



FULL TEXT OF AN ADDRESS

BY

**THE CHIEF MINISTER OF GIBRALTAR**

**THE HON P R CARUANA QC**

TO

**THE UNITED NATIONS**

**FOURTH COMMITTEE**

Mr Chairman, Excellencies, I am grateful for the opportunity, once again, to address you in petition on behalf of the people of Gibraltar as the Chief Minister of their democratically elected Government.

The essence of the Gibraltar issue is simple enough. The Kingdom of Spain claims from our Administering Power, the United Kingdom, the return of the sovereignty of our homeland, Gibraltar, which Spain lost to the UK in 1704 and subsequently ceded in perpetuity by Treaty in 1713. For our part the people of Gibraltar assert our right of self determination which the Charter of these United Nations enshrine for the inalienable benefit of all colonial peoples.

The Kingdom of Spain bases her claim on two fundamental propositions, which we believe are misconceived or inapplicable.

### The Alleged Principle of Territorial Integrity

The first of these is Spain's contention that there exists in the doctrine of the UN or elsewhere in international law, a principle of territorial integrity in the process of decolonisation, and further that it is the doctrine of the UN that it is this principle, and not the principle of self determination, that applies to the decolonisation of Gibraltar. The application of the principle of territorial integrity, if it exists in the process of decolonisation would, according to Spain, require the transfer of the sovereignty of my country by the UK to Spain contrary to the unanimous wishes of the people of Gibraltar. A curious proposition between three democracies.

Mr Chairman, I believe that we have demonstrated in detailed argument before the Special Committee on Decolonisation that there is in fact no such principle or doctrine. In support of her contention the Kingdom of Spain cites two or three General Assembly Resolutions of the 1960s.

Mr Chairman none of those resolutions stipulate what Spain seeks to attribute to them. What they do (in preambular paragraphs setting out general principles of self determination) is assert the indisputable doctrine that the principle of self determination is not available to peoples who form a constituent part of a Member State to enable them to secede from (ie disintegrate) that Member State. But that is not the position of Gibraltar. Gibraltar has not been part of Spain for 295 years and is not now seeking to secede from Spain. If Spain's territorial integrity has been disintegrated it happened in 1704 and this could not, and would not, be the result of the application now of the principle of self determination to the people of Gibraltar. Accordingly the principle of non disruption of territorial integrity is not applicable or relevant to the case of Gibraltar and does not arise on its facts.

On the other hand, in the annual omnibus resolution on decolonisation, the UN proclaims that "in the decolonisation process there is no alternative to the principle of self determination". This is the doctrine of the UN: No alternative to the principle of self determination. Not no alternative to the principles of self determination except the principle of TERRITORIAL INTEGRITY as Spain would have you believe. And this is because there is no principle of territorial integrity applicable in the process of decolonisation of non self-governing territories.

And if, as the Omnibus Resolution says, there is no alternative to the principle of self determination in the decolonisation process, I ask you – is Gibraltar a colony? Yes! Are we on the UN's list of colonies? Yes!

General Assembly Resolution 46/181 of 19<sup>th</sup> December 1991 says in paragraph 1 that the UN reaffirms the inalienable right of self determination of the peoples of the remaining Non Self Governing Territories. That, Mr Chairman, is UN doctrine. And we, Mr Chairman, that is Gibraltar, is a Non Self Governing Territory as listed by the UN.

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". All of them, Mr Chairman, must include Gibraltar which as I have just said is a UN listed Non Self Governing Territory.

When the Distinguished Representative of the Kingdom of Spain addressed you this time last year, in response to my address to you, he said that Gibraltar was "a colonial enclave". When Sr Matutes, Spanish Foreign Minister addressed the General Assembly on 21<sup>st</sup> September this year he too referred to a colonial enclave saying that his country "continues to suffer from the presence of a colonial enclave on its territory". In using this phrase "colonial enclave" the Kingdom of Spain means to suggest that there is a special doctrine relating to decolonisation in the case of "colonial enclaves". Mr Chairman, Excellencies, there is no such special doctrine or regime. The general principles of self determination and decolonisation cannot be deplaced by the use of semantic labels. Nothing in UN doctrine or international law conditions the right to self determination of colonial peoples to considerations of size, geographical location or history. This was made clear by the International Court of Justice in the Western Sahara case when in relation to what the Court referred to as "so-called colonial enclaves" it 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 however interesting to note that in the case of her own "enclaves" of Ceuta and Melilla which, geographically, are enclosed in the territory of and are claimed by the Kingdom of Morocco, Spain draws contrived and irrelevant distinctions to distinguish them from the case of Gibraltar.

### The alleged effect of the Treaty of Utrecht

Mr Chairman, the second of Spain's fundamental propositions is that the Treaty of Utrecht of 1713 (by which she ceded Gibraltar to Britain in perpetuity) operates to deny the people of Gibraltar the right to self determination. Spain maintains that this is the case because of the provision in that Treaty that purports to give Spain first option if Britain were to alienate sovereignty of Gibraltar. Mr Chairman, it is our contention that even if this provision were to be capable of that interpretation it could not be valid and effective today to deny the people of Gibraltar the right to self determination, given the current applicable principles of international law. Mr Chairman, so confident are we of this view that we have on several occasions invited the Committee of 24 to refer the point to the International Court of Justice for a declaratory ruling, which we are advised the Gibraltar Government itself does not have the legal standing to do given that we are

not a party to the Treaty of Utrecht. I repeat that request again today. All sides must benefit, regardless of their political positions, from clarification of applicable international legal principles.

### The people of Gibraltar

In a frankly reprehensible attempt to discredit our credentials as a people, Spain systematically makes a series of allegations that are either untrue or irrelevant. These include allegations that we are military camp followers, engaged in all manner of nefarious and illicit activities, and are economic parasites on Spain. In addition Spain contends that the people of Gibraltar (which she refers to as "inhabitants") are not indigenous, being the descendants of people who arrived in the territory after the act of colonisation and therefore are not a colonised people.

Mr Chairman, the people of Gibraltar have established themselves in Gibraltar over the last 295 years having originally come, like the people of so many ex-colonies from many different places. We have over that very long period acquired a unique and distinct identity and characteristics as a people. Throughout the whole decolonising era, self determination has been exercised all over the globe by colonial peoples who were not indigenous to the territory and who had been in their territories much less time than we have been established as a people in Gibraltar. Mr Chairman, there is no principle that self determination is only available to "indigenous people" (whatever that may exactly mean). If there had been, a very large number of ex colonies who today are sovereign independent states as a result of the exercise of their right of self determination by their non-indigenous colonial people would not exist. The Charter of the UN grants the right of self determination to the people of Non Self Governing Territories not to indigenous people.

### Our political and Administrative Autonomy

Gibraltar already enjoys a very large measure of self Government. It took many years of political struggle to achieve that. We have our own elected parliament that makes all our laws and an elected ministerial Government, of which I currently lead, which has political, executive and administrative responsibility for all aspects of life in Gibraltar except defence, external affairs and internal security. Even in these areas where the Administering Power retains responsibility it is usual for the Gibraltar Government to be consulted beforehand. I would urge Excellencies to expel from their minds any notion that they may have of a territory governed on behalf of the Administering Power by colonial governors and expatriate administrators.

### Our Economy

Economically Gibraltar is totally self sufficient. We have a vibrant economy based principally on highly successful tourism and port industries and one of the best regulated international financial services centres in the world. Far from being a parasite on Spain we give employment to over 2000 daily commuting Spanish frontier workers. Spanish companies play a significant role in our economy, we take a large part of our imports from Spain and Gibraltarians make a very important spending contribution to the economy of the immediate Spanish hinterland.

Mr Chairman, the perception of Gibraltar that Spain seeks to project is a highly distorted one which in no way reflects the reality. I appreciate that the picture that I have painted sounds self serving. It is nonetheless a true and accurate one. That is why we have repeatedly urged the Special Committee on decolonisation to visit Gibraltar and assess for itself its characteristics and credentials as a place and as a people. I would, once again, urge and invite the UN to send envoys to Gibraltar for this purpose.

### The "Matutes Proposals"

When he addressed the General Assembly on the 21<sup>st</sup> September, Senor Matutes, the Spanish Foreign Minister, told you that Spain had submitted a proposal to the United Kingdom that takes into account the interests of the population of Gibraltar and which would allow for the recovery of sovereignty after a lengthy period.

Mr Chairman, in this day and age Gibraltar is neither Spain's to claim nor the UK's to give away – it is the homeland of the people of Gibraltar. It is not our interests as determined by Sr Matutes or anyone else that must be taken into account, but our wishes. That is the essence of self determination – that only we can determine our political future.

These so-called "Matutes proposals" provide for the inevitable transfer of sovereignty to Spain, preceded by a transitional period of joint sovereignty between Britain and Spain. This is totally unacceptable to the people of Gibraltar who have so said, not only through a massively subscribed public petition, but also through a unanimous resolution of Gibraltar's Parliament supported by all political parties in Gibraltar.

The UK, as its representative told the General Assembly in response to Sr Matutes address on 21<sup>st</sup> September, is solemnly committed not to transfer the sovereignty of Gibraltar contrary to the wishes of the people of Gibraltar. Given that Sr Matutes' proposals are essentially about the transfer of sovereignty, the UK cannot but reject those proposals, as they are contrary to the wishes of the people of Gibraltar whose wishes in such matters it is committed to respect

Spain now says that those proposals were intended "as a starting point" and regrets their outright rejection by Gibraltar. That is positive if it means that Spain is able to contemplate and seek a solution to the issue that does not involve a Spanish Gibraltar and which is in accordance with the wishes of the people of Gibraltar.

### Dialogue

Notwithstanding our determination to decide our own future Gibraltar does not turn its back on Spain. Gibraltar is not afraid to engage Spain in dialogue. The Government of Gibraltar accepts and is committed to the principle that open agenda dialogue is the only constructive way forward in addressing problems between us and in exploring ways of establishing a basis for a viable relationship between Gibraltar and Spain based on friendship, cooperation and mutual respect. We have offered to take part in such dialogue with Spain in a structure that is both safe and appropriate. Indeed we have sought it and continue to seek it.

However, Mr Chairman, the primordial factor and consideration must be respect for the wishes of the people of Gibraltar. And so it has to be clearly understood that any

dialogue about Gibraltar must be on the basis and subject to the overriding principle that the people of Gibraltar have the right to freely decide their own future and that their wishes must be respected. We are not willing to negotiate a transfer of sovereignty to Spain contrary to our wishes. The overwhelming reality is that the people of Gibraltar do not wish Gibraltar to be Spanish.

In this respect, Mr Chairman, bilateral dialogue between the Administering Power (the United Kingdom) and the territorial claimant (Spain) which is what this Committee's annual consensus resolution calls for is inappropriate and unacceptable to the people of Gibraltar because it fails to recognise the primary role and say of the people of Gibraltar in such dialogue and is thus inconsistent and incompatible with our right to self determination.. This is why those bilateral negotiations between the UK and Spain have achieved nothing in the nature of a solution to the problem in nearly three decades.

Mr Chairman, with respect, the decolonisation of the Non-Self Governing Territory of Gibraltar in accordance with the UN Declaration on Decolonisation cannot, by definition, be a matter of bilateral resolution of differences between the Administering Power and a third party territorial claimant.

#### Decolonisation through Constitutional Modernisation

Mr Chairman, Gibraltar cannot stand still. Our offer to engage Spain in dialogue is not an alternative to proceeding with our natural aspiration as a people to be decolonised. Gibraltar's political evolution cannot stand still like a rabbit caught in the headlights of Spain's territorial claim. We do not accept, as Spain asserts, that the options open to us are to remain a colony of the UK or to become part of Spain. We are willing to engage Spain in constructive open agenda dialogue but we are not willing to mortgage our rights and aspirations as a people to her territorial claim.

And so we are seeking to achieve our decolonisation through the exercise of our right to self determination, by a process of reform and modernisation of our current constitution.

To this end our parliament in Gibraltar has recently established a Select Committee on Constitutional Reform with a view to achieving consensus on constitutional proposals to submit to the UK such as would put an end to the colonial status of Gibraltar in manner acceptable to the people of Gibraltar in an act of self determination.

And so, Mr Chairman, by way of conclusion I pose some questions. When this Committee adopts every year that 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 resolutions of the General Assembly? 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?

When the UN speaks about "eradicating colonialism" is it, in the case of Gibraltar, advocating the handing over of my country to Spain against the unanimous wishes of the people of Gibraltar or does it set out to promote the right of the people of my country to self determination? I respectfully submit that only the latter is consistent with the mandate of the Special Committee on Decolonisation who are charged with our case. Thank you, Mr Chairman and Excellencies.