



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 this opportunity to address you on behalf of the people of Gibraltar as Chief Minister of their Government.

When the Foreign Minister of the Kingdom of Spain addressed the General Assembly last week he denounced Gibraltar's continuing colonial status as an anachronism. He also expressed the view that the UN should finish the task of decolonisation across the globe and eliminate the last vestiges of colonialism. I agree with all of that. Spain and Gibraltar agree on the objective – namely the need to decolonise Gibraltar – but we disagree profoundly about how this should be achieved.

We for our part assert that we enjoy the same inalienable right to self determination as all colonial people because we are a colonial people and because we are the people of a territory that was colonised in 1704, 296 years ago! We have been on the UN's list of Non Self Governing Territories since 1946. All such listed territories are entitled to decolonisation by the application of the principle of self determination. The principle of self-determination is the only principle applicable in the decolonisation process. For her part 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 this Committee 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 so many colonies that have now gained their independence. 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 assert 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 frequently been asserted and endorsed by Special Committee on decolonisation and endorsed by this Committee. Spain nevertheless asserts that Gibraltar must be decolonised, not pursuant to the 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 on the other hand 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.

Spain asserts that the application of the principle of self determination to the decolonisation of Gibraltar and its people would breach her territorial integrity and thus the principle that any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations. We assert that this principle has no application to the case of the decolonisation of Gibraltar through the exercise now by the people of Gibraltar of their right to self determination because

Spain's territorial integrity if indeed it has ever been breached, was breached 296 years ago and would not result from the exercise now by the right of self determination of the people of Gibraltar. The real 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.

Whilst we assert therefore that we enjoy the right to self determination, Spain, 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 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 which, in accordance with international legal principles, take precedence over other treaties, including the Treaty of Utrecht. A principle contained in the Charter of the UN cannot be curtailed by any other treaty, whether that other treaty pre dates or post dates the UN Charter.

Referral to International Court of Justice

Well Mr Chairman, it seems to me that there is an obvious course of action available to adjudicate all these assertions and counter assertions. That is that this 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 Committee that on 18th November 1999 Gibraltar's Parliament unanimously passed a resolution to this effect.

The people of Gibraltar are entitled to clarity on these vital issues. We are confident of our rights in international law. It seems an obvious way to proceed. If the Kingdom of Spain opposes the referral then it will be reasonable to assume that her reason for so doing is that she is not confident about her rights in international law.

The People of Gibraltar

Mr Chairman, Spain 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.

Mr Chairman, 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".

Gibraltar enjoys a very large measure of self Government through our own elected Government and Parliament in which we pass all our own laws. We administer ourselves through our own public administration, police and judiciary. Gibraltar operates a modern, diverse and successful economy. Spain is a good deal less complimentary in her description of our economy. We believe that Spain's accusations are politically motivated and self servicing and have no basis in truth. Mr Chairman, this disagreement about whether we are worthy to be considered "a people" in our own right also has an obvious solution. And that is that the Committee should take neither Spain's word nor Gibraltar's word over these issues and should simply request the Special Committee to 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. Why should any other country object to that?

Dialogue

Mr Chairman, I have said on many occasions to this Committee that the Government of Gibraltar is not afraid of, and positively seeks dialogue and good relations and co-operation with Spain. Only through such dialogue could the possibilities be explored of solutions acceptable, primarily to the people of Gibraltar – but also to the UK and 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 unhelpful, for this Committee to continue, year after year, to approve a resolution that calls for bilateral dialogue between our Administering Power, the UK, and the territorial third party claimant, Spain. This resolution has been concocted by the UK and Spain together for their mutual convenience. 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 no such meetings have taken place since 10 December 1997 and in his address to the General Assembly, last week, Señor Pique, Spanish Foreign Minister, also lamented their failure to register any progress.

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, by denying us a proper place at the table, 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 if it is to be workable should not prejudice Spain's position either. We note, though do not agree with Spain's concerns about recognising the Gibraltar Government's status in such talks. 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 remains willing to participate fully in the exploration of those possibilities.

I therefore renew my call to the Committee that it introduces into its annual resolution on Gibraltar the call for dialogue structured in manner which includes the representatives of the people of Gibraltar in their own right and with their own voice. Only then will meaningful and constructive dialogue be possible.

New Action Plan

Mr Chairman the Committee will be aware of the Special Committee's very welcome intention to formulate an updated plan of action for the eradication of colonialism by developing 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.

Mr Chairman, when I addressed the Special Committee in July I urged it, 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 to this Committee 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 annual call for dialogue by the UN should be on the basis that I have just described, namely with a proper and distinct voice and representation for the people of Gibraltar.

Mr Chairman, given the position adopted by each of the parties in this matter this course of action offers the only constructive, practical way forward consistent with the standing of all three parties as modern democracies.

We for our part are heeding the United Nation's call for the eradication of colonialism. A constitutional Select Committee of our Parliament is currently revising our Constitution with a view to putting all political party consensus proposals to the UK for such constitutional reform as will end our colonial status and will enable our proper delisting by the UN from its list of Non-Self Governing Territories.

The Gibraltar Government does not see this as an alternative to or in conflict with dialogue with Spain of the type and for the purposes that I have described.

Thank you, Mr Chairman and distinguished delegates, for your time and attention.