



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,

Gibraltar is listed by the UN as a Non-Self Government Territory subject to Decolonisation under the Decolonisation Declaration. The United Kingdom is our Administrating Power. Spain is our neighbour and the claimant of the sovereignty of Gibraltar. In fact Gibraltar is the homeland of the Gibraltarians and therefore neither the UK's to give nor Spain's to have.

Every year, the General Assembly adopts, by consensus, a Resolution relating to Gibraltar. The annual Consensus Resolution calls upon the UK and Spain to continue their bilateral negotiations to overcome all the differences between them over Gibraltar.

The Resolution urges both Governments to reach a definitive solution "in the light of relevant resolutions of the General Assembly and in the spirit of the Charter of the United Nations."

The question that the people of Gibraltar pose is this. Is the General Assembly thereby saying that the wishes of the people of Gibraltar do not matter and should be disregarded, that we do not enjoy the right to self determination and that the UK and Spain should therefore resolve their alleged differences over Gibraltar bilaterally over the heads of the people of Gibraltar? Is that the "relevant resolutions" and the "spirit of the Charter" to which the Consensus Resolution refers? Or, alternatively, is the reference to the spirit of the Charter intended by the Committee precisely as a reference to the wishes of the people?

So what is the "Spirit of the Charter" that applies to the case of Gibraltar? We are all agreed that Gibraltar should be decolonised. But should it be done in accordance with the wishes of the people of Gibraltar in exercise of our right to self determination, or is it the "spirit of the Charter" that 300 year old sovereignty claims be resolved regardless of the wishes of the people of that territory and, (uniquely in the case of Spain) giving her the Right to restore European boundaries to what they were in 1704?

It is the frequently stated doctrine of these United Nations, supported by judicial statements of the International Court of Justice, that in the process of decolonisation there is no alternative to the principle of self determination. Therefore there is no such principle (either in international law or in UN doctrine) as decolonisation by the principle of territorial integrity. Such a doctrine simply does not exist. This, as I will examine later, is the fatal flaw in Spain's case.

Mr Chairman, by a process of "smoke and mirrors" Spain is trying to merge two separate issues into one, namely the process of decolonisation on the one hand and a territorial sovereignty dispute on the other. She then invokes the principle of territorial integrity (which is inapplicable to the decolonisation process) to claim priority for her sovereignty claim over the right of Gibraltarians to self



determination. It is a clever argumentational device, supported by an impressive diplomatic lobby, but a device nevertheless.

Spain's case simply does not bear analysis or scrutiny under modern principles of international law, and Spain and the UK both know this, which is why they both refuse to accept our request to refer these issues to the International Court of Justice for an advisory opinion. If Spain were as confident as she pretends to be about the correctness of her arguments in international law she would readily agree, as we do, to submit to the views of the International Court of Justice. But she does not.

The essence of Spain's case is the assertion, which she claims to be doctrine of the UN, that Gibraltar must be decolonised, not by the self determination of its people, but in accordance with the principle of territorial integrity. Spain's new Foreign Minister (whom I take this first public opportunity to greet and congratulate on her appointment) said precisely this to the General Assembly in her address the week before last.

Mr Chairman, we have no doubt that Spain is distorting and abusing the principle of territorial integrity, not just legally, but also politically.

It is clear from statements by the International Court of Justices and these United Nations that there is no such doctrine of the UN and that (as a matter of international law) the principle of territorial integrity does not exist in the decolonisation process. Indeed, if Spain is right, then the UN is wrong to say that in the process of decolonisation there is no alternative to the principle of self determination. We believe that the principle of territorial integrity is intended to refer and apply to the non-existence of a right of self determination to enable territories and people who are currently integral parts of a Member State to secede from and thus dismember that State. It is not applicable to historical claims to territorial restitution especially when that territory is a UN listed colony.

Spain's reliance on the principle of territorial integrity rests on the recital of that principle in paragraph 6 of the Decolonisation Declaration. (Resolution 1514) and in some 1960s resolutions relating to Gibraltar.

Mr Chairman, persuasive support for our view that the principle of territorial integrity does not apply to the decolonisation of Gibraltar is to be found in the Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations. This Declaration was adopted by the General Assembly on 24 October 1970 (Resolution 2625 (XXV)).

That Declaration, in its preamble, recites the principle of territorial integrity in the same terms as in the Decolonisation Declaration, namely: -



“Convinced in consequence that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or Country or at its political independence is incompatible with the purposes and principles of the Charter”.

Mr Chairman, the meaning and purport of this principle is clearly and fully explained, in detail in the body of the Declaration itself under the heading “the Principle of Equal Rights and Self-determination of Peoples.”

It says that every State has the duty to promote the self determination of peoples in accordance with the provisions of the Charter “to bring about a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned.”

It then goes on to helpfully and specifically explain how the principle of territorial integrity interacts with the right to self determination. It says, and I quote: -

“Nothing in the foregoing paragraphs shall be construed as authorising and encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples and described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.”

Mr Chairman the Kingdom of Spain is not “possessed of a government representing the whole people belonging to the territory.” Neither Spain nor its people are possessed of a government representing either the people or the territory of Gibraltar. Gibraltar is not currently a part of Spain and has not been since 1704! The words “possessed of a government representing the whole people belonging to the territory” clearly demonstrate that the principle of territorial integrity applies only to prevent the disintegration, through secession and consequent dismemberment, of sovereign states as they are presently constituted. That is quite obviously not the case of Gibraltar’s decolonisation, viz a viz Spain.

That is why Spain is misapplying the principle of territorial integrity by trying to invoke it in Gibraltar’s decolonisation process. The exercise to-day of self determination by the colonial people of Gibraltar does not bring about or result in the disintegration of the territory of the Kingdom of Spain. Therefore that principle is not properly available to Spain under international law for the purpose of denying us the right to self determination.

And so, Mr Chairman, the people of Gibraltar are dogged in our determination and resolve to ensure that our inalienable right as a colonial people to self determination is upheld and respected and not denied to us by the deployment of



spurious argument. If Spain, and the UK, will not give us the opportunity to win this argument in an international court of law, then we will persist with our political struggle.

There are three fundamental strands to Spain's reasoning as to why the people of Gibraltar do not enjoy the Right to self determination. First, she says that we are not an "indigenous" people and therefore have no right to self determination even though the people of Gibraltar have been establishing themselves in the territory since 1704. But is it not the case that half of the world's colonies (including Spain's) were decolonised by and in favour of non-indigenous descendants of the colonising people? Second she claims that Gibraltar is an "enclave", as if there was some special rule relating to enclaves that is an exception to the principle of self determination. There is not.

Mind you, Mr Chairman, not that the people of Spain's enclaves of Ceuta and Melilla are exactly indigenous to Continental North Africa.

Thirdly, Spain argues that a clause in the Treaty of Utrecht of 1713 prevents Gibraltar's decolonisation, other than by the integration of Gibraltar into Spain. This is nonsense and is another of the mirrors in the "smoke and mirrors" Spanish case. The Treaty of Utrecht does not even refer to colonisation and decolonisation. In fact under the Treaty of Utrecht Gibraltar did not become a British Colony. Great Britain did not declare Gibraltar to be a colony until 1830, that is 126 years after the Treaty of Utrecht. So Utrecht cannot be an obstacle to all and any decolonisation for Gibraltar as Spain alleges.

This abuse of the Treaty of Utrecht is the device by which Spain tries to bridge the gap between decolonisation and sovereignty claim, so as to blur the difference between the two and use principles applicable to one issue, to help her case in the other issue. It is a wholly phoney case, based on argument that not even Spain is willing to defend in the International Court of Justice.

Yet, and despite all of these arguments and issues, despite all these flaws in her case, despite her unwillingness to test her case, Spain continues to enjoy the benefit of your annual consensus resolution, which she uses to insist that dialogue over Gibraltar should be bilateral between her, as claimant, and UK as colonial administering power; she continues to use your consensus resolution to deny us the right to self determination, to continue to ignore our wishes, even to deny our existence as a people with political rights and legitimate aspirations in our homeland.

These are the reasons why we have repeatedly urged you: -

- 1) to refer the Gibraltar case to the International Court of Justice for an advisory opinion;



- 2) to amend the consensus resolution to give the people of Gibraltar an equal and separate voice in dialogue; and
- 3) to refer in the Resolution to the privacy of the wishes of the people of Gibraltar, and the principle of self determination.

I repeat that request this year.

Mr Chairman, in July last year the British and Spanish Governments re-launched their bilateral negotiations under the so-called Brussels Process.

It is true that I have been invited to take part in those talks and that I have declined to do so, despite my pro-dialogue political stance and despite the fact that we advocate open agenda, properly structured, safe and fair dialogue. The reason that I declined is that I have not been offered an equal voice at those talks, and I have been denied the assurance that agreements would not be struck over my head by the UK and Spain.

Their intention is that I should participate only to express my opinion in discussions to flesh out the details of an agreement, based on joint sovereignty between the UK and Spain that they had already agreed in principle between themselves and thus pre-determined at the outset.

Mr Chairman, on the 18<sup>th</sup> March this year practically the entire population of Gibraltar took part in a public demonstration to plead with the British Government not to make in principle concessions to Spain about our Sovereignty and our political future against our wishes. On the 25<sup>th</sup> March this year Gibraltar's parliament unanimously passed a resolution to that very same effect.

Throughout the last 12 months, the Gibraltar Government has pleaded with the British Government not to compromise, even in principle, our political rights in a way incompatible with our right to self determination.

Despite all of this, and in the certain knowledge that he was acting contrary to the wishes of the overwhelming majority of the people of Gibraltar, on 12<sup>th</sup> July this year, the British Foreign Secretary, The Right Hon Jack Straw MP, made a formal statement in the British Parliament that the UK and Spanish Governments were in broad agreement on many of the principles that should underpin a lasting settlement of Spain's sovereignty claim and that these included the principle that Great Britain and Spain should share sovereignty over Gibraltar.

The Gibraltar Government is firmly of the view that this action on the British Government's part, of purporting to enter into a political agreement with Spain on the principles applicable to our sovereignty and our future against our wishes and without our consent, represents a betrayal and violation of our rights as a people to self determination, of the spirit of the Charter and the Decolonisation



Declaration and of Britain's obligations, under both those documents, as colonial administering power. We roundly condemn Mr Straw's statement.

Mr Straw says that we should not worry because nothing will be implemented without the support of the people of Gibraltar in referendum. But Mr Chairman, the rights of the people of Gibraltar are wider and deeper than the right to say yes or no to physical implementation of an agreement to share sovereignty of Gibraltar between UK and Spain. The very fact that the UK feels free to enter into such political agreements as to the principles affecting our future is a violation of our political rights as a people, in particular our right to self determination.

Mr Chairman, joint sovereignty does not eliminate the colonial situation of Gibraltar, rather it enshrines it for ever. It is a legalistically and politically misconceived concept, which the people of Gibraltar do not want. Mr Straw says that we will have the last word on implementation. But the intention is that even if Gibraltarians reject practical implementation of the agreement in referendum, the joint declaration of principle between the UK and Spain (including the political agreement to share sovereignty) will nevertheless survive that referendum rejection as a political agreement between the UK and Spain with continuing validity. Furthermore, the UK intends not to submit the question to referendum at all for several years, therefore compromising and eroding our rights without even giving us an early opportunity to vote on the issue.

Accordingly, the response of the Gibraltar Government has been to convene our own referendum on the 7<sup>th</sup> November, to give the people of Gibraltar an early and timely opportunity to express their views on the question of joint sovereignty.

This referendum will invite the people of Gibraltar to say whether they accept or reject the principle of shared or joint sovereignty. It will be observed by many independent international observers. I invite this Committee, the Committee of 24 and the Office of the Secretary General to designate observers as well.

Mr Chairman, what has been the reaction of the UK and Spanish Governments to our referendum? I can only describe those reactions as aberrations on the part of the governments of two of Europe's leading democratic countries. The Spanish Foreign Minister, Señorita Palacios, referring to our referendum in her address to the General Assembly the week before last, condemned it as "an attempt to interfere in the successful development of Anglo-Spanish negotiations". That is how she described the expression of the wishes of the people affected by those negotiations. I condemn that view as profoundly undemocratic and a breach of the Spirit of the Charter.

The British Government has described it as "an eccentric waste of money", as a "short-circuit" of democracy and "short changing" the people of Gibraltar. I condemn that view in the same measure. Needless to say the people of Gibraltar have enthusiastically welcomed the referendum as a timely opportunity to

express their opinion on the principle of joint sovereignty in a timely, free, fair and democratic manner. That is the definition of democracy in Gibraltar.

Needless to say, the British Government's reaction has met with the deserved and universal condemnation of all sectors of the British community in the UK itself, including all political parties, all the press, trade unions, business organisations and indeed the public at large and also of the Commonwealth Parliamentary Association.

Mr Chairman, in conclusion, I know, understand and appreciate that the United Nations are pre-occupied with bigger and weightier issues than the political rights of a small European colonial country where, thankfully, we live in peace and prosperity and where there is no security or humanitarian crisis. We applaud the UN's focus on those much more important issues. All we ask is fairness and balance in the UN's attention to the Gibraltar issue. That fairness and balance must include respect for the wishes of the colonial people of Gibraltar and the protection of our rights. We do not want to insist on rights that do not belong to us. But neither do we want to be denied rights that do belong to us. That is why we ask for the correct position in international law to be settled by the International Court of Justice in an advisory opinion. I urge you to reflect these views in your Resolution. There is no realistic, alternative way forward.