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Gibraltar's Constitutional Future

“Our aims remain to agree proposals covering all outstanding issues, including those of co-operation and sovereignty. The guiding principle of those proposals is to build a secure, stable and prosperous future for Gibraltar and a modern sustainable status consistent with British and Spanish membership of the European Union and NATO. The proposals will rest on four important pillars: safeguarding Gibraltar's way of life; measures of practical co-operation underpinned by economic assistance to secure normalisation of relations with Spain and the EU; extended self-government; and sovereignty”.

Peter Hain, HC Deb, 31 January 2002, c.137WH.

In July 2001 the British and Spanish Governments embarked on a new round of negotiations under the auspices of the Brussels Process to resolve the sovereignty dispute over Gibraltar. They aim to reach agreement on all unresolved issues by the summer of 2002. The results will be put to a referendum in Gibraltar.

The Government of Gibraltar has objected to the process and has rejected any arrangement involving shared sovereignty between Britain and Spain. Gibraltar is pressing for the right of self-determination with regard to its constitutional future.

The Brussels Process covers a wide range of topics for discussion. This paper looks primarily at the sovereignty debate. It also considers how the Gibraltar issue has been dealt with at the United Nations.

Vaughne Miller

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Summary of main points

- The Brussels Process between Spain, the UK and Gibraltar began in 1984 with the aim of discussing matters of common interest, including the issue of sovereignty over Gibraltar.
- Since 1988 successive Chief Ministers of Gibraltar have declined to attend Brussels Process meetings on the grounds that Gibraltar's voice is not represented in its own right but by the British Government.
- Gibraltar has appealed to the United Nations to uphold its right of self-determination in line with the UN Charter and the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples.
- The British and Spanish Governments embarked on a new round of talks in July 2001 with the aim of resolving the constitutional problem by the summer of 2002. This has given rise to mass demonstrations and popular protest in Gibraltar and to parliamentary debate in the UK.
- The Government seeks to achieve four objectives in the agreement: to preserve Gibraltar's way of life, its culture and British traditions; to establish greater self-government in Gibraltar; to encourage a stronger economy, more and better jobs, an end to border delays, problems with telephones and restrictions on air services, through a new relationship with the region and with the European Union; and a lasting agreement on sovereignty to end the 300-year-old dispute with Spain.
- It is believed that the current talks will result in a proposal for a shared sovereignty arrangement, which would be put to the people of Gibraltar in a referendum. Gibraltarians are concerned that the practical issues only will be put to the vote, but not the principles of the agreement, and that in the event of a no-vote, the principles will remain on the table as the basis for renewed negotiations.
- The European Union, which supports a settlement of the Gibraltar question, is considering extra funding for Gibraltar.
- Brussels Process talks took place on 15 May 2002 but did not resolve outstanding sovereignty issues. There was no further progress at talks between the British and Spanish Prime Ministers on 20 May. Brussels Process talks are scheduled for June or July 2002.

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I Gibraltar: historical summary

A. The Capture of Gibraltar and the Treaty of Utrecht

Spain captured Gibraltar from the Moors in the 15th century and it was taken by the English and Dutch in 1704 during the War of Spanish Succession. The peace settlement to bring an end to this War consisted of a series of bilateral treaties involving France and Britain, Savoy, Portugal, Prussia, Spain and Holland.¹

British possession of Gibraltar was granted under the Treaty of Utrecht in July 1713 and was subsequently confirmed by the Treaties of Paris in 1763 and Versailles in 1783. British sovereignty is based on Article X of the 1713 Treaty which “yielded ... the town and castle of Gibraltar, together with port, fortifications and forts thereunto belonging” to the British Crown. It stipulated that in the event of the UK wanting to “grant, sell, or by any means alienate” ownership of Gibraltar, Spain would be given first preference.² Gibraltar became a British Crown Colony in 1830.

The population of Gibraltar has always been a mixture of different nationalities, cultures, religious and ethnic groups.³ Most of today’s Gibraltarians have their roots in the eighteenth century, from 1704, following the capture of Gibraltar by Britain.

B. The Government of Gibraltar

The British monarch is represented by the Governor of Gibraltar, who is the executive authority. Since April 2000 this post has been held by David Durie CMG, who succeeded Sir Richard Luce.

¹ The Treaty of Utrecht was a peace settlement comprising a series of separate agreements between individual allied states with France and with Spain. The main treaties in the settlement, known also as the “Peace of Utrecht”, were the Treaty of 11 April 1713 (France dismantled Dunkirk, recognised the Protestant succession in Britain, ceded Newfoundland, Acadia and Hudson Bay to Britain; Portugal received San Sacramento, north of the River Plate, from Spain; France gained fortresses on the Canadian frontier); Treaty of 11 April 1713 (Holland established a barrier against France; Austria obtained the Spanish Netherlands; Savoy obtained Sicily and became a kingdom); the succession of Philip V in Spain was recognised, but France and Spain would never be united under a single monarch; Treaty of 13 July 1713 between Britain and Spain (Spain ceded Gibraltar and Minorca to Britain; Britain obtained the Asiento for trade with the Spanish American colonies); Treaty of 26 June 1714 between Holland and Spain (Holland gained trading privileges with Spain, but the Asiento would remain a British monopoly, annexed to the Treaty of 1713). These treaties are published in the Consolidated Treaty Series, 1648, edited by Clive Parry. The Anglo-Spanish Treaty of Utrecht is in Volume 28, 1713-1714 (House of Lords Library at Resbk/con.) and in *A Collection of all the Treaties of Peace, Alliance, and Commerce between Great Britain and other Powers from the Revolution in 1668 to the Present Time*, Vol.1, p.168 (Commons location: R Treaties).

² The full text of Article X is in **Appendix I**.

³ A “List of Inhabitants” in 1777 gave a population of 3,201, consisting of 506 British Protestants, 1,832 Roman Catholics (English, Irish, Minorkeens, Genoese and Savoyards, Spaniards, Portuguese, French and natives of Gibraltar), and 863 Jews.

The *Gibraltar Constitution Order 1964* was amended by the *Gibraltar Constitution Order 1969*, which contains the present Constitution in Annex 1. Under this Order the Governor is advised by the Gibraltar Council, which is composed of four ex-officio members and five elected members from the House of Assembly. The Council, which is responsible for domestic affairs, excluding defence and internal security, is headed by the Chief Minister, an elected member of the House. The House of Assembly comprises the Speaker (appointed by the Governor), two ex-officio members and 15 members elected for a four-year term. In the Assembly the governing party has eight seats and the opposition parties the remaining seven.

The Governor remains responsible for matters not specifically allocated to ministers, in particular defence, external affairs and internal security. In domestic areas delegated to ministers, the Governor acts on their advice and in other matters he usually acts with the advice of the Gibraltar Council. The Governor may intervene in domestic matters in the interests of economic and financial stability. The formal assent of the Crown, or the Governor acting on behalf of the Crown, is required for all legislation in Gibraltar.

In elections in March 1988, on a platform calling for greater autonomy from the United Kingdom, the Gibraltar Socialist Labour Party (GSLP) won 58.2% of the vote against 29.3% for the Gibraltar Labour Party/AACR. Joseph (Joe) Bossano was appointed Chief Minister. He was returned for a second term in January 1992 following the election victory of the GSLP with 73.3% of the vote. The Gibraltar Social Democrats, formed in 1989, obtained 20.2%.

In elections on 16 May 1996 the Social Democrats, led by Peter Caruana QC, won by 52.2% against 42.2% for Joe Bossano's GSLP. Mr Caruana won a second term on 10 February 2000 by 58.3% to 41.6% for the GSLP.

II Anglo-Spanish Relations and Gibraltar

A. Early Spanish Interventions

Spain began its attempt to regain Gibraltar almost immediately after its cession to Britain and it has been an issue ever since. In the 1960s Spain, the UK and Gibraltar took the sovereignty issue to the United Nations (see Section X). General Sir William Jackson, Governor of Gibraltar from 1978 to 1982, suggested that Spain made various assumptions after World War II, one of these being: “that as Britain withdrew from Empire she would no longer need her strategic bases and would be willing to return the Rock to Spain when it became a militarily expensive millstone around her neck”.⁴

However, Gibraltar remained significant for western defences during the Cold War in the 1950s and later as NATO’s southernmost reinforcement and supply point.

In the Franco period Spain introduced various measures which obstructed communications and movement between Gibraltar and Spain, culminating in the severing of all lines of communication in 1968. These measures, known as the Castiella policy after General Franco’s foreign minister who initiated them, were accompanied by an on-going diplomatic battle and by Spanish efforts to exert international pressure on the UK to cede Gibraltar.

B. The Lisbon Agreement

After General Franco’s death in November 1975, King Juan Carlos of Spain pledged to continue the fight for Gibraltar, and the first democratically elected Prime Minister, Adolfo Suarez, announced that negotiations with Britain to restore Spain’s territorial integrity would be resumed. In 1977 there were meetings between Mr Suarez, the British Prime Minister, James Callaghan, and the Foreign Secretary, David Owen. They agreed to a negotiated solution to the issue, but the border and communication restrictions put in place under General Franco were not lifted. Talks between Britain, Spain and Gibraltar representatives continued throughout 1978.

Following the Conservative election victory in Britain in 1979, intergovernmental talks continued with a view to removing the border restrictions and achieving a settlement that satisfied all sides. Shortly after the 1979 general election the Government was questioned in the Commons about progress in the talks with Spain “on a settlement of the Gibraltar problem”. The talks had not yet begun but the Lord Privy Seal, Sir Ian Gilmour, said:

It will be our policy to seek a settlement of the Gibraltar problem acceptable both to the people of Gibraltar and to Spain. The Government consider the continuing

⁴ Sir William G.F. Jackson, *The Rock of the Gibraltarians: a History of Gibraltar*, 1987.

maintenance of restrictions by Spain to be unjustified and will work for their early removal.⁵

Spain had applied to join the European Community,⁶ which provided an incentive for renewed diplomatic efforts to diminish border and other tensions. In July 1979 Sir Ian Gilmour said in a written parliamentary answer:

It is essential, when we consider Gibraltar's future in the context of closer relations with Spain and Spanish accession to the European Community, that the restrictions against Gibraltar should be brought to an end. We shall be seeking a way forward in continuing close cooperation with the Gibraltar Government and in dialogue with the Government of Spain.⁷

The result of these diplomatic and political negotiations was the "Lisbon Agreement", concluded by the foreign ministers of the UK and Spain and set out in a communiqué on 10 April 1980. It provided as follows:

1. The British and Spanish Governments, desiring to strengthen their bilateral relations and thus to contribute to European and Western solidarity, intend, in accordance with the relevant United Nations Resolutions, to resolve, in a spirit of friendship, the Gibraltar problem.
2. Both Governments have therefore agreed to start negotiations aimed at overcoming all the differences between them on Gibraltar.
3. Both Governments have reached agreement on the re-establishment of direct communications in the region. The Spanish Government has decided to suspend the application of the measures at present in force. Both Governments have agreed that future co-operation should be on the basis of reciprocity and full equality of rights. They look forward to the further steps which will be taken on both sides which they believe will open the way to closer understanding between those directly concerned in this area.
4. To this end both Governments will be prepared to consider any proposals which the other may wish to make, recognising the need to develop practical co-operation on a mutually beneficial basis.
5. The Spanish Government, in reaffirming its position on the re-establishment of the territorial integrity of Spain, restates its intention that, in the outcome of the negotiations, the interests of the Gibraltarians should be fully safeguarded. For its part the British Government will fully maintain its commitment to honour the freely and democratically expressed wishes of the people of Gibraltar as set out in the preamble to the Gibraltar Constitution.

⁵ HC Deb, 24 May 1979, c217W.

⁶ Spain did not in fact join until 1986, following a long negotiating and transitional phase.

⁷ HC Deb, 25 July 1979, c257W.

6. Officials on both sides will meet as soon as possible to prepare the necessary practical steps which will permit the implementation of the proposals agreed to above. It is envisaged that these preparations will be completed not later than 1 June.⁸

In a statement on the agreement Sir Ian said: “It is a part of the agreement that nothing is barred. We shall discuss anything. But ... that must be read in the context of our firm commitment to the people of Gibraltar.”⁹

The Commons Foreign Affairs Committee (FAC) published a report on Gibraltar in 1981 entitled *The Situation in Gibraltar and UK Relations with Spain*,¹⁰ which favoured diplomatic initiatives to explore “possible constitutional solutions”. It also noted, however, that the democratic parties in Spain all supported Spanish sovereignty of the Rock and the Spanish and British governments had significantly different interpretations of the 1980 Lisbon Agreement. The Report concluded that the Spanish Parliament would not have accepted the British understanding of the Agreement, which was that only when Spain had unconditionally lifted the border and other restrictions would there be “reciprocity and full equality of rights”.¹¹ The Prime Minister, Margaret Thatcher, fully supported the Lisbon Agreement and said that the Government looked forward to “the implementation of the measures set out in the Lisbon statement ...”.¹²

Spain’s entry into NATO’s political structure in 1982, but without full military integration,¹³ and to the European Community in 1986, redefined its relations with much of Western Europe. The dispute with Britain over Gibraltar also took on a different character during the entry negotiations and beyond.

C. The Brussels Agreement

Although the Socialist Government of Felipe Gonzalez¹⁴ relaxed restrictions by opening the border to pedestrians in December 1982, no real diplomatic progress was made until the “Brussels Agreement” of 27 November 1984. Its provisions were as follows:

- (1a) The provision of equality and reciprocity of rights for Spaniards in Gibraltar and Gibraltarians in Spain. This will be implemented through the mutual

⁸ Foreign Affairs Select Committee Report, *Gibraltar: Situation of Gibraltar and UK Relations with Spain*, 22 July 1981, HC 166, 1980-81. The arrangements were completed by the target date of 1 June 1980 in Gibraltar but not by the Spanish, and implementation of the agreement was stalled, first temporarily, and then, with the outbreak of the Falkland Islands conflict in April 1982, indefinitely.

⁹ HC Deb, 14 April 1982, c801.

¹⁰ Foreign Affairs Committee, Seventh Report, HC 166, 1980-81.

¹¹ *Ibid*, para. 64.

¹² HC Deb, 14 June 1982, c189W.

¹³ Spain’s security and its role in NATO are discussed in Library Background Paper 256, Spain: Achievements and Prospects, 30 July 1990.

¹⁴ Felipe Gonzalez (PSOE) became Prime Minister in December 1982 and lost to José María Aznar (PP) in elections in March 1996.

concession of the rights which citizens of European Community countries enjoy, taking into account the transitional periods and derogations agreed between Spain and the Community. The necessary legislative proposals to achieve this will be introduced in Spain and Gibraltar. As concerns paid employment, and recalling the general principle of Community preference, this carries the implication that during the transitional period each side will be favourably disposed to each other's citizens when granting work permits. (lb) The establishment of the free movement of persons, vehicles and goods between Gibraltar and the neighbouring territory. (lc) The establishment of a negotiating process aimed at overcoming all the differences between Spain and the United Kingdom over Gibraltar and at promoting co-operation on a mutually beneficial basis on economic, cultural, touristic, aviation, military and environmental matters. Both sides accept that the issues of sovereignty will be discussed in that process. The British government will fully maintain its commitment to honour the wishes of the people of Gibraltar as set out in the preamble of the 1969 constitution. (2) Insofar as the airspace in the region of Gibraltar is concerned, the Spanish government undertakes to take the early actions necessary to allow safe and effective air communications. (3) There will be meetings of working groups, which will be reviewed periodically in meetings for this purpose between the Spanish and British Foreign Ministers.¹⁵

Mrs Thatcher welcomed the Agreement, saying: "In our view, it is very much in the interests of both Gibraltar and Spain".¹⁶ She confirmed that the wishes of the people of Gibraltar would not be compromised:

I believe that the opening of the border between Gibraltar and Spain today was generally welcomed ... Let me make it clear that the statement of 27 November 1984 underlined Her Majesty's Government's intention fully to maintain their commitment to honour the freely and democratically expressed wishes of the people of Gibraltar, as set out in the preamble to the Gibraltar constitution of 1969. ... Her Majesty's Government have given assurances to the people of Gibraltar that Gibraltar will remain part of Her Majesty's dominions unless and until an Act of Parliament provides otherwise, and, furthermore, that Her Majesty's Government will never enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another state against their freely and democratically expressed wishes. ... We cherish the freedom of the people of Gibraltar to decide their future.¹⁷

¹⁵ Deposited Paper 1150, 28 November 1984.

¹⁶ HC Deb, 6 December 1984, c234W.

¹⁷ HC Deb, 5 February 1985, c744.

III The Brussels Process

A. Introduction

In accordance with the Brussels Agreement, the British and Spanish foreign secretaries and foreign ministers have met fairly regularly. They have also met informally in the margins of the EU or NATO, for example. Brussels Process meetings are held alternately in London and Madrid. There is no fixed timing for these meetings, although they have traditionally, and until recently, been held roughly once a year. Ministers have informed the House on the outcome of Brussels process and other bilateral meetings in response to parliamentary questions. However, the Brussels Process has not always been a transparent one and there is no formal reporting of meetings to the House. Full details of Brussels process meetings are classified, although the Government sometimes places information on them in the Library of the House of Commons in the form of Deposited Papers. There was a sensitive period in Anglo-Spanish relations in 1997-98, when Spain was negotiating to become a full member of NATO's integrated military structure, and in 1998-99, when the Government sought to defuse a fisheries dispute over fishing rights in the Bay of Gibraltar. Informal Anglo-Spanish meetings continued and the formal Brussels Process was relaunched in July 2001. It has met four times at ministerial level since then. The Government pledged to keep the House regularly informed on developments in the current negotiations (see Section IV) and has deposited communiqués on the meetings so far.

B. Sir Joshua Hassan and the Brussels Process

The Chief Minister of Gibraltar at the time of the Brussels Agreement was Sir Joshua Hassan. He was concerned about the prospect of sovereignty discussions, while the opposition Gibraltar Socialist Labour Party (GSLP) condemned the Agreement, and the combined opposition parties asked for a referendum on it, which was refused by the Gibraltar Government.

Spain finally lifted its border restrictions on 5 February 1985 but refused to restore the ferry route from Algeciras (removed on 25 June 1969) and the air exclusion zone introduced in 1967. Brussels Process talks were held in December 1985 and in 1986 an agreement was signed on economic and cultural co-operation with the understanding that Gibraltar issues would also be on the agenda. At a subsequent meeting on 13-14 January 1987, Sir Geoffrey Howe "reaffirmed the British Government's commitment to honour the wishes of the people of Gibraltar" and emphasised "the importance of managing any differences between Britain and Spain in a spirit consistent with their links of traditional friendship and their common membership of the European Community and NATO".¹⁸

¹⁸ Communiqué, 14 January 1987.

Sir Joshua participated in Brussels Process meetings in February 1985, December 1985 and January 1987. He was the last Chief Minister to participate in the talks.

C. Joe Bossano and the Brussels Process

There were Brussels Process meetings on 30 November and 1 December 1987. In December 1987 Sir Joshua Hassan resigned. He was succeeded briefly by the Deputy Chief Minister, Adolfo Canepa, before general elections in March 1988, as a result of which Joe Bossano of the Socialist Labour Party became Chief Minister. Mr Bossano rejected further participation in the Brussels Process (the Governor attended instead) on the grounds that he would be considered part of the UK delegation and not as a direct representative of the Gibraltar Government. During Mr Bossano's time as Chief Minister there were Brussels Process meetings on 10 June 1988 (between Sir Geoffrey Howe and Fernandez Ordoñez), 6-7 February 1989 (Howe/Ordoñez), 26 February 1990 (Douglas Hurd/Ordoñez), 12 February 1991 (Hurd/Ordoñez), 1 March 1993 (Hurd/Javier Solana) and 19-20 December 1994 (Hurd/Solana).

Mr Bossano favoured a pragmatic approach to relations with Spain. He established contacts with the mayors of La Linea and Algeciras, and in 1992 an Economic Co-ordination Council was set up with neighbouring Spanish cities in the region (although this collapsed in November 1994 as a result of a Spanish decision to withdraw from the Council). Mr Bossano also had strong views on the constitutional future of Gibraltar. Regarding the Treaty of Utrecht as archaic, his Government argued against any form of 'colonial' management by Britain or Spain, in favour of self-determination under resolutions of the United Nations Decolonisation Committee¹⁹ and Article 1(1) of the *UN Covenant on Economic, Social and Cultural Rights* (1976). This states that "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development".

Joe Bossano became Chief Minister for a second term after elections in 1992 (in which the GSLP obtained 73% of the vote). He told the Gibraltar House of Assembly that he would try to obtain a revision of the 1969 Constitution to allow for Gibraltar's foreign affairs and defence matters to be transferred to the European Communities, with the UK retaining formal sovereignty over an otherwise self-governing entity. He proposed a new constitutional relationship with the UK in the context of Gibraltar's status within the EU. Independence gambits such as this and Gibraltar's attempts to ignore both Britain and Spain over the use of the Rock's airport were not successful. The European Court of Justice decided in June 1993 that Gibraltar had no right to overturn the decisions of Spain and Britain, even though it had legal personality in UK law.²⁰

¹⁹ See Section VI on Gibraltar at the United Nations.

²⁰ Case 298/89, *Gibraltar v EC Council*, judgment of 29 June 1993.

Mr Bossano was critical of the Brussels Process, saying that this had shown:

... that where an agreement is reached with the Kingdom of Spain in an area which is entirely under its control there is no guarantee that it will be honoured. Rather than mutually beneficial co-operation, we have had increasing strains in the tripartite relations between the administering Power and the Kingdom of Spain on the one hand; between Spain and ourselves on the other; and between ourselves and the United Kingdom in turn.²¹

On 28 November 1994 Spain's former Foreign Minister and Socialist MEP, Fernando Moran, launched a new campaign for Spanish sovereignty over Gibraltar. In an article in the Spanish newspaper *El País*²² Mr Moran proposed two scenarios: one was the temporary joint ownership and administration of Gibraltar for a specified period, after which the Rock would proceed to full Spanish sovereignty; the second was its immediate return to Spain and the establishment of a leasing agreement with the UK.²³ Mr Hurd said in a written answer in November 1994 that the Moran proposals were unacceptable "as a basis for talks because of their precondition that sovereignty would be transferred. That position has not changed".²⁴

Mr Hurd and his Spanish counterpart, Javier Solana, met in London on 19 and 20 December 1994. Drug smuggling was discussed but "There was no substantive discussion of sovereignty issues".²⁵ An account of the meeting stated:

They reaffirmed their commitment to the Brussels Process. They agreed on the importance of Gibraltar developing a sustainable economy. They recognised that there was a problem of illegal trafficking, in particular drugs, in the Gibraltar area and agreed on the need to establish an effective mechanism, which should include the competent local authorities, to improve consultation and co-operation. On the basis of normal and regular movement between Gibraltar and the neighbouring territory, and in a spirit of co-operation, they will review progress towards agreeing on such a mechanism in the New Year.²⁶

In a parliamentary answer on the meeting the FCO Minister, Douglas Hogg, said that Mr Hurd had "made clear that we would not deviate from our commitment to the people of Gibraltar in the 1969 constitution".²⁷

²¹ UN Doc A/AC.109/PV.1433, 1994.

²² 28 November 1994.

²³ These ideas were revisited in 1997 and aspects of the Moran proposals may be discussed in the present negotiations.

²⁴ HC Deb, 2 November 1994, c1206W.

²⁵ HC Deb, 10 January 1995, c62W.

²⁶ Dep/3 928, 20 December 1994.

²⁷ HC Deb, 10 January 1995, c62W.

The Conservative Government did not rule out changes to the 1969 Gibraltar Constitution, as the Foreign Secretary made clear in correspondence with Mr Bossano on 13 February 1995, when he wrote that he:

... would be willing to listen to the views of Gibraltarians and the Gibraltar Government on how the constitution might be developed. But we have always made clear that any changes would have to be realistic in the circumstances of Gibraltar²⁸.

The British Government was cautious about self-determination on the grounds of the requirement of Article X of the Treaty of Utrecht, according to which independence would not be an option without the consent of Spain.²⁹

Speaking in Madrid on 8 March 1995, the Gibraltar Chief Minister objected to the bilateral talks on Gibraltar's future and appealed to Spain to understand that the people of Gibraltar would not accept any agreement over its future that did not involve Gibraltar's direct participation in negotiations. Mr Bossano again insisted on the right of Gibraltarians to self-determination under the UN Charter and castigated Spain for not recognising that right or the right to participate directly in negotiations over their future.

In a Lords written answer, the FCO Minister, Baroness Chalker, set out the Government's view on Gibraltar's bid for self-determination:

Our policy has consistently been that while we support the principle or right of self-determination, reflecting the wishes of the people concerned, it must be exercised in accordance with the other principles and rights in the United Nations Charter as well as other treaty obligations. In the case of Gibraltar, the right of self-determination is circumscribed by Article X of the Treaty of Utrecht. We are willing to look at options for constitutional change, if that is what Gibraltar wants. But they have to be compatible with the Treaty of Utrecht and they have to be realistic.³⁰

D. Peter Caruana and the Brussels Process

On taking office after the May 1996 Assembly elections, Peter Caruana pledged to try and improve links between Gibraltar and Spain but was adamant that the issue of sovereignty remained non-negotiable. Mr Caruana, like his predecessor, has boycotted Brussels Process talks as long as he is not represented as an equal participant with Spanish and British ministers, because "it seems to imply acceptance of a junior role in the negotiations, which Gibraltar insists should be multilateral".³¹

²⁸ David Davis, quoting the Foreign Secretary, HC Deb, 6 March 1995, c4W.

²⁹ See Section X (C) for further comment.

³⁰ HL Deb, 19 April 1995, c53-4WA.

³¹ *Panorama News*, at: <http://www.panorama.gi/updates.htm>, 4 October 2001.

The then British and Spanish foreign secretaries, Malcolm Rifkind and Abel Matutes, met under the auspices of the Brussels Process on 16 October 1996 and 22 January 1997. At the 1997 meeting Mr Matutes put forward a proposal for shared sovereignty of Gibraltar which Mr Rifkind rejected because it would not have the consent of the people of Gibraltar.³² The proposed arrangement involved shared sovereignty for up to 100 years followed by a handover of the territory to Spain. The Spanish flag would be flown alongside the British one and border restrictions would be lifted. The British Governor would remain but “account would have to be taken of the new Spanish position”.³³ Mr Caruana commented: “Mr Matutes’s proposition is absurd. As far as the people of Gibraltar are concerned, there is simply no question of sharing sovereignty with Spain”.³⁴ Mr Rifkind urged his Spanish counterpart to follow the Argentinian/Falklands example and set aside the sovereignty issue in order to work out practical arrangements for cooperation over the future of Gibraltar, such as the restoration of all communication links and the removal of border obstructions.

E. The Brussels Process under the Labour Government

The first Brussels Process meeting after the May 1997 UK general election took place on 10 December 1997. The FCO issued the following press release on the meeting between the new Foreign Secretary, Robin Cook, and Abel Matutes:

The Foreign Ministers of Britain and Spain held a meeting in London on 10 December, the 11th formal session of the Brussels process, to discuss Gibraltar. The talks took place in a friendly and constructive atmosphere. The Spanish set out their ideas of a general outline for a legal, political and economic framework for Gibraltar including sovereignty issues. The British side listened carefully to the Spanish presentation and recalled its commitment to respect the wishes of the people of Gibraltar as enshrined in the preamble to the 1969 constitution. It was agreed that the co-ordinators of the Brussels process would meet to carry forward their work. Under discussion as well as the Spanish ideas would be any proposals from the Gibraltarians together with British proposals for increased economic cooperation.

[.....]

For Britain there can be no compromise on the principle of sovereignty against the wishes of the people of Gibraltar and I have repeatedly expressed the view that it is important that the people of Gibraltar should never again be put under siege and that we should try and build a positive relationship. That is why, as part of the process, Britain would wish to table proposals that will assist in economic cooperation and help in building confidence and trust.

³² The text of the Matutes proposal can be found at: <http://www.gibraltar.gi/localinfo/news.html> in an article dated 7 December 1998.

³³ *Times*, 29 January 1997.

³⁴ *Ibid.*

Abel Matutes said:

The question of Gibraltar has now been outstanding for many years and over that period it has been tackled in various instances including the United Nations. In all proposals for a solution to this, Spain and the United Kingdom have been urged to tackle the question of decolonisation on the basis of the principle of the territorial integrity of states. In this process decolonisation is the primary consideration. For Spain, it has always been of the greatest importance to take account of and indeed to satisfy the rights of the people of Gibraltar in such a manner that Spain does not dispute the right of Gibraltarians to be British or to be Spanish, if they wish to be Spanish, or to enjoy both nationalities simultaneously if that is their preference. Neither does Spain dispute the right of Gibraltar to enjoy the fiscal and customs advantages that it currently enjoys. We hope to offer an opportunity to the Gibraltarian people to plan their future prosperity on a reasonable and hopeful basis and that is precisely the reason why we have made these proposals.

Mr Cook concluded:

Gibraltar is a valuable military asset for Britain and therefore to NATO. However, what motivates the British Government in its approach to Gibraltar is our respect for the democratic wishes of the people of Gibraltar and it is fulfilling our duty to them that is the national interest of Britain, in respecting their wishes we discharge our national interest.³⁵

On 22 June 1999 the Commons Foreign Affairs Committee published a report on Gibraltar. The summary of conclusions and recommendations included the following points on the sovereignty question:

(19) The Committee believes that, while the potential Spanish reaction to any constitutional change compatible with the Treaty of Utrecht is a consideration which British and Gibraltarian Governments will wish to bear in mind, there can be no question of a Spanish veto on constitutional developments in Gibraltar. (Paragraph 106)

(20) We recommend that Señor Matutes's proposals be rejected, and that the Brussels Process be replaced by a new phase in British/Spanish relations over Gibraltar. (Paragraph 119)

(21) We recommend a new process of regular dialogue on those many other areas where agreement and co-operation could yield substantial benefits to Gibraltarians and Spanish people alike. (Paragraph 120)

(22) We recommend that the new process of dialogue should put issues of sovereignty on hold, and concentrate on exploring areas of co-operation. The full participation, on the United Kingdom side, of the Government of Gibraltar would be essential. (Paragraph 123).³⁶

³⁵ <http://www.gibnet.com/news/fcol.htm>

³⁶ FAC Fourth Report, HC 366, 1998/99.

IV The Brussels Process Resumes

A. The Re-launch

The Brussels Process was re-launched with ministerial-level talks on 26 July 2001, although there had been various bilateral meetings prior to this at which UK and Spanish foreign ministers discussed Gibraltar informally (for example, in the margins of EU and NATO meetings). The Minister for Europe, Peter Hain, said of the July talks:

The Government will continue to stand by their commitments to the people of Gibraltar as set out in the Preamble to the Gibraltar Constitution. We have agreed with Spain to resume ministerial level talks on Gibraltar under the Brussels Process, and aim to use these talks to re-establish a framework for dialogue with Spain on a number of issues concerning Gibraltar. The Government intend that the Government of Gibraltar should be fully engaged in this process.³⁷

The Spanish foreign ministry invited Gibraltar's Chief Minister to take part in the bilateral discussions but he declined. On 9 October 2001 Peter Caruana and Jack Straw met to discuss the Brussels process and the participation of Gibraltar. Mr Straw assured Mr Caruana that while there was "no question of any change in sovereignty against the wishes of the people of Gibraltar", there should be a way to "normalise relations through dialogue."³⁸ Peter Hain said in a parliamentary answer on 30 October 2001 that better relations between Spain, the UK and Gibraltar were the Government's objective in the latest round of discussions. He continued:

[Spain] is a modern, democratic power in Europe and in the world, and we attach great importance to our relationship with Spain and the close friendship between our two Prime Ministers. It is precisely in order to move forward our relationship with Spain ... and to enable the people of Gibraltar to normalise relations with Spain, that we are engaged upon these discussions ...³⁹

In a parliamentary answer concerning Gibraltar's participation in the Brussels Process, Mr Hain said that the British and Spanish Governments:

... confirmed that Gibraltarian engagement would be an important element in carrying the process forward and that they would welcome the attendance of the Chief Minister of Gibraltar at future ministerial meetings.⁴⁰

³⁷ HC Deb, 10 July 2001, c473W.

³⁸ *Panorama News*, 9 October 2001.

³⁹ HC Deb, 30 October 2001, c739.

⁴⁰ HC Deb, 8 November 2001, c335W.

B. Rumours of a ‘Deal’

In early November 2001 reports emerged of a shared sovereignty ‘deal’, the framework of which would be worked out between the UK and Spanish governments during the November Brussels Process meeting. Peter Hain said in a Westminster Hall debate on Gibraltar on 7 November 2001:

Gibraltarians have nothing to fear from the discussions in Brussels; our dialogue with Spain is not a threat, but an opportunity for Gibraltar to secure a safer, more prosperous future. I know from a recent visit that Gibraltar is a proud place and that Gibraltarians are proud people. They are hugely suspicious of Spain and of British Ministers and officials. They do not like to feel that they are being told what to do. But no one is telling anyone what to do. When the dialogue ends, the people of Gibraltar will be able to form a judgment. I ask the people of Gibraltar to judge us by our actions and by outcomes, not by myths and prejudices.⁴¹

However, the Minister identified a need to ‘modernise’ the relationship between the UK, Gibraltar and Spain:

The politics of 1969 must be replaced by the politics of 2001. The British Government must make choices. Will we try to reach a new deal for Gibraltar, or will we duck the issue and pretend that matters can continue as they are even though they take Gibraltar nowhere fast? Does Spain have the courage to make hard decisions? Does Gibraltar have the vision to contemplate a new deal? The choices will not go away. If they are ducked, Gibraltar will be left behind.

The dispute with Spain about Gibraltar is a constant factor in the otherwise excellent relationship between Britain and Spain. For a long time, Spain has placed grossly unsatisfactory and damaging obstacles in the way of normal life for the people of Gibraltar. The obstacles include restrictions on the use of the airport, long and unpredictable delays in crossing the border, restrictions on telecommunications and even restrictions on organising dog shows.

The dispute has gone on for so long that attitudes on both sides have hardened. The only key movement made by Spain was an offer of more than triple the number of telephone numbers available--from 30,000 to 100,000--and that was announced at the first meeting of the resumed Brussels process. The time has come for Spain clearly to demonstrate its new attitude through action. It could, for example, open up normal red and green channels at the border; allow normal procedures for the diversion of Gibraltar-bound flights in bad weather; ensure that Gibraltarian mobile telephones work in Spain; and ensure that telephone calls from other countries get through.

... the status quo is not sustainable, because Gibraltar's current relations with Spain are abnormal and will remain so if the status quo prevails. Spain's historic

⁴¹ HC Deb, 7 November 2001, c88WH.

aspirations are unattainable, and the continuous aggravation with Gibraltar is anachronistic and unseemly. Britain's relations with both Spain and Gibraltar are damaged by the status quo.⁴²

C. The Barcelona Talks

Jack Straw and Josep Piqué met in Barcelona under the auspices of the Brussels Process on 20 November 2001 and a Joint Press Communiqué on the outcome of the meeting stated:

At our meeting today we confirmed our shared objective to continue our discussions about Gibraltar, in an atmosphere of trust and mutual co-operation, a commitment which Prime Minister Blair and Prime Minister Aznar endorsed when they met in London on 9 November. We are delighted that we are making good progress.

We discussed the full range of issues set out in the November 1984 Brussels Communiqué. We did not want to draw conclusions today. Our aim is to conclude a comprehensive agreement by the summer of next year. This overall agreement will cover all outstanding issues, including those of co-operation and sovereignty.

Our shared objective is a future where Gibraltar enjoys greater self-government and the opportunity to reap the full benefits of normal co-existence with the wider region. The guiding principle is to build a secure, stable and prosperous future for Gibraltar and a modern sustainable status, consistent with our common membership of NATO and the EU. We also agreed on the need for rapid progress on key areas of co-operation. We asked officials to work up ideas and report to the next ministerial meeting.

While the British Government welcomed the Spanish decision to more than triple the number of telephone numbers for Gibraltar to 100,000, both Ministers agreed on the need for experts to continue discussions to resolve the other telecommunications issues. The British Government welcomed Spain's proposals to improve health care facilities in Spain for Gibraltarians, and both Ministers agreed that this should be followed up quickly. The Ministers also agreed that bilateral discussions would continue to address the pensions issue.

We agreed that the Government of Gibraltar had a very important contribution to make to our discussions. Gibraltar's voice should be heard. We reiterated the invitation which we issued to the Chief Minister of Gibraltar when we met in London on 26 July to attend future Brussels Process Ministerial meetings. His role will be fully respected and he will have the opportunity to contribute fully to the discussion. The Process would benefit greatly from the direct views of the

⁴² HC Deb, 7 November 2001, c88WH.

Government of Gibraltar, and through the Government of the House of Assembly and public opinion in Gibraltar as a whole.⁴³

On 20 November 2001 the Government of Gibraltar issued a statement on the Barcelona talks:

The Gibraltar Government welcomes the clear statement by Mr Straw that no agreements are possible without the consent of the people of Gibraltar. The Gibraltar Government also welcomes Mr Straw's statement of the Constitutional sovereignty assurance in its traditional form that sovereignty of Gibraltar cannot be transferred contrary to the wishes of the people of Gibraltar democratically expressed in a referendum. This assurance thus extends to the land, and not just to the citizenship of the people. In these contexts, the Gibraltar Government also notes the stated objective of reaching an agreement by summer next year. In the Gibraltar Governments view there is absolutely no prospect of the people of Gibraltar accepting any proposal that involves any transfer of sovereignty, joint sovereignty, shared responsibility for Gibraltar's EU or NATO affairs, the establishment of cross border bodies or committees that give Spain a role or say in our affairs, or any Spanish military presence in Gibraltar.

The Gibraltar Government would welcome participation in dialogue with Spain on an open agenda basis, provided that we can participate with a separate voice of our own and with the assurance that nothing will emerge from this process by way of agreement over the head of the Gibraltar Government. Agreements must be agreements which are acceptable to the three voices present (under the two flags three voices model). It is not politically reasonable or viable to expect the Gibraltar Government to take part on any other basis, and we will not do so.

The Gibraltar Government regrets that these simple and reasonable terms have not so far been available to it, hence its absence from the Barcelona talks. This dialogue is about Gibraltar, and, allegedly its future and its destiny. It is therefore wholly inappropriate to talk of the Gibraltar Government "being invited" to participate, or of agreeing to "listen" to the Chief Minister's view, or of the Gibraltar Government having "a very important contribution to make" to discussions between London and Madrid or of allowing the Chief Minister to "express his opinion on matters of his competence". There is no issue that affects the future of Gibraltar or as affairs over which the Government of Gibraltar is not competent to participate. Such language implicitly denies the people of Gibraltar their rightful status, in talks about them and their homeland. Gibraltar is not a Colony in Victorian times. We will happily take part in dialogue between London, Gibraltar and Madrid. We will not take part as "invitees" in talks between London and Madrid.

The right of self-determination of the people of Gibraltar is an irrenounceable objective.

⁴³ <http://www.gibraltar.gov.gi/>

The Gibraltar Government notes the joint statement that "the guiding principle (of the talks) is to build a secure, stable and prosperous future for Gibraltar and a modern sustainable status consistent with (the UK and Spain's) common membership of NATO and the EU". Gibraltar already enjoys a secure, stable and prosperous future and therefore a sustainable status. The only threat that we face is Spain's failure to fully respect our EU rights and obligations, and the failure by others to take effective remedial action to uphold our rights.

Spain's offer to increase the number of Gibraltar telephone numbers that are accessible from Spain is not sufficient to eliminate Spain's flagrant breach of EU Competition Rules in relation to Gibraltar's telecommunications system.

The Gibraltar Government notes that the British Government welcomes Spain's proposals to improve health care facilities in Spain for Gibraltarians and that the UK and Spain agreed that this should be followed up quickly. Gibraltar has its own excellent health service. This is supplemented in respect of certain emergency and specialist services by hospitals in the UK and in Andalucia, Spain which are greatly valued in Gibraltar. In Gibraltar, health is the competence of the Gibraltar Government. In Andalucia it is the competence of the regional government of Andalucia. Any agreement to further develop links between the Gibraltar and Andalucian health services (which the Gibraltar Government welcomes) is therefore a matter for the Gibraltar Government and the Andalucian Regional Government.

It is not clear what is meant by the agreement that bilateral discussions between the UK and Spain would continue to address the pensions issue, This may be a reference to Spain's claim that pre-1969 Spanish workers in Gibraltar should enjoy periodic increases in their pensions. These pensions are paid by the UK Government with its own funds and are frozen at the UK's insistence. The UK is therefore free to agree to increase them at any time. Entitlement to pensions from Gibraltar Government funds is a matter of law and not open to political discussions, bilateral or otherwise.

The Gibraltar Government much looks forward to its participation at future talks being made possible on fully democratic and politically reasonable terms that reflect the rights, wishes and interests of the people of Gibraltar in their homeland.⁴⁴

On 28 November 2001 the Opposition in the Gibraltar Parliament condemned the Brussels Process and pledged "to continue to campaign against it as we have done since the day it was signed".⁴⁵

⁴⁴ Government of Gibraltar Press Release No. 190/2001, 20th November 2001.

⁴⁵ *Gibraltar News*, 28 November 2001.

D. The Brussels Process April-May 2002

Jack Straw held talks with Josep Piqué on 23 April 2002, reports of which describe agreement on a formula for “total shared sovereignty”.⁴⁶ However, Mr Piqué said on Spanish radio on 6 May that the problem was ‘almost insoluble’.

We are working to share full sovereignty. It is a reasonable way out, which would allow each side to retain its commitments and historical aspirations, without Spain having to renounce at any time its aspiration of reintegration of sovereignty.⁴⁷

According to local press reports, Mr Piqué spoke of having to be sensitive to British and Gibraltarian demands that “we agree on a status that will be durable and which cannot be questioned the next day.”⁴⁸

Peter Hain met the Spanish Minister for Europe, Ramón de Miguel, in London on 2 May 2002 and reports of the meeting reveal little more than that it was friendly but that significant problems remained. Mr Hain and Mr de Miguel met in London again on 9 May to prepare for the Straw-Piqué Brussels Process talks in London on 15 May.

Although there had been some speculation that agreement on the principles would be reached on this occasion,⁴⁹ it had become clear in the preceding weeks that there were still points of dispute which would not be easily resolved. The main stumbling blocks for the British and Spanish Governments are control of the naval base, which the UK insists will remain in British hands, and the duration of the final agreement. The UK wants a durable settlement, whereas Spain would like an arrangement leading to ultimate full Spanish sovereignty of Gibraltar.

The Straw-Piqué meeting did not succeed in resolving these problems. A joint statement on the meeting said:

We met today to continue our discussions on Gibraltar in a friendly and constructive atmosphere. We have made good progress since July 2001 and remain committed to reaching agreement by the summer. At the same time we both acknowledge that there are real difficulties which remain to be resolved. We have agreed to convene a further formal Brussels Process meeting in late June or early July.⁵⁰

⁴⁶ *El País*, 23 April 2002.

⁴⁷ *Gibnews*, 7 May 2002, at: <http://www.gibraltar.gi/localinfo/news.html>

⁴⁸ *Ibid.*

⁴⁹ *El País*, 7 May 2002.

⁵⁰ <http://www.fco.gov.uk/news/newstext.asp?6223>

Tony Blair and Jose-Maria Aznar met on 20 May in London to discuss a wide-ranging agenda that included Gibraltar. Although they did not resolve the main areas of disagreement, Mr Blair said the talks “would continue in ‘a positive and sensible’ atmosphere”.⁵¹ Mr Aznar described the talks as ‘fruitful’, but denied the suggestion that the talks were in crisis and hoped that they would continue.⁵² Further ministerial level Brussels Process talks have been scheduled for June or July and the two governments insist that they are still aiming for an agreement in summer 2002.

⁵¹ BBC News, 20 May 2002, at:
http://news.bbc.co.uk/1/hi/english/uk_politics/newsid_1997000/1997536.stm

⁵² Ibid.

V Gibraltar and the UK Parliament

A. Foreign Affairs Committee Evidence Session

The Foreign Affairs Committee took evidence from Peter Caruana on 28 November 2001 during an Inquiry on Gibraltar. The Chief Minister set out his Government's views on options for Gibraltar's future status:

The views of the Government and the people of Gibraltar overwhelmingly are that the future of Gibraltar can only be determined by the exercise by the people of Gibraltar of their right to self-determination; that is to say the people of Gibraltar, as all colonial peoples have done before them in the world's history of decolonisation, in accordance with their own wishes. There are, as Mr Chairman knows, four options for decolonisation that the United Nations find acceptable. One of them is integration with a colonial power or some other. If the question of integration arose, then as far as we are concerned the only version of that integration option which we are willing to contemplate is integration with the United Kingdom. We should certainly not be willing to consider any form of integration with any other country including our neighbour, Spain.⁵³

He sought to clarify his opposition to participation in the Brussels Process:

We are very happy to enter into discussions with Spain on an open agenda. I have been advocating precisely such discussions with Spain since I have been in office for the last six years, but that discussion on an open agenda has first of all to be structured in a way that is reasonably politically viable for all sides: Spain, but Gibraltar as well. That means that the Foreign Office does not cave in to the Spanish obsession with bilateralism. The issue at stake in the so-called boycott by me, which is a gross distortion of my position in relation to non-attendance at the talks, but that is what is being spun in the press in this country, is not that I will not go to talks, it is that I will not go to talks which are structured purely bilaterally between London and Madrid. Why? With your indulgence, it is important, as you offered, that you give me an opportunity to explain to the Committee why that is so. It is not just whimsical. The essence of the Spanish case over Gibraltar is that it is a piece of Spanish territory, occupied by the United Kingdom in which the people of Gibraltar have no political rights, certainly not the right to have their wishes taken into account and absolutely not the right to decide the future of Gibraltar in accordance with the rights to self-determination. Instead they argue that the decolonisation of Gibraltar must be brought about by the negotiation between London and Madrid of a transfer of the sovereignty of Gibraltar from the UK to Spain. The physical manifestation of that political position is the Spanish obsession with the talks being and being seen to be bilateral between London and Madrid, to which I am invited—note the word. I am the leader of the elected Government of Gibraltar, there is a process of

⁵³ FAC First Report, *Gibraltar*, 4 December 2001, evidence 28 November 2001, at: <http://www.publications.parliament.uk/pa/cm200102/cmselect/cmfaff/413/1112803.htm>

dialogue in which it is said the destiny of my country is at stake and I am "invited", which is what you do to guests, to take part in that process.⁵⁴

Pressed to clarify his position on a power of veto at the talks, Mr Caruana said:

I do not ask for a veto. What I say is that if this is to be a political process of dialogue, which is politically viable not just for Spain, but also for Gibraltar, then it has to be a process of dialogue in which things emerge by way of agreement, because they have been agreed to by all the participants in the process and not by two of the participants with the third being there to express his opinion and then fold his arms to wait to see what the other two will do.⁵⁵

He insisted that the Treaty of Utrecht could not over-ride the UN Charter and that if there were any doubt about this, the point should be tested at the International Court of Justice, but that the governments in London and Madrid did not want to do so. Asked if he thought the preamble to the 1969 Constitution was not a sufficient guarantee, Mr Caruana believed that, while it was a guarantee against the transfer of sovereignty, "Certainly it is not enough to protect us against equally unacceptable political deals which might be done, which do not invoke the sovereignty veto, giving Spain a role. The preamble gives us no protection there".⁵⁶

Mr Hain offered the Northern Ireland experience as an example of how dialogue could break entrenched positions and also gave an "absolute undertaking" that any change in sovereignty would require the consent of the people of Gibraltar. He would not give details of the negotiations because they were confidential, but suggested that there would be greater credibility if Mr Caruana attended the talks.⁵⁷

B. House of Lords Debate on Gibraltar

In the debate in the Lords on 12 December 2001 different views emerged as to Gibraltar's economic future with and without an accommodation with Spain. Peers disagreed over the significance of border delays and there was some concern that Gibraltar was perhaps not being as flexible as it might on the question of joint use of its airport.

⁵⁴ FAC First Report, 4 December 2001, at: <http://www.publications.parliament.uk/pa/cm200102/cmselect/cmfaff/413/1112803.htm>

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

The Conservative Peer, Lord Howe, said that “the continuance of the dispute is against everyone’s interests”⁵⁸ and went on to consider how the parties involved might reach an accommodation:

If one is to find a solution, it is essential that both sides - I say "both sides" because it is really only Gibraltar and Spain that are contending with each other - in seeking to find a solution, are willing to make changes to their positions.[...] if a solution in the long-term is to be found, Spain must surely acknowledge the need to secure the consent of the people of Gibraltar. It must surely regulate its conduct and attitude in relation to these matters with a view to achieving that outcome. In effect, it must win their trust - to be able to win a referendum in the last resort - if it is to find a final solution to the problem. It must abandon any ideas that harassment or obstruction can win any advantage at all. [...] But Gibraltar must be ready to move as well. First, above all, it must surely abandon the opposition that some express to joint use and development of the airport. Nothing would do more good to the economic development of southern Spain and Gibraltar than to implement the agreement ... Unhappily, implementation of that agreement was blocked by the reluctance of the Gibraltar legislature to see it through. That remains the position today, although many voices in Gibraltar, not least the Gibraltar Chamber of Commerce, now see the necessity for it. The fact that the legislature could block that in that way is a real demonstration of the need for consent in the whole process.

In my judgment, it should ultimately be possible to reach an agreement whereby [...] sovereignty might be shared in one of a variety of ways between the United Kingdom and Spain - but not, please, by means of a lease, which would merely recreate a Hong Kong-type situation and postpone the problem for the future. The Andorran solution is certainly a possibility.⁵⁹

Lord Wallace of Saltaire, the Liberal Democrat foreign affairs Spokesperson, considered some of the Spanish concerns about illegal immigration and smuggling via Gibraltar and concluded: “We need to be cautious about allowing important British dependencies to cherry pick on their EU obligations while exploiting tax loopholes, on-line gambling, offshore financial centres and so on.”⁶⁰

The FCO Minister, Baroness Symons, spoke of the political significance of the new talks:

The Government's aim in re-starting the Brussels process is precisely as set out by the Conservative government in 1984; namely, to overcome all differences between the United Kingdom and Spain over Gibraltar. It is the Government's firm view that the present situation in which Gibraltar faces long and unpredictable border delays, telecommunications difficulties, restrictions on the use of the airport and a range of other problems are not in the interests of anyone.

⁵⁸ HL Deb, 12 December 2001, c1392.

⁵⁹ Ibid, cc1392-3.

⁶⁰ Ibid, c.1403.

It is clearly not in Gibraltar's interest, nor is it in the interest of the United Kingdom, to see the citizens of a loyal overseas territory prevented from pulling their full weight in a European region full of opportunity. It is not in the European Union's interest for important EU business to be impeded by the Gibraltar dispute. Frankly, it is not in Spain's interest either to be at odds with a good European neighbour over this issue.

Her Majesty's Government see a strong, and very much a shared, interest between the United Kingdom, Spain and Gibraltar in finding a lasting solution to this dispute, which has continued for close on 300 years. The present UK-Spain and Gibraltar-Spain relationship is very different from that which pertained in 1969, when Franco closed the border; or even that which pertained in 1984 when the noble and learned Lord, Lord Howe, agreed the Brussels communiqué. I was enormously pleased that he decided to participate in the debate, particularly as I agreed with almost everything that he said.

I am sorry that matters did not turn out then as hoped. However, I hope that he will agree that our relationship with Spain has developed enormously in recent 8 years. We are now close partners in the European Union, in NATO and in other international fora. Spain is now one of our most important trade and investment partners and is home to half a million Britons. Millions take their holidays there every year. Similar trends can also be seen in the relationship between Gibraltar and Spain: there is much more economic interdependence and, despite all the difficulties, many Gibraltarians visit Spain regularly; hundreds have houses across the border.

[...] why are we doing this now? ... We believe that, now, there is a real opportunity to resolve the historic tensions and to forge a new relationship between Gibraltar and Spain, to allow the people of Gibraltar to look forward with confidence to a better and more secure future. After the July meeting of the respective Foreign Secretaries, a further meeting was held in Barcelona on 20 November. The joint communiqué issued after that meeting has been placed in the Library of the House. In that communiqué the Ministers stated that the guiding principle of their discussion was, 'to build a secure, stable and prosperous future for Gibraltar and a modern, sustainable status, consistent with our common membership of NATO and the EU'.

Secondly, the Ministers declared that their shared objective was, 'a future where Gibraltar enjoys greater self-government and the opportunity to reap the full benefits of normal co-existence with the wider region'. I believe that that demonstrates how far we have come since 1969.

[...] Of course, discussions will cover sovereignty. Indeed, it is explicit in the Brussels communiqué, agreed by the Conservative Government in 1984, that the talks would include discussions on sovereignty. But the Barcelona communiqué made clear that no conclusions have yet been drawn on the nature or content of any proposals which might be put forward. Therefore, in answer to the noble Baroness's three options, it is up to the parties to discuss how the fraught issue of sovereignty might be taken forward. I make this point to the noble Lord, Lord

Thomas of Swynnerton. We cannot pretend that the Treaty of Utrecht simply does not exist. I shall return to that in a moment.

[...] the Government stand by the commitment contained in the preamble to the 1969 Constitution Order which states that Her Majesty's Government will never enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another state against their freely and democratically expressed wishes. Consequently I reiterate that if agreement were reached with Spain which involved a transfer of sovereignty to Spain the wishes of the people of Gibraltar would be ascertained in a referendum.

It is important to be as explicit as possible on this point. Anything which affects the sovereignty of the people of Gibraltar will be put to them in a referendum. I do not want to mince around with terms such as legal sovereignty, or how we define it. I say that anything which affects the sovereignty will be put to them.

[...] As I told the House on 22 November, the Spanish government share our view that the government of Gibraltar have a very important contribution to make to these discussions. Gibraltar is guaranteed a separate and distinct voice alongside the Foreign Secretary within the British delegation. Spanish Ministers have assured us that the Chief Minister will be treated with the respect and dignity that his position deserves. So we very much hope that Mr Caruana will accept the invitation which has been extended to him to attend future meetings. His voice on behalf of the people of Gibraltar should be heard.

Gibraltar already enjoys a substantial measure of autonomy and Her Majesty's Government would like the people of Gibraltar to exercise greater control over their daily lives. This has to be exercised in accordance with our other treaty obligations which, in Gibraltar's case, includes the Treaty of Utrecht. It is not good enough to say that we can sweep all that on one side because human rights issues that are grossly outmoded are involved. It is a treaty and the Government do not set treaties on one side when they go past their sell-by date. We have to acknowledge that treaty. Independence could be an option only if it was done with the agreement of the Spanish government.

[...] we are committed to extending the European parliamentary franchise to Gibraltar in time for the elections to the European Parliament in 2004. To that end, Her Majesty's Government have now decided to seek legislative time in order to introduce the domestic legislation for that purpose. It will be done in time for the election. The decision to extend the European parliamentary franchise to Gibraltar by enacting domestic legislation is a matter for the United Kingdom alone. In preparing to take that step, we have rightly been in contact with all the interested parties, including Spain.

After so many years of dispute, attitudes on both sides have hardened. For our policy to succeed, we need some new thinking - not only in the United Kingdom, not only on the Rock, but crucially, in Spain. It has to win the hearts and minds of the people of Gibraltar if the measure is to be a success. The time has come for Spain to show its new attitude through action. We have seen the important steps that it has taken over the increase in the number of telephone numbers available

but we now have to look to the Spanish government to take more steps in normalising their relationship with Gibraltar.

We also need to encourage the people of Gibraltar to have an open mind in the current talks. They need to look at the matter rationally and have an informed discussion about a future in which their government can take a full and active part. In conclusion, I ask the House for support in what the Government believe to be a realistic policy, to take advantage of the real opportunity that now exists to forge the future, which we believe will be demonstrably better for all the parties involved, especially the people of Gibraltar.⁶¹

C. House of Commons Debate on Gibraltar, January 2002

The Gibraltar negotiations were the subject of a Westminster Hall debate on 31 January 2002. Peter Hain introduced the debate with an explanation of the Government's views on Gibraltar and a denial of the accusation of appeasement:

Our aim is to safeguard Gibraltar's way of life, to secure a better future and to end our dispute with Spain. That is not because we want to appease Spain or to rid ourselves of Gibraltar—quite the reverse.⁶²

Mr Hain put forward the 'economic' argument for an agreement with Spain, which the Gibraltar Government has rejected (see below):

It is not just Gibraltar's present that is difficult. Gibraltar cannot stand still in a globalised world. Its economy will not thrive in the new global marketplace unless it can modernise. It will not thrive unless it can attract new investment. It will not thrive unless it opts for full and unfettered access to the EU's single market. It will not thrive until the barriers that separate it from the wider region come down. Those things will be harder or impossible to achieve while the current dispute festers.⁶³

Mr Hain made clear that although Gibraltar was, and would continue to be, important to the UK, improving relations with Spain, its EU and NATO partner, was also important. This could not happen without a resolution of the Gibraltar issue. He warned:

Be clear that change is coming anyway, as the Chief Minister, Peter Caruana, has recognised. Moreover, the strong relationship that Britain now enjoys with Spain cannot reach its full potential until we resolve the Gibraltar issue. Gibraltar matters to us. It has mattered for many hundreds of years. It will continue to matter to us, but so does our relationship with Spain. Spain is a big country. It is

⁶¹ HL Deb, 12 December 2001, cc1405-1410.

⁶² HC Deb, 31 January 2002, c.135WH.

⁶³ Ibid.

increasingly prosperous; soon it will be a net contributor to the EU. It is increasingly powerful inside and beyond Europe.

We already have a strong alliance with Spain on a range of key issues, including reform of the European economy to deliver greater prosperity and more jobs in all our constituencies, which we will take further forward at the Barcelona European Council in March; creating an EU that is more effective and accountable and in which the key decisions remain with the nation states; fighting the domestic and international terrorism that has afflicted both our countries more than many others in the EU. Our two Governments co-operate closely at all levels.

The relationship matters to real people too. Some 500,000 British citizens live in Spain. Our exports to Spain are worth more than £8 billion per year and support thousands of British jobs. But this relationship, good though it is, remains constrained by the Gibraltar issue. We will not realise its full potential and the benefits for Britain that will flow from it unless and until we resolve that issue. The Spanish Government feel exactly the same way.

Nor will we secure from the European Union all the benefits that we want for the British people until the issue is resolved. In the EU, the dispute damages our interests. It has complicated and delayed for years the opening up of a European single sky and measures to make air travel safer, flights cheaper and delays shorter.

So this is not an abstract diplomatic dispute. It has real effects on the lives of 30,000 Gibraltarians and of 59 million Britons, who are unable to enjoy all the potential benefits of our relationship with Spain and the European Union because of it. It needs solving, but not at the expense of Gibraltar. Any solution must be in the interests of Gibraltar. That is our objective and our pledge. We will not solve the problem by posturing or shouting or carrying on, as successive British, Spanish and Gibraltarian Governments have done for decades. Where has all that got us? The old ways have been abject failures.⁶⁴

The Minister expressed his continuing hope that the Chief Minister would participate in the talks. He regretted Gibraltar's "empty chair" policy and said that the Government "could not simply proceed to implement something without agreement or negotiated participation. That would be impossible".⁶⁵ He insisted that Gibraltar's policy was 'mistaken', but that the Chief Minister and the Government could negotiate a "phase II" after agreement on a joint declaration of proposals, if one could be reached, which would still be subject to a referendum. If Mr Caruana participated in the talks, he would have "a full and separate voice on the British side of the table, with no restriction on the issues on which he could speak. The Spanish would address the Chief Minister and respond to him directly".⁶⁶

⁶⁴ HC Deb, 31 January 2002, c.136WH.

⁶⁵ Ibid, c.142WH.

⁶⁶ Ibid, c.178WH.

Mr Caruana has expressed his view of the situation as follows:

The position is not that we are practising the politics of the empty safe chair, but rather that the Foreign Office has booby-trapped the chair and then complains to the world that we won't sit in it.⁶⁷

Mr Hain outlined four main areas to be covered by the agreement and the procedure for implementation:

The Government's first aim is to preserve Gibraltar's way of life, its culture and its proud British traditions. Our second aim is to establish greater self-government in Gibraltar so that its people can have what they want—more power over their own lives. Our third aim is to deliver real and lasting practical benefits to Gibraltar—a stronger economy, more and better jobs, and an end to border delays, problems with telephones and restrictions on air services, through a new relationship with the region and with the European Union. Our fourth aim is a lasting agreement on sovereignty, so that the 300-year-old dispute and all its damaging effects are finally put behind us, enabling Gibraltarians to enjoy security for their way of life and an end to feuding with Spain.

[...]

Any changes of that magnitude would have to be endorsed in a referendum by the people of Gibraltar. However, there could be changes to the treaties required, which would require the approval of the European Council at the intergovernmental conference in 2004.

If and when we have agreed proposals, which will not be easy given the difficulty of the issues involved, we intend to report them fully to Parliament. We hope that the Government and people of Gibraltar will study the proposals carefully. If they wish, they will have the opportunity to negotiate a final agreement before putting it to a referendum.

I want to make two things crystal clear in case they were not clear before. In the absence of the Chief Minister, the proposals will be in the form of a joint declaration from Her Majesty's Government and the Government of Spain. As such, they will be historic. Crucially, however, they will not be a *fait accompli*. Neither Government will say to the people of Gibraltar, "Take it or leave it." Instead, there will be proposals for consultation with the people of Gibraltar and negotiation with their Government. Once the Brussels process meetings have concluded, both Governments will be ready to invite the Chief Minister to fresh negotiations, especially on those matters of detail and substance without which any new settlement could not be satisfactorily implemented to the benefit of all concerned, especially Gibraltar. If at the end of that process we have a viable agreement, we plan to put the whole package to the people of Gibraltar in a

⁶⁷ Gibraltar Government website at: <http://www.gibraltar.gov.gi>

referendum and let them decide. If they say yes to the package, we will implement it. If they say no, we will not.⁶⁸

There was some confusion as to the form of the agreement and whether all, or only part, of it would be submitted to a vote. In response to persistent questioning by Andrew Mackinlay on this matter, Mr Hain said:

... there will be a joint declaration of proposals, not a final agreement. There is no *fait accompli* or take-it-or-leave-it decision. We do not envisage a referendum on the proposals; we envisage the proposals being put to the people of Gibraltar to study, think about, consult on and form their own views about. We can then invite the Chief Minister in the Government of Gibraltar to negotiate with us jointly—Spain and Britain—bilaterally with Spain and bilaterally with Britain, as is appropriate, to form a final agreement which will then go to a referendum.

At this moment I do not envisage one referendum after the other. I do not know; we would have to see what the Government of Gibraltar felt, but if there were no subsequent agreement following the conclusion of the Brussels process with the Government of Gibraltar, I am not sure that there would be any point in calling a referendum. However, that is a matter for the Government of Gibraltar, who may want to call a referendum, in which case we would happily discuss with them how to proceed in order to achieve a definitive conclusion to the process. That is something for the future.⁶⁹

Mr Hain later clarified the matter of the future status of the joint declaration in the event of a no-vote: “Any proposals that emerge will be just that—proposals. If they are put to a referendum and rejected, no one can air-brush them away, but they cannot be implemented”.⁷⁰ By way of comparison he cited the Downing Street Declaration between the Governments of the UK and Ireland on the status of Northern Ireland, which the Conservative Government had said in 1994 “remains, and will remain, a free-standing declaration of principles.”⁷¹

Richard Spring, for the Opposition, asked the Government about the political consequences of the proposed agreement:

Does the Minister realise that such an agreement would also, in international eyes, legitimise Spain's claim on Gibraltar? It is interesting that the whole process is apparently being spurred on by the European Union; begun by the Brussels process, the proposal suddenly gets put in as a mechanism to push it on. The internationalisation of the issue is of great concern. It contradicts the position that every past British Government have adopted—indeed, in a written answer ... on

⁶⁸ HC Deb, 31 January 2002, c.137-8WH.

⁶⁹ HC Deb, 31 January 2002, c.140WH.

⁷⁰ Ibid, c.141WH; see also c.178WH and HC Deb, 16 April 2002m c.452.

⁷¹ HC Deb, 28 April 1994, c.375.

6 November, he admitted that it has been the position of the British Government since the mid-1960s that Gibraltar's right of self-determination is limited only by article X of the treaty of Utrecht. Does the Minister agree that that would no longer be true once Spain's claim is legitimised by an agreement between the two Governments, thus negating for the first time the United Kingdom's historic position? Such an agreement would run the risk of creating irreversible parameters for future negotiations, even if a referendum produced the result that I think is inevitable.⁷²

Michael Moore, for the Liberal Democrats, said:

The current situation is untenable. Gibraltar has to retain the right to self-determination, and there are bigger prizes that Liberal Democrat Members want to be achieved as well. However, nothing can be achieved without dialogue. Although there is some dialogue, the situation remains a mess. We must ask why matters are not progressing. Some think it is because of the dialogue between the UK and Spain that we are getting further away from, not closer to, a solution.

Liberal Democrat Members have long supported the Brussels negotiation process, and we acknowledge that that partly involves talks about sovereignty. Those talks must lead to a proper, fair and free referendum. We cannot allow a rigged referendum or one that takes place under political duress. That is what the people of Gibraltar fear. For as long as Gibraltarians continue to be denied basic rights such as freedom of movement, proper access to telecommunications and participation in European Parliament elections, they will be very wary of, if not absolutely hostile to, any deal cooked up by the two Governments. Equally, for as long as they are unclear what future constitutional status will be offered to them, they are right to be cynical.⁷³

Following a ministerial meeting on 4 February 2002, a joint communiqué confirmed that the “common aim remains to conclude a comprehensive agreement before the summer, covering all outstanding issues, including cooperation and sovereignty”. The two governments invited the Chief Minister to participate on the basis of the two flags, three voices formula, “having his own and distinct voice as part of the British delegation”.⁷⁴

⁷² HC Deb, 31 January 2002, c.147WH.

⁷³ Ibid, c.154WH.

⁷⁴ FCO News at: <http://www.fco.gov.uk/news/newstext.asp?5862>

D. Foreign Secretary's Article in the *Gibraltar Chronicle*

The Foreign Secretary sought to reassure the people of Gibraltar directly about the British Government's intentions in the talks. In an article in the *Gibraltar Chronicle*, Mr Straw wrote:

I fully understand why, for many in Gibraltar, these meetings are causing some anxiety. Gibraltar is rightly proud of its history and its traditions, and loose talk of 'secret deals' and 'sell outs' unsurprisingly touches a raw nerve. Inevitably, many people will be thinking about their families' livelihoods, their jobs and their future economic security.

So I want to use this opportunity to explain why I am meeting Sr Piqué today, and what I hope to achieve. I also want to speak frankly about some of the challenges ahead for all of us - Britain, Gibraltar and Spain.

I believe that the process of dialogue we are engaged in is the right way forward - not just for Britain but, most importantly, for Gibraltar itself. It cannot be right that the people of Gibraltar are forced to endure the sort of obstructions to everyday life which have become commonplace. Whether these be border delays, flight restrictions, access to telephone lines or even pigeon racing events, you have the right to be free of this disruption, and to enjoy the benefits and opportunities of a modern Europe of economic opportunity and free movement.

It also cannot be right that the UK's relationship with a key European Union and NATO ally is persistently undermined by our dispute with Spain over Gibraltar.

So we have a choice: either we continue to shout from the sidelines but achieve nothing, or we can engage in dialogue with Spain. While I do not claim to have all the answers, I genuinely believe that dialogue is the only realistic way forward. After all, that has been the conclusion of every British government since Margaret Thatcher first launched the Brussels Process in 1984.

Let me say, however, that there is nothing inevitable about the outcome of dialogue. Discussions with the Spanish have proceeded well so far but there are still difficult issues to resolve.

Of course, the easy option would have been to have done nothing about Gibraltar, and to have continued to duck the issue. But I am not one to duck difficult issues. It is far better to try to solve by dialogue what is an unacceptable situation than not to try at all.

However, let me make it clear what is not negotiable. There must be an end to Spanish antagonism. Gibraltar's way of life, its culture and British traditions, will be preserved. There can be no question of handing Gibraltar over to Spain. The people of Gibraltar will retain their British citizenship. There must be lasting practical benefits derived from a new relationship with the wider region and with the EU, with a stronger economy to help guarantee Gibraltar's prosperity.

In addition, I want to satisfy the demands of many in Gibraltar to give the people of Gibraltar a greater say in the running of your own affairs. It is surely time to put to rest many of the relics of the Rock's colonial past, and ensure that there is a greater degree of self-government within Gibraltar, free from the everyday interference from Governors, Ministers and officials.

All this is attainable, but only within the context of a dialogue with Spain. There is no third way. And, as Margaret Thatcher and John Major accepted too, that requires a discussion about sovereignty.

I know, of course, that this is hard to swallow. But even if a set of framework proposals with Spain can be reached setting out what both governments believe is the way forward, the people of Gibraltar will be the final arbiters of whether or not this is implemented. Our guarantee on a referendum, enshrined in the 1969 Constitution, is clear. Plainly, the proposals would not affect the position or status of Gibraltar if not implemented.

It is this guarantee which I believe should provide the necessary security for the Government of Gibraltar to join the process of dialogue. I want your Chief Minister to be part of our future discussions, shaping any possible future reforms to ensure that they are in your best interests. I repeated my invitation to Peter Caruana when I saw him in London 10 days ago. I can tell you today, that if framework proposals can be agreed between the UK and Spain, then the Brussels Process itself will be over. There will then be a new phase of discussion and dialogue with a different architecture. I hope that this can provide a means by which Gibraltar's representatives can become involved.

There are, of course, those who seek to suggest that the status quo is tolerable, that nothing needs to be done. But I do not think this is the case. Whatever happens in discussions with Spain, the UK Government is under international obligations to ensure the reform of the Rock's special tax status. We want to ensure, however, that change is made in the interests of Gibraltar's economic future. An agreement between Gibraltar, Britain and Spain will make it much easier to ensure that we can secure effective transitional support arrangements from the EU.

So today's meeting will continue the process of dialogue. There will, no doubt, be protests, and criticisms. But the discussions will go on, and they do so because I believe that they are in the best interests of the future prospects of the people of Gibraltar. Beyond all the arguments, I hope you will acknowledge that this is what we seek.⁷⁵

⁷⁵ FCO News at: <http://www.fco.gov.uk/news/newstext.asp?5861>

E. Opposition Views

The Shadow Foreign Secretary, Michael Ancram, has said that a future Conservative Government would not consider itself bound by the terms of any Anglo-Spanish agreement that emerges from the current negotiations. At the Conservative Party Spring Conference in March 2002, he told delegates that the Government was ‘betraying’ Gibraltarians:

They are preparing a deal with Spain to share sovereignty over the rock and a bribe for Gibraltar to accept it. But however it is wrapped up, sovereignty shared is sovereignty surrendered ... Gibraltarians will have no part of it and neither will we. And nor can that deal just be parked for another day if Gibraltar says 'no'. It must fall. Let me be clear. An incoming Conservative Government will not feel bound by any deal on sovereignty which has not received the freely and democratically expressed consent of the people of Gibraltar.⁷⁶

The Liberal Democrats have published a Standard Letter on their Gibraltar policy, which calls on the Government to “adhere to the spirit of its commitments to the people of Gibraltar in the preamble to the 1969 Constitutions”. It also states:

The Government of Gibraltar should play a full part in the Brussels process. If they remain outside the negotiation process, they risk being seen as an obstacle to progress rather than a partner in a mutually satisfactory agreement.⁷⁷

⁷⁶ Reported in *Gibraltar Chronicle*, 26 March 2002. See also HC Deb, 16 April 2002, c.454. Mr Blair warned that the Opposition “... would be very unwise to try to derail a process that was begun under the previous Conservative Government for a very good reason [...] It would be very unfortunate – in fact, it would be misjudged and wrong – if the Conservative Party attempted to inflame feelings in Gibraltar in a way that was irresponsible and wrong. In the end it is right for Britain, for Spain and for the people of Gibraltar that we find a sensible way forward.

⁷⁷ Menzies Campbell, Liberal Democrat Parliamentary Resource Centre, 25 October 2001.

VI Gibraltar's Views on the Negotiations

On 21 February 2002 Mr Caruana made a public statement on the Anglo-Spanish dialogue, in which he decried the fact that only part of the final agreement (the detail of the principles, but not the principles themselves) would be put to the people of Gibraltar in a referendum:

[...] Some of you may be asking what the problem is if everything will be put to the people of Gibraltar in a referendum and not implemented if we reject it. The short answer is that although nothing will be physically implemented unless approved in referendum, they do not intend to put everything to referendum before formally agreeing it between themselves in principle.

What the UK and Spain intend to do is this. Sometime before next summer they will sign between themselves an agreement, declaration or agreed framework of principles applicable to the settlement of the Gibraltar issue. We do not know the detail of what this document will contain. We do all know however that it will have four pillars: respect for our way of life, respect for our EU rights, maximum self Government and sovereignty. The Government believes that in relation to sovereignty, the content will be such as to amount to extensive "in principle" concessions to Spain, probably some sort of model based on some form of joint or shared sovereignty.

Once this framework or declaration has been agreed and entered into between the UK and Spain, containing we do not know what, there will then be further dialogue to work out detailed proposals based on the principles already agreed between the UK and Spain.

The proposals based on the agreed principles (but not the principles themselves) will then be put to the people of Gibraltar in referendum. If we reject them none of the proposals will be implemented, BUT the Anglo-Spanish declaration, agreement or framework of principles that they entered into as phase 1 will survive our referendum rejection of the proposals based on those principles. This agreement on principles will remain on the table for all time as the agreed UK/Spain political position on Gibraltar. This will defraud our wishes.

This will, for all time, set the parameters for and limit our future rights, options and aspirations. It will, for all time politically, diplomatically (and possibly even legally) legitimise Spain's sovereignty claim and will betray our right to self determination, even to the curtailed extent that the Foreign Office admits that we enjoy the right to self determination.

[...]

The referendum will therefore be only about implementation or not of proposals and will not be about whether the UK adopts formal positions in principle on the issue of sovereignty contrary to our wishes. This will not represent full respect for our wishes since the UK would be entering into arrangements in principle (albeit unimplemented) and would be adopting positions on sovereignty, and other issues affecting us, regardless of and contrary to our wishes, as we may subsequently express them in a referendum.

They will have entered into a bilateral "done deal" on applicable principles above the head of the Gibraltar Government, the political, diplomatic and possibly even legal effect of which will survive a referendum rejection of proposals based on those principles. We will not be able to protect ourselves from these consequences in a referendum, although we will be able to prevent their physical implementation.

The Gibraltar Government rejects such "done deals". It is wholly unreasonable and unrealistic to expect the Gibraltar Government to take part in dialogue the outcome of which is pre-determined by this done deal on principles, the contents of which we are not aware of, and cannot therefore even assess before committing ourselves to the process of dialogue.

Mr Straw says that, once proposals are made he cannot "airbrush" them away, or he cannot make them "evaporate" or "shred them". This is a complete red herring. Of course he cannot "expunge" the fact that proposals were made even if they are rejected. We have no problem with that, provided that rejected proposals will have no damaging, lingering, political or diplomatic effect on Gibraltar. They will not become our political magna carta for all time. Just as the rejected Moran and Matutes proposals have not had that status or effect.

What Mr Straw cannot airbrush away, evaporate or shred BUT IS problematic for US is the bilateral declaration, agreement and framework of principles and their subsequent, post referendum political effect on Gibraltar and our rights and aspirations. But the point is that there is no reason or need why he should enter into such a framework of declarations of principle in the first place, and thus the problem of shredding would not arise. It is therefore not a case of not being able to make the principles evaporate, but rather that he chooses, unnecessarily, to do a done deal on applicable principles, precisely so that those principles WILL NOT evaporate.

[...]

In the Gibraltar Government's judgement this means that the political, diplomatic and possible legal effects of any in principle concessions that may be made to Spain on the question of sovereignty, will survive the referendum to our future prejudice.

[...]

Finally, in my response to Mr Straw I have repeated that the Gibraltar Government would take part in open agenda dialogue resulting in proposals which will not be implemented if rejected in referendum, and which will not be survived by an Anglo-Spanish framework of principles containing damaging, in principle sovereignty concessions to Spain for all time.

For dialogue to be fair, the price of failure must be the same for all participants i.e. the status quo prior to the dialogue. What is actually intended is a dialogue from which Spain will derive massive progress, at our expense, even if the talks fail to produce proposals acceptable to the people of Gibraltar. Spain has understandably described failure to obtain Gibraltarian consent to the proposals

as nevertheless representing "a historic millstone" for her because of the Declaration of Principles. Spain's "historic milestone" will be at the expense of a historic millstone around our necks.⁷⁸

A mass protest against the negotiations took place in Gibraltar on 18 March. Peter Caruana addressed the Welsh Assembly on 19 March, saying that although the dispute over the status of Gibraltar was not in the military realm, the colony expected Britain to resist joint Spanish sovereignty with the equivalent "political and diplomatic" force as it had against Argentina 20 years ago.⁷⁹ Mr Caruana has pointed out on various occasions that, in contrast to its relations with Gibraltar, the British Government has made an unequivocal commitment to the defence of British sovereignty of the Falkland Islands and to their right of self-determination.⁸⁰

In response to a UK Parliamentary Labour Party briefing on Gibraltar which the Gibraltar Government considered incomplete, the latter prepared a document entitled: "Gibraltar Government Response to Parliamentary Labour Party Brief on Gibraltar and the Brussels Process", which it has circulated to MPs (also to the House of Lords, MEPs and the UK devolved assemblies).⁸¹ The document states that the "done deal on principles" will:

- For all time legitimise the wholly anachronistic and undemocratic Spanish Sovereignty claim;
- Betray the right of the people of Gibraltar to self determination;
- Limit and condition our future rights and options;
- Possibly undermine exclusive and perpetual British sovereignty under the Treaty of Utrecht;
- Hang over Gibraltar's head like a sword of Damocles for all time;
- Reward Spain's long-standing campaign of restrictions and harassment against Gibraltar.

⁷⁸ Gibraltar Government website at: <http://www.gibraltar.gov.gi>

⁷⁹ *Gibraltar Chronicle*, 20 March 2002.

⁸⁰ For example, HC Deb, 29 November 1999, c30W, when the Foreign Office Minister, John Battle, said: "There is no doubt about British sovereignty of the Falkland Islands, confirmed in international law. This is not negotiable. We are committed to defend the Islanders' right to determine their own future."

⁸¹ A summary of the Paper can be found in the *Gibraltar Chronicle*, 23 April 2002 at: <http://www.chronicle.gi/>. The full text of the document can be found at: http://www.gibraltar.gov.gi/latest_news/news/19-2002.htm

VII The Spanish View

Following the demonstration in Gibraltar against the Brussels Process talks, Josep Piqué appealed to Mr Caruana in an “Open Letter to the Gibraltarians” in the *Gibraltar Chronicle* on 26 March 2002:

I am aware of the existing mistrust after long years of difficult relations and mutual perceptions of misunderstanding. I understand and assume it. I am also aware that Spanish historical aspirations have been perceived by many of you as harassment and a threat to your traditions and way of life.

I want to make this very clear: As you surely know, Spain's historical claim, which is fully justified, concerns the sovereignty over the territory and is - and intends to be - perfectly compatible with the interests of the Gibraltarians as free citizens in a democratic system.

We have invited Chief Minister Mr. Caruana to attend the talks from the very start. Unfortunately, so far he has not attended. I honestly hope that he reconsiders his position.

The task that we are fulfilling is for the benefit of all. In the first place, for the two countries that have the obligation to overcome a historical dispute that has disturbed their relations for the last three centuries. Its perpetuation makes no sense in the 21st century between States who are friends and allies, Members of the European Union and of NATO. Furthermore, this effort will also benefit you and your neighbours, that is both the Gibraltarians and the people of the Campo.

I can assure you that if we achieve the desired agreement with the United Kingdom you have nothing to fear from today's Spain. Quite the opposite: such an agreement will provide you with a future of understanding and harmony, of stability and security, of well-being and prosperity. Thus, the situation of uncertainty that stems from an unsustainable status quo - that can only deteriorate if such an agreement is not reached - would come to an end. Spain has shown that very deeply rooted conflicts can be overcome.

Do, please, stop considering Spain as it was and, fortunately, no longer is. We enjoy full fledged democracy, with all the freedoms and guarantees, which safeguard diversity and plurality within our country. You will agree with me that it is difficult to find a country that is more respectful than Spain of its different cultures, languages and singularities, all of which fully guaranteed by our Constitution. And I take on the commitment that any agreement we reach with the United Kingdom will take into account the indispensable respect of your singularities. Without any doubts or mental reservations whatsoever.

For all these reasons, I ask you to have trust in your future. Please do not let yourselves get carried away by intransigent attitudes. Do not entrench yourselves in positions of refusal to participate in the dialogue that is being offered to you. You Gibraltarians have much to say in this dialogue and much to contribute to it, and no one is going to deny you the highest possible degree of self-government in

the framework of a shared understanding between Spain and the United Kingdom.

Never before have you had so many opportunities to attain a brighter future. Please do abandon immobilism and short-term perspectives, and join the vision and the hope of overcoming an anachronistic dispute. We can understand each other and, most sincerely, in the name of the people and the Government of Spain, we are reaching out to you. We will not disappoint you. We hope you do not disappoint us either.⁸²

According to a report in the *Gibraltar Chronicle*, the Spanish Opposition spokesman for European Affairs, Rafael Estrella, has said that Gibraltar's daily life would be affected by increasing uncertainty if it decided to remain outside the negotiations over the Rock's future.⁸³ The report also implied that Spain would resume obstructive action against Gibraltar and the UK if there was no agreement, and that:

Spain would lose interest in co-operating with Gibraltar and in facilitating Gibraltar's well-being besides placing Britain in an uncomfortable position as regards opportunities for the future.

Sr Estrella declared: "I think that with however many reservations and suspicion it is essential that the Gibraltar Government comes into the negotiating process at least with sufficient open mind to take into account the interests of the coming generations."⁸⁴

The two main political parties in the Spanish Parliament (the left-wing PSOE and the ruling conservative PP) believe that constitutional changes are inevitable and Gibraltar must reflect on this and simply accept it.⁸⁵ The PSOE has also said that it would be unacceptable to exclude the military base from any sovereignty agreement.⁸⁶ Josep Piqué told the Spanish Senate Foreign Affairs Committee that if the present talks failed, Anglo-Spanish relations could deteriorate 'seriously'.⁸⁷ He also made clear to the Committee on 29 April that the Government's long-term aim was full sovereignty of Gibraltar. He said that Spain would be willing to accept a 'durable' or 'long-lasting' agreement with Britain, but not a definitive one, and that "Spain will never renounce the claim for full reintegration of sovereignty" of the isthmus, the colony and the naval base.⁸⁸

⁸² <http://www.chronicle.gi/Opinion/26.3.2002.htm>

⁸³ *Gibraltar Chronicle*, 15 April 2002, at <http://www.chronicle.gi/>

⁸⁴ *Ibid.*

⁸⁵ *Gibraltar Chronicle*, 13 April 2002, at <http://www.chronicle.gi/>

⁸⁶ *Panorama News*, 13 May 2002, at: <http://www.gibraltar.gi/localinfo/news.html>

⁸⁷ *Gibraltar Chronicle*, 1 May 2002.

⁸⁸ *Ibid.*

VIII EU Action

Gibraltar was discussed at the European Council in Barcelona on 15-16 March 2002. The Conclusions stated:

56. The European Council welcomes the decision of the UK and Spain to relaunch the Brussels Process on Gibraltar, established in November 1984; underlines the EU's support for both Governments' commitment to overcome their differences over Gibraltar, and to conclude comprehensive agreement before the summer; and invites the Commission to explore possible ways in which the EU could underpin any agreement reached.⁸⁹

UK and Spanish press coverage of the summit described “secret plans”⁹⁰ to ‘bribe’ Gibraltar into surrendering British sovereignty, worked out in a deal struck within the margins of the summit between the EU and the Spanish and British governments. The headline in the *Sunday Telegraph* read “Gibraltar gets £32m ‘bribe’ to join Spain”. British officials had allegedly warned that Gibraltar’s economy would stagnate if it rejected the financial inducement because, whatever the outcome of the proposed referendum on sovereignty, the British Government would act over the next few years to stop Gibraltar from offering tax breaks to traders and investors. A statement from the office of Mr Caruana said that “Gibraltar’s sovereignty - and our rights and wishes as a people - is not for sale for the reported £35 million or any other sum of money”.⁹¹ The Spanish press reported that the alleged aid package had been exaggerated and that the European Commission had doubts about the legal formula which both sides would have to agree. The projects to be financed by EU money would also have to be defined in greater detail.

Asked by Richard Spring whether “the funds for Gibraltar agreed to by the European Union at the European Council meeting at Barcelona will be available if the people of Gibraltar reject joint British and Spanish proposals put to them on their future”,⁹² Mr Hain referred to an earlier answer in which he had said “It is for the Commission to consider how best to carry this remit forward”.⁹³

⁸⁹ Europa website at:

<http://ue.eu.int/newsroom/makeFrame.asp?MAX=&BID=76&DID=69871&LANG=1&File=/pressData/en/ec/69871.pdf&Picture=0>.

⁹⁰ *Sunday Telegraph*, 17 March 2002.

⁹¹ 4 April 2002.

⁹² HC Deb, 10 April 2002, c54W.

⁹³ HC Deb, 25 March 2002, c614W.

IX The *Gibraltar Constitution Order 2001*

Parallel with the Gibraltar Government's attempts to obtain a voice for Gibraltar in Anglo-Spanish discussions on its future status is a process, set in motion by Mr Caruana, for Gibraltar to modernise its constitutional relationship with the UK. In 1999 the Gibraltar Assembly established a Select Committee on Constitutional Reform "to review all aspects of the Gibraltar Constitution Order 1969 and to report back to the House with its view on any desirable reform thereof".⁹⁴ Over the last two years the Committee⁹⁵ has investigated ways of achieving a consensus on constitutional proposals to submit to the British Government that would end Gibraltar's colonial status in a manner acceptable to the people of Gibraltar in an act of self-determination.⁹⁶

The Committee completed the draft in December 2001 and submitted it to the House of Assembly and Opposition parties for comment. The draft *Gibraltar Constitution Order 2001* to amend the *Gibraltar Constitution Order 1969* was published on 23 January 2002 and approved by the Assembly on 27 February. The Committee has recommended amending the existing Constitution rather than proposing a new constitution.

The Committee's amendments are "such as would maximise the self government of Gibraltar by the people of Gibraltar, whilst retaining British sovereignty and close links with Great Britain".⁹⁷ The Committee outlines its approach and objective in Section B of the Report:

The Committee's approach has been guided by its unanimous view that reform of the Constitution should achieve both a suitable modernisation of the relationship with the United Kingdom (with consequential and enhanced powers of self-government) and that these reforms should, when and if accepted by the people of Gibraltar in a referendum, bring about the decolonisation of Gibraltar through the exercise of the right of self-determination by the people of Gibraltar, and Gibraltar's subsequent delisting from the UN's list of Non Self-Governing Territories maintained under Article 73(e) of the Charter.⁹⁸

Self-government is a recurring element of the amendments. The Committee recommends that the new Constitution Order retain the existing Preamble containing the Government's guarantee on sovereignty. It proposes that "language setting out the right to self determination, in terms of the language used in International Covenant on Civil and

⁹⁴ Appendix 1 of Gibraltar House of Assembly Select Committee on Constitutional Reform, Report 23 January 2002.

⁹⁵ The Committee was composed of the Chief Minister, Hon Peter Caruana, the Deputy Chief Minister, K Azopardi, the Minister for Health, Education and Culture, Hon B Linares, the Opposition leaders, Hon Joe Bossano and Hon J. Garcia.

⁹⁶ In 2001 the British Government invited all the Overseas Territories to review their constitutions and to submit their proposals for modernisation.

⁹⁷ Select Committee Report, 23 January 2002, Section B (Approach and Objective), p.2.

⁹⁸ *Ibid.*, pp.2-3.

Political Rights be included in the Constitution as a statement of a fundamental right and freedom⁹⁹ and new wording is proposed for the catalogue of fundamental rights in the Constitution (Sections 1-14).

The amendments generally transfer executive and legislative powers away from British Government appointees, replacing unelected, ex-officio members of the Assembly and the executive with elected Gibraltarian representatives. The Governor, re-named the Lieutenant Governor, would be appointed by the monarch only “after consultation with the Chief Minister and Leader of the Opposition through a Secretary of State”. The appointment of the Chief Minister would continue to be made by the (Lieutenant) Governor, but the appointment of Ministers other than the Chief Minister would be made on the ‘advice’ of the Gibraltar Government and no longer just ‘in consultation’ with it.

The Committee recommends changing the name of the Gibraltar Assembly to the Gibraltar Parliament, thereby giving it a more authoritative and independent status, and it strengthens the status of the Gibraltar Government in the re-wording of various articles on the executive authority of Gibraltar. The Attorney-General and the Financial and Development Secretary, who are currently unelected members of the Assembly, would not be members of the newly styled Parliament (Section 25).

The special legislative powers of the Lieutenant Governor (Section 34), in particular those concerning taxation and appropriation, would be curtailed and limited to matters set out in the Constitution. The Government of Gibraltar would be defined as being the Council of Ministers and the Constitution would delimit the responsibilities of the Lieutenant Governor rather than those of the Government of Gibraltar (at present the Constitution sets out defined domestic matters for which the Government of Gibraltar is responsible, while the Governor has other defined and non-defined areas, giving him a much broader remit). Although external affairs and defence would remain the responsibility of the British Government, the Lieutenant Governor would consult with, and act (if possible), on the advice of the Chief Minister (Section 46).

The Committee recommends establishing a Council for EU matters in which the UK Government and the Gibraltar Government would together consider matters relating to Gibraltar’s membership of the EU.

Further amendments would give a greater role to the Gibraltar Government in judicial and other senior public service appointments, in public finance, responsibility for Crown land and matters of law and order.

⁹⁹ Select Committee Report, 23 January 2002, p.4.

In an interview with the *Gibraltar Chronicle*, the Foreign Secretary made clear that constitutional proposals by Gibraltar would not be considered in bilateral discussions with the Gibraltar Government:

Q. Have I understood correctly that you will only contemplate any Constitutional proposals, put to you by Gibraltar, in the context of the current process with Spain? You are not willing to sit down bilaterally?

A. That was never a prospect in any event because the extent of internal self-government quickly runs into questions of overall government. That's just a reality. That is the context in which these discussions take place. I have already made that clear to the Government of Gibraltar.¹⁰⁰

¹⁰⁰ Jack Straw in an interview with Dominique Searle, *Gibraltar Chronicle*, 5 February 2002.

X The Gibraltar Issue at the United Nations

A. The 1960s: the UK and Spain at the UN

The status of Gibraltar was discussed during the 1960s, in the context of debates on decolonisation and self-determination at the UN and at a time when many of the colonial possessions of the European powers were being transferred to independence. In 1960 the UN General Assembly (GA) adopted the *Declaration on the Granting of Independence to Colonial Countries and Peoples* (the Declaration).¹⁰¹ The GA made various statements, in Resolutions and other forms, on the application of the Declaration to Gibraltar. The UK and Spain each argued that these statements were supportive of its own position, each giving primacy to the Declaration in making out its case.

Under the 1964 Constitution Gibraltar had obtained a level of internal self-government to which Spain objected, and at Spain's request, in 1963 and 1964, the question of its constitutional future was raised at the UN in the Special Committee on the Implementation of the Declaration on Decolonisation (the Committee of 24). In September 1963 this Committee decided that Gibraltar should be decolonised. Spain declared a special interest in the case. Spain argued that it was not the Gibraltarians themselves but a piece of Spanish territory that had been colonised.¹⁰² In short, Gibraltar was a British colony on Spanish soil and decolonisation could not under Utrecht mean independence for Gibraltar, but only a return of the land to Spain. The people of Gibraltar were, according to Spain, implanted by Britain and therefore had no rights over the land. Apart from the historical claims, the Spanish argument was based on paragraph 6 of the Declaration, which stated:

Any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.

It could be argued that on its own this did not take into account other UN conditions, namely that this particular provision was to protect the integrity of colonies from neighbouring aggressors as they moved towards independence. The Declaration also emphasised respect for the wishes of the dependent population in paragraph 2:

All people have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

¹⁰¹ GA Resolution 1514(XV) (1960), 14 December 1960.

¹⁰² The Rock and isthmus, including the Spanish town of La Linea and other towns and villages in the Cadiz area, had together formed the Campo de Gibraltar before 1713.

What the people of Gibraltar wanted at this point was another status provided for by the Declaration, namely “free association with an independent State”.¹⁰³

The mood during this period in the Committee of 24 and in the UN GA was strongly anti-colonial and the British/Gibraltarian arguments were continually countered by those of recently independent states or colonial powers which had themselves recently decolonised. The Committee of 24 reached no conclusion in 1963.

On 16 October 1964 the Committee of 24 reached a consensus, deciding that the Gibraltarians did **not** have the right to determine their future, and the main consideration in the dispute was the restoration of the territorial integrity of Spain. After representations from Sir Joshua Hassan and from the British and Spanish sides (the latter referred to the population of the Rock as “pseudo-Gibraltarians”), the Committee called for a “negotiated solution” in accordance with the provisions of the Declaration and the principles of the UN Charter, “bearing in mind the interests of the population of the Territory”.¹⁰⁴

In 1965 the British Government published a White Paper, *Gibraltar - Recent Differences with Spain*,¹⁰⁵ which considered British historical and political claims to Gibraltar. The White Paper drew attention to the ethnic and religious diversity among Gibraltarians, noted their wish to remain linked with the UK, and maintained that there was therefore no conflict with Spain or with the UN over the status of Gibraltar. The Spanish Government’s response to the White Paper was the publication in 1965 of the *Red Book*, in which it sought to discredit the UK by accusing the Government of Treaty violations and imperialistic advances onto the Spanish mainland at La Linea, beyond the so-called “neutral zone”. In 1965 the UN General Assembly invited the UK and Spain to enter into negotiations over Gibraltar and initial talks began in May 1966. Spain proposed repealing Article X of the Treaty of Utrecht, which it regarded as anachronistic, and returning Gibraltar to Spanish rule with certain concessions to the UK to be formulated in an Anglo-Spanish convention. The retention of a British military base on Gibraltar would be covered by a special agreement and there would be legal protection of the interests and nationality of the present population. The UK made counter-proposals in three subsequent rounds of talks in 1966, but Anglo-Spanish relations deteriorated rapidly as agreement on Gibraltar’s future status could not be reached.

The 1966 Spanish proposals provoked a British caveat that they did not prejudice the British view that it had sovereignty over the whole territory of Gibraltar, which included all the ground up to the frontier fence, and the neutral zone. Spain refuted this, alleging that the isthmus had not been ceded under Utrecht but had been acquired by Britain

¹⁰³ Gibraltar’s desire for “free association with an independent State” was repeated by Gibraltar’s representatives at the UN on numerous occasions in the 1960s.

¹⁰⁴ *Yearbook of the United Nations*, 1964, p.424.

¹⁰⁵ Cmnd 2632.

‘illegally’. The British Government insisted that as Britain had occupied and used this land for over 150 years, it was British territory by right of long occupation.

The British Government’s suggestion that the sovereignty issue be referred to the International Court of Justice was rejected by Spain on the grounds that it would contradict the Resolution of the Committee of 24. On 20 December 1966, the UK and Spain voted in favour of a UN GA Resolution which, for the first time, mentioned the interests of the Gibraltarians themselves.¹⁰⁶

In a referendum on 10 September 1967, Gibraltarians were asked whether they wanted “to pass under Spanish sovereignty in accordance with the terms proposed by the Spanish Government to Her Majesty’s Government on 18 May 1966” or “voluntarily to retain their link with Britain, with democratic local institutions and with Britain retaining its present responsibilities”. The result was a large pro-British vote.¹⁰⁷ Spain objected that the unilateral referendum violated the 1713 Treaty, the UN Charter and UN Resolutions on Gibraltar. The UK argued that its referendum-based approach was consistent with the principle of self-determination in the Declaration, while Spain held that its approach was consistent with the principle of national unity which also appears in the Declaration.¹⁰⁸ The Committee of 24 agreed with Spain.

In 1967 the General Assembly adopted Resolution 2353 (XXII), which described the referendum in Gibraltar that year as a ‘contravention’ of its previous Resolutions and argued in favour of a solution based on negotiations between the UK and Spain. In the debates leading up to the adoption of this Resolution the UK had argued that it was unable to continue negotiations as a result of Spanish preconditions. The British Government believed the referendum was a move towards satisfying existing decolonisation Resolutions, since it allowed the people of Gibraltar to choose decolonisation, or, if they rejected it, to choose that option at some point in the future if the majority so wished. Resolution 2353 made reference to the incompatibility with the UN Charter of “any colonial situation which partially or completely destroys the national unity and territorial integrity of a country.”¹⁰⁹ The UK voted against this, on the basis that it could be seen as supportive of the Spanish position.

Anglo-Spanish talks resumed in March 1968 but collapsed almost immediately. The situation was exacerbated by a joint Communiqué issued after talks between the British Government and Gibraltar in 1968 on constitutional changes that would give Gibraltarians considerably more control over their domestic affairs and replace the legislative and city councils with a House of Assembly and an executive headed by the

¹⁰⁶ UN GA Res. 2231 (XXI), 20 December 1966.

¹⁰⁷ There were 12,762 registered voters and a turnout of 95.8%. 12,138 (99% of those voting) voted to stay with Britain and 44 voted for Spanish sovereignty (with 55 spoiled ballots).

¹⁰⁸ Further information on self-determination in international law can be found in Standard Note SN/IA/613, 1 January 2001.

¹⁰⁹ UN General Assembly Resolution 2353 (XXII), 19 December 1967.

Governor. The Communiqué also required that Gibraltar should cease to be a colony. Its status should be redefined, incorporating a reference to the UK's permanent and exclusive sovereignty over Gibraltar. On 18 December 1968 the UN General Assembly asked Britain to decolonise Gibraltar, in accordance with the restoration of Spain's territorial integrity, not later than the 1 October 1969.¹¹⁰

The new Gibraltar Constitution made under the *Gibraltar Constitution Order 1969* contained in the Preamble the guarantee that Gibraltar would remain part of the dominions of the British Crown (unless amended by further UK legislation), and that the UK would “never enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another state against their freely and democratically expressed wishes”.

Spain responded by accusing the British Government of maintaining a colonial arrangement in Gibraltar that was incompatible with the UN Charter. Between June and October 1969 Spanish workers in Gibraltar were refused work permits by the Spanish authorities. The Spanish Government closed the border and customs post at La Linea. The Algeciras-Gibraltar ferry service was stopped and telephone lines cut. Spain offered Spanish nationality to all residents of Gibraltar or to those born there.

On 24 October 1970 UN Resolution 2625 advocated decolonisation through the emergence of “Any other political status” freely determined by the inhabitants of the Non Self-Governing Territory.¹¹¹

The “Question of Gibraltar” continued to be discussed in UN bodies and by the UK and Spain in the margins of General Assembly meetings during the 1970s and 80s. The UN welcomed the Brussels Agreement in 1984. Although bilateral relations improved during this period (see Section II on Anglo-Spanish relations), the sovereignty issue remained contentious.

B. The last decade: Gibraltar at the UN

Mr Bossano addressed the UN Committee of 24 as Chief Minister of Gibraltar in 1992, 1993 and 1994. On 12 July 1994¹¹² he emphasised Gibraltar's enthusiasm for proposals adopted in UN GA Resolution 48/52 of 10 December 1993, which had called upon the Committee “to formulate specific proposals for the elimination of the remaining manifestations of colonialism”¹¹³ and “to recommend to the General Assembly the most suitable steps to be taken to enable the population of those Territories to exercise their right to self-

¹¹⁰ UN GA 2429(XXIII), UN Yearbook 1968, p.750.

¹¹¹ Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, GA Res. 2625 (XXV), UN Doc. A/5217 (1970).

¹¹² A/AC.109/PV.1433.

¹¹³ UN Resolution 48/52, para. 10a.

determination and independence”.¹¹⁴ In his address he called upon Spain to face “the reality of the identity of the Gibraltarians and of their right to self-determination as the only route available for eliminating the anachronism of a colony in Western Europe”. He was concerned that in the bilateral negotiations between Spain and Britain:

... the wishes of the people of the colonial territory, and indeed their interests, are relegated to second place. The fact that we are not a self-governing territory does not mean, as far as my government is concerned, that others have the right to govern us. It means that others are acting *in loco parentis* on our behalf and assuming a protective role until we are strong enough to be able to govern ourselves.¹¹⁵

In 1998, as Leader of the Opposition, Mr Bossano appeared before both the UN Committee of 24 and the Fourth Committee, stressing on both occasions Gibraltar’s right to self determination and stating that the constitutional relationship involving Gibraltar and the UK should not be an obstacle to better relations between Gibraltar and Spain.

Mr Caruana has also regularly addressed the UN Committee of 24. On 21 June 1999 he refuted Spanish claims put before the UN about the principle of territorial integrity and the effect of the Treaty of Utrecht:

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 (i.e. disintegrate) that Member State.

¹¹⁴ UN Res 48/52, para.10b.

¹¹⁵ UN Doc A/AC.109/PV.1433.

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 19th 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 21st 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 displaced 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.¹¹⁶

On 10 October 2001 in his address to the UN's Fourth Committee Mr Caruana commented on the exclusion of Gibraltar from the Brussels Process:

Why is the annual consensus resolution on Gibraltar fundamentally flawed? Because it calls for bilateral negotiations between the UK (our Administering Power) and Spain (the territorial claimant) to resolve their differences over Gibraltar. Where do the people of Gibraltar, our wishes and our right to self determination fit in that formula of words? The language of your annual resolution is the language of territorial disputes; it is not the language of decolonisation and self determination, and therefore ignores this inalienable right of the people of my country.

The rights of my country and its people cannot be compromised in a mist of confusion of the very different issues of decolonisation and territorial dispute. The latter cannot eliminate the former. The right to self determination of all colonial peoples is sacred, universal and primary principle of international law and doctrine. It lies at the very heart of the historical foundation of these United

¹¹⁶ <http://www.gibraltar.gov.gi/>

Nations. A mere bilateral territorial sovereignty dispute is not sufficient to displace or compromise it.¹¹⁷

In April 2002 Mr Caruana addressed the UN's Committee for Economic, Social and Cultural Rights. He rejected the "new position" adopted by the UK that Gibraltar's right to self-determination is curtailed by the Treaty of Utrecht and that the Treaty prohibits independence without Spanish consent. He contrasted this with the position in 1964 when the UK ambassador to the UN argued before the General Assembly that the Treaty in no way affected the UK's obligation under the UN Charter to allow Gibraltar full self-government and that this was not curtailed by Article X of Utrecht. The Government insists that this is the position today:

HMG's position on this issue has been consistent since the mid-1960s. We believe that Gibraltar's right of self-determination is not constrained by the treaty of Utrecht except in so far as Article X gives Spain the right of refusal, should Britain ever renounce sovereignty. Thus independence would only be an option with Spanish consent.¹¹⁸

In March 2002 the Government said:

Her Majesty's Government support the right or principle of self-determination. It must be exercised in accordance with other principles and rights in the Charter of the United Nations and with other treaty obligations. In Gibraltar's case that includes Article X of the Treaty of Utrecht.¹¹⁹

Mr Caruana described Spain's interpretation of Utrecht as 'anachronistic' and asked for the Committee to recommend that the issues be brought before the International Court of Justice.

If the arguments of the UK and Spain are correct in international law then she should have nothing to fear from such a referral. If not, mere arguments should not be allowed, indefinitely, to prejudice the political rights of self-determination of the people of Gibraltar simply because the UK and Spain assert the arguments to the contrary. They should be willing to test them in international law. Yet they refuse to refer the issues to the International Court of Justice. Why? The only conceivable reason is that they know that their interpretations of the Treaty of Utrecht are unsustainable in modern international law.¹²⁰

¹¹⁷ http://www.panorama.gi/press_releases.htm#ADDRESS

¹¹⁸ HC Deb, 6 November 2001, c.121W.

¹¹⁹ HC Deb, 5 March 2002, c.1309W.

¹²⁰ Peter Caruana, speech at UN Economic, Social and Cultural Rights Committee, 29 April 2002, at: <http://www.gibraltar.gov.gi/>

Gibraltar is on the UN list of Non Self Governing Territories awaiting decolonisation. Mr Caruana pointed out that in the *Namibia Opinion*¹²¹ the International Court of Justice stated 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.” In the Western Sahara case¹²² the International Court of Justice ruled that:

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.

Mr Caruana argued that, on this basis, “territorial claims do not and cannot extinguish or override the right of the colonial people of a territory to self-determination”.¹²³

In answer to questions from the members of the Committee on a leaseback arrangement, Mr Caruana said that the people of Gibraltar would not accept this. He emphasised that this was not what was being argued at this juncture: Gibraltar was not saying ‘yes’ or ‘no’ to proposals or models put to them, but rather, was rejecting a process whereby a decision was being made above their heads.¹²⁴

A list of contributions to the UN Committees with *Gibnet*¹²⁵ Internet links can be found in **Appendix V**.

C. Self-Determination vs. Treaty of Utrecht¹²⁶

In the context of the debate on Gibraltar’s future status the question has arisen as to whether a treaty (in this case, the Treaty of Utrecht) can be made invalid by a later General Assembly Resolution, such as the Declaration. Mr Caruana’s view, as expressed above, is clearly that the principle of self-determination is paramount and now takes precedence over earlier colonial arrangements. He has argued that, even if Spain’s interpretation of the Treaty of Utrecht were correct, the UN Charter prevails over any other treaty where the principles between that treaty and the Charter conflict.¹²⁷ This raises the question of whether Utrecht does conflict with the UN Charter. Equally, Spain could argue that territorial unity is enshrined in UN law derived from the Charter.

¹²¹ The ICJ rendered an advisory opinion upon the request of the Security Council on the legal obligations of states arising from the illegal presence of the then regime of South Africa in Namibia, June 1971, ICJ Reports 1971 p. 6 at p. 31 (para. 52).

¹²² Western Sahara, ICJ Advisory Opinion of 16 October 1975, case summary at: <http://www.icj-cij.org/icjwww/idecisions/isummaries/isasummary751016.htm>

¹²³ Speech to UN Committee, 29 April 2002.

¹²⁴ http://www.panorama.gi/press_releases.htm#ADDRESS

¹²⁵ GibNet Limited, Suite 1.2.1, Eurotowers, P O Box 797, Gibraltar, webmaster@gibnet.gi

¹²⁶ This section includes a contribution by Paul Bowers.

¹²⁷ Peter Caruana: speech at UN Economic, Social and Cultural Rights Committee, 29 April 2002.

The *Vienna Convention on the Law of International Treaties*, 1969, sets out the grounds on which a treaty may be terminated, suspended or regarded as invalid. Under Article 42 this may occur only through the application of the that Convention or some relevant provision of the treaty in question (for instance, a sunset clause). The various causes of invalidity which are set out in the Vienna Convention do not include reference to a conflict between a treaty and a General Assembly Resolution. However, they do include the case of a treaty which conflicts with a peremptory norm of general international law (*jus cogens*), whether existing at the time of the conclusion of the treaty or appearing later.¹²⁸ In the case of such a conflict, the treaty immediately becomes void and terminates. *Jus cogens* is defined for the purposes of the Vienna Convention as:

a norm accepted and recognised by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.¹²⁹

According to Jennings and Watts, “there is no general agreement as to which rules have this character.”¹³⁰ However, they point out that the International Law Commission, in a discussion of its draft *Articles on the Law of Treaties*, 1966, gave as examples of *jus cogens* the prohibition on most uses of force in the UN Charter, the prohibitions on genocide, piracy and the slave trade, the observance of human rights and equality of states, and the principle of self-determination.¹³¹

If the Declaration, or rather the principle of self-determination within it, is regarded as *jus cogens*, then a treaty which prevented self-determination would be invalid. If, on the other hand, the law on self-determination¹³² were merely regarded as customary international law, then there is no obvious provision in the Vienna Convention which would privilege it over the Treaty of Utrecht, were the two held to be in conflict.

Daniel Feetham, a barrister practising in Gibraltar, has argued that the right to self-determination takes precedence over the Treaty of Utrecht, but that the problem for Gibraltar is finding a court where its right to self-determination could be established:

The fact is that the right to self-determination is a peremptory norm of public international law that has emerged since the signing of the Treaty of Utrecht in 1713. [...] the right to self-determination takes precedence over the proviso to Article X of the Treaty of Utrecht from which the Spanish claim is derived. A simple reference to the International Court of Justice would undoubtedly confirm

¹²⁸ Articles 53 and 64.

¹²⁹ Article 53.

¹³⁰ Eds. Sir R.Jennings and Sir A.Watts, *Oppenheim's International Law*, 9th edition, 1992, p7.

¹³¹ Jennings and Watts, p8, citing Yearbook of the International Law Commission, 1966, ii, pp247-9

¹³² E.g. the *Declaration on Principles of International Law Concerning Friendly Relations*, 1970, and the ICJ Opinions in cases such as Namibia and Western Sahara.

this analysis. Unfortunately, Gibraltar has no *locus standi* to make a reference and the UK and Spain both now refuse to refer the issue.¹³³

The distinguished lawyer, Peter Carter-Ruck, considered the status of the Treaty of Utrecht today:

It might be contended that the Treaty was signed at a time when the world, in the main, was ruled by autocracies and that therefore we should not now revert, in considering what is just, to long past eras. If that is so, the case for the return to Spain is even weaker because we now live in a world of democracies, where self-determination is the main feature of determining citizens' rights and the Gibraltarians, by an overwhelming majority, wish to remain British.¹³⁴

The Foreign Affairs Committee, taking account of the international legal norms, considered various constitutional options for Gibraltar in its Fourth Report in 1999. **Appendix II** contains an extract from this Report.

¹³³ Daniel Feetham, "Gibraltar: is Legal Action the Answer?", *The European Journal*, Vol.9 (6), March 2002.

¹³⁴ Peter Carter-Ruck, "Gibraltar: a Lawyer's Analysis", *The European Journal*, March 2002.

XI Judicial Review in the UK?¹³⁵

Daniel Feetham (see above) has argued that “the current crisis in Gibraltar offers the opportunity to test Gibraltar issues in the United Kingdom in judicial review proceedings”,¹³⁶ the subject of which could be the Government’s rejection of Gibraltar’s proposals for constitutional reforms. Feetham cites cases where individuals in dependent territories have successfully challenged government decisions.¹³⁷

In the case of Gibraltar two independent possible lines for judicial review have been touched on:

- any UK/Spain agreement, in principle, for joint sovereignty, would be objectionable because, even if it were expressed to be subject to approval by Gibraltarians, and Gibraltarians voted against it, the FCO would still be left with a vestigial commitment which was inconsistent with a pre-existing obligation.
- UK rejection of the Gibraltarians’ own proposals would be unreasonable.

In the past there has been some judicial reluctance to review what is done in the area of foreign policy, although judicial attitudes have tended to be more relaxed when what is sought is a declaration, as opposed to other forms of judicial review.

Could a complaint be made in a UK court against the Anglo-Spanish Declaration of Principles on grounds of infringing the Preamble to the 1969 Constitution, as the Gibraltar Government alleges it would? The status of preambles in legal texts (laws, treaties etc) needs some clarification. A preamble can be used as an aid to construction, it can amount to a limitation on the following words, but cannot prevail over clear meaning in the main text, and may be no more than *prima facie* evidence of facts which it recites. A construction of it as if free-standing may be of dubious utility, although it might still be possible to fall back on arguments based on legitimate expectation derived from the reported assurances.

It would be prudent to anticipate that the wording of any joint statement would be framed in such a way that it did not, at least patently, conflict with the assurances referred to as having been given in the 1969 Preamble. Preambles, though their inclusion is relatively uncommon in legislation now, have been regarded as of great importance as guides to construction of legislation. But it could be argued that the nature of this preamble might require interpreters to make more detailed examination of the assurances actually given before and (perhaps more briefly) recorded in the Preamble to the Constitution Order.

¹³⁵ This section was contributed by Sally Broadbridge, Home Affairs Section.

¹³⁶ Daniel Feetham, “Gibraltar: is Legal Action the Answer?”, *The European Journal*, March 2002.

¹³⁷ He cites *Bancoult v. Secretary of State for Foreign and Commonwealth Affairs* [2001] 2WLR 1219 and *R (Quark Ltd) v. Secretary of State for Foreign and Commonwealth Affairs* (unreported, 5 December 2001).

The courts have repeatedly emphasized that a purportedly representative organisation will not have a “sufficient interest” unless the individuals have one. In the present context, where what is or may be proposed would have the potential to affect the nationality of all the residents of a territory, it would seem likely that even an individual resident could establish standing, but a government application would be seen as more weighty. In *R v Secretary of State for the FCO ex p Bancoult*¹³⁸, the sole applicant was Mr Bancoult, an Ilois and the leader of the Chagossian Refugee Group, who had been born on the non self-governing territory of the Chagos Archipelago at Peros Banhos (and lived there for three years in the 1960s), now part of the British Indian Ocean Territory (BIOT). There does not appear to have been any discussion there of locus, but the media reports do suggest that his application was being treated as representative of (all) the other displaced BIOT persons. Laws L.J. said in the *Bancoult* case

The question for this court is whether to quash an instrument, the Ordinance, whose making was wholly procured by the United Kingdom government. If the suggestion that the court lacks the power to do so has a place in our legal tradition, it is not one which I recognise. I would hold that we possess ample jurisdiction to make the order sought.¹³⁹

It is not unprecedented for proceedings to be brought jointly by a very large number of individuals, as in the Banaban case (where the background was not dissimilar, but the proceedings were not judicial review and proceedings were brought by *all* the islanders who had rights by succession to parts of Ocean Island).

If litigation were to be contemplated, case studies described in *Judicial Review of Administrative Action* (5th edition, 1995) by Stanley De Smith *et al* may serve as pointers to factors to be taken into account. In a consideration of judicial restraint, De Smith concludes:

.. the courts of this country are wary of making pronouncements on treaties and international obligations. Foreign affairs are a matter for the executive and if a dispute arises between the United Kingdom and a foreign state the courts seek to avoid opening up differences of opinion between themselves and the Secretary of State on questions of international law.¹⁴⁰

In *British Airways Board v. Laker Airways Ltd.*¹⁴¹ the conclusion was that the Court should strive to support the Government’s stance on foreign affairs.¹⁴²

¹³⁸ [2000] 2 WLR 1219

¹³⁹ Ibid.

¹⁴⁰ De Smith p 992

¹⁴¹ [1984 QB 142]

¹⁴² *Judicial Review Handbook*, Fordham p 163 (Lord Diplock observed that the interpretation of treaties which had not been incorporated into English domestic law was not a matter within the interpretative jurisdiction of an English court).

XII Gibraltar's Defence Role

A. Historical Overview

Gibraltar's role as a military fortress dates back over centuries because of its valuable strategic position in southern Europe and its proximity to Africa and the Middle East. Gibraltar was no more than a defence post until 1160 AD, when a city was founded on the Rock and peninsula by the Arab king, Abd el M'umin.¹⁴³ Defence reinforcements were made during successive Spanish and Arab (Moorish) invasions and in the struggle between Spain and England following the capture of Gibraltar by the Anglo-Dutch force in 1704.

By the end of the Napoleonic wars in 1815 Gibraltar was becoming a successful trading centre, although its primary role continued to be that of a fortress. Towards the end of the nineteenth century, in response to Germany's increasing power in Europe, the *Naval Defence Act of 1889* authorised improvements to Gibraltar's harbours and dockyards, which were completed in 1906. Gibraltar's importance as a strategic naval base was evident during both world wars and the airfield that was built during World War II has helped to make Gibraltar a European communications and tourism centre.

In the 1960s rivalry over strategic bases between the forces of the Warsaw Pact countries and NATO, to which Spain did not then belong, gave rise to a new dispute concerning Gibraltar. The British Government argued that Gibraltar was not in fact a NATO base, although it was used for NATO purposes. This did not satisfy the Spanish who, in their *Red Book* of 1968, published press reports, Foreign Office statements and other material offering 'evidence' of Gibraltar's status as a NATO base. As such, Spain saw it as a possible target of Warsaw Pact nuclear weapons and hence a threat to Spanish territory. In 1966 Spain announced that it would not allow NATO aircraft to fly over Spanish airspace en route for Gibraltar and NATO warships were not allowed to stop at Spanish ports after leaving Gibraltar. UK and other military aircraft flying to Gibraltar are still prohibited by Spain from overflying Spanish airspace and territory except on humanitarian missions.

B. Military Personnel

At its peak during World War II, the British garrison numbered seventeen thousand.¹⁴⁴ Peacetime figures have been considerably less. The local defence force, the Gibraltar Regiment, was reorganised after the abolition of national service in 1971 as a largely volunteer reserve force. The contraction of MOD installations on Gibraltar began with the conversion of the Royal Naval Dockyard to a commercial dockyard in 1985 and since then most installations have been run down. In 1991 the Conservative Government announced the so-called 30/30/50 plan, under which manpower on Gibraltar would be

¹⁴³ *Information concerning the territory of Gibraltar for the year 1992 in accordance with the provisions of Article 73 (e) of the United Nations Charter 1993.*

¹⁴⁴ Sir William G.F. Jackson, *The Rock of the Gibraltarians: a History of Gibraltar*, 1987.

reduced by 30 per cent, running costs by 30 per cent and the MOD estate by 50 per cent over a five-year period starting in 1992. Under this Plan 895 servicemen serving in Gibraltar would be reduced to 643 by 1997/98 and to approximately 500 by 1999. The number of civilians employed by the Garrison would be reduced from 1,246 to 950 in 1997/98 and to between 350 and 700 in 1999. The running costs would continue to be funded by the MOD but with the proposed cuts these would be reduced from £55 million in 1994/95 to £40 million in 1997/98 and to £35 million in 1999.

In 1993 the end of the Cold War prompted the MOD to commission a study into future MOD requirements for a number of areas, including Gibraltar. This looked at five core military functions for Command British Forces Gibraltar: intelligence gathering facilities, nuclear berthing facilities, access to airfield, the Gibraltar Regiment and the Headquarters and Associated Command and Control facilities. The future operation of these functions was set out in an MOD Consultative Document.¹⁴⁵ The then Minister for the Armed Forces, Nicholas Soames, commented on the future plans for military personnel in Gibraltar:

On current plans, there will be about 50 fewer personnel stationed in Gibraltar in five years' time. These projected force levels enable us fully to carry out our core tasks. They are a clear manifestation of Her Majesty's Government's continuing commitment to the people of Gibraltar. Over the same period, the cost of the Gibraltar garrison will reduce to less than £50 million per annum, compared with expected costs of some £63 million for the current financial year.¹⁴⁶

The Government launched a Strategic Defence Review (SDR) in May 1997 and the resultant SDR White Paper placed renewed emphasis on the rapid deployment of British forces in response to crises.¹⁴⁷ North Africa and the Near and Middle East were widely regarded as regions of the world where such crises could occur. Gibraltar (and its facilities) would provide a useful and independent forward operating base for British forces in the Mediterranean and also serve as a transit base for those en route to the Middle East and elsewhere.

¹⁴⁵ Dep/3 234, 1994.

¹⁴⁶ HC Deb, 11 March 1997, c.187W.

¹⁴⁷ Cm 3999, 1998.

The following table¹⁴⁸ shows the strength of the local Gibraltar regiment from 1975 to 2001:

| Strengths of locally entered personnel in Gibraltar | | |
|---|-------------|------------------|
| | Army | Civilians |
| 1975 | 45 | 2,695 |
| 1980 | 44 | 2,656 |
| 1985 | 49 | 1,699 |
| 1990 | 69 | 1,534 |
| 1995 | 162 | 1,303 |
| 1996 | 160 | 1,212 |
| 1997 | 354 | 1,129 |
| 1998 | 367 | 1,051 |
| 1999 | 352 | 1,051 |
| 2000 | 351 | 982 |
| 2001 | 340 | 958 |
| Source: UK Defence Statistics, 2001 and earlier editions, Ministry of Defence | | |

The Defence Minister, Adam Ingram, gave the following comparative costs over the last five years of maintaining British forces in Cyprus, Gibraltar and the Falklands:¹⁴⁹

The costs incurred by the Commanders British Forces Cyprus, Gibraltar and the Falkland Islands over the same period are as follows:
£ million

| Financial year | Cyprus | Gibraltar | Falklands garrison |
|----------------|--------|-----------|--------------------|
| 1996-97 | 170 | 63 | 81 |
| 1997-98 | 165 | 61 | 76 |
| 1998-99 | 170 | 52 | 72 |
| 1999-00 | 159 | 54 | 71 |
| 2000-01 | 160 | 60 | 64 |

¹⁴⁸ Compiled by Gavin Berman of the Social and General Statistics Section.

¹⁴⁹ HC Deb, 15 April 2002, c710-1W.

Mr Ingram also gave comparative figures for UK regular forces serving in and around Gibraltar, Cyprus and the Falkland Islands as at 1 September 2001.¹⁵⁰

| | Gibraltar | Cyprus | Falkland Islands |
|---------------|------------------|---------------|-------------------------|
| Naval Service | 237 | 8 | 92 |
| Army | 70 | 2,053 | 457 |
| RAF | 114 | 1,089 | 726 |
| Total | 421 | 3,150 | 1,275 |

C. Defence and the Brussels Process

The current Brussels Process talks have given rise to concern in the British Parliament over the future of Gibraltar's defence role and military facilities, although the Defence Minister, Adam Ingram, has said that "Military activity on and around Gibraltar has not been affected by the recent Brussels process discussions".¹⁵¹ The Opposition defence spokesman, James Gray, asked a number of questions on Gibraltar's current defence role. The Government replied that 149 Royal Navy ships had docked in Gibraltar since April 1998, and

About 300 training exercises have been carried out by the UK armed forces in and from Gibraltar during the last three years. Of these, five exercises each year are conducted off Rock by Gibraltar-based forces. Around 30 each year were maritime based including maritime/air and amphibious exercises, 50 predominantly army and the remainder joint exercises.¹⁵²

In the January debate on Gibraltar Lindsay Hoyle emphasised Gibraltar's continuing strategic role:

Gibraltar plays a major military role to this day and has been involved in every war since the second world war, sharing part of the supply chain. That is because it is 1,000 miles from the UK. Recently, the submarine *Tireless*, which no one really wanted to discuss, had to be repaired in Gibraltar. Nowhere else was available and it was not safe to bring it back to the UK. That is just one example of the strategic importance of Gibraltar.

Anyone who goes between the straits is monitored. Every ship or submarine that progresses through those straits is known. It is as important militarily now as it was 100 years ago in terms of surveillance tactics, especially for movements up into the Gulf.¹⁵³

¹⁵⁰ HC Deb, 5 December 2001, c346-7W.

¹⁵¹ HC Deb, 11 December 2001, c740-1W.

¹⁵² Ibid.

¹⁵³ HC Deb, 31 January 2002, c.156WH.

The Gibraltar Government fears that the British Government might concede to Spain's request for shared sovereignty of the military base. The MOD insists that the current discussions have not included the joint use of or joint decision-making on the naval and RAF bases on Gibraltar¹⁵⁴ and has said recently that the United Kingdom would "retain full control over the British military base in Gibraltar".¹⁵⁵

However, the Government's responses have not always tackled these concerns directly:

Mr. Dodds: To ask the Secretary of State for Defence what recent representations have been made by Spain to the Government in respect of future British military deployment in Gibraltar.

Mr. Ingram: Gibraltar is, and will remain, an important overseas base for the British armed forces. Talks with Spain under the Brussels Process are aimed at reaching a comprehensive agreement covering all outstanding issues related to Gibraltar.¹⁵⁶

And:

Syd Rapson: To ask the Secretary of State for Defence, pursuant to his answer of 29 November 2001, Official Report, column 1055W, on Gibraltar, if he will initiate discussions to permit the overflight of Spanish airspace by UK military aircraft.

Mr. Ingram: We have no plans specifically to discuss the overflight of Spanish airspace by UK military aircraft, but the on-going discussions with Spain under the Brussels Process aims to resolve all outstanding issues between the UK and Spain over Gibraltar.¹⁵⁷

According to Spanish press reports, Spain would like a new arrangement for the regulation of the Gibraltar naval base activities along lines similar to the arrangements at the US-Spanish joint military base of Rota on Spain's Atlantic coast. Operational control would remain in British hands and the UK would share sovereignty of the base via a system of consultation, in which Spain would authorise activities and impose certain limitations.¹⁵⁸ On 11 May 2002 the *Daily Telegraph* reported a "strongly worded" letter written by the Defence Secretary, Geoff Hoon, to Jack Straw about the latter's negotiating stance on sovereignty of the military base. According to the report, the MOD emphasised that "Gibraltar is a vital forward-operating base during operations that serve the UK national interest ... It is 1,000 miles closer to most local areas of operation than the UK and for that reason plays a vital role for regrouping".¹⁵⁹

¹⁵⁴ See HC Deb, 4 December 2001, c226W.

¹⁵⁵ Adam Ingram, HC Deb, 23 April 2002, c192W.

¹⁵⁶ HC Deb, 18 March 2002, c70W.

¹⁵⁷ HC Deb, 5 December 2001, c346W.

¹⁵⁸ Reported in the *Gibraltar Chronicle*, 9 May 2002.

¹⁵⁹ *Daily Telegraph*, 11 May 2002.

XIII Conclusion

The Gibraltar Government does not rule out negotiating with Spain and meets regularly with Spanish Government representatives and local officials with the aim of improving relations with Spain.¹⁶⁰

Gibraltar wants to modernise its relations with the UK but believes that the proposed Agreement or Declaration of Principles would constitute a breach of the 1969 Constitution by legitimising the Spanish sovereignty claim. The Spanish Government would then be able to argue that the Agreement altered the legality of the Treaty of Utrecht and the granting of Gibraltar to the UK “in perpetuity” and the British Government would give political, diplomatic and perhaps legal ground “in a way in which we will not be able to recover it”.¹⁶¹

In comments on the four areas to be covered by the agreement/declaration, the Gibraltar Government and other critics have pointed out that:

- the preservation of Gibraltar’s way of life was offered by Spain in the earlier Moran and Matutes sovereignty proposals;¹⁶²
- that Spain should recognise Gibraltar’s EU rights in accordance with EC law in any case;
- that greater self-government for Gibraltar should be Britain’s duty under the UN Charter;
- and that the people of Gibraltar have rejected the negotiation of an agreement on sovereignty issues unless they have an equal say in the negotiations.¹⁶³

Mr Caruana has also rejected the British Government’s contention that Gibraltar’s economy will suffer if the deal is not accepted. According to the Chief Minister, Gibraltar’s future will remain secure, stable and prosperous without the proposed deal, and it is only uncertainty surrounding the outcome of the talks that will undermine its economic stability.¹⁶⁴ This view would appear to have been endorsed by the International Monetary Fund which reported on Gibraltar in October 2001 and stated:

The development of the financial sector in Gibraltar has been facilitated by its location, a favorable tax regime, a stable government, status within the European

¹⁶⁰ For example, on 4 April Mr Caruana resumed cross-border contacts with the Mayor of Algeciras, Patricio Gonzalez, after two years of sour exchanges.

¹⁶¹ Peter Caruana, Chatham House, 10 April 2002.

¹⁶² Mr Hain said in the WH debate that “the Matutes proposals do not lie on the table. We specifically set them aside at the beginning of the Brussels process. They suggested a 50 year reopening clause on any agreement, which is a slippery slope to the Spanish historic claim to full sovereignty over Gibraltar. We will not accept anything like that.” (HC Deb, 31 January 2002, c.177WH).

¹⁶³ From press reports in the *Gibraltar Chronicle* and *Panorama News Service*.

¹⁶⁴ Chatham House meeting, 10 April 2002.

Union (EU), no exchange controls, a legal framework based on the British system, and the availability of a well-qualified labor force, particularly well endowed with accounting and legal skills.¹⁶⁵

Mr Caruana asked whether the decision on Gibraltar's constitutional future lies in the hands of the people or in those of the colonial power and a third party claimant:

Do we as European democrats believe in self-determination or not?... Do we believe that all colonial territories have the right to decide our own future or do we believe that answer is capable of being qualified?¹⁶⁶

There have been increasing calls in the UK, as well as in Gibraltar, for the Government to abandon the current talks as a 'non-starter'. In the Lords, the Conservative former Cabinet minister, Lord Waddington, asked: "What really is the point in proceeding further with these talks when the British Government and the Spanish government between them seem to have made it absolutely certain that any deal is going to be rejected by Gibraltar?... Would it not be better to break off the talks now? There is a very good reason for doing so in view of Spanish intransigence as regards the base."¹⁶⁷ Baroness Symons replied that the point of the talks was to try to achieve a settlement over a matter that has caused a great deal of difficulty between the UK and a major ally in the EU.¹⁶⁸ In Prime Minister's Question Time in the Commons, Geoffrey Clifton-Brown also called for the talks to be suspended.¹⁶⁹ Mr Blair replied that the Government would "carry on negotiating in the way that we have described, as set out under the Brussels Process that began in 1984, initiated by the Conservative Government".¹⁷⁰

The meeting on 15 May did not resolve the outstanding issues and press reports commented on the possibility of the process unravelling. The *Guardian* drew attention to three main issues which had brought the talks "close to breakdown."¹⁷¹ These were the "red line" areas, namely:

- the UK's insistence on a durable settlement and Spain's refusal to abandon its "historic claim" to sovereignty over Gibraltar.
- The UK's insistence on control of the naval base against Spain's demand for 'symbolic' joint command of the base, with UK retaining operational control.¹⁷²
- The UK's pledge to put any sovereignty agreement to the Gibraltarians in a referendum against Spain's refusal to accept a referendum on the sovereignty issue

¹⁶⁵ Executive summary, IMF Report, *Gibraltar: Assessment of the Regulation and Supervision of Financial Services*, October 2001.

¹⁶⁶ Ibid.

¹⁶⁷ HL Deb, 14 May 2002, c136.

¹⁶⁸ Ibid.

¹⁶⁹ HC Deb, 15 May 2002, c.766.

¹⁷⁰ Ibid.

¹⁷¹ *Guardian*, 11 May 2002.

¹⁷² Ibid.

(not least because this might set a precedent for Basque nationalists wanting independence from Spain).

The Gibraltar campaign against the sovereignty talks was intensified after the Straw-Piqué meeting. On 17 May 2002 the Gibraltar Government placed full-page advertisements for a ten-day period in all UK daily and Sunday national newspapers, urging Britons to support Gibraltar's concerns about joint sovereignty. The BBC reported Peter Caruana's warning to the British Government that Gibraltarians might suffer a "loss of enthusiasm" for hosting UK military bases if their status was changed.¹⁷³

The meeting on 20 May between Mr Aznar and Mr Blair did not resolve the outstanding issues and critics of the process in Gibraltar and in the UK have continued to call for the talks to be suspended. The British and Spanish Governments have reached deadlock over their "red lines", those areas of historic sensitivity that are not open to compromise. There is certainly a possibility that no agreement will be reached by the summer. The Government might well take the view that no agreement would be better than an unsatisfactory agreement and the Foreign Secretary told the Radio 4 "Today Programme" that if there were no agreement, the tense status quo would be upheld.¹⁷⁴ Clearly the British and Spanish Governments have the will to reach a satisfactory agreement, but at the same time there are no signs yet of any willingness to back down on fundamental issues of sovereignty. The Gibraltar Government might take heart from the failure so far of the two governments to agree on anything that would affect their constitutional status. However, over the next few months, as efforts to secure agreement continue, the debate on Gibraltar's future seems likely to intensify.

¹⁷³ BBC News on-line at: http://news.bbc.co.uk/1/hi/english/uk_politics/newsid_1997000/1997536.stm

¹⁷⁴ 20 May 2002.

Appendix I Article X of Treaty of Utrecht

X. The Catholic King does hereby, for Himself, His heirs and successors, yield to the Crown of Great Britain the full and entire propriety of the Town and Castle of Gibraltar, together with the port, fortifications, and forts thereunto belonging; and He gives up the said propriety, to be held and enjoyed absolutely with all manner of right for ever, without any exception or impediment whatsoever. But that abuses and frauds may be avoided by importing any kinds of goods, the Catholic King wills, and takes it to be understood, that the above-named propriety be yielded to Great Britain without any territorial jurisdiction, and without any open communication by land with the country round about. Yet whereas the communication by sea with the coast of Spain may not at all times be safe or open, and thereby it may happen that the garrison, and other inhabitants of Gibraltar may be brought to great straits; and as it is the intention of the Catholic King, only that fraudulent importations of goods should, as is above said, be hindered by an inland communication, it is therefore provided that in such cases it may be lawful to purchase, for ready money, in the neighbouring territories of Spain, provisions, and other things necessary for the use of the garrison the inhabitants and the ships which lie in the harbour. But if any goods be found imported by Gibraltar, either by way of barter for purchasing revisions, or under any other pretence, the same shall be confiscated, and complaint being made thereof, those persons who have acted contrary to the faith of this Treaty shall be severely punished. And Her Britannic Majesty, at the request of the Catholic King, does consent and agree that no leave shall be given under any pretence whatsoever either to Jews or Moors, to reside or have their dwellings in the said town of Gibraltar: and that no refuge or shelter shall be allowed to any Moorish ships of war in the harbour of the said town, whereby the communication between Spain and Ceuta may be obstructed or the coasts of Spain be infested by the excursions of the Moors. But whereas Treaties of friendship, and a liberty and intercourse of commerce are between the British and certain territories situate on the coast of Africa, it is always to be understood that the British subjects cannot refuse the Moors and their ships entry into the port of Gibraltar purely upon the account of merchandising. Her Majesty the Queen of Great Britain does further promise that the free exercise of their religion shall be indulged to the Roman Catholic inhabitants of the aforesaid town. And in case it shall hereafter seem meet to the Crown of Great Britain to grant, sell, or by any means to alienate therefrom the propriety of the said town of Gibraltar, it is hereby agreed and concluded, that the Preference of having the same shall always be given to the Crown of Spain before any others.¹⁷⁵

¹⁷⁵ *The Consolidated Treaty Series*, Vol. 28, 1713-1714, edited by Clive Parry.

Appendix II Foreign Affairs Committee Report¹⁷⁶

Independence

98. Self-determination is the first of the four basic principles enunciated by the Government as the basis for its relationship with all the United Kingdom's Overseas Territories.¹⁷⁷ Mr Caruana told us that this right to self-determination should be recognised by the United Kingdom Government in the case of Gibraltar.¹⁷⁸ Self-determination is not, however, the same as independence. The Committee concurs with the view of the British Government that independence is not an option for Gibraltar. This is because of Article X of the Treaty of Utrecht, with its provision about the territory reverting to Spain if alienated from the United Kingdom.¹⁷⁹ The Government of Gibraltar does not accept that independence is prevented by the Treaty of Utrecht. Their principal argument is that the Treaty of Utrecht has, in effect, been superseded by the Charter of the United Nations and is incompatible with the commitment of the United Nations to decolonisation.¹⁸⁰ They would be content to have the issue determined in an international court,¹⁸¹ but they emphasise that the question is an academic one, since "the people of Gibraltar do not seek independence from Britain."

Integration with the United Kingdom

99. Integration is a concept which means different things to different people. During our visit to Gibraltar, we encountered a number of people who favoured some form of integration of Gibraltar into the United Kingdom. We understand, for example, that Mr Bossano had been responsible for starting the integration movement in 1964, and that his party believed that the case now was more overwhelming than it was then. Opinions were not unanimous—one union leader, for example, regarded integration with the United Kingdom as a backwards move as Europe became more politically united. Support for integration was also apparent in much of the written evidence we received: Sir Robert J Peliza, the former Chief Minister, pointed to a 1998 opinion poll which suggested that 90% of Gibraltarians supported it.¹⁸² Other individuals wrote in support of integration.¹⁸³

100. The integration of overseas territories with the metropolitan country can be manifested in a number of different ways. It is, of course, well preceded in Europe: the French départements d'outre-mer (Martinique, French Guyana, Guadeloupe and Réunion) are an integral part of France,¹⁸⁴ while the territoires d'outre-mer have a lesser status. Ceuta and Melilla, though in North Africa, are autonomous regions of Spain. Aruba and the Dutch Antilles are self-governing, but are within the Kingdom of the Netherlands. Gibraltar's colonial status contrasts unfavourably with these. Mr Aurelio Falero pointed in his written evidence to the fact that the Spanish would naturally consider the position of Gibraltarians anachronistic because of the full voting rights

¹⁷⁶ FAC Fourth Report, *Gibraltar: constitutional change*, HC 366, 1998/99, 22 June 1999.

¹⁷⁷ Cm 4264 para. 1.19.

¹⁷⁸ Q150.

¹⁷⁹ Ev. p. 1, para. 7.

¹⁸⁰ Ev. pp. 40-41, paras. 75-77.

¹⁸¹ Q185.

¹⁸² Ev. p. 82.

¹⁸³ E.g. Ev. p. 98 (Appendix 16).

¹⁸⁴ Ev. p. 13, para. 13.

which Spain itself gave to the residents of Ceuta and Melilla,¹⁸⁵ and Mr Caruana said that any Spanish diplomat worth his salt if challenged on Ceuta and Melilla would point to their status as part of Spain compared to Gibraltar's status as a colony.¹⁸⁶

101. In the recent White Paper on the Overseas Territories, the Government has stated (in respect of all the overseas territories) that integration does not offer a more appropriate alternative to current arrangements, but it has accepted that the issue may need to be "revisited, reviewed and where necessary revised."¹⁸⁷ The Government of Gibraltar told us that it regretted the closing of the door on the integration option which the White Paper appeared to demonstrate. It commented that "this denial of the integration option may be legitimate in respect of territories to whom independence is available. It is less obviously so in the case of Gibraltar to whom independence is not available."¹⁸⁸ Mr Caruana confirmed this view when he gave evidence, describing the policy as "regrettable and disappointing."¹⁸⁹

102. Ms Quin assured the Committee that integration of Gibraltar with the United Kingdom would not be incompatible with the Treaty of Utrecht.¹⁹⁰ It would hardly be popular in Spain, where it would signify the end of Spanish aspirations to regain control of the Rock. There are other disadvantages in any form of integration. It could take power away from responsive local leaders in Gibraltar, and remove decision-making on Gibraltar-related issues from Gibraltarians and instead vest it in those who understood little about the territory. On the other hand, many of the obstacles which Spain at present places in the way of Gibraltar could potentially be removed—competent authorities in Gibraltar would become United Kingdom competent authorities (this was a point made forcefully to us by opposition politicians in Gibraltar); driving licences and passports would no longer refer to Gibraltar; criticism of Gibraltar's record in law enforcement or compliance with EU requirements would be a direct criticism of the United Kingdom; extradition would be possible, and so on. There would also be a considerable benefit to Gibraltar in no longer having to duplicate work being done in London—to take one example, the Data Protection Registrar's remit could extend to Gibraltar and consequently there would be no need for Gibraltar to set up its own body with its own staff, equipment and overheads.

103. The implication of devolution in the United Kingdom was not lost on Mr Caruana or some of our other Gibraltarian witnesses.¹⁹¹ In the new variable geometry of the United Kingdom, with different levels of self government for Scotland, Wales, Northern Ireland, London and the English regions, Gibraltar could form another part of this picture. It might be that Gibraltar would have to give up some of its present powers which would be repatriated to London. Mr Caruana appeared quite relaxed at this prospect.¹⁹² However, Gibraltar would not lose all its legislative independence, and might indeed be regarded as an autonomous region of the United Kingdom, rather than an autonomous region of Spain as Señor Matutes offers. Integration would, of course, pose many problems. However, if the people of Gibraltar were to vote clearly in favour of

¹⁸⁵ Ev. p. 103.

¹⁸⁶ Q186.

¹⁸⁷ Cmnd 4624 para. 2.6.

¹⁸⁸ Ev. p. 41, para. 79.

¹⁸⁹ QQ192,233.

¹⁹⁰ QQ87-88.

¹⁹¹ Q199; Ev. pp. 97, 103.

¹⁹² QQ192,199-200.

integration within the United Kingdom, the British Government should be prepared to consider the option.

104. Integration would bring Gibraltarian representation directly into the House of Commons. But even if integration is not the future course for the territory, there is a strong case for a major enhancement of the link between the Government and Parliament of the United Kingdom and the Government and House of Assembly of Gibraltar in order to meet some of the existing democratic deficit. First of all, we believe that the Prime Minister should consider meeting Gibraltar's Chief Minister, at least before any bilateral meeting with the Spanish Prime Minister at which Gibraltar is to be discussed. We understand that no formal meeting had taken place, though Ms Quin pointed out that she spoke regularly with the Chief Minister, and reported on these discussions to the Prime Minister.¹⁹³ As far as Parliament is concerned, we believe that the Royal Commission at present considering the future of the House of Lords might consider whether Gibraltar should be represented in that House, and we shall draw this view to the attention of the Commission. In the House of Commons, we note the Chief Minister's support for a right for the Government of Gibraltar to petition at the bar of the House, as petitions from the Corporation of London may.¹⁹⁴ This was a possibility which Baroness Symons was prepared to consider when she gave evidence to the Committee in December 1997 on the Dependent Territories Review.¹⁹⁵ We also re-iterate the view we have expressed to the Leader of the House that arrangements should be put in place to allow Members of the House of Commons to visit the Gibraltar House of Assembly in connection with their parliamentary duties.

Other constitutional change

105. The FCO told us that the Government of Gibraltar was "interested in exploring the possibility of effecting various changes to Gibraltar's constitution."¹⁹⁶ Preliminary exploratory discussions had taken place, but no formal proposals had yet been made. The British Government's position is that "they are willing to listen to any ideas that are realistic and compatible with international obligations, which include the Treaty of Utrecht." The aim of the Government of Gibraltar is "to seek the effective decolonisation of Gibraltar, by means of the modernisation of Gibraltar's bilateral constitutional relationship with the UK."¹⁹⁷ This aim chimes in with the policy of the main opposition parties in Gibraltar: as the Memorandum of the Joint Foreign Affairs Committee of the Gibraltar Socialist Labour Party and the Liberal Party of Gibraltar put it, "Gibraltar is a colony and it must be decolonised."¹⁹⁸ The Government of Gibraltar believes there should be "last resort" powers for the British Government, but the "existing residual colonial features of the present Constitution would be removed."¹⁹⁹ The opportunity could also be taken to reflect changes (such as membership of the EU) which had occurred since the 1969 Constitution was put in place. An illustration of the sort of proposal which might be made was Mr Caruana's suggestion that the Governor, whose office was a colonial one, should be replaced, for example, by a Lieutenant Governor (as in the Channel

¹⁹³ QQ73-77, 195.

¹⁹⁴ Q196; see Erskine May, 22nd edition, page 814.

¹⁹⁵ HC 347, Session 1997-98, Q186.

¹⁹⁶ Ev. p. 1, para. 7.

¹⁹⁷ Ev. p. 38, para. 53; QQ186ff.

¹⁹⁸ Ev. p. 88.

¹⁹⁹ Ev. p. 42, para. 88.

Islands).²⁰⁰ Mr Caruana intends to propose to the Gibraltar House of Assembly that a Select Committee should be established which, he hopes, can come forward with unanimous proposals for constitutional change.²⁰¹

106. The Government of Gibraltar expressed misgivings that the British Government might allow a "Spanish dimension" to inhibit its moves towards decolonisation.²⁰² However, it argued that constitutional modernisation was a move to give Gibraltar a status which suits its circumstances, and which would be approved by its people in a referendum.²⁰³ This would be in keeping with UN Resolutions on decolonisation. (We return to the issue of a referendum later).²⁰⁴ Opposition politicians in Gibraltar told us that they believed that the Foreign Secretary had told Mr Caruana that Spain would "go ballistic" if changes were made to the Constitution. We are aware of Spain's hostile reaction to the 1969 Constitution,²⁰⁵ but this is not a reason to prevent change to that constitution. Nor do we accept the Spanish view²⁰⁶ that the Treaty of Utrecht would be an obstacle: Ms Quin told us that the Government's initial view of the Gibraltarian Government's constitutional proposals were that they were compatible with the Treaty of Utrecht.²⁰⁷ Moves to greater self government, under the British Crown, do not seem to us to amount to the alienation of Gibraltar from the Crown referred to in Article X of the Treaty. The Committee believes that, while the potential Spanish reaction to any constitutional change compatible with the Treaty of Utrecht is a consideration which British and Gibraltarian Governments will wish to bear in mind, there can be no question of a Spanish veto on constitutional developments in Gibraltar.²⁰⁸

²⁰⁰ Q204.

²⁰¹ Ev. p. 42, para. 85 and Q187.

²⁰² Q182.

²⁰³ Ev. p. 42, paras. 86 and 87; QQ186,189.

²⁰⁴ See para. 107.

²⁰⁵ Q202.

²⁰⁶ See evidence of Señor Estrella-Ev. pp. 100-103.

²⁰⁷ Q90.

²⁰⁸ QQ183-4.

Appendix III Sovereignty Arrangements: Northern Ireland and Andorra

Two territorial sovereignty arrangements have been suggested as possible options for Gibraltar. The British Government has cited the peace process negotiations in Northern Ireland as a possible way forward for Gibraltar. However, in the Good Friday Agreement, Dublin withdrew its formal claim to Northern Ireland, while the Spanish Government has insisted that the door be left open to full sovereignty over Gibraltar.

In the January debate on Gibraltar, Richard Spring pointed out differences between the Northern Ireland and Gibraltar processes:

Several references have been made to Northern Ireland, but unlike the situation there, we are talking about only three parties between two states, so this matter should be much simpler. Only when detailed arrangements had been agreed by all parties did an agreement between Britain and the Republic of Ireland become bilateral, as we saw in the Good Friday agreement.

As my right hon. Friend the shadow Secretary of State has suggested to the Foreign Secretary, will the Minister use another successful formula from the Northern Ireland negotiations—nothing is agreed until it is agreed? Does he agree that no satisfactory solution will come from treating the negotiations as purely bilateral? Just as Gibraltar cannot insist on agreements that Spain cannot live with, so Spain should not be able to insist on agreements that Gibraltar cannot live with.²⁰⁹

In an interview in the *Gibraltar Chronicle* Jack Straw responded to a question on the Northern Ireland process and its relevance for the Gibraltar issue:

Q. The Anglo- Irish process has been raised in the context of a comparison with Gibraltar, by Peter Hain for example. Do you think we might reach a point in this where an independent arbitrator, a George Mitchell figure, brought in?

A. I doubt it. The point about the Anglo-Irish process is that it actually took a long time. At the initial stages people got very upset on both sides and said this was not in their interests and we talked more about vetoes than anything else. Then gradually it settled down into a process of further discussion.

I think we now have a much better position in the whole of Ireland and in particular in Northern Ireland than we have had in the past. It has taken a long time.²¹⁰

²⁰⁹ HC Deb, 31 January 2002, c.148WH.

²¹⁰ *Gibraltar Chronicle*, 7 May 2002.

The Andorran solution, proposed as early as the 1970s, was based on joint sovereignty, although the modern Andorra model, which is based on the 1993 Constitution, vests sovereignty in the Andorran people.²¹¹ The Gibraltar Government is more tolerant of the modern Andorran solution than of other sovereignty scenarios, according to a report in the *Gibraltar Chronicle* on 20 March 2002. Mr Caruana has said that if the Spanish Government put forward a referendum proposal for Gibraltar to be given a modern Andorra status, “the result of that might be more interesting than they think.”

Andorra is a co-principality. It has its own seat at the UN, while the sovereignty formula is based on a system whereby the heads of state, who are the Spanish and French *Coprincipes* (the Bishop of Urgell and the Head of State respectively), hold it as trustees on behalf of the people of the territory. Spain has no sovereignty over Andorra and no influence in its affairs. Title III of the Constitution concerns the role and powers of the *Coprincipes* in relation to the parliament (the *Consell General*) and the government (the *Govern*):

Article 44

1. The *Coprinceps* are the symbol and guarantee of the permanence and continuity of Andorra as well as of its independence and the maintenance of the spirit of parity in the traditional balanced relation with the neighbouring States. They proclaim the consent of the Andorran State to honour its international obligations in accordance with the Constitution.
2. The *Coprinceps* arbitrate and moderate the functioning of the public authorities and of the institutions, and are regularly informed of the affairs of the State by their own initiative, or that of the *Síndic General* or the *Cap de Govern*.
3. Except for the cases provided for in this Constitution, the *Coprinceps* are immune from suit. The acts of the *Coprinceps* are under the responsibility of those who countersign them.

Article 45

1. The *Coprinceps*, with the countersignature of the *Cap de Govern*, or when appropriate, of the *Síndic General*, as politically responsible:
 - a) Call for general elections in accordance with the Constitution.
 - b) Call for a referendum in accordance with articles 76 and 106 of the Constitution.
 - c) Appoint the *Cap de Govern* following the procedure provided for in the Constitution.
 - d) Sign the decree of dissolution of the *Consell General* following the procedure of article 71 of the Constitution.
 - e) Accredite diplomatic representatives of Andorra to foreign States. Foreign envoys present credentials to each of the two.
 - f) Appoint the holders of office of the other institutions of the State in accordance with the Constitution and the laws.

²¹¹ Article 3 of the Constitution states: “Sovereignty is vested in the Andorran People, who exercise it through the different means of participation and by way of the institutions established in this Constitution”. <http://www.consell.ad/constitutuk.htm>.

- g) Sanction and enact the laws in accordance with article 63 of this Constitution.
 - h) Express the consent of the State to honour its international treaties under the provisions of chapter III of Title IV of the Constitution.
 - i) Perform such other functions as may specifically be conferred to them by the Constitution.
2. The dispositions provided for in letters g) and h) of this article shall be simultaneously brought to the attention of each Copríncep, who shall sanction and enact them or express the consent of the State, as may fit the case, and the Coprínceps shall ordain their publication within the period between the eighth and the fifteenth days thereafter.
- In that period the Coprínceps, individually or jointly, may send a reasoned message to the Tribunal Constitucional, so that this institution may render judgment on their constitutionality. If the resolution is positive the act may be sanctioned with the signature of at least one of the Coprínceps.
3. When there may be circumstances impairing one of the Coprínceps from formalising the acts listed in part 1 of this article within the periods constitutionally provided for, his representative shall make it known to the Síndic General, or when appropriate, to the Cap de Govern. In that case, the acts, norms or decisions in question shall take effect once the aforementioned days have elapsed with the signature of the other Copríncep and the countersignature of the Cap de Govern, or, when appropriate, the Síndic General.

Article 46

1. The Coprínceps may perform the following acts of their free will:
- a) The combined exercise of the prerogative of grace.
 - b) The creation and structuring of the services considered to be necessary for the performing of their institutional functions, the appointment of the holders of these services and their accreditation to all effects.
 - c) The appointment of the members of the Consell Superior de la Justícia, in accordance with article 89.2 of the Constitution.
 - d) The appointment of the members of the Tribunal Constitucional, in accordance with article 96.1 of the Constitution.
 - e) The requirement of a preliminary judgment of unconstitutionality of the laws.
 - f) The requirement of a judgment about the unconstitutionality of international treaties, prior to their ratification.
 - g) The lodging of conflict before the Tribunal Constitucional in relation to their constitutional functions, under the provisions of articles 98 and 103 of the Constitution.
 - h) The granting of the agreement for the adoption of the text of an international treaty, in accordance with the provisions of article 66, before its parliamentary approval.
2. The acts derived from articles 45 and 46 are exercised by the Coprínceps personally, except for the faculties provided for in letters e), f), g), and h) of this article, which may be performed by delegation.

Article 47

The General Budget of the Principality shall assign an equal amount to each Copríncep, for the functioning of their services, which amount they may freely dispose of.

Article 48

Each Copríncep appoints a personal representative in Andorra.²¹²

Modern Andorra is not a joint or shared sovereignty model. There is nothing in its status that holds out the prospect of eventual sovereignty for either one or other of the ‘trustees’. Neither has there been any move to bring about such a change. Perhaps it is for this reason that the modern Andorra model is unacceptable to Spain, which is seeking eventual full sovereignty.²¹³ The British Foreign Secretary has also said “I don’t want to go down the track of the Andorra model”,²¹⁴ although it is not clear whether he meant the old or the modern model.²¹⁵

²¹² <http://www.consell.ad/constitut.htm#Coprincipat>

²¹³ *Gibraltar Chronicle*, 8 May 2002.

²¹⁴ *Gibraltar Chronicle*, 7 May 2002.

²¹⁵ According to Gibraltar Government sources, the British Government has only given consideration to the Andorra model in its pre-1993 form.

Appendix IV Public Opinion

a. Gibraltar

In a *Panorama* opinion poll published on 15 April 2002 84% would welcome a referendum to decide between the proposed ‘deal’ with Spain and the amended Gibraltar Constitution. Another question asked: In such a referendum which option would you vote for? 2% voted for the Anglo-Spanish deal, including a form of joint sovereignty with Spain, while 98% voted for the reformed Constitution and a ‘modernised’ relationship with Britain.²¹⁶

b. UK

A MORI poll of 1,003 people published on 19 March 2002 on “Public Attitudes Towards The Future Of Gibraltar” showed that nearly 80% of British people think the Gibraltarians should have the right to decide about the future of Gibraltar. Asked which of three statements came closest to their own view:

1. 79% thought the people of Gibraltar had the right to decide about the future of Gibraltar,
2. 16% thought the interests of Gibraltarians should be taken into account but they should not be the ones to decide;
3. 3% thought the people of Gibraltar were a secondary factor and that they had to adapt to whatever was agreed for them by Britain and Spain;
4. 3% did not have an opinion.²¹⁷

In a poll of MPs conducted in April 2002 by Harris Polls for the Gibraltar Government,²¹⁸ 75% of MPs thought that the people of Gibraltar should decide its future status. A total of 150 MPs, proportionately chosen from the three main political parties, were polled by TNS Harris. The full results were as follows:

Question: Should the future of Gibraltar ultimately be decided by:

| | % |
|--|----|
| • The people of Gibraltar? | 75 |
| • The Government of the United Kingdom? | 19 |
| • The people of Gibraltar and the UK Government? | 2 |
| • The people of Gibraltar and the Government of Spain? | 0 |
| • The UK and Spanish Governments? | 1 |
| • The people of Gibraltar and the UK and Spanish Government? | 1 |
| • Not answered? | 1 |

²¹⁶ *Panorama News*, <http://www.panorama.gi/updates.htm#Poll>

²¹⁷ MORI at: <http://www.mori.com/polls/2002/gibraltar.shtml>

²¹⁸ Reported in the *Gibraltar Chronicle*, 21 May 2001.

c. Spain

A poll of nearly 28,000 people published in the Spanish daily, *La Vanguardia*, and reported in *Panorama News* on 4 April 2002 asked three questions concerning support for:

1. integration with Spain
2. joint sovereignty with the UK
3. some form of independence for Gibraltar.

48.9% were in favour of a Spanish Gibraltar. 6% were in favour of a joint arrangement with the UK, while 41% supported some form of independence for Gibraltar.²¹⁹

²¹⁹ Reported in *Panorama News*, 5 April 2002.

Appendix V Selected Texts

- 2002 - Gibraltar Government Briefing Paper, at: <http://www.gibnet.com/texts/status1.htm>
- 2001 - Peter Caruana at the UN at: <http://www.gibnet.com/texts/pcun0601.htm>
- 2001 - Joe Bossano at the UN at: <http://www.gibnet.com/texts/jbun0601.htm>
- 2001 - Guy Stagnetto QC discusses Utrecht at: http://www.gibnet.com/texts/gsl_tou.htm
- 2000 - The UN 4th Committee at: <http://www.gibnet.com/texts/4un1000.htm>
- 2000 - The Anglo-Spanish Agreement at: <http://www.gibnet.com/texts/anglosp1.htm>
- 1999 - UN Report on Gibraltar at:
<http://www.un.org/Depts/dpi/decolonization/docs/gibraltar.pdf>
- 1999 - Conclusion of the UN 4th Committee at: <http://www.gibnet.com/texts/un1099.htm>
- 1999 - Spanish Statement at the UN 4th Committee at:
<http://www.gibnet.com/texts/spun1099.htm>
- 1999 - Peter Caruana at the UN 4th Committee at:
<http://www.gibnet.com/texts/pcun1099.htm>
- 1999 - Joe Bossano at the UN 4th Committee at: <http://www.gibnet.com/texts/jbun1099.htm>
- 1999 - The SDGG at the UN 1999 at: <http://www.gibnet.com/texts/sdgg1.htm>
- 1999 - Peter Caruana at the UN Committee of 24 at:
<http://www.gibnet.com/texts/pcun699.htm>
- 1999 - The FCO - Partnership For Prosperity at: <http://www.gibnet.com/texts/fco699.htm>
- 1999 - Rafael Estrella - Rethinking Gibraltar and Spain at:
<http://www.gibnet.com/texts/psoel.htm>
- 1998 - Sir Robert Peliza - The case for de-colonisation at:
<http://www.gibnet.com/texts/rpdcl.htm>
- 1998 - Peter Caruana at the UN 4th committee at: <http://www.gibnet.com/texts/pcun982.htm>
- 1998 - Peter Caruana at the UN Committee of 24 at:
<http://www.gibnet.com/texts/pcun98.htm>
- 1997 - Mr Caruana at Westminster at: <http://www.gibnet.com/press/speech20.htm>
- 1995 - Mr Bossano at the United Nations at: <http://www.gibnet.com/texts/jbun2.htm>
- 1994 - Mr Bossano at the United Nations at: <http://www.gibnet.com/texts/jbun1.htm>
- 1987 - The Airport Agreement at: <http://www.gibnet.com/texts/airport.htm>.
- 1976 - The UN & the right to self-determination at: <http://www.gibnet.com/texts/unsd.htm>
- 1968 - UN Resolution 2353 (XXII) at: <http://www.gibnet.com/texts/un2353.htm>
- 1961 - UN Resolution 1654 (XVI) at: <http://www.gibnet.com/texts/un1654.htm>
- 1960 - UN Resolution 1514(XV) at: <http://www.gibnet.com/texts/un1514.htm>
- 1909 - The Status of the Neutral Ground at: <http://www.gibnet.com/texts/neutral.htm>