



GIBRALTAR

THE RIGHT TO SELF-DETERMINATION

FULL TEXT OF AN ADDRESS

BY THE

CHIEF MINISTER OF GIBRALTAR

THE HON. J J BOSSANO

TO THE

U.N. FOURTH COMMITTEE

NEW YORK

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1. In appearing before the Fourth Committee, I think the first thing that I should put on record is my appreciation for the reception that the petition from Gibraltar has received in the two appearances before the Committee of 24 in which I have participated this year and last year. I have been encouraged to seek this audience today before the Fourth Committee, by the warmth and the understanding of the reception that I have experienced in the Committee of 24. It was clear to me from that reception and warmth that in the intervening lapse of time that has occurred before Gibraltar appeared in front of the United Nations, a lot of misconceptions about the situation of Gibraltar needed to be clarified.

2. The last time the Chief Minister of Gibraltar appeared before this Committee was in December 1967 to appeal to the Committee not to reject the result of a referendum that had taken place in September of that year in Gibraltar. It is obvious that in the 1960's, both in the Fourth Committee and in the Committee of 24, the question of the British military presence in Gibraltar was a factor that coloured to a very large degree the reaction of the members of both Committees.

3. It is true that at the time of the referendum in 1967 the Gibraltar economy was dependent to a very high degree on British military expenditure. But it was a different world from the one that exists in 1993. It was then at the height of the Cold War. It was a world divided into blocks and Gibraltar depended for 75% of its national income on British defence expenditure. In fact, I can do no better to illustrate the importance attached to this factor than to refer to what took place before this Committee in December 1967.

4. In condemning the holding of the referendum before this Committee, the representative of Spain, described it as a referendum intending to bring about the perpetuation of colonial rule with the approval of Her Majesty's loyal subjects in Gibraltar and went on to argue that the British Government was using the native population to perpetuate its colonial rule in the same way as it had used them for the perpetuation of the military base.

5. In exercising his right of reply, the UK representative pointed out that Spain had tried to suggest that the UK opposed self-determination and independence for Gibraltar. He asserted that the UK had always made clear its aim to continue with Gibraltar's decolonisation as speedily as possible. He

admitted that independence for Gibraltar had not been seen as a solution because Spain had always made clear to UK that it could not accept independence for Gibraltar because it considered it to be a breach of the Treaty of Utrecht. He asked if that was not Spain's position perhaps the representative of Spain could tell him whether, if Gibraltar was granted independence, that solution would be acceptable to Spain.

6. I ask members of the Committee to think carefully about the reply given by the representative of Spain to this question put by the United Kingdom, which was clearly not assumed to be rhetorical. The representative of Spain replied that the first necessity was for the United Kingdom to remove its military base. After that, the Spanish delegation would be prepared to reply to the United Kingdom representative's question and any other question he might ask.

7. That is to say, after the United Kingdom removed its military base, Spain would be willing to answer the question on whether it would accept Gibraltar being granted independence. I ask members of the Committee to take careful note of that given the change that has taken place in Gibraltar in the intervening twenty six years since this Committee previously had a petitioner from Gibraltar addressing it.

8. Well, the reality of it is, that the military base has been dismantled. Not in order to elicit an answer from Spain on independence for Gibraltar, but because the United Kingdom's interests no longer require a large military presence in Gibraltar. This has created difficulties for our people, in adjusting to change, in re-organising our economy, in adapting to a competitive market to which we were not used to. But today we are managing to survive and developing an economy with a contribution from military spending of 10%, a contribution which is still declining and likely to become negligible.

9. This was a factor that I drew to the notice of members of the Committee of 24 in 1992 and earlier this year. So, to the extent that the colonial situation in Gibraltar was coloured in the past by the overwhelming military presence on the part of the United Kingdom, that is no longer a factor in the equation. That is no longer a threat - if ever it was one - to the neighbouring country. And therefore the question that was put in 1967 to the representative of Spain is relevant today.

10. Allied to the development of a market orientated, self-sufficient economy, there has been the natural concomitance of the growth and deepening of the sense of identity of our people and a coming of age in the aspirations of our people being reflected in a love for their country and a desire to have their identity recognised within the family of nations.

11. As culmination of this feeling, which has been growing apace with our own control of our economy, the Government of Gibraltar declared the 10th September this year as Gibraltar's National Day. It was a wonderful occasion when our people came out virtually to the last man, woman and child. Some 16,000 of the 20,000 indigenous inhabitants of Gibraltar took part in a day of peaceful and happy celebration, celebrating the identity of Gibraltar and its people. It was the day which was the 26th anniversary of the 1967 referendum.

12. But the people of Gibraltar were not simply recalling and repeating the decision taken in 1967 in the referendum; a referendum which was not found acceptable by the Fourth Committee, nor by the Committee of 24. That referendum for us marked the first time in our history when an attempt had been made by the administering power to consult the natives of Gibraltar about their future. It presented a limited choice, as we all recognise, but if one were to question the 1967 referendum, the only thing that one can question was why this choice was limited.

13. It was not the exercise of self determination because no one can constrain the right of self-determination by saying to a colonial people - you are exercising your right to self-determination, but you can only exercise it in the way I tell you. However, from the point of view of the Gibraltarians, it was an enormous advance to be asked to express a view at all.

14. I would remind the Committee that, also in 1967, the people of Anguilla had exercised, freely and democratically, their decision to secede from a post colonial independent state of St Kitts and Nevis and to return to a colonial relationship with the United Kingdom. We were then in a situation where decolonisation had taken place of a small island in the Caribbean with 6000 people and that decolonisation had been by integration with their nearest neighbour. After integration took place, the inhabitants decided to break the

territorial integrity of the newly formed state and restored the colonial relationship with their former colonial power. This Committee accepted that decision. Members will understand how the contrast between these two responses to Gibraltar's decision not to join Spain and Anguilla's decision to secede from St. Kitts and Nevis, appeared incomprehensible to the Gibraltarians.

15. It is my responsibility, Mr Chairman, to seek to redress that situation after twenty six years and to obtain for the Gibraltarians the treatment at the hands of the United Nations General Assembly and the Fourth Committee that the Gibraltarians are entitled to, which is simply the same treatment as any other peoples of any other non self-governing territory have had in the past.

16. In our National Day celebrations at Casemates Square, in front of a mass meeting and rally of our people, where virtually everyone was there, in a spirit of comradeship and of identity, we had with us on the platform something that was perhaps even more historic than the fact that we were celebrating our National Day. We were joined on the platform to speak to our people, by friends from Spain. Members of the Association of the Spanish Friends of Gibraltar and other sympathetic Spanish politicians who joined us as a sign of solidarity with our people and also to publicly express the view that the people of Gibraltar were entitled to have the right of self-determination recognised.

17. Mr Chairman, what an extraordinary event. That the principle of self-determination, which the United Kingdom has so vehemently defended in respect of nearly all its other colonial territories and which it has appeared hesitant to defend to the same degree in respect of Gibraltar, apparently out of concern for not upsetting its bilateral relations with Spain, should be unreservedly defended by Spanish nationals in Gibraltar. What an extraordinary thing.

18. This is an enormously encouraging development. It is not a development contrived by the administering power or by the Kingdom of Spain. It is a reflection of the change that has taken place in the Kingdom of Spain where the concept of Gibraltarians having the right of self-determination is no longer anathema. This is not surprising because Spain is a democracy today which it wasn't in 1967. But it is in 1993, thereby making the arguments that were being paraded twenty six years ago invalid with the passage of time.

19. In a modern democratic Spain there are many thousands of Spaniards who don't see the aspirations of the people of Gibraltar to determine their future and to be decolonised as inimical to the national interests of Spain, but rather as a natural phenomenon. And those Spaniards are as perplexed as we are that people can be talking about territorial integrity in a Europe without frontiers, where Spain and ourselves are members of the same European Community which is dismantling internal frontiers. And the dismantling of frontiers is not synonymous with fragmenting territorial integrity. The fact that there is a free flow of people between Spain and Portugal, does not mean that Portugal is now merged with Spain.

20. We believe in living in harmony and peace and in having commercial interchanges with the neighbouring territory, but we have no aspirations to take them over and we don't expect them to have any aspirations to take us over. That is why for the United Nations, the acceptance of Andorra this year as a country, with its own people, is not a fragmentation of the territorial integrity of France. There are no frontiers between Andorra and France. And why should there be? How could France possibly consider Andorra as a threat to its territorial integrity because of its emergence as a country recognised internationally and accepted in the international community? The modern state of Spain which has welcomed an independent Andorra could well be expected to adopt a similar attitude to Gibraltar.

21. This modern face of Spain we saw reflected in the speech made by His Majesty the King of Spain on the 11 October 1991 when he addressed the General Assembly. He referred to the situation of Gibraltar and the need to resolve its status but at the same time qualified and defined that solution as being one "in accordance with the times in which we live". Mr Chairman, I responded on the very day His Majesty made that speech by taking encouragement from those words and welcoming them. I referred to those words in my first intervention before the Committee of 24 last year.

22. That modern face of Spain does not sit well with a repetition of the outdated arguments of twenty six years ago. We have to appeal to Spain to come to terms with the reality of Gibraltar and to review its attitude to Gibraltar consistent with its attitude internationally; in the United Nations, in the democratic family of nations, in the western European alliance, within the

European Community, within the European Economic Area, in all of which both of us are partners. We are no longer talking about a world divided into hostile blocks with military bases. We might have been talking about that in 1967 and that might have coloured the view of the Fourth Committee and the General Assembly. But that is not the world in which we live in 1993. That is not the Gibraltar that exists in 1993. And therefore the Committee of 24, the Fourth Committee and the General Assembly have an obligation to review the position they have adopted historically in the light of what has happened in the intervening twenty six years, in the light of what Gibraltar is today and what Europe is today.

23. This Committee, Mr Chairman, is charged with monitoring the progress on the implementation of the declaration of the granting of independence to colonial countries and peoples. The United Nations has declared 1990 to 2000 as the decade for the eradication of colonialism. My Government and people fully subscribe to those sentiments, identify ourselves with them and support them. What then is the process of decolonisation for Gibraltar? What are the arguments paraded to deny to the Gibraltarians what has been conceded to every other people in every other colonial territory?

24. Two arguments have been paraded in opposition to our right to self-determination. The argument used by the administering power has been exclusively the international obligation that the United Kingdom has under Article 10 of the Treaty of Utrecht of 1713 to give first choice of any change in sovereignty to the Kingdom of Spain. This argument is one that is shared by the Kingdom of Spain but is not the argument that has been promoted by them as the primary reason for their position on Gibraltar. The United Kingdom has never accepted the argument put by the Kingdom of Spain on the restoration of Spain's territorial integrity.

25. We differ from the view of the administering power as regards the ability of Article 10 of the Treaty of Utrecht to constrain the right of self-determination of the people of Gibraltar and we are encouraged in this view by what has transpired on the international scene since this Committee considered the matter in 1967.

26. I refer members of the Committee, Mr Chairman, to the International Court of Justice report of 1971 dealing with the Legal Consequences for States

of the continued presence of South Africa in Namibia. The Court observed that subsequent development of 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. We, Mr Chairman, are one of them. Otherwise, I would not be here today appearing before this Committee.

27. In that report, in a separate opinion, Judge Ammoun observed. "If there is any general practice which might be held, beyond dispute, to constitute law within the meaning of Article 38 paragraph 1(b) of the Statute of the Court, it must surely be that which is made up of the conscious action of the peoples themselves engaged in a determined struggle. This struggle continues for the purpose of asserting..... the right of self-determination..... Indeed, one is bound to recognise that the right of peoples to self-determination before being written into Charters that were not granted but won in bitter struggle, had first been written painfully, with the blood of the peoples, in the finally awakened conscience of humanity".

28. In the case of Western Sahara, in the International Court of Justice report of 1975, the Court again held that the principle of self-determination applied to all non self-governing territories. In this case, Judge Gros added that if the Government of Spain had agreed to support the claim of the Government of Morocco, such an attitude would have been without any legal effect in the international sphere. The essence of the argument of the United Kingdom is that it is unable fully to subscribe to the principle of self determination for the people of Gibraltar because it is required by Article 10 of the Treaty of Utrecht to agree with the attitude of the Kingdom of Spain that it has a claim to the territory.

29. The paramountcy of the principle of self-determination over bilateral agreements was unequivocally spelt out in Resolution 2734 (XXV) (paragraph 3) where the General Assembly solemnly affirms that in the event of a conflict between the obligations of the members of the United Nations under the Charter and their obligations under any other international agreement, their obligations under the Charter shall prevail.

30. If the concept has been so solemnly and clearly reaffirmed in respect of any agreement, how much more so must it be valid over an agreement that is as outdated as the one signed in 1713? It is natural and self-evident that such a fundamental principle as the right of self-determination of colonial people cannot be constrained by a bilateral agreement. How could a bilateral agreement constrain a fundamental principle? If there is such a conflict then the principle overrides the bilateral treaty. That is how it should be. Otherwise every fundamental principle underlying the Charter of the United Nations could be abrogated by two members signing a bilateral treaty.

31. Therefore in the context of that argument we believe the United Kingdom is wrong in saying to the people of Gibraltar that their right of self-determination is constrained by Article 10 of the Treaty of Utrecht which was a Treaty signed in 1713 when such a right was not recognised for anybody. The right appeared after the Treaty. Why should we be the only people in the whole planet denied the right because of a Treaty, when at the time of the Treaty nobody else had the right? So, we reject entirely the view of the UK. We cannot accept that the United Nations can support the view that the people of Gibraltar are not entitled to self-determination because of the Treaty of Utrecht signed 280 years ago.

32. Spain, not unexpectedly, concurs with the United Kingdom in its view of the Treaty of Utrecht. But Spain has not in its previous interventions before the United Nations highlighted the Treaty of Utrecht as a primary consideration. It has highlighted the fact that throughout the Resolutions of the United Nations on decolonisation, the caveat has been entered that the application of the right of self-determination to colonial territories was never intended and should not be conducive to breaking up the territorial integrity of an existing member state of the United Nations.

33. In assessing the validity of this argument to Gibraltar's case I would draw the attention of the Members of the Fourth Committee to the study carried out by Aureliu Cristescu, Special Rapporteur of the sub Commission on the prevention of discrimination and protection of minorities published in a study by the United Nations in 1981 which dealt with the right of self-determination. In this study, in referring to this particular aspect, he mentions that the principles in the International Covenant on Civil and Political Rights, and as developed in United Nations General Assembly Resolution 2625 (XXV), the

principle of equal rights and self-determination should not be construed as authorising or encouraging any action which would dismember or impair totally, or in part, the territorial integrity or political unity of a sovereign and independent state.

34. I submit, Mr Chairman, that the decolonisation of Gibraltar would not produce such a result. I therefore have to say that we cannot accept the view expressed by Senor Javier Solana in his contribution on the 1st October before the General Assembly, where he stated that the negotiations taking place between the Kingdom of Spain and the United Kingdom, should be based on the doctrine established by the General Assembly according to which the decolonisation of Gibraltar is not a case of self-determination but of the restoration of the territorial integrity of Spain.

35. We submit Mr Chairman, to this Committee and through the Committee, to the General Assembly, that there is no such General Assembly doctrine. The doctrine of the UN is that self-determination should not become the justification for minorities to secede from existing sovereign and independent states. The restoration of the territorial integrity of Spain as it was in 1703 is not the doctrine of the United Nations. What indeed would be magical about Spain and 1703 that, in our case, decolonisation could not do anything other than restore the status quo of 1703?

36. Every colonial territory that is a member of the United Nations that has achieved self-determination and independence as a consequence of exercising the right has created a situation which was different to that which existed prior to colonialism. In every case where the development of imperialism and colonialism has established new populations in new territories, it has done it by fragmenting what existed there before. If no colony could achieve independence if it altered the status that existed prior to colonialism, then no colony would have been able to achieve independence and many members of the United Nations would never have achieved the opportunity of exercising self-determination other than by restoring the position that existed before the imperial powers seized parts of the world.

37. We accept the Spanish argument that Gibraltar was a part of Spain in 1703, but it is also true that Portugal was once a part of Spain. It is also true that many many territories were a part of something else. Indeed, on the 1st

October 1993, in his address to the General Assembly, Senor Solana welcomed the entry into the international community of the Czech Republic and Slovakia which were, not in 1703, but a couple of years ago, constituent members of the Czechoslovak Republic which was a member state fragmented by the people of Slovakia and the people of the Czech Republic exercising freely and democratically their right to self-determination. Not in a colonial situation. But in a situation that the Fourth Committee cannot ignore. The Fourth Committee is charged with looking after the wishes and protecting the welfare of the natives of the colonial territories. We cannot accept that because we are a colony, we should be less well treated than countries that are not colonial territories. And we are not fragmenting Spain. The United Kingdom fragmented Spain in 1704.

38. Accepting that the people of Gibraltar have got the right to determine their future would not fragment Spain, but it would perpetuate the fragmentation that was created in 1704. A fragmentation whereby out of a national territory of over half a million square kilometres, six square kilometres were removed. Well, so be it. That is what has happened in every other colonial territory. In every country in Africa. In every country in America that today are independent nations. What has been created was something that wasn't there nearly three hundred years ago. And therefore we reject the Spanish argument on the basis that we are not seeking to fragment Spain. We reject the Spanish argument on the basis that it is not the doctrine of the Committee of 24, it is not the doctrine of the Fourth Committee, and it is not the doctrine of the General Assembly, that the only way in which you can decolonise a colonial territory is by getting a time machine, going back three hundred years and restoring what was there three hundred years ago. That would be a total farce in terms of the interpretation of the doctrine of the United Nations as regards respecting the wishes of the people of colonial territories to exercise self-determination.

39. My presence before you is to assert and demand the right of my people to self-determination. We are not here as petitioners asking for a concession. We are here as petitioners making a demand which we are entitled to. A basic human right which hundreds of thousands of people, all over the world, in the transformation of the British empire into the Commonwealth, in the development of colonial territories of other European administering powers, have demanded like we demand it today.

40. We have to say to the Fourth Committee. It is no good continuing to pass resolutions about Gibraltar year in year out asking the administering power and the neighbouring country to hold discussions and negotiations in order to achieve a definitive solution to the problem of Gibraltar in accordance with the resolutions of the UN on decolonisation because the only ingredient that is important in the decolonisation of Gibraltar, as in any other colonial territory are the wishes of the inhabitants of the territory and the exercise of their right of self-determination must be paramount.

41. The existence of a colonial situation in Gibraltar in 1993 may be a problem in the relations between the administering power and the Kingdom of Spain because of their bilateral interests. If in looking at determining Gibraltar's future and its decolonisation, it is considered that there is a contrast between interests and wishes, then we have to say that the situation is one where the contrast is between the wishes of the people of Gibraltar - who are entitled to express their wishes freely and democratically in their right of self-determination - and the interests of the United Kingdom and the interests of the Kingdom of Spain. The discussions between the two parties are therefore discussions which concern their interests, but the line that we would expect the Committee of 24, the Fourth Committee and the international community to take is that the wishes of the people override the interests of the two member countries in line with the consistent position the United Nations has always taken in defending the welfare and the rights of small countries and small peoples in contrast to the interests of big powers. Therefore, what is missing in the annual repetition of a resolution which calls on both sides to meet and talk about Gibraltar is that, notwithstanding the reference in the text to the commitment of the United Kingdom to respect the wishes of the people of Gibraltar, it fails to recognise the paramountcy of such wishes in the exercise of the right to self-determination. I come here today to remind the Fourth Committee that the established doctrine of the UN is that the right of self-determination is inalienable, paramount and a sine qua non in the process of decolonisation. I ask that this should be upheld and respected for Gibraltar and its people.

42. Perhaps the greatest contrast in the way the decolonisation of Gibraltar as opposed to other territories has been focused is to be seen in the intervention of Senor Solana before the General Assembly on the 1st October 1993 when he gave a warm welcome particularly to Andorra, where a referendum was recently held. Not a referendum that was found to be objectionable as Gibraltar's

referendum was in 1967 to this Committee. But a referendum with the support of France and Spain. A referendum where the people of Andorra, freely and democratically, decided their future. A referendum which Spain and France as democratic, modern nations, respecting the exercise of the free will of the people, supported their self-determination and welcomed them into the family of the United Nations. How sad it is that to date the Kingdom of Spain has been able to make that move in respect of Andorra, a small territory to the north of Spain, but not in respect of Gibraltar, an equally small territory to the south of Spain. Senor Solana explained the warmth of his welcome for Andorra on 1st October 1993 by describing it as a country neighbour of Spain with which Spain was bound by special ties of history, culture and deep friendship. My country is also a country neighbour of Spain with which Spain is bound by special ties of history, culture, but regrettably not deep friendship. We look forward to the day when we are able to say that there is also deep friendship between us which will enable Senor Solana to stand in front of the General Assembly and make as welcoming a speech for Gibraltar as he did for Andorra.

