

**GIBRALTAR**



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

**21 June 1999**

Mr Chairman,

I thank you and the members of the Special Committee for, once again extending to the Government and people of Gibraltar the opportunity to address you.

Between my predecessor as Chief Minister of Gibraltar and I, we have addressed this Committee, and the Fourth Committee, every year since 1992.

Our arguments and aspirations have been clearly and frequently rehearsed before you. So have the conflicting arguments and aspirations of the Kingdom of Spain.

Spain asserts that although Gibraltar is a colony, the people of Gibraltar are not a colonial people and therefore do not enjoy the right to decolonisation by the application of the principle of self determination. When the representative of the Kingdom of Spain addressed you last year he told you that this was because the people were “the descendants of the people brought by the colonial power”. When the Spanish representative addressed the Fourth Committee in October last year he went further and said “The (the Gibraltarians) are not an indigenous people, since they are not the descendants of the people who suffered the colonial act. They are the descendants of the colonising power, of the people brought by the colonising people”. This leads Spain to conclude that the decolonisation of Gibraltar can only take place by the integration of it into Spain thereby, allegedly, restoring her territorial integrity. She further asserts that this is the doctrine of the UN on the Gibraltar question.

This is a curious argument. IT is not clear what Spain means by “an indigenous people”. It is true that we were not there before 1704. But that is not a relevant criteria. Many of the colonial peoples that have exercised the right to self determination have not been indigenous to their territories in the sense that they were in the territory before the act of colonisation or from the beginning of time. No one seriously suggests or supposes that it was the indigenous Indian peoples who exercised self determination in North America, South America, the Caribbean or Australia for example. It was exercised precisely by the people who arrived in those territories after colonisation – in the case of South America, brought there by or arriving from Spain herself.

If this Committee has any doubt that the people of Gibraltar constitute a people, those doubts would be immediately dispelled by a visit to Gibraltar which would serve to demonstrate the existence of a distinct people, with our own cultural and ethnic characteristics and heritage, developed over 295 years. The indisputable fact is that for decades now the people of Gibraltar have been accepted by the UN as a separate people by virtue of Article 73. Indeed this Committee accepts information about us from the Administering Power under Article 73(e).

The Government and people of Gibraltar reject these Spanish arguments and assertions which we believe to be based on a series of misconceptions.

Mr Chairman, it is certainly the doctrine of the UN that the right of self determination is not available to disrupt the territorial integrity of a country. But Gibraltar has not been Spanish, nor part of Spain for 295 years, since 1704. If Spain’s territorial integrity was disrupted, as she alleges, this occurred in 1704 and cannot be and would not be the result of an exercise now by the people of Gibraltar of their right to self determination. It is not the exercise of that right that would bring about a disruption of Spain’s territorial integrity. That doctrine

accordingly has no application to the case of Gibraltar, since we are not seeking to secede from Spain of which we are not a part. That this interpretation of the position is the correct one is clear from the language of General Assembly Resolution 2625 (XXV) of 24 October 1970 setting out the declaration on principles of International law concerning friendly relations and cooperation among states in accordance with the Chapter of the UN: "Nothing in the foregoing paragraphs shall be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign an independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour". Mr Chairman, there is no government representing the people of Spain and Gibraltar.

Furthermore the doctrine, even if it were applicable, could only apply to acts arising after the doctrine was promulgated. It is therefore simply not admissible to seek to apply in 1999 the principle of territorial integrity by reference to the territorial position of 295 years ago, when the doctrine did not exist and therefore could have no application to events that this took place had taken place more than 200 years earlier. IF this were so, the map of the world would have to be redrawn.

There is in fact no recognised principle of retrocession of territory in the context of decolonisation. It is significant in this respect that neither a right to, nor the principle of, retrocession of territory has been recognised in any UN Resolution or instrument. Indeed, in its advisory opinion in the case of Western Sahara the International Court of Justice said in relation to so-called "colonial enclaves".

"Even if integration of a 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".

In the Namibia case, the International Court of Justice held that "international law in regard to non self governing territories as enshrined in the Charter of the UN made the principle of self determination applicable to all of them". Well, Mr Chairman, Gibraltar is one of the 17 such territories on this Special Committee's list. We are one of them. "All" therefore includes us.

Mr Chairman, the relevant doctrine of the UN, approved on many occasions in recent years by this Special Committee is that, in the process of decolonisation there is no alternative to the principle of self determination. The notion that you can decolonise a territory under the auspices of this Committee by its transfer from the colonial power to a third party claimant, regardless of the wishes and rights of the inhabitants of the territory is bizarre and an affront to the mandate, work and very raison d'être of this Committee. It is unsustainable in international law. To suggest that it is the doctrine of the UN established in relevant resolutions is simply incorrect.

General Assembly Resolution 46/181 of 19<sup>th</sup> December 1991 says in paragraph 1 that the UN reaffirms the inalienable right of the peoples of the remaining Non Self Governing Territories to self determination.

When this Special Committee speaks about “eradicating colonialism” in Gibraltar is it advocating the handing over of my country to Spain against the unanimous wishes of its inhabitants or does it set out to promote the right of the people of my country to self determination”? Does this Committee see its task as recognising and helping us to exercise our right to self determination or to help Spain recover a territory that she not only lost in 1704 but ceded in perpetuity to the British Crown in 1713?

Spain’s territorial claim which is being used to obstruct our right to self determination is thus the very antithesis of the Declaration on the granting of independence to the Colonial country and people of Gibraltar which is the sole mandate of this Committee.

The position is, in reality, quite simple. As Gibraltar is on this Committee’s list of non-self governing territories its case is within this Committee’s mandate and therefore can be decolonised only by the application of the principle of self determination in accordance with the Declaration; in the opposite case Gibraltar would simply be a disputed territory whose people have no such rights. IT would then not be a colonial situation at all falling within the terms of reference of this Committee and would not be on its list.

I say this, Mr Chairman, because every year, and despite our protestations, this Committee limits itself to recommending to the Fourth Committee the adoption of a consensus resolution calling upon the UK and Spain to negotiate to resolve “the differences between them over Gibraltar” in bilateral discussions between them.

Mr Chairman, with respect, the decolonisation of the non-self governing territory of Gibraltar in accordance with the UN Declaration on the granting of independence to Colonial countries and people cannot, by definition, be a matter of bilateral resolution of differences between the Administering Power and a third party territorial claimant. That would be relevant in the resolution of a territorial dispute – which is very different tot eh process of decolonisation which preoccupies this Committee and the Fourth Committee. Gibraltar is neither the UK’s to give away nor Spain’s to re obtain.

The decolonisation of Gibraltar in accordance with the UN Declaration can only be a matter of the existence, recognition and exercise of the right of self determination by the people of the territory. It is a matter between the colonial people and the Administering Power.

When the Fourth Committee adopts every year – with the Special Committee’s recommendation – the consensus resolution urging the UK and Spain “to continue their negotiations with the object of reaching a definitive solution to the problem of Gibraltar in the light of relevant resolutions of the General Assembly and in the spirit of the Charter of the United Nations”, what is the “light” to which the resolution is referring? What are the relevant resolution of the General Assembly and what, in this Committee’s view is their correct interpretation and application to our case? What is the “spirit” of the Charter of the UN to which reference is made? Does it mean the recognition or the denial of the right to self determination of the people of Gibraltar.

The people of Gibraltar seek and are entitled to clarity on these matters. And we seek this Committee’s help in this respect.

As I told you last year, this consensus resolution is, as sterile and fruitless in practice as it is ambiguous in theory. The people of Gibraltar will not accept (or acknowledge by

participation in dialogue that is structured bilaterally between the UK and Spain) that the decolonisation of Gibraltar is a matter to be negotiated between the UK and Spain. It therefore does not further the cause of our decolonisation that this Committee recommends a continuation of that sterile dialogue year after year.

As Excellencies know the established doctrine of the UN is that the right to self determination of all colonial peoples and their right to be masters of their own destiny is a fundamental basic human right. The UN reaffirmed this in its commemoration last year of the 50<sup>th</sup> Anniversary of the Universal Declaration of Human Rights. The Secretary General reminded you of this in his address to you in February. Are the people of Gibraltar excluded from this central human right?

Mr Chairman, in your own address to the Special Committee's opening session in February you observed that there are still 17 non-self governing territories and that the work of the Special Committee remains relevant, urgent and necessary. You said that it will be one of the tasks of the Special Committee to identify, devise and propose flexible, practical and innovative approaches to deal with the perennial issues among the remaining 17 territories, bearing in mind the mandate as specified in Article 73 of the Charter of the UN.

Mr Chairman, I whole heartedly agree with your remarks. Article 73, imposes as a sacred trust on Administering Powers, inter alia, the obligation "to develop self government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions". Article 73 is not rendered inapplicable by the existence of a territorial claim of a third party. How then can this Committee help to apply your remarks, and those principles, to one of those 17 territories on your list – namely Gibraltar?

Well Mr Chairman, you yourself provided the answer when you asked distinguished representatives, whether they want the Committee "to be marginalised and invalidated because of our reluctance to embrace change in the world politics and the realities of today's world?" You said that it is self evident that the answer should be in the negative.

Mr Chairman, the realities of today's world, in so far as concerns Gibraltar is that today Gibraltar is a vibrant, self sufficient economy based on tourism (6 million visitors a year), financial services (we operate one of the world's best legislated and best regulated offshore financial services centres), port services (Gibraltar is the largest ship bunkering port in the Mediterranean and operates a strategically located and successful ship repair facility). We are increasingly attracting new industries, especially in the field of international satellite telecommunications. We have our own parliament in which we make all our own laws. We have a ministerial system of elected Government which exercises self government in all areas of political and executive activity except external affairs, defence and internal security, which remain the responsibility of the Administering Power. We have our own police force and judicial system and our own Civil Service. We raise our own taxes which we spend as we please. We make and implement our own economic, fiscal, social, education, health, land and other policies. It is vital that Excellencies dispel from their minds the pre 1960s spectre of a territory governed by colonial Governors and administrators sent out to the territory by the Administering Power. We are almost entirely self governing in practice. That is the reality of today's world in Gibraltar brought about by changes in world politics, as they

have affected us since 1969 when we obtained our current Constitution from our Administering Power – the UK.

I just wish that the Special Committee would visit Gibraltar and witness and assess these realities for itself. It would then be clear just how anachronistic and untenable is Spain's assertion that Gibraltar and its people are not a people with an inalienable right to self determination. Nobody that visits Gibraltar leaves doubting that.

Your Excellencies will recognise it as a natural aspiration of the people of Gibraltar that we should seek to progress still further towards an even fuller measure of self government. This we seek to do by modernising our constitutional relationship with the UK so that it should cease to be colonial in nature. When accepted by the people of Gibraltar in an act of self determination this will constitute the decolonisation that we believe will entitle us to be delisted.

In his address to you last year the Spanish representative said that this meant that we did not want to put an end to the colonials situation but rather that the colonial power should continue "to exercise sovereignty over the territory". This reveals just one more fundamental flaw in Spain's case.

It is now trite, established UN doctrine that self determination does not necessarily mean independence. The desire of the people of Gibraltar to retain British Sovereignty (which is in any case not the same thing as the colonial power exercising sovereignty – which implies exercising the power of Government) is in no way inconsistent with the Charter's principles of decolonisation through self determination.

It is now settled UN doctrine that the acid test for genuine decolonisation is not the severing of sovereignty ties with the Administering Power, but the obtention of a full measure of self government, the transfer of effective political and administrative power and self rule to the people of the territory in a modern non-colonial and freely chosen relationship. What matters is not the label that attaches to a territory but the reality of the people being masters of their own home land and destiny and that these should be exercised by a free act of self determination.

The integration option, the free association option and the so-called fourth option (that is 3 of the 4 options recognised by the UN) all envisage the retention of the sovereignty of another independent state in the territory.

Independence is, in any event a changing concept in the modern Europe of the European Union of which Gibraltar forms an integral part. EU Member States are increasingly pooling the functions of traditional independence – executive decision making, judicial decision making, law making – even a common currency and a single currency that inevitably leads to a single economic policy. Europe is increasingly based on relationships of freely chosen inter dependence, rather than classical independence.

It is entirely consistent with this international trend in Europe that Gibraltar should seek to decolonise through a process of modernisation of an enduring link that the people wish to maintain. This does not suggest a masochistic proclivity to colonial subjugation nor insecurity in our claim to self determination – it is precisely what UN Resolutions envisage in the so-called fourth option for valid decolonisation. Mr Chairman, I would remind the

Committee of the following stipulation in General the Committee of the following stipulation in the General Assembly Resolution 2625(XV) of 24 October 1970:-

“The establishment of a sovereign and independent state, the free association or integration with an independent state or the emergence into any other political status freely determined by a people constitute modes of implementing the right to self determination by that people”.

The fourth option, not being independence therefore necessarily envisages a relationship of political dependence on another state and thus the retention of sovereignty by that state. We seek such a relationship with the UK – a modern, non-colonial constitutional relationship.

This contradiction in the Spanish position is evident in the Spanish representative’s statement to you last year. He argued that a clause in the Treaty of Utrecht of 1713 giving Spain the right of first refusal should Britain wish to relinquish sovereignty of Gibraltar means that we have no right to decolonisation by the application of the principle of self determination.

Even if that were a correct analysis of the position in law (which we dispute since it contradicts the UN Charter which is supreme, overriding law) it presupposes that there cannot be decolonisation by the application of the principle of self determination without a cession of sovereignty by Britain. That is clearly not correct. If it were the fourth option would have no meaning or practical application in any circumstances for any territory. Yet Spain told you last year: “This clause prevents not only independence, but any other formula, however imaginative it might be, which has not been agreed by Spain”. “Gibraltar” he said “can be British or Spanish but any other option is excluded”. “Spain” he continued, “will always oppose any initiative that impedes or obstructs the result envisaged in this retrocession clause”. Spain thus argues that this clause bars all manner of self determination for Gibraltar. The Clause is thus in flagrant contradiction to the principles of the Charter of the UN.

Mr Chairman, it is trite international law that where a bilateral treaty (and this one dates back to 1713) is incompatible with the UN Charter – the UN Charter prevails over the bilateral treaty.

And so Spain tells us that we can either be British or Spanish. And when we say that, therefore we wish to stay British but with a modern, non colonial relationship – Spain comes here to tell you that because we wish to stay British we are not seriously and meritoriously seeking self determination. There is no merit or justice in that circuitous argument. It is without foundation in law or logic. It is self evidently a self serving and contrived argument, calculated to condemn us to a colonial status unless we agree to integrate into Spain.

It is a curious argument indeed that says that it is not legitimate decolonisation to obtain a feely chosen non colonial relationship with the Administering Power but that it is legitimate decolonisation to succumb to a non-colonial relationship with the third party claimant to our territory which our people do not want. Such is Spain’s argument.

Mr Chairman, these are the circumstances in which Gibraltar has rejected Spain’s proposals for full integration of Gibraltar into Spain preceded by a transitional period of joint Anglo-

Spanish sovereignty. The people of Gibraltar do not wish to be part of Spain and such proposal therefore amounts to a total denial of our right of self-determination.

There is much to discuss. Cooperation in economic, social, cultural, judicial and law enforcement matters; bridge building and fence mending. It will be possible to hear and discuss each others views about a viable basis for enhanced and improved relations in the future.

All such dialogue is possible, and indeed desirable, since Gibraltar does not turn its back on Spain. But the overriding parameter is the primacy of the freely expressed wishes of the people of Gibraltar, free from all forms of duress and coercion, to decide their own future.

But we can only participate in dialogue in which we have our own separate voice to represent and speak for ourselves.

We seek to engage Spain in constructive dialogue on the basis of an open agenda. We seek to find a formula for that dialogue which safeguards all parties in what they regard as their essential, fundamental interests and concerns in relation to structure and procedure.

Our willingness to engage Spain in constructive dialogue is a separate issue to the existence of our right to self determination. Such, or any, dialogue is therefore not a legitimate alternative to the recognition of the existence of that right, whatever may be the political obstacles to the enforcement of the right. Thus the adoption of the consensus resolution urging dialogue between Britain and Spain is not an alternative to this Committee's recognition of our right to self determination. That is why I once again urge the Special Committee not to pay lip service to Gibraltar and to our right to self determination by recommending the adoption of the same old consensus resolution.

Mr Chairman, when this Committee reviews annually the position affecting each territory on its list, it does so principally to assess compliance by the Administering Powers with their obligations. However there are covenants and resolutions of the UN relating to the rights of Non-Self Governing Territories, especially relating to the imposition of pressure and coercion on them, that binds, all Member States. We believe that Spain systematically offends against those obligations in the case of Gibraltar in manner which impedes, and is calculated and intended to impede the political, social and economic development of Gibraltar. She refuses to allow maritime or air links between Gibraltar and Spain; she refuses to recognise and deal without authorities, our police, our customs, our judiciary etc; she systematically seeks to prevent the participation of Gibraltar in EU measures and pressurises the UK and other EU Member States to agree to exclude us; she obstructs the development of the use of our airport; she constantly obstructs the affiliation of Gibraltar national sports associations in international federations; most significantly she systematically causes unnecessary delays at our border to obstruct fluid passage of people.

Mr Chairman, the Spanish Government no longer tries to disguise the fact that the objective of these measures are to bring us to heel politically and to dissuade us from the pursuit of our right to self determination. On the 28<sup>th</sup> April 1999 the Spanish Foreign Minister, Senor Matutes, told the Spanish Parliament's Foreign Affairs Commission as follows;

"The controls at the border are what is causing Mr Caruana to be dissatisfied with the situation and with the British Government itself. The frontier controls are what is causing Mr



Caruana to look for alternatives and formulas to reach understanding with Spain and they are what is causing Mr Caruana to know that the Spanish Government is not content with the situation and that he must change his attitude if he wants those controls to take a less restrictive form. Any step to lift or soften those controls without obtaining anything in exchange would purely and simply weaken Spain's position and would reward Mr Caruana in his efforts not to implement the airport agreement or to accept other formulas for cooperation which have been proposed to him". The last point is a clear reference to Sr Matutes sovereignty proposals.

And so, Mr Chairman, in conclusion I once again seek the Committee's clear assertion of our right to self determination in accordance with the Charter, spirit, declarations and resolutions of the United Nation.

I once again ask you not to recommend the continuation of bilateral dialogue between the UK and Spain as an alternative to recognising our right to self determination; and I ask the Committee to examine and condemn the pressure systematically imposed on us by Spain for purely political reasons which seek to deny us the exercise of our rights of economic, social, cultural and political development in breach of Spain's obligations under the UN's Charter and Covenant and of the relevant UN Declarations.