

GIBRALTAR



FULL TEXT OF AN ADDRESS

BY

THE CHIEF MINISTER OF GIBRALTAR

THE HON P R CARUANA QC

TO

THE UNITED NATIONS

FOURTH COMMITTEE

8 OCTOBER 2003

Mr Chairman,

I thank you, and distinguished Representatives for this annual opportunity to address you on behalf of the people of Gibraltar, a non-self governing territory on the United Nations list and therefore part of the mandate of the Special Committee on Decolonisation. I also take this opportunity to congratulate you, Mr Chairman, on your appointment to the Chair of this Committee.

Every year a Consensus Resolution on the question of Gibraltar is adopted by the General Assembly on the recommendation of this Committee. That Consensus Resolution notes the bilateral Anglo-Spanish negotiating process aimed at overcoming the differences between them and urges 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.

Since 1992 we have addressed you, and the Special Committee on Decolonisation, annually. Our arguments and pleas have not so far succeeded in debunking, modifying or even obtaining clarification of this Annual Consensus Resolution. We do not believe that that is because our arguments are wrong, or our case unworthy either in international law or under United Nations Doctrine, but rather because the Consensus Resolution reflects the consensus agreed between the two member states involved, UK and Spain, for their management of the case, and it thus carries the day with other member states. The General Assembly's consensus is thus not based on the merits of the case or our rights as a people, but rather on letting UK and Spain "get on with it" in whatever way they have agreed between themselves.

We sincerely and respectfully believe that this approach visits an injustice on the people of Gibraltar, a colonial people, whose rights under the Charter these United Nations have a sacred trust to protect.

We have frequently argued that the Consensus Resolution is deficient in principle because it recognises no proper status for the colonial people of Gibraltar in the talks that it urges, and because it fails to recognise the overriding relevance and importance of our inalienable right to self determination.

Indeed, the Resolution appears to treat the Gibraltar question as if it were a territorial sovereignty dispute between UK and Spain, rather than an issue of decolonisation, despite Gibraltar being a United Nations listed Non Self Governing Territory. We believe that It is neither right nor helpful to continue to fudge the distinction between a sovereignty dispute and a decolonisation issue. They are different things. Gibraltar is either a decolonisation issue or it is a territorial dispute issue, or it could be both. But it is important to know which (or if both, to keep them separate), because very different international legal and political principles apply to the two issues. Many territories the subject matter of

sovereignty claims by third parties have nevertheless exercised self determination, e.g. Belize. The existence of such a sovereignty claim does not merge with, still less does it extinguish or displace the matter of the decolonisation of Gibraltar. Nor does it displace the application of the principle of self determination in that decolonisation process.

We therefore call for an end to bilateralism between UK and Spain over Gibraltar's future, which can only be decided by its people. There must be respect for our right to self determination and that is wholly incompatible with that bilateralism.

Mr Chairman, the reality is that the Consensus Resolution is not a mechanism that achieves progress towards a resolution in accordance with the Spirit of the Charter, or any United Nations Resolution. Rather the last 20 years have shown that it is a mechanism that results in consensual stalemate which leaves our rights as a colonial people (which should be the United Nations main preoccupation in this case) in a state of permanent "suspended animation".

The reason why the Consensus Resolution results in stalemate is that, while it calls for progress in accordance with relevant resolutions and the Spirit of the Charter, there is no agreement as to what that "Spirit" is, or what those Resolutions are.

For Gibraltar, the issue is one of decolonisation and the applicable principle is therefore self determination. For Spain it is an issue of territorial sovereignty claim which she thinks gives her a stake in our decolonisation process, and for that purpose invents the notion of the applicability of the principle of territorial integrity to the decolonisation process. This is a wholly phoney exercise in international law. A monumental confusion of wholly different matters. Spain may be free to continue to claim sovereignty of Gibraltar after decolonisation, but she cannot, or should not be able to prevent that decolonisation by the application of the principle of self determination, simply because she has that claim. To the UK the applicable principle is self determination but, inexplicably, then engages with Spain in a bilateral territorial sovereignty negotiation that is wholly incompatible with that principle of self determination.

These different issues have got to be disentangled and the correct applicable principles have to be established.

This year's Spanish statement to the General Assembly has made no reference to Gibraltar. We welcome that, and hope that it has a positive implication. But last year, the Spanish Foreign Minister told the General Assembly (on 17th September:) -

“As we embark on the twenty first century, the time has come to settle this dispute based on the resolutions that have been adopted calling for the application of the principle of territorial integrity”.

This statement reflects a somewhat peculiar vision of the 21st Century and the modern principles that should prevail in it, especially for a democratic country like Spain. Suggesting that a piece of territory should change hands between countries regardless of the wishes of its inhabitants, and denying those inhabitants the political right to determine their own future that all colonial peoples enjoy, hardly seems like appropriate principles for the 21st Century. It is wholly unrealistic for Spain or anyone else to think that 18th Century problems can be resolved in the 21st Century by the application of 18th century principles and attitudes.

The statement that I have quoted by the Spanish Foreign Minister also misrepresents current international law and current United Nations doctrine on decolonisation. Gibraltar is a colony, and the current United Nations doctrine is that in the process of decolonisation there is no alternative to the principle of self determination. This has been established in many United Nations Resolutions and has been endorsed by the International Court of Justice as constituting international law. No alternative means no alternative, and therefore, in the process of decolonisation, there is no exclusion of the principle of self determination in respect of so - called “territorial enclaves” or “territories the Sovereignty of which is claimed by someone else”. This too has been confirmed by the International Court of Justice.

Furthermore, General Assembly Resolution 2625 (XXV) of 24th October 1970 (which post-dates any Resolution to which the Spanish Foreign Minister may have been alluding) makes it abundantly clear that the principle of territorial integrity applies only to prevent secessions from a state of any of its existing territory and does not apply to decolonisation situations where the territory is a colony and not currently part of a Member State. In the latter case (which is Gibraltar’s case) the overriding principle is declared to be “the freely expressed will of the peoples concerned.” Apart from International Court of Justice pronouncements to this effect, there is therefore a United Nations Resolution specifically dealing with the interface between the process of decolonisation and the principle of territorial integrity. That is the relevant resolution of the United Nations! That is the United Nations Doctrine on the matter – and it results in the very opposite conclusion to that which Spain professes.

Mr Chairman, it is crystal clear that there is no such thing in United Nations doctrine or international law as decolonisation by the principle of territorial integrity. That it is simply a misconception and confusion of terms and principles.

And so, what I would say to the Kingdom of Spain is that as we embark on the 21st Century the time has come to settle this case (which is a case of

decolonisation) on the basis of 21st Century legal and political principles, namely the principle of self determination and the overriding primacy of the wishes of the people of Gibraltar. That is the only viable way forward. We value and seek good relations and co-operation and safe and properly structured dialogue with Spain, which is our neighbour, but we will not betray or sacrifice our political rights as a people to decide our own future, free of harassment and duress, in order to humour her anachronistic sovereignty claim. Who else in the world is allowed to ignore the last 300 years of history and seek to restore international boundaries to what they were in 1704, and in the process to distort the principles and spirit of the Charter of the United Nations?

And so, Mr Chairman, given that there is no agreement between the three parties about the correct analysis of the issue or about the principles which are applicable to it, how can the impasse be broken? We say, let the International Court of Justice give an advisory opinion on these questions. Spain refuses. We fully understand the reasons for Spain's refusal. She knows that she would lose and that any such judicial referral will deprive her of the political advantage which she is presently deriving from her systematic misrepresentation, misapplication and distortion of the applicable international legal principles.

Less comprehensible and more puzzling is our failure to date to persuade this Committee to itself make such a referral to the International Court of Justice. I am advised that we cannot make the referral ourselves, but that this Committee can. Surely clarity as to the correct principles applicable can only be helpful and constructive in the process of finding solutions in accordance with the Spirit of the Charter, as this Committee recommends and exhorts every year.

Sometimes, Spain argues (momentarily forgetting her own enclaves in North Africa) that we are not entitled to self determination because we are an "enclave", or because we are not a people or because we are parasitic. And so, in response to these assertions we repeatedly invite the United Nations to dispatch a mission to visit Gibraltar to see, assess and judge for itself just how unreal and absurd these false and self serving assertions by Spain are. But, of course, Spain objects to such a visit as well!. It is not clear to me what right Spain has to do so and to seek to impede the United Nations in its decolonisation work. And why does she object? It can only be because she knows that the realities of Gibraltar, which will be inescapably obvious to anyone who visits, will inevitably lead to the conclusion that Gibraltar is indeed a country inhabited by people with a distinct and separate identity of their own, economically, socially and culturally distinct, viable and prosperous, more than worthy of recognition as a people with the Right to self determination.

And so, Mr Chairman, it is clear that in order to maintain her position, Spain requires that the applicable legal principles should not be clarified by the International Court of Justice and the true facts of the situation in Gibraltar should not be correctly and objectively established by the United Nations through a visit

to Gibraltar. Why? Contrast this, Mr Chairman, with Gibraltar's position. We seek both. We are confident of the merits of our own position. We do not mind the legal and factual truths being assessed and established. Our case does not depend on others not knowing the true facts.

Mr Chairman, on the 24 June this year, Gibraltar's Parliament unanimously adopted a resolution, jointly moved by me, as Chief Minister, and the Leader of the Opposition calling upon the Special Committee on Decolonisation to visit Gibraltar. I attach a copy of that Resolution to the written copy of this address, by way of its formal notification to this Committee.

In July, the Gibraltar Council of Representative Bodies, a Council bringing together all Gibraltar's trade Unions, business representative bodies and social representative bodies such as the Women's Association, The Students Association and the Senior Citizens Association (in effect the whole non – political sector of the community) launched a petition also calling on the Special Committee on Decolonisation to visit Gibraltar.

That Petition reads as follows:-

"We, the undersigned citizens of Gibraltar, concerned by the persistent failure to recognise the inalienable right of the people of Gibraltar to self determination, hereby petition and call upon the United Nations Special Committee on Decolonisation to visit Gibraltar.

In our view, such a visit is vital to enable the Special Committee:-

- (1) to see and assess for itself the economic, social, political and cultural reality of Gibraltar and the unique and separate identity of its people;
- (2) to see and assess for itself the worthiness of the people of Gibraltar to enjoy and exercise the right to self determination; and
- (3) to assess for itself the wishes and aspirations of the people of Gibraltar in relation to the political future of their homeland."

It has been signed by nearly 80% of the Gibraltar electorate. The organisers have asked me to deliver it to the Special Committee on their behalf, and I shall be doing so immediately after this address.

I would urge this Committee not to turn a deaf ear to the appeals of the people and parliament of Gibraltar. We lack the diplomatic weight and status of Spain and the UK, but that is the very reason why this Committee should itself redress the balance in our favour.

A visit by the Special Committee to a listed territory is a matter for the Special Committee, the Territory and the Administering Power. No-one else should interfere to prevent it. On the 4 July 2003 Mr Denis MacShane, British Foreign

Office Minister said publicly in Gibraltar that a visit by the Special Committee to Gibraltar was entirely a matter for the Committee and that the British Government would raise no objection were the Committee to decide it wished to visit Gibraltar. The Administering Power is therefore agreeable to the visit, the people and Parliament of the Territory have requested the visit and offered to pay for it. The way is therefore clear for it to happen. I would urge this Committee to mandate the Special Committee to undertake it, as part of its programme of work on the case of Gibraltar.

Mr Chairman, last year I reported to you about the re-launched Anglo-Spanish negotiations based on the principle of the UK and Spain sharing the Sovereignty of Gibraltar; I told you also that this principle would never be acceptable to the people of Gibraltar because, amongst other reasons, joint sovereignty would perpetuate our colonialism and replace one colonial master with two! The people of Gibraltar also reject the transfer of any part of the sovereignty of our homeland to Spain. I told you also that a statement had been made on 12th July last year by the British Foreign Secretary in the UK Parliament to the effect that UK was in principle willing to share Sovereignty of Gibraltar with Spain. I described such an agreement by the UK as a betrayal and violation of our rights as a people to self determination; I told you also of our plan to hold a Referendum in response to that statement.

We held our referendum on 7th November 2002. It was observed by an impressive panel of international observers, including parliamentarians, trade unionists and journalists who gave a glowing report concluding that the Referendum process was a model of sound democratic process. A full copy of their report, and of the Report of the Referendum Administrator has been deposited with the Special Committee on Decolonisation.

The Referendum was held in the face of strong opposition to it by the Spanish and UK Governments.

The question put to the people was simply this:-

“On the 12th July 2002 the Foreign Secretary, Jack Straw, in a formal statement in the House of Commons, said that after twelve months of negotiations the British Government and Spain are in broad agreement on many of the principles that should underpin a lasting settlement of Spain’s sovereignty claim which included the principle that Britain and Spain should share sovereignty over Gibraltar. Do you approve of the principle that Britain and Spain should share sovereignty of Gibraltar?”

The turnout was 88% of the electorate. 99% voted “no”.

There can therefore be no political or democratic legitimacy to any continuation of negotiations between the UK and Spain in relation to any transfer of sovereignty.

In his address to the Fourth Committee last year the UK Government Representative said that the two Governments (UK and Spain) had agreed on the principles of co – sovereignty. He described this as a historic achievement.

For all the reasons that I have cited, we do not consider this to be an achievement still less one worthy of the description “historic”. Indeed, there is not even an agreement, given that the premise upon which Britain entered the negotiations, namely “putting the long – running dispute about sovereignty to rest” has subsequently been negated by Spain who has said publicly that she would never renounce her claim to full sovereignty. Agreement has also not proved possible between UK and Spain because Spain rejects the UK’s insistence on putting any joint sovereignty agreement to referendum in Gibraltar, and also because Spain rejects Britain’s unrealistic aspiration to retain sovereignty or control of the military base while bartering away half the sovereignty of the rest of Gibraltar. It is therefore not clear what is the “achievement”, even from the UK’s point of view, given that there is in fact no agreement, and that the UK’s willingness to share sovereignty has been conceded by the UK in return for nothing from Spain, and is rejected by 99% of the people of Gibraltar.

The people of Gibraltar are implacably opposed to the principle of joint sovereignty. We are also implacably opposed to the notion that the sovereignty of our homeland is divisible and can be carved up between our administering power and our neighbour to suit the military interests of one and the territorial ambitions of the other, while ignoring the political rights of the people of Gibraltar to self determination.

Our 7th November Referendum, (then pending) is what the Spanish Foreign Minister had in mind when she said to the General Assembly in September last year: -

“Any attempt to disrupt the smooth progress of these negotiations, and thereby also to disregard the position of the United Nations, should therefore be condemned.”

And so there you have it, Mr Chairman. Spain wants no International Court of Justice adjudication or clarification of legal principles, no United Nations fact finding visit and no democratic expression of wishes by the people of Gibraltar, no objectivity, no truth, no light, no democracy – instead what we have is a bilateral territorial horse-trade between the UK and Spain in violation of our political rights as a people.

Can that possibly be the Spirit of the Charter, which you call to be respected in the annual consensus resolution? I think not. The situation is wholly unacceptable and does not deserve your annual support and encouragement. The current approach will never prosper. Until it is abandoned in favour of a 21st Century approach, which is based on respect for our right to decide our own future, no progress will be possible.

And so once again, I urge you. Amend the Annual Resolution to reflect the primacy of our wishes and status at talks, refer the case to the International Court of Justice and mandate the Special Committee to visit Gibraltar. Only these steps will deliver progress.

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HOUSE OF ASSEMBLY
GIBRALTAR

This House

1. Notes with satisfaction and approval: -
 - (1) that the recent UN Special Committee Caribbean Regional Seminar on decolonisation has taken place in the UK Overseas Territory of Anguilla with the approval of the British Government; and
 - (2) that at the Seminar the Representative of the British Government indicated that the British Government was content for the UN Special Committee on Decolonisation to visit other UK Overseas Territories at the invitation of the territorial governments.
 - (3) That the United Kingdom representative at the meeting of the United Nations Committee of 24 meeting on 4th June 2003 when Gibraltar was being discussed, told the Committee that the UK Government supported the sending of visiting missions by the Committee of 24 to United Kingdom Overseas Territories.
2. Notes that Gibraltar is a UK Overseas Territories on the same Constitutional basis as the other UK Overseas Territories.
3. Notes with approval that the present Chief Minister and his predecessor have on numerous occasions invited the Special Committee on Decolonisation to visit Gibraltar, most recently at addresses to the Special Committee earlier this month on the 4th June;
4. Supports the view that the Special Committee has systematically been informed by Spain about the characteristics of Gibraltar, its people, its economy, its physical and social infrastructure and the unique and separate identity and worthiness of its people, on an erroneous basis which bears no relationship to the truth.
5. Considers that the Special Committee would benefit from seeing the realities for itself.
6. Ratifies, confirms and adopts the Government's invitation to the Special Committee to visit Gibraltar at its earliest opportunity and endorses the offer by the Gibraltar Government that the costs of such a visit be defrayed by the Gibraltar Government, if necessary.