



FULL TEXT OF AN ADDRESS
BY THE
CHIEF MINISTER OF GIBRALTAR
THE HON P R CARUANA
TO
THE UNITED NATIONS
COMMITTEE OF 24

6 JUNE 1997

Mr Chairman,

On behalf of the Government and people of Gibraltar I would like to thank you and members for this further opportunity to address the Special Committee in relation to our plea for a clear recognition of our inalienable right to self determination.

Since 1992 the irrefutable arguments in favour of Gibraltar's rights have been put to this Committee and to the Fourth Committee firstly by my predecessor in office and latterly by me. What we now seek is this Committee's clear and unequivocal declaration that the people of Gibraltar have the same right to self determination as those of any other Non Self Governing Territory.

The obstacle to the exercise of our right to self determination comes not from our administering power, but from our neighbour, the Kingdom of Spain.

We do not seek this declaration because we have any doubt of our entitlement to that right, but in order to counteract the Spanish Government's assertion that the decolonisation of Gibraltar is a matter to be determined not by the application of the principle of self determination but by the restoration of the territory to Spain despite the implacable and unanimous opposition of the people of Gibraltar.

Spain pursues her position by invoking the principle that there can be no partial or total disruption of the territorial integrity and political unity of a sovereign state. This, she argues, means that we have no right of self determination.

Mr Chairman, Spain bases her erroneous contention entirely on operative paragraph 6 of Resolution 1415 (XV) of 1960, which ironically she in fact failed to support when it was passed in 1960. Yet it seems perfectly obvious, on an objective analysis of paragraph 6, that what it means to say is that the principle of self determination cannot be used by the people of an existing territory of a Member State to secede from it. In other words self determination cannot be used to dismember from a sovereign State a territory within it. If such dismemberment were to take place, the UN would not recognise it unless it took effect by internationally accepted agreement between the parties involved.

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This is clear from a reading of the remarks of many of the distinguished representatives of Member States when draft Resolution 1514(XV) was being debated in the General Assembly in 1960. Members of the Committee will recall that the burning issue in the General Assembly in 1960 was the attempt by Katanga to secede from the Congo. That was the context in which paragraph 6 was included.

Operative paragraph 6 of Resolution 1415(XV) declares that:

"Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a member country is incompatible with the purposes and principles of the Charter of the UN".

This principle requires that the act complained of should lead to the partial or total disruption of a member country's national unity and territorial integrity. Mr Chairman it is self evident that this is not the case of Gibraltar. The application of the principle of self determination to Gibraltar now does not, indeed cannot, result in the partial or total disruption of Spain's territorial integrity. Gibraltar ceased being Spanish in 1704 and as members know, was ceded in perpetuity by Spain to Britain in the Treaty of Utrecht in 1713. If Spain's territorial integrity was disrupted it occurred 293 years ago, long ago in history like so many other unalterable events which have shaped today's world.

Mr Chairman, the history of the world cannot be re written, whatever one may now think of how it was written in the first place. Still less can it be re written in order to deny modern human rights that have evolved after that history was written. At the 945th meeting of the General Assembly, during a discussion on Resolution 1514(XV), the distinguished Representative of the Kingdom of Spain, in replying to a claim by the Kingdom of Morocco to Ceuta and Melilla, the two Spanish enclaves in North Africa, said "Are we going to turn world history into a veritable bedlam..... Are we not going to set limits for ourselves in all these discussions". Mr Chairman I wholly endorse that sentiment of the Kingdom of Spain which is the very same one that I am urging on her today. Spain's national territory has excluded Gibraltar for 293 years. Paragraph 6 is, therefore, according to its own terms, inapplicable.

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Nevertheless, Spain asserts that this is the UN's doctrine on Gibraltar. We believe that there is no such doctrine. Indeed, neither a right to, nor the principle of, retrocession of territory has ever been recognised in any UN instrument or resolution, so how can it be said to override the principle of self determination?

In fact in the Western Sahara case the International Court of Justice said that, "even if integration of territory was demanded by an interested state, it could not be had without ascertaining the freely expressed will of the people - the very sine qua non of all decolonisation".

Indeed Mr Chairman this is the very opposite of Spain's own interpretation of operative paragraph 6.

Why should it be the case that a colonial people are deprived of self determination simply because another State asserts a historical territorial claim? Does the subjective interest of one third party State override the Charter of the UN? If the right of an administering power that is in possession of the territory does not override and subjugate the right of self-determination of the inhabitants of that territory, how can those of a third party do so? How can a third party frustrate the right to self-determination of the inhabitants of a colony but not the administering power itself? It defies all logic.

There is no difference between an administering power that obstructs self-determination and a third party State that does the same even if the arguments that she uses and the interests that she claims are of a different nature to those of the administering power.

If Spain had no claim to Gibraltar, no-one would doubt that we had the right to self-determination. Can anybody seriously argue that Gibraltarians have the right to self-determination as against the UK, the administering power, but not as against Spain, a third party claimant?

The reality of the matter, Mr Chairman, is that the doctrine of the UN and of international law is that the right to self determination applies to all Non Self

4.

Governing Territories on the UN list - of which Gibraltar is one of the remaining 17.

This Special Committee, and indeed the General Assembly in the Omnibus Resolution, have declared that in the process of decolonisation there is no alternative to the principle of self determination as enunciated in Resolutions 1514(XV), 1541(XV) and other relevant resolutions and decisions. That is UN doctrine.

Self determination is the opposite of territorial restitution. If in the process of decolonisation there is no alternative to the principle of self determination, then Gibraltar, which undoubtedly is a colony can only be decolonised by reference to self determination, and not territorial retrocession.

There are no stated exceptions to the application of the right of self determination in the decolonisation of Non Self Governing Territories. There is no UN document that says so. Indeed, international law clearly stipulates that there are no exceptions.

In the Namibia Case the ICJ observed that "international law in regard to Non Self Governing Territories as enshrined in the Charter of the United Nations made the principle of self determination applicable to all of them". In the Western Sahara case the ICJ held that the principle of self determination applies to all Non Self Governing Territories. "All" includes Gibraltar which is on the UN list of Non Self Governing Territories.

Furthermore, under the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, which have been specifically extended and applied to Gibraltar in 1976, without Spanish objection, all peoples have the right to self determination. What is more the obligation to respect that right is imposed not just on administering powers but on all Member States, and that includes Spain. These are fundamental UN human rights commitments and must be honoured.

Mr Chairman, it is indisputable that Gibraltar, being on the United Nation's list of Non Self Governing Territories is entitled to decolonisation by reference to

the principle of self determination. We therefore seek a clear and unequivocal declaration to that effect by the Special Committee.

Mr Chairman when addressing the December meeting last year you said that there were many factors that could obstruct full independence but those factors should not be allowed to undermine the right of the peoples of the Territories for self determination, or be used as a rationale to maintain colonial situations. I would respectfully agree. Difficulties in exercising the right must not be confused with the existence of the right itself. We petition you for recognition of the existence of the right. Such recognition would make it absolutely clear to all interested parties that in all discussions aimed at resolving the difficulties and obstacles in the exercise of the right, the bottom line is that ultimately the wishes of the people of Gibraltar have to be respected.

Mr Chairman, even though we seek this Committee's declaration of our right to self determination, we do not make acceptance by Spain of our position a pre condition for dialogue with her. What Gibraltar does insist on is that any dialogue should recognise our right to represent our own position in our own right and with a distinct voice.

Dialogue between only Spain and the United Kingdom implicitly denies the existence of the principal party, namely the colonised people of Gibraltar, with primordial rights in the matter under discussion. That is why we will not take part in bilateral dialogue between UK and Spain.

This, Mr Chairman, is why the people of Gibraltar, whose rights and wishes you have a sacred trust to uphold and protect, urge the Special Committee to stop recommending annually that UK and Spain engage in dialogue only between themselves "aimed at overcoming all the differences between them over Gibraltar". Your Committee has been calling for dialogue over Gibraltar for over 30 years but you have never pronounced yourselves over the position of the people of Gibraltar in that process of dialogue.

I therefore repeat my call for your support for a process of dialogue in which the people of Gibraltar have their own separate voice and representation in

6.

the form of their democratically and constitutionally elected Government and further that all such dialogue must have regard to the wishes of the people of Gibraltar pursuant to their right of self determination.

This is no more than the application to Gibraltar of the two established principles to which the Special Committee subscribes namely:

- (1) that in the process of decolonisation there is no alternative to the principle of self determination as enunciated by General Assembly 1514(XV), 1541(XV) and other resolutions; and
- (2) that negotiations to determine the status of a territory must not take place without an active involvement and participation of the people of that territory.

I have been in Government for just over one year, far less than the many years during which your Committee has urged bilateral dialogue. I have the resolve, indeed the imagination, to walk a path through this dispute. But I do not only have imagination. I have a right. A right to represent our people separately in a dignified manner. It is a right which has to be acknowledged and respected. I have urged dialogue from the moment that I took office. As I have explained before in earlier addresses, I seek dialogue in an honourable cause for better relations and mutual benefit with our neighbour in a climate of understanding and respect for the rights of the people who elected me to represent them. They have the right to have their own separate voice and to determine their own future. This principle was openly recognised in the statements on decolonisation made to the Fourth Committee year after year by the EU Presidency until 1995 when the Kingdom of Spain belatedly objected to continue with the agreed policy line because of Gibraltar.

Unlike all other territorial disputes in the UN List of Non Self Governing Territories, Gibraltar is the only case which draws in two Member States, both of which are not just democratic partners but equal members of a Union (the European Union) governed by Treaty (the Treaty of Rome). Moreover, Gibraltar itself is a juridically constituted part of that membership or Union. Does it require so much imagination to conjure even a vision of a solution

within such a marriage of interests? In this sense Gibraltar is a dispute among parties who are all partners within the European Union. This creates a window of opportunity to resolve differences. It is a dispute which, in the modern democratic times in which we live, can only be resolved if the very people at the heart of it can have their proper place in that very dialogue which you have urged for so long. Already, within the European Union we see active, direct dialogue and participation not just among the Member States but by regions, cities, even towns, each and every one of them having a recognised voice of their own.

In a Europe, where concepts of sovereignty are disappearing, or at best converging, how can anyone with any sense of reality, let alone imagination, go back 300 years and say that, in the case of Gibraltar, it is an issue of national territorial integrity? How relevant is this concept of territorial integrity over the heads of the wishes of the people in a Europe that is fast developing into an integrated unit transcending national sovereignty? These are the times in which we live.

These are the inescapable features which should serve to promote solutions, not to be exploited to frustrate them as, unfortunately, the Kingdom of Spain has chosen to do in its relations with Gibraltar. I urge the Government of the Kingdom of Spain to use her imagination to grasp this European vision and approach the Gibraltar issue with the eyes of the fathers of Europe, not with those of 18th Century monarchs. Be fraternal to the future, not obsessive of the past. Be European, not nationalistic. The Kingdom of Spain has made great strides in achieving democracy and promoting the European dream. In her forward looking approach to European and world affairs Spain cannot make an exception of Gibraltar.

Mr Chairman, the people of Gibraltar look forward with hope and confidence to benefiting from the policies of a new Government in Great Britain that has rightly put human rights at the very core of its foreign policy. The Special Committee has also declared that self determination is a fundamental human right.

8.

Mr Chairman, thirty years of bilateral dialogue have produced no results, and there are only three years left to meet the Special Committee's target for the eradication of Colonialism. If Gibraltar is to have any chance of progress, let alone success, in meeting that target the Special Committee must inject new life, a catalyst, into the issue. That catalyst is the recognition of the supremacy of the wishes of the people of Gibraltar coupled with a call for Gibraltar to be allowed to represent itself in its own right at dialogue.