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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

19 JUNE 2001



Mr Chairman, once again, as it has done each year since 1992, the Government of Gibraltar, in the person of its Chief Minister, appears before this Committee, to articulate the wishes, views and aspirations of the colonial people of Gibraltar and to seek this Committee's assistance in our decolonisation through the exercise of our right to self-determination. We are, as always, grateful of the opportunity to address the Special Committee.

Since 1992 we have deployed many arguments, some of a legal nature, others of a political nature, in support of our case. None has ever received a response from the Special Committee nor have they so far been reflected in the position adopted by the Committee. We have also regularly reported to the Special Committee on the situation in Gibraltar. In addition, we have rebutted the Kingdom of Spain's arguments that the people of Gibraltar are not a colonial people, are not entitled to the right of self-determination and that this is, somehow, the doctrine of the United Nations.

To these ends we have argued, and demonstrated, the following:-

1. That Gibraltar is one of the Territories on this Special Committee's list of non-self governing territories having been placed on it by our Administering Power, the United Kingdom, in 1946. Since then the UK has reported on the territory and its people to the Special Committee in discharge of its obligations under Article 73 of the Charter.
2. Gibraltar is thus unquestionably a colony. Indeed, in Spain's statement last year to both this Special Committee and to the Fourth Committee, Her Representative conceded that: "Gibraltar is a colony in the process of decolonisation". We have also demonstrated that the doctrine of the United Nations, repeatedly stated by this Special Committee, is that in the process of decolonisation there is no alternative to the principle of self determination. That is to say, that it is not possible to decolonise a territory by any other means.
3. We have shown also how this principle has been fully affirmed and endorsed by the International Court of Justice and is thus enshrined in international law. In support, we have cited the Namibia case in which the International Court of Justice said 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".
4. We have demonstrated, specifically, (even though it follows from all the above arguments) that there is in fact no UN doctrine, as alleged by Spain, that Gibraltar should or indeed can be decolonised by the application of the principle of territorial integrity, which principle (in any case) has no application to cases of decolonisation. To demonstrate this we have cited the case of the Western Sahara, in which the International Court of Justice said:-

"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".

It is therefore clear that there is no such thing as decolonisation by the application of the principle of territorial integrity without the consent of the people of that territory. There is no special doctrine applicable to colonies that some choose to call "colonial enclaves". There is no special decolonisation regime suspending or overriding the

right to self determination in colonies just because they are, separately, the subject of a territorial or sovereignty dispute.

5. We have demonstrated how Spain, therefore, has sought to distort the real meaning of the principle of territorial integrity, which is to prevent secessions by an integral part of a Member State. Gibraltar is not now, and has not for 297 years been, a part of the Kingdom of Spain, and therefore neither the principle has application nor does our decolonisation now bring about the disintegration of her national integrity.
6. We have demonstrated how it is trite international law that even if the Treaty of Utrecht were still valid, it is incapable of overriding rights and obligations contained in the Charter of the UN – which is supreme international law that overrides all other bilateral and international treaties.
7. We have demonstrated how in General Assembly Resolution 46/181 of 19 December 1991 the UN reaffirms the inalienable right of self determination of the peoples of all the remaining Non-Self Governing Territories.

Mr Chairman, despite addressing you year after year to this effect; despite repeatedly putting these (and other) arguments to you, we have as yet had no sign from the Special Committee that it is ready to help the people of Gibraltar to secure respect for and implementation of these rights. The Committee listens to us politely and with interest (which we greatly appreciate) but then appears to ignore everything that we say.

Instead, the Special Committee, year after year, repeats the same statement in support of a sterile and ineffective negotiating process between our Administering Power, the UK, and the territorial claimant, Spain, which is wholly irrelevant to the issue of our decolonisation. In doing so, the Committee ignores another of Gibraltar's pleas to it namely that it should not endorse dialogue about a Non-Self Governing Territory in which the people of that Territory are not represented in their own right and with a separate voice of their own. How can this Special Committee, with a sacred trust to promote the rights and interests of the colonial peoples of a Non-Self Governing Territory, promote these bilateral talks, as if our decolonisation could, even in theory, be negotiated between the UK and Spain in any manner that would be even remotely consistent with the Charter of the UN or the Declaration on Decolonisation?

Surely the Special Committee exists to help us, the people of Gibraltar, and not to balance the positions of Spain and the UK – or even to adjudicate between them.

Mr Chairman, with your indulgence, I would like to read to you a lengthy quotation. They are not the words of a Chief Minister of Gibraltar, but of the Distinguished Representative of Iraq to this Committee on the occasion of its consideration of the question of Gibraltar. But I could not articulate the point more eloquently myself. Nor is this modern theory. It was said here, to this Committee 37 years ago on the 6<sup>th</sup> October 1964:

“But whatever ancient shadows established or did not establish the present, they have left us now with one substantial legacy; 17,000 – odd or 24,000 – odd Gibraltarians. These are our real responsibility here. We cannot ignore them, nor should we seek to bundle them up and dispose of them in some clandestine way. They have been called a “pre-fabricated population”. I do

not believe that they are. But whether they are or whether they are not, they are in being – they exist. And they exist as people. They exist not as Spaniards, nor as Englishmen, but as people, and Gibraltarian people. They exist as surely as, for example, the population of Singapore exists – which developed, according to my understanding, only from 1819 onwards, in much less time than it took the Gibraltarians to develop, on an island which was bought for the British by Sir Stamford Raffles as an uninhabited island swamp, was converted from a swamp, and rapidly became the home of 2 million people who had never previously known of its existence, or if they had known, they had never previously cared. So that these Gibraltarians are not unique in the peculiar nature of their birth and composition. In these respects they have many colonial counterparts elsewhere. And I repeat that they exist as surely as the populations of many other places in the world to whom there has been no suggestion that self-determination should be denied simply because they have been migrant people over the centuries in an area which they now call home. Through the very fact of their existence these people have rights as people. Under the provisions of resolution 1512(XV) they have particular rights and a particular claim upon us here.

These people are what we are now concerned with. We are not, I submit, concerned with the conflicting and imperial claims of Great Britain, on the one hand, and Spain on the other. Whatever differences exist between these two Powers, my delegation believes, are differences for adjustment between them in the normal course of events and without the intervention of our Committee.”

Mr Chairman, in contradiction of this, the Kingdom of Spain says that we are not a colonised people, because she says (wrongly) that we are the descendants of the people brought to the Colony by the Colonising Power. In saying this Spain ignores the fact that she is, in fact, describing her own colonial history in much of South and Central America, where the dependants of Spanish colonists (the people that Spain took to her colonies) eventually exercised their right to self determination in lands to which they were not indigenous. She also ignores the similar colonial history of more than half the colonial peoples who exercised the same right and now sit in these United Nations.

Mr Chairman, it is a fundamental error to confuse the very different issues of decolonisation and sovereignty dispute. Decolonisation relates only to the rights and status of the people of a Non-Self Governing Territory and their homeland. A territorial sovereignty dispute is a dispute over a piece of land between two Member States. Decolonisation and sovereignty disputes are not synonymous terms or concepts. Neither can one displace the other. Just as the existence of a territorial dispute over sovereignty cannot extinguish the right to decolonisation by the exercise of self determination of the people of that colony, neither does the exercise of that right to self determination extinguish any sovereignty claim or dispute. But they cannot be confused or lumped together, because each issue (decolonisation on the one hand, and territorial disputes on the other) raises different rights of a different quality and nature in favour of different parties.

I say this, Mr Chairman, not least because this Special Committee has not mandate over sovereignty disputes. It does however have a mandate, indeed a sacred trust, to help the peoples of all the remaining Non-Self Governing Territories to achieve decolonisation and to

do so through self determination, given 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 makes the position taken by this Committee, year in year out, all the more surprising to the people of Gibraltar.

Mr Chairman, in order to enlist the support of this Committee, Spain begins almost all its statements to the Committee with words of support for and commitment to the Committee's work to eradicate colonialism. Regrettably Spain's actions do not match her words, for she repeatedly informs this Committee and the people of Gibraltar that Gibraltar faces only two options:

- to remain a British colony for ever; or
- to integrate into Spain.

For example on 21<sup>st</sup> June 1999, the distinguished Representative of Spain told this Special Committee:

“Gibraltar can either continue as a British Colony or revert to Spain”.

That is to say, Spain is quite content for Gibraltar to remain a Colony. Spain's commitment, therefore, is not (as she professes) to decolonisation but to her own self-interested territorial ambitions. And the reason why Spain finds herself in this self evidently contradictory position is that she confuses the question of decolonisation with the question of territorial sovereignty dispute.

The people and Government of Gibraltar have supported the Special Committee in its work, through our attendance at these meetings and regional seminars. We have attended in spite of opposition from our administering power. We have also openly welcomed the Declaration of the Second Decade for the Eradication of Colonialism.

To mark this support we attended the Caribbean Regional Seminar in Cuba, last month. I would like, once again to thank and congratulate the people and Government of the Republic of Cuba for hosting that Seminar and for their excellent hospitality. I think that it was clearly a good seminar for the Special Committee and its future. I regret that it was not a good Seminar for Gibraltar.

Certainly I was afforded every opportunity to express my views, but when it came to drafting the so-called “Conclusions and Recommendations” of the Seminar, everything that I had said was ignored, and everything that he representatives of the Kingdom of Spain and the Republic of Argentina had said was diligently included and reflected in the so-called “Conclusions and Recommendations” of the Seminar, despite the fact that the Seminar participants (which included me) had concluded and recommended nothing of the sort. I was therefore obliged to condemn those Conclusions and Recommendations and disassociate Gibraltar from them. The spectacle of these two self interested Member States openly determining the text of the Conclusions and Recommendation was most demoralising to us as an affected Non-Self Governing Territory. Surely, the Special Committee organises these Seminars for the benefit of the Non-Self Governing Territories and not to give interested Member States a still further opportunity to wield their obviously greater power

and influence within the UN and to frustrate the very objectives of the Special Committee and the principles which bind it.

Mr Chairman, I do not come here expecting the Committee to accept and adopt everything that we say, simply because we say it, even though we have passionate confidence in the correctness of our cause and the merit of our argument. Rather, I come to say:- this is what we believe is right – if you agree with us please say so, if you have any doubt about the truth of the facts that we put to you or the correctness of our arguments please put those doubts to the test. If you have doubt about the existence, in international law, of our right to self determination, or of the extent of it, please recommend to the Fourth Committee that it refers the question to the International Court of Justice for a declaratory ruling. If you have a doubt about the worthiness of the people of Gibraltar to be beneficiaries, politically, of the right to self determination, please send a delegation to Gibraltar to make an independent assessment of that issue and of our situation. That is the minimum that we ask.

Yet both these pleas have been disregarded by the Special Committee, as well.

Mr Chairman, I have asked the Special committee to devise a working plan of action for Gibraltar based on these and other elements. This request has not, as yet, prospered either. Instead, the Special Committee has approved the Conclusions and Recommendations of the Marshal Islands Pacific Regional Seminar in 2000, into para. 32 of which, Spain and Argentina had (as a further example of what happened in Havana) procured the insertion of the statement that representatives of Non-Self Governing Territories should not participate in the development of work programmes for individual territories, where the territory was the subject of a sovereignty dispute.

The clause reads:-

(32) The participants noted that the participation of representatives of the Non-Self-Governing Territories in which there was no dispute of sovereignty in the development of the work programmes for individuals Territories should be ensured.

In other words, this Special Committee, charged as it is to promote and defend the right to self determination of the people of Gibraltar, has endorsed the extraordinary proposition that the mere existence of a sovereignty dispute results in us not being entitled to participate even in the development of a work programme for the territory of Gibraltar. This was not the conclusion and recommendation of the seminar or its participants. It was the private prescription of Spain and Argentina. My request in Havana for this to be excised from the Havana Conclusions and Recommendations also fell on deaf ears because of the intervention of Spain and Argentina.

Mr Chairman, the reality of the matter is that some Member State or other has some axe or other to grind in relation to most of the territories remaining on your list of Non-Self Governing Territories. Therefore, Mr Chairman, if, as we would all wish, this Committee is to successfully complete its work during this Second Decade for the Eradication of Colonialism it will have to break loose from excessive influence over its work by other Member States interested in the territories.

Mr Chairman, the distinguished members of the Committee will detect in my remarks a degree of criticism of the Committee. It is born of frustration and disappointment. I utter these criticisms on behalf of a territory that has valued and continues to value the work of the Special Committee. I therefore utter them in friendship and not in hostility to the Special Committee and with due deference to the distinguished members of it and that Member States that they represent.

Mr Chairman, I would wish to deal with one final matter. In Havana last month the distinguished Representative of the Kingdom of Spain sought to denigrate the worthiness of our cause and the sincerity of our commitment to decolonisation by saying that Gibraltar targeted its criticism only at Spain and never criticised the colonial power, the UK. In fact this is not true, but even if it were, the reality of the matter is that it is not our colonial power, of her own conviction, that denies us decolonisation, but the Kingdom of Spain that obstructs, intimidates and discourages the UK, as it does this Special Committee, to that end.

In Havana last month the distinguished Representative of Spain openly told the Seminar that if Britain made the slightest alteration to Gibraltar's Constitution this would have dire consequences for relations between Spain and the United Kingdom. In doing so he was doing no more than echoing the words of the Spanish Foreign Minister who told the Spanish Senate in February this year, that:

"An ever-growing trellis of human, cultural and economic links exists between the United Kingdom and Spain. The United Kingdom is our 4<sup>th</sup> supplier and our 5<sup>th</sup> customer, the flow of investments in both directions is of utmost importance, interest for our respective cultures is on the increase, approximately 12 million British people visit us every year and there are 200,000 UK residents in our country. However, Gibraltar still prevents our bilateral relations reaching their plenitude. Moreover, they could deteriorate if the Gibraltar "Constitution's" reform project bears fruit. Even if the United Kingdom minimises its scope, alleging that it represents a mere modernisation technique, Spain cannot remain indifferent to a modification in the colonial status of Gibraltar contrary to that stipulated in the Treaty of Utrecht, to the resolutions of the United Nations General Assembly and to the very same Declaration of Brussels."

The following month he told the Spanish Parliament's Chamber of Deputies that:

"To the absence of dialogue there is added the perspective of a constitutional reform in the Colony, the first steps towards which have already been taken in Gibraltar. The UK intends that its scope should be minimal. We have made clear to the UK our frontal opposition to any modification, however small it may be, of the colonial status of Gibraltar, to any modification of the Constitution in the direction of a greater measure of independence or integration with the UK, contrary to the Treaty of Utrecht. If the process comes to fruition, Spain would regard the reform as a grave and hostile act that could cause a serious deterioration in relations between Spain and Britain."

Mr Chairman, we believe that it is these Spanish threats that prevent the United Kingdom from adhering to her own position on the matter of Constitutional Reform and self Government which she articulated before this Committee as long as the 30<sup>th</sup> September 1964 when her distinguished Representative, a Mr King, told this Committee:

“First, I wish to say that my Government does not accept the interpretation of the Treaty of Utrecht presented by my Spanish colleague, nor does it accept that Spain has any right to be consulted on changes in the constitutional status of Gibraltar and its relationship with Britain. My Government is satisfied that the grant of Gibraltar to Britain under the Treaty, and as subsequently reaffirmed, was absolute and without any bar to constitutional changes in Gibraltar and the acquisition by its inhabitants of “a full measure of self-government” as the Chapter requires”. He then added:

“Given that the United Nations has consistently treated Gibraltar as a colony and that Article 73 applies to it, Britain would not have been fulfilling the requirements of that Article had it not taken steps to enable the Gibraltarians to advance towards a full measure of self-government.”

I am not aware that the UK has made any statement in the UN resiling from this position. Indeed, how could it?

The distinguished Representative of the United Kingdom went further on to add:

“My Spanish colleague has argued that the principle of self-determination cannot apply to the people of Gibraltar. He has not made it clear why that should be so. This Committee would not, I am sure, accept the implied suggestion in the statement by the representative of Spain that the population of Gibraltar is too small to enjoy self-determination. It has repeatedly been said in this Committee and its organs that the size of a population is irrelevant to the applicability of the Charter and of Resolution 1514(XV)”

Mr Chairman, in conclusion I wish to make it quite clear that the Gibraltar Government is not opposed to, and indeed would welcome properly structured dialogue with the Kingdom of Spain to attempt to resolve our differences and problems. I would therefore urge the Special Committee to make the following recommendations:

- (1) No dialogue should take place about a problem affecting a Non-Self Governing Territory between the administering power and any other Member State without the presence and participation, with a separate voice, of the Government of that territory.
- (2) Without prejudice to the applicability of the principle of self determination to the decolonisation of Gibraltar, the Special Committee recommends dialogue between the Governments of the United Kingdom, Spain and Gibraltar within or out with the Brussels process aimed at achieving a solution to the question of Gibraltar in accordance with the relevant resolutions of the United Nations, namely respect for the inalienable right of the people of all Non-Self Governing Territories to self determination.