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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

5 July 2000

Mr Chairman,

I thank you and the members of the Special Committee for the opportunity to address you once again as Chief Minister of Gibraltar on the subject of Gibraltar's decolonisation, which it continues to be my honour and privilege to do, following General Elections in February this year which returned my party to office.

During my own annual addresses to you since July 1996, and in addresses to you by my predecessors in previous years, Gibraltar's Chief Ministers have sought to do three things. Firstly to appraise the Special Committee of the facts and the realities about modern Gibraltar; secondly to assert and justify our claim to the same inalienable right to self determination enjoyed by all colonial people; and thirdly to challenge the arguments and the facts put to you by the Kingdom of Spain that systematically seeks to rebut our contention on both these matters. These arguments have now been put repeatedly and are therefore well known to the Committee.

We have asserted that we enjoy the inalienable right to self determination because we are a colonial people. We are the people of a colonised territory. We have been on your list of Non Self Governing Territories since 1946. All such territories are entitled to decolonisation by the application of the principle of self determination. This is the only principle applicable in the decolonisation process. The Kingdom of Spain asserts that, despite the passage of 296 years since Gibraltar has not been Spanish or part of the Kingdom of Spain we are not a colonial people but rather (and I quote the Representative of the Kingdom of Spain to the 54th Session of the Fourth Committee of the General Assembly on 7 October 1999) that we are "the descendants of the colonising people". Gibraltarians are, in fact, the descendants of people from many parts of Europe who over the different generations since 1704 settled in the colony just as occurred with settlers in the United States of America, Canada, Australia, New Zealand, South America and the Caribbean countries – all of whom nevertheless exercised the right to self determination in the colonies in which they settled. Indeed, the people who exercised the rights equivalent to modern rights of self determination in much of South America, were the descendants of the colonising people – namely Spain!

We have asserted that it is the doctrine of the United Nations that in the process of decolonisation there is no alternative to the principle of self determination. This has been accepted by Regional Seminars of this Special Committee, by this Special Committee and by the Fourth Committee. Spain nevertheless asserts that Gibraltar must be decolonised, not pursuant to this exclusive principle of self determination, but by what she asserts to be a principle called "territorial integrity". Mr Chairman there is no such principle recognised in international law for the decolonisation of a colony in violation of its peoples' right to self determination. We are confirmed in this view by the judicial statement of the International Court of Justice in the Western Sahara case that "even if integration of the 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".

Spain asserts that there is a special UN doctrine relating to what she calls colonies that are "territorial enclaves". We assert that there is no such doctrine in the UN or elsewhere in international law. There is but one universal principle of decolonisation applicable to all colonised territories – and that is self determination. Our view would appear to be endorsed

by Spain's own behaviour in rejecting the Kingdom of Morocco's claim to Spain's territorial enclaves of Ceuta and Melilla in North Africa.

Spain asserts that the application of the principle of self determination to the decolonisation of Gibraltar and its people would breach her territorial integrity. We assert that it does not do so, since her territorial integrity, like that of many nations, was breached, if at all, 300 years ago. The breach is thus not the result of our exercise of self determination. The principle of territorial integrity applies only to secession of territories from a Member State, which cannot be justified by alleging the application of the principle of self determination. This is not the case of Gibraltar or any other colony.

The view that the principle of self determination applies to the decolonisation of all the territories on this Committee's list of Non Self Governing Territories has been upheld by the International Court of Justice and numerous statements by this Organisation. As recently as 18th February 2000 the UN Deputy Secretary General said, on the occasion of the beginning of your 2000 session, "continued support for the aspirations of the peoples of the remaining 17 Non Self Governing Territories to exercise their right to self determination is a principal responsibility of the Special Committee". Gibraltar is, of course, one of those 17 territories!

We assert therefore that we enjoy that inalienable right to self determination. Spain, on the other hand asserts that we do not – not only for the reasoning that I have attributed to her earlier in my address – but for the further reason that – she alleges - a provision in the Treaty of Utrecht of the 1713 has the effect of denying us that right. Our own Administering Power, the United Kingdom, which in 1969 asserted before the General Assembly that it was undeniable that Gibraltar enjoys the right to self determination and that the Treaty of Utrecht did not affect that right – now asserts that we do have the right but that it is "curtailed" by the Treaty of Utrecht so as to exclude the possibility of independence and free association. We for our part assert that, whatever may be the proper interpretation of the Treaty of Utrecht, it is, in any case, incapable of displacing the right to self determination of the people of Gibraltar being rights enshrined in the Charter of the United Nations and in accordance with other overriding modern international legal principles.

Referral to International Court of Justice

Well Mr Chairman, there is an obvious course of action available to resolve all these assertions and counter assertions. That is that the Fourth Committee should refer the following questions to the International Court of Justice for a declaratory ruling:

1. Does the principle of self determination by the people of Gibraltar apply to the decolonisation of Gibraltar?
2. If it does, is this right curtailed or howsoever affected by the Treaty of Utrecht of 1713, and if so, how?

Mr Chairman, I should report to the Special Committee that on 18th November 1999 Gibraltar's Parliament unanimously passed a resolution to this effect. I shall hand a copy of its full text to the Secretariat for placing on the record.

Mr Chairman, I and others before me, in the name of Gibraltar have urged you to recommend this course of action to the Fourth Committee. The people of Gibraltar are

entitled to clarity on these vital issues. We are confident of our rights in international law. If others obstruct this course of action the Special Committee and others will be entitled to draw obvious inferences and conclusions.

Mr Chairman, assertions and counter assertions relating to Gibraltar are not limited to legalistic and political issues. They extend to factual matters as well. Over the years Gibraltar's Chief Ministers have set out to inform the Special Committee of the reality of the facts and circumstances of Gibraltar. And so last year I told the Special Committee that 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 which is fully compliant with EU and international standards and requirements), 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 internet and international telecoms based activities and international satellite telecommunications. 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 very substantially self governing in practice.

Spain by contrast systematically seeks to paint a very different and wholly false picture of Gibraltar. For example, the Spanish Representative told the General Assembly on 7th October 1999 that:

"Gibraltar lacks natural resources and agricultural land. Her economy, formerly dependent on the British military base, is now based on its exceptional and privileged status within the EU given that it is exempt from VAT and is excluded from the EU Common Customs Zone. This added to the opaqueness of its financial system converts it into a parasite economy that lives from and at the expense of Spain and from depressing the neighbouring Spanish territory". She said also that our economy was established on "corrupt bases" and that Gibraltar had to establish a sound economy, fully in conformity with EU directives and regulations in which there is no illicit trafficking nor financial opaqueness which permits fiscal competition which have negative consequences for Spanish interest and Spanish exchequer".

Mr Chairman this is a wholly false and propagandistic characterisation of Gibraltar designed to undermine the UN's confidence in our legitimacy and in our rights as a people and as a country. It is an unworthy attempt, at the collective criminalisation of my country and its people that Spain systematically engages in to undermine Gibraltar's reputation and support.

We do what we can for ourselves but the inequality of resources, diplomatic and political influence and access severely handicaps us.

Mr Chairman the truth is that Gibraltar has implemented, complies with and enforces every international convention and standard relating to the international fight against drugs trafficking and money laundering relating to the proceeds of all crimes, not just drugs. In this respect it will interest the Special Committee to know that Gibraltar was a founding and adviser member of the new United Nation Offshore Forum relating to the fight against drugs trafficking and money laundering and that Gibraltar complies with every criteria established by that Forum. Gibraltar complies with all applicable EU requirements on the regulation of the financial system. Our financial system is no more opaque than the UK's and the rest of Europe and the modern world. Ironically, Spain herself is in non compliance with many more EU Financial Directives than Gibraltar. This does not make her shy to make false allegations against us on the issue.

It would take for ever to list all the instances of this propaganda to which I have referred. By way of example only, I would inform the Special Committee of the latest, outrageous example.

Distinguished delegates will be aware that the Financial Action Task Force established by the G7 under the auspices of the OECD has been conducting an enquiry into 47 financial services centres to ascertain which are co-operative, and which are not co-operative, in the international fight against drugs money laundering and the laundering of the proceeds of organised and serious crimes.

The FATF report, published on 22nd June 2000, categorises Gibraltar as co-operative saying that Gibraltar has "comprehensive anti money laundering systems" and does not find that Gibraltar fails any of the FATF 25 tests of non-cooperative". When reporting on the FATF report, Spanish state owned, national television nevertheless added Gibraltar to the list of 15 countries that the FATF had found to be non-co-operative, thus publicising the very opposite of the Report's findings and fabricating information for the sole purpose of blackening Gibraltar's name. This was placed on their world wide internet website.

Mr Chairman, it is not only administrative powers that have obligations and responsibilities, under UN doctrines, towards Non Self Governing Territories. Numerous UN Resolutions and Covenants impose on all UN Members the obligation not to oppress and harass Non Self Governing Territories. Spain is persistently and systematically in breach of these obligations.

Mr Chairman, this harassment does not just take the form of the dissemination of false propaganda about us. Spain also causes unnecessary delays in crossing the international frontier between us and then uses spurious pretexts, such as drug smuggling and money laundering to try and justify what everyone, including her own citizens in the region, know to be unjustified and unjustifiable. Spain also interferes with the development of our telephone services by obstructing the expansion of our telephone numbering plan and mobile phone network.

The People of Gibraltar

I would respectfully submit that the reality of our legitimate existence as a people is inescapable to anyone who visits Gibraltar. No one who visits Gibraltar can conclude that we are not a distinct people. The origins of our people are indeed a mixture of various Mediterranean and British stock. This ethnic cocktail, so common to the historical and

current make up of many of the UN's Member States, is complemented by a wonderful diversity of cultural influences from many countries. These differing ethnic and cultural backgrounds, Mr Chairman, have long ago over the decades, and continuously since 1704, fused a cohesive people small in number, but immensely rich in heritage, culture, social and religious tolerance. Our identity is distinct, separate and unique. As a people the only way in which we can be accurately described is therefore as "Gibraltarians".

Spain on the other hand asserts that even though Gibraltar is a colony of the UK, the people of Gibraltar are not a colonial people because, she says, we are the descendants of the colonising people and of people brought to the colony by them. This leads her to the peculiar conclusion, for which there is no basis in international law or in the history of decolonisation of the world, that we therefore do not enjoy the right to self determination.

Well, Mr Chairman, there is also an obvious course of action available to resolve these assertions and counter assertions relating to factual matters. And that is what the Special Committee should take neither Spain's word nor Gibraltar's word for these issues and should simply visit Gibraltar and assess and judge for itself what are the physical, economic, political, social and cultural realities of Gibraltar and whether the people of Gibraltar are a distinct people worthy of that name and of the right to achieve decolonisation through the exercise of self determination.

In our view, Spain's position in relation to the decolonisation and other aspects of Gibraltar is based on a distortion of both international law and of the facts and circumstances of Gibraltar. Both of these are capable of objective assessment and resolution. The first by referring the question of the existence or otherwise of our right of self determination to the International Court of Justice for a declaratory ruling and the second by the Special Committee despatching a delegation to visit Gibraltar to assess the factual situation of our circumstances. I, and my predecessors before me, have invited the Special Committee to pursue both and I once again renew that invitation.

Dialogue

Mr Chairman, I have said on many occasions to this Committee and to the Fourth Committee and it is fully reflected in the Secretariat's Working Paper on the question of Gibraltar at paragraph 64, that the Government of Gibraltar is not afraid of, and positively seeks dialogue and good relations and co-operation with Spain. However, dialogue about Gibraltar must be structured so as to give the people of Gibraltar, as the primary interested party, a proper voice of its own in the form of their elected leaders and Government.

It is therefore wrong and pointless, for this Committee to continue, year after year, to recommend to the Fourth Committee a decision that calls for the bilateral dialogue between our Administering Power, the UK, and the territorial third party claimant, Spain. It is wrong because Spain derives from such bilateralism comfort for her thesis that this is not a case of decolonisation by self determination of the people of Gibraltar but rather a bilateral sovereignty dispute between the UK and Spain in which the people of Gibraltar have no rights. It is pointless because such bilateral talks have made no progress since they commenced in 1984. Indeed, as the Working Paper correctly observes at para 69, such meetings have not taken place at all since 10 December 1997.

I hope that distinguished representatives will appreciate and understand that despite our desire to engage Spain in dialogue, it is not reasonable to expect us to do so within a structure, which of itself, prejudices our substantive position and rights as we see them. We would hope that the Kingdom of Spain can also understand our position and concern in that respect, just as we understand that the structure of dialogue should not prejudice Spain's position either. It seems to us that all that is required is a little imagination, good faith and will on all sides to seek a formula for dialogue that properly safeguards the fundamental interests and concerns of all sides. For Gibraltar's part, the Gibraltar Government is willing to participate fully in the exploration of those possibilities.

I therefore renew my petition to the Special Committee that it introduces into its annual recommendation the call for meaningful and constructive dialogue structured in manner which includes the representatives of the people of Gibraltar in their own right and with their own voice.

Mr Chairman, whilst on the subject of dialogue, I note the restatement by the Spanish representative during her address to the Fourth Committee on 7th October 1999 of the point that Spain's offer of transitory co-sovereignty between Britain and Spain followed by full integration into Spain – the so-called Matutes Proposals – were not a final offer, but rather a starting point for negotiations. I had, just two days earlier, told the Fourth Committee that this statement was positive if it meant that Spain is able to contemplate and seek a solution to the issue of her territorial claim that does not involve a Spanish Gibraltar and which is in accordance with the wishes of the people of Gibraltar.

However, in assessing whether the so-called Matutes Proposals genuinely were a final offer or an opening offer, it is necessary to consider the language in which they were couched. The reality is that they came with a very comprehensively spelt out "health warning" as to the adverse consequences for Gibraltar of a negative response.

Mr Chairman, on several occasions the Kingdom of Spain has said publicly that the Matutes proposals have been hastily rejected by the people, Parliament and Government of Gibraltar without proper consideration. This is not so since the proposals intrinsically involve immediate Spanish co-sovereignty followed by permanent and exclusive Spanish sovereignty over Gibraltar under the Spanish State, to both of which the people of Gibraltar are firmly and practically unanimously opposed. There has been a unanimous resolution of Gibraltar's Parliament and a massively subscribed public petition rejecting these proposals. The people of Gibraltar now await the UK's formal rejection of the proposals consistent with their commitment to respect the wishes of the people of Gibraltar in this respect and with the unanimous wishes of Gibraltar's Parliament expressed in a motion to that effect. Mr Chairman, such rejection of the Matutes' Proposals does not mean that the Gibraltar Government is unwilling to participate constructively in properly structured dialogue about Gibraltar.

Delisting of Territories

Mr Chairman, during the last year or two the issue of delisting territories, that is to say removing them from the Special Committee's list of Non Self Governing Territories and therefore from the Committee's and the UN's oversight has been increasingly under discussion.

My Government supports the development of modern, realistic and workable criteria for the delisting of territories. Those criteria must however include a genuine and free act of self determination, namely a referendum, by which the people of the territory make a valid decolonisation choice.

It would be wholly wrong and inappropriate for any of the 17 territories to be delisted without the consent of the people of the territory and other than in the context of the decolonisation of the territory consequent upon the exercise of the right to self determination by the people of that territory.

I say these things, Mr Chairman, because I understand that the Kingdom of Spain is lobbying the Special Committee to delist Gibraltar, without an act of self determination on our part, and precisely because she alleges that Gibraltar is not a case of decolonisation by self determination within the Committee's jurisdiction, but rather a simple territorial sovereignty dispute. This would be tantamount to the Special Committee comprehensively adjudicating against the people of Gibraltar on the question of the existence of their right of self determination.

Mr Chairman, I cannot believe that the Committee would even contemplate such a course of action which would be regarded by the people of Gibraltar as a betrayal of them by the very organisation in which they have placed their trust.

If the Committee has the remotest doubt about our political and legal rights under the Charter and other international law the fair and proper course of action would be, as I have already said, to recommend to the Fourth Committee that it refers the matter to the International Court of Justice for a declaratory ruling.

We however have no such doubts about our political and legal rights. We have no doubt that we are the beneficiaries of the inalienable right of self determination.

Report on the situation of Gibraltar

Mr Chairman, there are two issues affecting Gibraltar upon which I think that it is both necessary and appropriate that I report to the Committee:-

1. EU Agreements

I have previously reported to the Committee on Gibraltar's difficulty in enjoying its EU Rights in accordance with our Constitutional authority and autonomy because of Spain's refusal to recognise our domestic competent authorities in the context of dealings within the EU. I am delighted to report, as does the Secretariat in his Working Paper, that the Gibraltar Government has been able to agree to what we consider to be good agreements which establish arrangements which satisfactorily overcome this particular category of difficulties (other types of difficulties remain unresolved). The agreements means that Gibraltar's own Constitutional domestic competent authorities will be designated in and under EU legal instruments in and for Gibraltar and that their acts and decisions will be recognised throughout the European Union. This fully upholds our Constitutional and jurisdictional autonomy and our self Government both domestically and for EU business. However, given that we are not a separate Member State of the EU in our own right we have agreed that, given that the UK is the Member State responsible for Gibraltar in the EU, communications

between Gibraltar's competent authorities and the competent authorities in other EU Member States will be physically conveyed on Gibraltar's behalf by the British Government. We believe that these agreements are good for Gibraltar and all EU Member States.

In addition, agreements have been reached that result in the recognition by all EU Member States of identity cards issued in and by Gibraltar's statutory administrative authority in that respect. And finally an agreement has been entered into which finally establishes a formal structure for co-operation between Gibraltar's police force and police forces in Spain.

Contrary to the report in the Working Paper the Agreements do not relate to finance. The Government of Gibraltar has been engaged with the United Kingdom Government in the negotiation of every aspect of the Agreements.

2. Eurovote

In February 1999 the European Court of Human Rights ruled that the United Kingdom was in violation of the European Convention of Human Rights as a result of its failure to make arrangements for Gibraltar to participate in elections for Members of the European Parliament. The United Kingdom has committed itself to the rectification of this violation. It has not yet occurred. The Kingdom of Spain has objected to the United Kingdom's attempt to end this violation of human rights which is occurring within the European Community. Given the ruling of the European Court of Human Rights it would be inconceivable in terms of the EU's commitment to uphold internationally agreed standards of human rights for Gibraltar not to be properly enfranchised to participate in the next European elections due in 2004.

New Action Plan

Mr Chairman I have in the past expressed to the Committee the view that it would need to deal with the remaining 17 territories on a case by case basis if the Committee wanted to make an impact on their decolonisation and help the peoples of the remaining 17 territories to realise their aspirations in that respect. This is the only approach that will yield practical results in the Second Decade for the Eradication of Colonialism.

I therefore fully support the Committee's determination to formulate an updated plan of action for the eradication of colonialism, and especially the Chairman's objective to develop a constructive programme of work on a case by case basis for all the Non Self Governing Territories by the end of this year and with input from the representatives of each territory.

In her address to you at the opening of your session this year, the Deputy General Secretary expressed confident hope that the Committee would be able to develop a programme of work for each Non Self Governing Territory before the end of the year.

In this respect we welcome the apparent recent inclination of some administrative powers, including the UK, to co-operate informally with the Special Committee. There is even talk of changing attitudes to allowing visits by the Committees to the territories. Mr Chairman, this is imperative.

I would therefore urge the Committee when it develops, pursuant to its new objectives, a constructive programme of work on a case by case basis, that in the case of Gibraltar this should include the following 4 points:

- (i) the despatch of a visiting delegation to Gibraltar
- (ii) the proclamation, for the avoidance of doubt, of the Special Committee's belief in the existence of the inalienable right to self determination of the people of Gibraltar.
- (iii) if the Committee has any doubt whatsoever in that respect it should recommend the referral of the legal points of conflict relating to our right of self determination to the International Court of Justice for a declaratory ruling, and
- (iv) the call for dialogue by the UN should be on the basis that I have described, namely with a proper and distinct voice and representation for the people of Gibraltar.



HOUSE OF ASSEMBLY,

GIBRALTAR.

ANNEX

TEXT OF HOUSE OF ASSEMBLY MOTION PASSED UNANIMOUSLY – 18/11/99

This House –

- (1) Reaffirms the view it has always held that the people of Gibraltar have and are entitled to exercise the inalienable right to self-determination as provided for by the Charter and Resolutions of the United Nations and that this is not affected by the Treaty of Utrecht.
- (2) Notes that the United Kingdom now holds the view that the right of the Gibraltarians to self-determination is constrained or curtailed by the provisions of the Treaty of Utrecht even though in 1964 the British representative at the United Nations told the United Nations that his Government "does not accept that there is any commitment under the Treaty of Utrecht binding us to refrain from applying the principle of self determination to the people of Gibraltar..... And completely rejects the attempts by the Government of Spain to establish that there is any conflict between the exercise of self determination by the people of Gibraltar and the provisions of the Treaty of Utrecht."
- (3) Notes that the Kingdom of Spain holds the view that the provisions of the Treaty of Utrecht deprive Gibraltarians of the right to self-determination.
- (4) Whilst totally confident of the correctness of the position that it has always maintained and of the position articulated by the UK at the United Nations in 1964 considers that all sides must benefit, regardless of their political positions, from clarification of applicable international legal principles.
- (5) Notes and welcomes the fact that the Government of Gibraltar has sought a further legal opinion on these and related questions from an international law expert and that the final opinion is expected shortly.
- (6) Notes that this and the previous Government have requested the UN itself to refer these questions to the International Court of Justice for an advisory opinion.
- (7) Notes with regret that only the parties to an international treaty and the United Nations itself can seek such an advisory opinion on the validity, meaning and effect of a treaty provision and that it therefore appears that the Gibraltar Government itself lacks the legal right and standing to petition the court.
- (8) Therefore calls on Her Majesty's Government and the UN or either of them to refer to the International Court of Justice for an advisory opinion, the question whether the Treaty of Utrecht now restrains or curtails the rights to self determination of the people of Gibraltar".