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Attached is the full text of the Chief Minister's address at the United Nations Fourth Committee on 6 October 2005.

Mr Chairman, Excellencies, thank you for allowing me, once again, to address you on behalf of the people of Gibraltar – one of your listed Non-Self Governing Territories awaiting decolonisation.

Stripped of the complications added by historical obsessions and high level political posturing and interests at these United Nations and elsewhere, and stripped also of intricate diplomatic niceties and stand off, the question of Gibraltar is really a very simple one.

Here is a territory, Gibraltar that in the last 1300 years or so has been Moorish for 727 years, Spanish for 266 years and a British possession (initially) and colony (later) for a total of 301 years.

It has, during the last 300 years become the homeland of the people of Gibraltar. The people of Gibraltar, like those of so many ex-colonies, and now independent states, have come from all over the Mediterranean Basin and further afield. We are politically developed, socially advanced and economically self sufficient. We already enjoy a very large measure of self Government. Gibraltar is governed by its own democratically elected Government (which I presently have the honour to lead) in all matters except external affairs, defence and internal security, and it legislates for itself in its own Parliament in respect of all matters, including the transposition into our national laws of EU obligations. These are the modern realities of Gibraltar which I have repeatedly invited the UN Special Committee on Decolonisation to see and judge for itself by visiting Gibraltar.

Everyone agrees that we should be decolonised. We want it, and we are ready for it. We are on the UN list of Non-Self Governing Territories, awaiting decolonisation. Given the realities of Gibraltar, it is absurd that we are still a colony.

And so, Mr Chairman, the simple issue at stake in the Gibraltar question is this: -

Should that decolonisation of my homeland in the 21st Century take place in accordance with the freely expressed wishes of the people of Gibraltar (as we profess), or should it be achieved by the handover of the sovereignty of our homeland by our colonial power (the United Kingdom) to our neighbour, Spain (who claims it) against our wishes, in negotiations conducted bilaterally between them (as Spain professes)?

That is the simple issue, Mr Chairman. And yet, all manner of self serving, contrived, inapplicable and inappropriate argument and reasoning has been raised over the decades here at the UN to cloud the simple principles truly applicable to that simple issue.

Spain says that it is the doctrine of these UN that Gibraltar's decolonisation must be achieved not by the application of the principle of self-determination but by the application of the principle of territorial integrity, that is by the handover of the sovereignty of my homeland from the United Kingdom to Spain regardless of the wishes of the people of Gibraltar. I say that that is not decolonisation but recolonisation. It would constitute a modern form of trafficking in human beings. It is simply unacceptable and inconceivable.

How many nations represented here today truly believe that Gibraltar can be decolonised in the manner that Spain demands? How many democratic nations represented here today really believe that it is acceptable, indeed that it is UN doctrine, that the sovereignty of Gibraltar could be handed over from one country to another against the wishes of its people, or that Gibraltar can be decolonised in a manner other than as chosen by its people? Nor should that be anathema only to countries governed in accordance with the principles of democracy. Simple adherence to basic principles of human dignity and common sense would suffice to find that approach to our decolonisation equally contemptible.

Nor can we accept that such is the doctrine of these United Nations. The principle of territorial integrity properly relates and applies only to the disintegration of existing member states, and not to the process of decolonisation of listed Non Self-Governing Territories. When the principle of territorial integrity is cited in the Decolonisation Declaration, and in other decolonisation resolutions, it is to make clear that the principle of self-determination is not available to allow the people and territory of a member state to secede from it. It is a total misconception to apply it so as to allow the inalienable right to self-determination of a colonial people to be frustrated and overridden, in the name of giving a member state the right, not to prevent its disintegration today, but to recover territory lost 300 years ago!

And it is not just I who say these things. The General Assembly says so too, in Resolution 2625 (XXV) of 24th October 1970 adopting the "Declaration of Principles of International Law concerning friendly relations and co-operation among states in accordance with the Charter of the United Nations." This Resolution is UN Doctrine. After citing the classic statements of the two principles of self-determination and territorial integrity, (the latter in exactly the same terms as Spain seeks to apply it to the Gibraltar case), that Declaration of Principles goes on to make clear what is the correct interrelationship between these two principles, (i.e. self-determination and territorial integrity)

And it does so in these words: -

"Nothing in the foregoing paragraphs shall be construed as authorising or encouraging any action which would 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 as 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, this is the only statement in UN doctrine of the interrelationship between the principles of self determination and territorial integrity.

It is self-evident that Spain is not possessed of a Government representing the people and territory of Gibraltar, and thus the principle of territorial integrity does not override the principle of self-determination in our decolonisation. Why? Well because decolonisation today does not result in, is not what brings about, the disintegration of Spain because we are already not part of Spain. In the words of the Declaration, she is not “possessed of a Government representing the whole people belonging to the Territory”. It is this phrase which makes it clear that the principle of territorial integrity applies only to prevent the principle of self-determination from allowing secession of people and territory from an existing state. But that is not our case!

A further obfuscation of the correct principles applicable to our case of our decolonisation, is the confusion of two quite separate and distinct issues: decolonisation and sovereignty. And so, it is asserted by Spain that decolonisation by the principle of self determination does not apply to and cannot take place, in the case of Gibraltar, because of the existence of a so-called sovereignty dispute over the Territory. This is conceptually and intellectually misconceived and has no foundation in UN doctrine or international law. Mr Chairman, solving a sovereignty dispute relating to a territory, against the wishes of its people, is not a valid or legitimate means of decolonisation of that Territory.

Nor is there any basis for the contrary view in UN doctrine. UN doctrine has it that self-determination of colonial peoples is “an inalienable right and a basic and fundamental human right.” Well Mr Chairman, inalienable and fundamental rights cannot be overridden or displaced by the mere existence of a territorial sovereignty claim or dispute. These are different and separate issues. The different and separate principles applicable to each of them does not qualify the principles applicable to the other. So, just as a sovereignty dispute can survive (and has often survived) decolonisation of a territory by self-determination, so too such a dispute does not prevent decolonisation by self-determination nor displaces the principles applicable to such decolonisation.

Again Mr Chairman, Excellencies, it is not just I who say these things about these basic principles of international law and UN Doctrine. The International Court of Justice says so too. In the Namibia Case the International Court of Justice said:

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“...the 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.”

“All of them” Mr Chairman includes listed non self-governing territories the subject of a sovereignty dispute, such as Gibraltar.

The Court also said: -

“Even if integration of 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”.

This Mr Chairman, is what I mean when I say that the existence of a sovereignty dispute does not eliminate or override the self-determination rights of a colonial people. There is no basis for the contrary view either in UN doctrine (properly applied) or in international law.

This, Mr Chairman, regrettably does not prevent the Reports of recent UN Decolonisation Committee Regional Seminars from confidently proclaiming, as a Conclusion & Recommendation, that “in the process of decolonisation, and where there are no disputes over sovereignty, there is no alternative to the principle of self-determination.” The “and where there are no disputes over sovereignty”, was recently added, without any proper basis whatsoever.

What is more the draft Report of the recent Canouan Caribbean Regional Seminar says (at para 39) that those Recommendations are “important expressions of the will of the people of the Territories”. Mr Chairman, this is wholly untrue. Not a single representative of the people of any of the Territories expressed the view that the principle of self-determination should not apply where there are sovereignty disputes. This is a pure fictional misrepresentation. Those words were added, at the Report drafting stage by one or two member states who claim sovereignty over Non Self-Governing Territories, and who appear to have a disproportionate and, in my respectful opinion inappropriate and regrettable influence on that drafting process. I would urge this Committee to look into this important matter, and to bear it in mind when considering that particular alleged Conclusion and Recommendation of the draft Report of the Canouan Seminar.

And thus, Mr Chairman, to our position, to the position of the people of Gibraltar - in relation to the desired decolonisation of our homeland. Our position is that it can only be achieved through the exercise by the people of Gibraltar of our inalienable right to self determination, that is pursuant to our right to freely decide the political future of our homeland. There is no other principle properly applicable in the decolonisation process, however unpalatable some Member States may find the consequences of that proposition and that reality.

What is more I have repeatedly urged this Committee, or Spain and the UK if they disagree with this statement, to refer the matter to the International Court of Justice for an advisory opinion as to the legal principles correctly applicable to our decolonisation.

Accordingly, Mr Chairman, we are currently engaged in Constitutional Talks with our administering power, the United Kingdom, for the negotiation of a non-colonial constitution that will endow on the people of Gibraltar the greatest possible measure of self government. There have been two formal rounds in the negotiations. They are going quite well, and we would hope to conclude them satisfactorily during the first half of next year.

Mr Chairman, the Committee will be aware that for ten years now, I have been decrying as wrong and ineffective, the concept of bilateral negotiations about Gibraltar between our Administering Power (the UK) and the Territorial Claimant (Spain). It is wrong because it is completely disrespectful of the people of Gibraltar and our rights, and it is ineffective for the self evident (but in democracies, perfectly foreseeable and understandable) reason that nothing that they decide can, could or should be implemented or effectively agreed without our consent.

Indeed, (and for the same reasons) I have repeatedly urged this Committee to modify the annual consensus resolution relating to the Gibraltar question that it sends to the General Assembly. But in the case of this, I do it also for another good reason. There is in practice no process of bilateral negotiations between the UK and Spain under the so-called "Brussels Process". Indeed there has not been such a meeting since September 2002 (not that the ones before that, in previous years achieved anything).

It is therefore factually incorrect and politically inappropriate for this Committee to approve annually a Consensus Resolution on a manifestly false premise namely, urging the UK and Spain to continue their negotiations. They are not taking place and cannot therefore continue. Furthermore it is not a Consensus Resolution at all, because the UK says that it has no intention of resuming bilateral negotiations with Spain about Gibraltar.

In this regard, Mr Chairman, I welcome and applaud the decision taken by Spain in the Autumn of 2004 to agree to the establishment of a new Trilateral Forum of Dialogue between the Governments of the United Kingdom, Spain and Gibraltar, separate from the so-called "Brussels Process". The principal modalities of this New Trilateral Forum are as follows: -

- 1) Dialogue is on an open agenda basis, and therefore any of the participants may raise any issue relating to or affecting Gibraltar.

- 2) Without prejudice to their constitutional status (including the fact that Gibraltar is not a sovereign Independent State), each of the three parties (that is the Governments of Gibraltar, the UK and Spain) will have its own, separate voice and each will participate on the same basis;
- 3) Any decisions or agreements reached within the forum must be agreed by all three participants. If the three parties wish to take a decision on an issue in the forum where formal agreement would properly be between the UK and Spain, it is understood that the UK will not agree thereto without the Government of Gibraltar's consent.

The Government of Gibraltar welcomes the creation of this forum through which the parties have agreed to endeavour to create a constructive atmosphere of mutual confidence and co-operation for the benefit and prosperity of Gibraltar and the whole region, in particular the Campo de Gibraltar, which is the district of Spain that borders Gibraltar.

Mr Chairman, this is the new process of dialogue that exists. It is realistic and viable for all parties. In the circumstances, it is even more pointless, ineffective and inaccurate that the Consensus Resolution should continue to pretend that there is an ongoing alternative or to focus on and quote from the obsolete or, at least chronically obsolescent, bilateral Brussels Process. Your Resolution should reflect the reality and not fiction.

The Brussels Process is politically spent and our strong preference is for that practical reality to be recognised through the elimination altogether of references to it in the Consensus Resolution. But if the Committee is unable to obtain a Consensus for that this year, then at least the Resolution should be modified by including a full reference to the new Tripartite process, and to tone down the references to the defunct Brussels Process by eliminating the pointless and unnecessary quotations from the text of the Brussels Declaration in the Consensus Resolution.

Mr Chairman, for the benefit of those Distinguished Representatives who may be interested in seeing it, I have attached to the written version of this address, a copy of the Trilateral Statement issued on 16th December 2004 by the Governments of Spain, Gibraltar and the UK confirming the establishment of the New Tripartite Forum, and its operating modalities.

Mr Chairman, there have been two formal rounds of talks this year under this new Trilateral Forum. The third is due next week on 10th and 11th October, in Spain. There have also been many other informal and technical working meetings relating to various issues. We welcome them and will continue to participate constructively in this Process, a Process in which all parties understand that the others have not changed their position on the basic questions. And so, just as Spain has not abandoned its Sovereignty Claim, so too we will never abandon our inalienable right to freely and democratically

decide the future of our homeland in exercise of our inalienable right to self-determination.

Late last month Miguel Angel Moratinos, the Foreign Minister of the Kingdom of Spain told the General Assembly that Spain is willing to work in a constructive spirit within the new Trilateral Dialogue Forum, the very creation of which confirms that constructive spirit. I reciprocate those sentiments and willingness and hope that we shall be able to reach good agreements on many issues. The people of Gibraltar have always shown friendship and respect to those who show friendship and respect to us, as demonstrated in actions as well as words. Spain is not an exception to this.