications of a new development. On 3 June 2003 reports suggested that Spain had instituted proceedings under Article 227 by lodging a formal notice of action at the European Court of Justice.⁴¹ While no action has yet been brought,⁴² such a step would be highly unusual, as—ironically—the FCO told us in response to our Sixth Report of 2000–01:

35 First Report from the Foreign Affairs Committee, Session 2001–02, *Gibraltar*, HC 413, Q 40

36 The European Parliament (Representation) Bill received Royal Assent on 8th May 2003.

37 Available at: www.electoralcommission.org.uk

38 First Report from the Foreign Affairs Committee, Session 2000–01, *Work of the Committee During the Present Parliament: A Progress Report*, HC 78, Q 40

39 Eleventh Report from the Foreign Affairs Committee, Session 2001–02, *Gibraltar*, HC 973, para 55

40 Cm 5714

41 See, for example, "España lleva al Tribunal de Luxemburgo la ley británica que permite el voto de Gibraltar en el PE", *Europa Press*, 5 June 2003

42 HC Deb, 13 June 2003, col 1149W

Article 227 of the EC Treaty permits a Member State, which considers that another Member State has failed to fulfil an obligation, to bring the matter before the European Court of Justice. However, under the EC Treaty the European Commission has primary responsibility for ensuring that Community law is applied, so Article 227 is invoked only very rarely.⁴³

35. Until an Article 227 action is brought, it will not be clear on exactly what grounds Spain is objecting to the Government's enfranchisement of the people of Gibraltar. This may be sabre-rattling, or it may be a serious attempt to interfere in the democratic process. It is possible that an action of this type was what the Government had in mind when it alluded to Spain's previous "opposition" to the proposal. **We recommend that the Government explain how Spain's apparent opposition to enfranchisement of the Gibraltar electorate in respect of elections to the European Parliament prevented the Government from implementing the judgment of the European Court of Human Rights in the first place; and what it understands to be the grounds on which Spain is now threatening to take action against the enfranchisement process under Article 227.**

The Convention on the Future of Europe

36. Gibraltar is in the European Union, yet has no direct representation in its Councils or in its Parliament. Part of that shortcoming is, as we have just noted, about to be dealt with by incorporating Gibraltar within a United Kingdom European Parliament Constituency. Gibraltarians will be able to vote in a European Parliamentary election for the first time in 2004, at the same time as the EU is enlarged to 25 states and a new constitution is adopted.

37. That new constitution has been developed by the Convention on the Future of Europe, on which the United Kingdom was represented by the Secretary of State for Wales—and former Europe Minister—Peter Hain, two Members of the House of Commons,⁴⁴ two Members of the House of Lords,⁴⁵ and two Members of the European Parliament.⁴⁶

38. In due course, the Convention's proposals will be considered by an Inter-Governmental Conference (IGC) of member states. Gibraltar is not a member state, and will not be represented. Gibraltar does, however, have an interest in the outcome of the IGC. And as the sovereign power, the United Kingdom is responsible for representing Gibraltar's interests in such a forum.

39. We are concerned about the implications of the IGC for the continued ability of the United Kingdom to deal with Gibraltar and other overseas territories on a bilateral basis. It would not, in our view, be acceptable for the United Kingdom's relations with those territories to be governed by EU law.

40. **We recommend that the Government set out in its response to this Report: (a) the implications for Gibraltar of the proposals contained in the draft Constitution published by the Convention; (b) how it intends to represent the interests of Gibraltar**

43 Cm 5321, p 3

44 Gisela Stuart MP, who is also a Member of this Committee; and David Heathcoat-Amory MP.

45 Lords Maclennan and Tomlinson.

46 Mr Timothy Kirkhope MEP and the Earl of Stockton MEP.

at the forthcoming Inter-Governmental Conference; and (c) how it will ensure that the United Kingdom's freedom to pursue bilateral relations with Gibraltar—and with the overseas territories generally—in its and their best interests is not compromised by decisions taken at the IGC.

The pensions ‘scam’

41. Our Report of last year set out in some detail the history of Gibraltar’s contributory pension scheme and of its system of household cost allowances, and discussed the question of liability to pay benefits to Spanish citizens who worked in Gibraltar prior to Spain’s unilateral closure of the border in 1969.⁴⁷ In that Report, we also deplored Peter Hain’s description of Gibraltar’s Community Care scheme as a “scam.”⁴⁸

42. We concluded last year that

... it is manifestly unjust for Gibraltar to be legally liable to pay uprated pensions to Spanish pensioners who had been prevented from making pension contributions for years by their own Government. We further conclude that it is unfortunate that the issue of this liability was not satisfactorily resolved before Spanish accession to the European Community.⁴⁹

43. The FCO replied that

As the report later recognises,⁵⁰ it is in fact HMG which pays pensions to Spanish pensioners who were prevented from working in Gibraltar by the 1969 border closure. The liability to pay those pensioners is a matter of EC law which requires Member States to pay state pensions, including any uprating, to pensioners living in another Member State at the same rate as would be paid if the pensioner lived in the paying State.⁵¹

44. The FCO’s reply failed to make the distinction between liability under EC law to pay the pensions, which according to both the European Commission and the Foreign Secretary⁵² (but not the Government of Gibraltar⁵³) rests with the Government of Gibraltar, and the fact of life that it is the United Kingdom exchequer which has assumed the liability and which makes the payments, because they amount to £80 million each year, a sum greater than what a small territory such as Gibraltar can afford. In a further development, in January this year the European Commission stated that it had found no evidence of pensions discrimination on the grounds of a worker’s nationality,⁵⁴ although we note recent reports that the Spanish Government is “exploring legal avenues” with the European Commission.⁵⁵

45. The position is even less clear with respect to the Community Care scheme. Last year, we concluded that

47 Eleventh Report from the Foreign Affairs Committee, Session 2001–02, *Gibraltar*, HC 973, paras 58–87

48 *Ibid.*, para 84.

49 *Ibid.*, para 64

50 *Ibid.*, para 66

51 Cm 5714

52 HC Deb, 16 April 2002, cols 452–3

53 Ev 10

54 Ev 3

55 Gibraltar Chronicle, 8 July 2003

... the legality of Community Care payments has yet to be established under European law. We recommend that a resolution of this issue be sought as soon as possible, without the British Government taking a view on the merits of the case which might prejudice its outcome.⁵⁶

46. The Government's response was

... The British Government made clear to the then Chief Minister in 1988 that any new arrangements which the Government of Gibraltar might introduce for payments to the elderly must be non-discriminatory and means-tested. When the British Government discovered the detail of the HCA in 1996, they advised the Government of Gibraltar to reform it, and the present Government has maintained this pressure. The Government of Gibraltar has failed to do so. We agree that a resolution of this issue is needed. As long as it continues unresolved, the potential cost to Gibraltar taxpayers is high and rising.⁵⁷

47. "Reform" in this context means change which would reduce payments to Gibraltar's pensioners. The Government of Gibraltar has stated that it is not prepared to countenance this.⁵⁸ There has, however, been what the FCO has called a "significant development". On 21 January, the European Commission stated that the Household Costs Allowance paid under the Community Care scheme were outside the scope of social insurance, and were therefore outside the scope of EC provisions.⁵⁹ Although the Commission's inquiries are continuing, this does hold out the prospect of an end to the affair.

48. In our previous Report, we went on to conclude that

... The current pensions situation, with or without Community Care, is highly unsatisfactory. The British and Gibraltar Governments should be co-operating to try to find a workable long-term solution to the issue, rather than wrangling about who is to blame and who should pay for the current situation, for which neither of them is to blame, and for which, in an ideal world, neither of them should have to pay.⁶⁰

49. The Government had this to say in reply:

It is a timeless verity that there will always be individuals or interests who may object to particular aspects of particular laws. That does not reduce the obligation on responsible administrations to observe the law unless and until it is changed. It is not the case, as stated in paragraph 87, that the Government of Gibraltar is paying pensions to Spaniards; HMG is carrying that liability. And HMG has been seeking to cooperate with the Government of Gibraltar since 1996 to remove the threat of legal challenge. But the Government of Gibraltar has not acted and has not taken up our offers of technical assistance. The contingent liability continues to rise. Progress is

56 Eleventh Report from the Foreign Affairs Committee, Session 2001-02, *Gibraltar*, HC 973, para 76

57 Cm 5714

58 Ev 11

59 Ev 3

60 Eleventh Report from the Foreign Affairs Committee, Session 2001-02, *Gibraltar*, HC 973, para 87

needed because otherwise the initial burden will fall on UK taxpayers, which is not acceptable to the Government.⁶¹

The Chief Minister's retort to this was that "This is not correct... It is not appropriate for HMG to equate the failure to reach agreement with a failure to take up offers of assistance."⁶²

50. So, the Government of Gibraltar will not agree to any resolution of the Community Care issue which results in lower payments for Gibraltar residents; and the British Government has not accepted any of the proposals made by the Government of Gibraltar which "would not result in anyone being worse off."⁶³ Notwithstanding the signs of limited progress at the European Commission, this remains a highly unsatisfactory state of affairs, yet one which it cannot be beyond the capacity of the two governments to resolve. In our view this blame game—which has been played by both sides—is a zero sum game, and it has gone on for long enough. **We recommend that the British and Gibraltar Governments renew their efforts to find a solution to the pensions issue and that the FCO in its Response to this Report set out in detail how it proposes to resolve this matter.**

61 Cm 5714

62 Ev 11

63 *Ibid*

Gibraltar's external links

Telephone links with Gibraltar

51. Among the petty restrictions imposed by Spain on Gibraltar has been a refusal to recognise its 350 international dialling code or to provide roaming arrangements for Gibraltar mobile telephones, and a limit on the number of Spanish telephone lines available to residents and businesses on the Rock. Talks over many years have failed to persuade the Spanish side to remove these restrictions, and the European Commission has been notably uninterested in dealing with what we believe is a clear breach of EU competition law.

52. In our previous Report, we recommended that

... if no solution to the Gibraltar communications issue can be found through negotiation with Spain, the Government should refer the matter back to the European Commission and should be prepared if necessary to take it to the European Court.⁶⁴

53. The Government responded that

The EC Treaty confers primary responsibility for the enforcement of Community Law on the Commission. Two Gibraltar telephone companies have launched competition complaints against Spain over its refusal to recognise the +350 code and to allow Spanish operators to conclude mobile roaming agreements with them. These are private complaints which HMG has supported in its dealing with the Commission.⁶⁵

54. We also recommended that

... in the absence of further progress on telecommunications access with Spain in the near future, the British Government should explore with Gibraltar the possibility of enabling access to Gibraltar telephone lines via the British numbering plan and dialling code as well as via Gibraltar's international dialling code.⁶⁶

55. The FCO's response was

The Government remains in regular contact with the Government of Gibraltar, the Gibraltar Regulator and Gib Telecom on this issue. Our overall objective remains Spanish recognition of Gibraltar's international dialling code +350, which would solve all Gibraltar's principal telecommunications problems. We are, of course, especially interested in the Government of Gibraltar's ideas for the way forward.⁶⁷

64 Eleventh Report from the Foreign Affairs Committee, Session 2001–02, *Gibraltar*, HC 973, para 106

65 Cm 5714

66 Eleventh Report from the Foreign Affairs Committee, Session 2001–02, *Gibraltar*, HC 973, para 107

67 Cm 5714

56. These responses do not suggest there is any sense of urgency on the part of the Government about dealing with the Gibraltar telecommunications problem. The Government is content to leave it to private companies to pursue the legal case with the Commission to take action; it has no new proposal of its own to resolve the issue; but it is “especially interested” in any proposals which the Government of Gibraltar may make.

57. In his comments on the Government’s Response, the Chief Minister of the Government of Gibraltar had no fresh proposals to make. Mr Caruana “does not agree that dialogue is the only way to resolve such problems. These are matters of international legal rights and obligations and are therefore enforceable judicially.”⁶⁸ It appears that the Government of Gibraltar is placing all its hopes for a resolution of this issue in the legal action which is currently under way. We suggest that it needs to think about what it will do if the action either fails or drags on for years.

58. We remain of the view that the proposal which we advanced in our previous Report, of using United Kingdom dialling codes for calls from Spain to Gibraltar, deserves serious consideration. However, neither the British nor the Gibraltar Governments has betrayed any enthusiasm for this solution. The FCO ignored it completely in its response; and the Chief Minister failed to comment on it also, although we are aware that he has previously objected to such a scheme “for political reasons.”⁶⁹ **We recommend that the Government set out in clear terms in its Response to this Report its policy on using United Kingdom telephone numbers for lines in Gibraltar.**

Air, maritime and land links with Gibraltar

Air links

59. Gibraltar’s airport is located on the disputed isthmus between the Rock and Spain. It is a joint military and civilian use facility, operated by the Ministry of Defence (MoD). MoD levies landing charges on aircraft using the airport at a rate five times of that which applies at the nearest Spanish airport, Malaga.⁷⁰

60. Last year, we called on the Government to

... reexamine its landing charges for commercial aircraft at Gibraltar airport to ensure that they do not exceed the real cost of allowing commercial operations to take place. We further recommend that the Government should assess whether reducing the landing charges would encourage greater commercial use of the airport, thereby ensuring that current revenues are maintained.⁷¹

61. The FCO replied that

Gibraltar airport is a Ministry of Defence (MoD) airfield with facilities for commercial airlines. Landing fees are a matter for MoD who are responsible for the

68 Ev 11

69 See April 1998 speech at www.gibraltar.gov.gi/latest_news/topical_speeches/phone_numbering.htm

70 For a fuller discussion, see Eleventh Report from the Foreign Affairs Committee, Session 2001–02, *Gibraltar*, HC 973, paras 108–111

71 Eleventh Report from the Foreign Affairs Committee, Session 2001–02, *Gibraltar*, HC 973, para 111

airfield. The costs of running the airfield are borne by the MoD and landing fees do not meet the full resource costs of facilities and services; in effect, the commercial users are being subsidised by the UK taxpayer. Commercial operators utilise the airfield out of duty hours and MoD incurs additional costs to provide essential support services to enable use of the airfield. The MoD will continue to keep the charging issue under review.⁷²

62. We wrote to MoD, asking for further details of this review. MoD had little to add:

MoD's review is examining the possibility that reducing the landing charges would encourage greater commercial use of Gibraltar Airport, thereby ensuring that current revenues are maintained.⁷³

Since we received that reply, there have been press reports in Gibraltar that MoD and the Government of Gibraltar have held talks on airport landing fees.⁷⁴ We welcome this development.

63. We recommend that the Government urgently complete its review of landing charges at Gibraltar Airport—and announce the results—as soon as may be practicable.

Maritime links

64. According to the Government of Gibraltar, until 1969 there were regular and frequent sea ferry services between Gibraltar and Spain. The United Kingdom and Spain agreed in 1984 that sea ferry links between the Spanish port of Algeciras and the port of Gibraltar would be renewed, an agreement given legal force by Spain's Council of Ministers in a decree issued on 31 January 1985.⁷⁵

65. However, applications by commercial operators to resume maritime links have apparently been refused by the Spanish authorities. Representations made by the British Government to the European Commission between 1990 and 1992 were unsuccessful. Even cruise ships which have called at Gibraltar are prevented from calling also at ports in Spain. As with air links, this situation is unacceptable.

66. When our predecessor Committee raised the question of maritime links in its 1999 Report, the FCO replied that

The Government would welcome the re-establishment of ferry links between Gibraltar and Spain and encourage any responsible initiative to do so. Should such an initiative be frustrated in a manner apparently incompatible with EC law, all available legal avenues for redress would be explored.⁷⁶

72 Cm 5714

73 Ev 5

74 See, eg, www.gibraltarfinance.com

75 See www.gibraltar.gov.gi/latest_news/topical_speeches/airlinks.htm

76 Cm 4470, p 4

We recommend that in its response to this Report the Government set out what it is doing to persuade the Spanish Government to honour its agreement to restore maritime links between Spain and Gibraltar.

Land links

67. As we have noted in previous Reports, Spain has continued to impose unreasonable and petty controls at crossing points to Gibraltar.⁷⁷ A second channel was opened in March 2002, when the European Commission concluded that the Spanish restrictions were not disproportionate.⁷⁸ Yet the delays continue,⁷⁹ and it remains the case that the land border between Spain and Gibraltar is more heavily controlled than any other land border within the EU. Even accepting that Gibraltar is in a different position from Spain's other land neighbours, France and Portugal, because it—like the United Kingdom—is not a party to the Schengen agreement, there is no good reason why this should be the case.

68. In 1999, our predecessor Committee analysed this situation and commented on it in some detail.⁸⁰ While we have welcomed the opening of a second customs lane, we do not believe that the situation as described in that earlier Report has yet been resolved. At the time, the FCO replied:

The Government accept the Committee's analysis of the situation at the border between Gibraltar and Spain. We continue to press the Spanish authorities to lift the restrictions they are imposing at the border. We are in regular contact with the European Commission, encouraging it to take effective action under the EC Treaty to ensure that Spain carries out its obligation to enable EU citizens to exercise their right of free movement within the European Union. We note the Committee's recommendation that the Government take action under Article 227 of the EC Treaty should the Commission itself fail to take swift action. Ministers have already raised the issue of border delays with the incoming Commission, and will keep the situation under review.⁸¹

69. Four years is certainly a long period in which to keep a situation under review. **We recommend that in its response to this Report the Government set out the latest statistics on delays at the border between Gibraltar and Spain—making clear the basis on which those figures have been compiled—and state how it proposes to ensure that delays at the border between Gibraltar and Spain are no greater than at the land borders between Schengen and non-Schengen EU states.**

Gibraltar and NATO

70. Although Spain is these days a fully participating member of NATO—and a valuable military ally of the United Kingdom—it refuses to co-operate with the use by NATO

77 Eleventh Report from the Foreign Affairs Committee, Session 2001–02, *Gibraltar*, HC 973, paras 112–116

78 *Ibid.*, para 112

79 HC Deb, 13 May 2003, col 22WH

80 Fourth Report from the Foreign Affairs Committee, Session 1998–99, *Gibraltar*, HC 366, paras 27–34

81 Cm 4470, pp 3–4

vessels, aircraft or other assets of Gibraltar's military bases. In 1999, the FCO told our predecessor Committee that

The Government continue to believe that the Spanish imposition of restrictions intended to hamper NATO military activity in and around Gibraltar is an inappropriate approach for a NATO ally. The Government intend to continue bilateral discussions with Spain aimed at maintaining progress towards the lifting of all restrictions, particularly in the light of Spain's recent joining of the NATO Military Structure.⁸²

71. More recently, replying to our Report of last November, the FCO told us that

... It is the Government's objective to lift the reservation on direct military movements between Gibraltar and Spain and to end the ban on direct military communications between NATO forces in Gibraltar and Spain. Military cooperation is specifically included in the Brussels Communiqué and this is therefore an issue which would be addressed in talks aimed at reaching a comprehensive agreement.⁸³

In the event, because those talks were held as part of the Brussels process and were thus caught up in the negotiations over joint sovereignty, they got nowhere. **We conclude that it is unacceptable that prohibitions on direct military movements and military communications between the territories of two NATO allies should continue to exist. We recommend that the British Government seek to bring the full weight of NATO to bear on the Spanish Government to have these prohibitions lifted.**

82 Cm 4470, p 7

83 Cm 5714, p 9

Formal minutes

Tuesday 15 July 2003

Members present:

Mr Donald Anderson, in the Chair

Mr David Chidgey	Mr Richard Ottaway
Mr Fabian Hamilton	Mr Greg Pope
Andrew Mackinlay	Sir John Stanley
Mr John Maples	Ms Gisela Stuart
Mr Bill Olnier	

The Committee deliberated.

Draft Report (Gibraltar), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 11 read and agreed to.

Paragraph 12 read, amended and agreed to.

Paragraphs 13 to 29 read and agreed to.

Paragraph 30 read, amended and agreed to.

Paragraphs 31 to 49 read and agreed to.

Paragraph 50 read, amended and agreed to.

Paragraphs 51 to 57 read and agreed to.

Paragraph 58 read, amended and agreed to.

Paragraphs 59 to 68 read and agreed to.

Paragraph 69 read, amended and agreed to.

Paragraph 70 read and agreed to.

Paragraph 71 read, amended and agreed to.

Resolved, That the Report, as amended, be the Eleventh Report of the Committee to the House.—(*The Chairman.*)

Ordered, That the Chairman do make the Report to the House.

Ordered, That the provisions of Standing Order No.134 (Select committees (reports)) be applied to the Report.

Several Papers were ordered to be appended to the Report.

Ordered, That the Appendices be reported to the House.—(*The Chairman.*)

[Adjourned till Thursday 17 July at 2.45pm

List of written evidence

1	The Office of the Leader of the Opposition, Gibraltar	Ev 1
2	Rt Hon Sir Malcolm Rifkind KCMG QC	Ev 2
3	Foreign and Commonwealth Office	Ev 3, Ev 4
4	Ministry of Defence	Ev 5
5	Government of Gibraltar	Ev 5, Ev 13