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A. Historical Background

1 Gibraltar is a promontory of about five square kilometres on the Southern coast of Spain. It comprises the rock, the town, its historically important fortifications, and port. An isthmus with the Gibraltar airport links the foot of the rock and the Spanish mainland, bisected East-West by the Spain-Gibraltar line of control. The enclave is one of 14 remaining British Overseas Territories (→ *Enclaves*; → *Overseas Territories, Australia, France, Netherlands, New Zealand, United Kingdom, United States of America*). To the west, Gibraltar is bordered by the Bay of Gibraltar (Algeciras) and to the south by the Strait of Gibraltar (→ *Gibraltar, Strait of*), a major route for international maritime traffic between the Atlantic Ocean and the → *Mediterranean Sea*. As guardian to the western entrance to the Mediterranean Sea, Gibraltar's naval base held great strategic significance during the two World Wars.

2 The Rock of Gibraltar is the more northern of the two 'Pillars of Hercules' to which writers in antiquity referred. In 711, people of Arab and Berber descent from Northern Africa conquered most of the Iberian Peninsula, including Gibraltar and its surrounding area. The conquerors were led by Tariq ibn Ziyad, and the Rock, by way of corruption of the Arabic 'Jebel Tariq' ('Tariq's rock'), came to be known by the Spanish as Gibraltar. Over the following centuries, the peninsula changed hands by force several times until, in 1462, the Spaniards ousted the Arabs and retook Gibraltar. The period of Spanish control would last until the War of the Spanish Succession (1701–13).

3 In 1704 an alliance of the Dutch and English navies, led by a German prince representing the Habsburg claimant—Archduke Charles—to the Spanish throne, seized Gibraltar. France supported Philip of Anjou as claimant to the Spanish throne. Several attempts to retake Gibraltar by force, such as a Franco-Spanish → *siege* in 1704–05, failed. By 1710 secret peace negotiations between France and Britain were under way, without knowledge of their allies. France, concerned about losing parts of its own territory, conceded Gibraltar as a condition of a peace agreement. Spain only joined the peace negotiations at an advanced stage, after most territorial questions had been resolved. By the Treaty of Peace and Friendship between Great Britain and Spain of 1713 ('Treaty of Utrecht'), Spain ceded Gibraltar to Britain. Given that a coalition took Gibraltar, it is disputed whether Britain obtained title to Gibraltar also by conquest.

4 Gibraltar has been a British overseas territory since 1713. In 1740, George II, through a charter of justice, formally introduced English law to the territory, replacing Spanish law. During the 19th century, Britain extended its control over parts of the Isthmus. With the opening of the → *Suez Canal*, Gibraltar's commercial value increased markedly. Its strategic significance diminished after World War II. Disputed → *sovereignty* over Gibraltar has complicated bilateral relations between Spain and affected multilateral negotiations, for instance in the context of the Spanish accession to the European Union and the → *North Atlantic Treaty Organization (NATO)*.

5 After 1945 the → *United Nations (UN)* increased the political focus on → *self-determination*. A third party entered the scene: Gibraltarians. In accordance with Art. 73 (e) UN Charter, the United Kingdom ('UK') started submitting reports on Gibraltar as a non-self-governing territory for which it holds responsibility. In response to a 1967 → *referendum* in which Gibraltarians decided with an overwhelming majority to remain under British sovereignty, Spain terminated all communications between Gibraltar and the mainland. Spain gradually removed access barriers to the Spanish mainland following its accession to the European Communities.

B. Contested Sovereignty

1. The Treaty of Utrecht

6 The status quo in Gibraltar is the legacy of dynastic aspirations for maintaining a → *balance of power* in European affairs among the French Bourbons and the Austrian Habsburgs and of British imperialism. To preserve the balance of power, the other European powers aimed to prevent the union of France and Spain under the Bourbon dynasty. The source of the sovereignty dispute between Spain and the UK is Art. X Treaty of Utrecht:

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 kind 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 ...

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 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.

7 The purpose of the intermediate paragraph quoted in para. 6 was to ensure that Gibraltar remained Christian after passing to British sovereignty. The treaty also contains a British undertaking not to grant any assistance to ships from Arab countries. This provision was to enable Spain to maintain uninterrupted communication with → *Ceuta and Melilla*. The UK has not complied with these provisions, and Spain has never made much of their violation. Both provisions have become unenforceable with the development of general international rules on non-discrimination, such as the prohibition of racism.

8 From the beginning, the Treaty of Utrecht caused much controversy. Subsequent treaties periodically confirmed it, though none shed additional light on its interpretation (Treaty of Madrid [1721]; Treaty of Sevilla [1729]; Treaty of Aix-la-Chapelle [1748]; Treaty of Paris [1763]; Treaty of Versailles [1783]). Spain occasionally alleged that British violations of the Treaty of Utrecht, such as smuggling, the presence of Jews and Arabs on the territory, and the extension of British control beyond the garrison, nullified the treaty. At times, the UK offered to return Gibraltar in exchange for an alliance, for territorial concessions in the New World, or for Spanish neutrality during World War II.

2. Spanish and British Claims

9 To underscore its claim to sovereignty over all of Gibraltar, Spain sometimes argued that the term propriety in the Treaty of Utrecht entails less than the expression fee simple in English land law. Also, a limit upon British sovereignty over Gibraltar could result from the phrase ‘without any territorial jurisdiction’. However, a cession thus restricted is difficult to square with the treaty’s text. The context and purpose of the entire paragraph indicate that this limitation applies only to the territory around Gibraltar, not to Gibraltar itself. Uniform treaty language (‘full and entire propriety’, ‘to be held and enjoyed absolutely and with all manner of right for ever, without any exception or impediment whatsoever’ in Art. X Treaty of Utrecht) points to a complete transfer of title and sovereignty over Gibraltar to Britain.

10 Another major disagreement with present-day implications centres on the cession's territorial scope: the isthmus and the sea surrounding Gibraltar. Spain maintains that the cession was limited to the town, the castle, port, and fortifications, as they existed in 1713. In the negotiations leading to the Treaty of Utrecht, Great Britain claimed two cannon shots of ground around Gibraltar. France and Spain adamantly refused this demand on several occasions. In later centuries, the UK invoked an alleged rule of → *customary international law* that two cannon shots of land were automatically included in any cession, in the absence of any indication to the contrary.

11 The UK gradually extended its control beyond Gibraltar's fortifications, occupying about one square kilometre of the isthmus. Its position is that this part of the isthmus was also ceded in 1713. As an alternative basis of title over part of the isthmus under its control, the UK has referred to the exclusive British control and the alleged acquiescence of successive Spanish governments that would have forfeited any claim that Spain may at one time have possessed. Spain maintains that it has continuously objected to any claimed extension of British jurisdiction beyond the town's limits. In view of the Treaty's unambiguous text and repeated refusals to cede more than Gibraltar itself, it is doubtful whether the UK has a right to any part of the isthmus. The UK has also claimed that the cession included a three mile → *territorial sea* around Gibraltar, a claim which Spain has repeatedly denied by reference to the Treaty's silence. The difficulty arises because Art. X Treaty of Utrecht does not define the maritime space included in the port's cession. On its accession to the UN Convention on the Law of the Sea ([concluded 10 December 1982, entered into force 16 November 1994] 1833 UNTS 397), Spain declared that 'this act cannot be interpreted as recognition of any rights or situations relating to the maritime spaces of Gibraltar which are not included in article 10 of the Treaty of Utrecht of 13 July 1713 between the Spanish and British Crowns' (see the Declaration of Spain Made Upon Ratification of the UN Convention on the Law of the Sea [done 15 January 1997] 33 UN Law of the Sea Bulletin 9).

12 A further source of long-standing friction concerns Gibraltar's status as a free port, and, in modern times, its status outside the EC Customs area (see paras 27–31 below; → *Free Ports*) which has facilitated the smuggling of duty-free goods out of the territory. Spain has often complained that the UK has given little assistance in interdicting the unlawful movement of goods across the Gibraltar frontier. Spanish attempts to prevent smuggling in the disputed waters of the Rock have led to confrontations with some frequency. Gibraltar's role as an offshore business centre with more than thirty thousand companies registered in Gibraltar has also given rise to controversy. Offshore financial services account for a substantial part of Gibraltar's economy, and online gambling accounts for more than 10% of the workforce. In December 2008 the European Court of First Instance held that Gibraltar's corporate tax regime did not contravene EC law—a testament to the gradual strengthening of the territory's regulatory framework (Joined Cases T–211/04 and T–215/04 *Government of Gibraltar and United Kingdom v Commission*). However, both Spain and the Commission of the European Communities appealed, and the case is currently pending before the European Court of Justice ('ECJ'; Cases C–106/09 P and C–107/09 P [2009] OJ C141/22 and C141/23). Offshore finance generally has come under increased pressure in the wake of the global financial crisis which started in 2008. On 31 March 2009 the Agreement between the Government of the United States of America and the Government of Gibraltar for the Exchange of Information Relating to Taxes was signed, Gibraltar's first agreement of this kind.

13 Between 1984 and the early 2000s, discussions over sovereignty took place in the framework of the Joint Communiqué Agreed by the Foreign Ministers of the United Kingdom and Spain of 1984 ('Brussels Declaration'). Gibraltarian representatives participated in the Brussels process as part of the UK delegation until December 1987, but did not do so after that date. The aim of the Brussels process is to resolve all differences between the governments over Gibraltar, including sovereignty. Substantial progress was only possible once both governments wished to unblock the discussions by striving for a comprehensive and permanent settlement in the early 2000s, recognizing that a resolution of technical matters (see paras 32–33 below) was insufficient to resolve the dispute.

14 In 2002 the UK and Spain agreed on a tentative plan for sharing sovereignty over Gibraltar. In exchange, Spain would guarantee enhanced local autonomy to Gibraltar, protect its local culture, and tax regime. Also under the plan, Gibraltarians would retain British nationality. By contrast, agreement on the shared use of Gibraltar's naval base remained elusive. The UK had proposed to convert it into a NATO base under British sovereignty to which Spain would have access. The British government invited Gibraltarian representation in its bilateral talks with Spain under the formula 'two flags, three voices'. However, the government of Gibraltar chose not to participate without a formal veto.

15 The Report of the British Foreign Secretary Jack Straw to Parliament ([12 July 2002] [2002] 408 House of Commons Parliamentary Debates 1166) stated that even though no final agreement had yet been reached, the government was in broad agreement with Spain on many of the principles that should underpin a lasting settlement. The Foreign Secretary also made clear that the UK would only ratify a treaty with the consent of Gibraltarians. Moreover, any agreement on shared sovereignty needed to be permanent and existing military arrangements needed to continue. In the House of Commons, opposition to the government's tentative plan was strong. The concerns centred on Spain's long-standing aspirations to regain full sovereignty, the alleged slippery slope from shared sovereignty to full Spanish sovereignty, and the alleged lack of respect for the wishes of Gibraltarians. In November 2002, by referendum, 98.5% of Gibraltarians rejected the plan to share sovereignty with Spain. It has since been shelved.

16 In 2004 the Spanish and British Foreign Ministers consulted further on how to establish a new forum for dialogue on Gibraltar, with an open agenda, in which Gibraltar would have its own voice. The Tripartite Forum for Dialogue was launched in December 2004. Its focus on technical issues distinguishes it from the Brussels process (see Section E below).

C. Self-Determination

1. The Reversionary Provision

17 Disagreement also centres on the right of refusal contained in the Treaty of Utrecht and the implications of this provision for the right of self-determination. Article X Treaty of Utrecht stipulates that, should the UK 'grant, sell, or by any means ... alienate ... the propriety of the said town of Gibraltar', then 'the preference of having the same shall always' be offered first to Spain. At times, Spain has taken the position that any change in the UK-Gibraltar relationship, other than reversion to Spain, violates the Treaty's reversionary provision and invalidates the 1713 cession. Despite several reorganizations of Gibraltar's internal governance over the past centuries, the basic relationship—the UK exercises sovereignty—continues unchanged. Such adjustments to Gibraltar's political status do not trigger the reversionary provision.

18 British sovereignty over Gibraltar today does not limit the options available with respect to a future change in status. It is in this connection that the application of self-determination to Gibraltar has given rise to considerable controversy. Whether Gibraltar is a case of external self-determination in the colonial context—involving the right to establish an independent State—is in dispute. The distinct question in Gibraltar's context concerns the relationship between the territory and the neighbouring State, Spain. For self-determination in the sense of giving rise to a right to freely elect the disposition of a given territory, it is first necessary to identify a population that holds that right. The majority view rejects the notion that enclave populations without distinct ethnic, linguistic, or religious characteristics enjoy a right of external self-determination as respects the particular territory they inhabit. In the post-colonial context, the right of self-determination is expressed primarily through participation in the democratic process (Arts 1 (3) International Covenant on Civil and Political Rights [adopted 19 December 1966, entered into force 23 March 1976] 999 UNTS 171 and International Covenant on Economic, Social and Cultural Rights [adopted 16 December 1966, entered into force 3 January 1976] 993 UNTS 3). Smallness is sometimes also said to

preclude self-determination, though the existence of numerous → *micro States* shows that international law defines no lower limit.

19 Spain rejects external self-determination for Gibraltar with one important exception—the one change of status that Gibraltarians may pursue in self-determination is to elect to pass under Spanish sovereignty and shake off British colonial rule. To Spain, → *decolonization* must mean reversion to Spain, on grounds of territorial integrity, even if this route does not fully accord with the wishes of the Gibraltarians. Gibraltarians claim they have exercised self-determination, and that their choice, freely expressed, has been to maintain free association with Britain, rather than to accede to independence. The British position on self-determination is ambiguous. The UK has occasionally referred to self-determination, as it has in connection with the → *Falkland Islands/Islas Malvinas*, a case with certain similarities to that of Gibraltar.

20 Yet the UK accepts that Gibraltar cannot become independent without Spanish consent. If the right of external self-determination indeed applied to Gibraltarians and the territory they inhabit, it would be difficult to square post-1945 → *State practice* on decolonization with Spain's right of first refusal under the Treaty of Utrecht. This tension stems from the evolution of international law since the Treaty was negotiated. At that time, it was common to cede territory, without any consideration for the inhabitants. Three hundred years later, international law has moved away from the view that equates responsibility for territory simply to property. Though its precise application depends on the circumstances, the rule that Judge Dillard articulated in his separate opinion in the → *Western Sahara (Advisory Opinion)* is one of general application: 'it is for the people to determine the destiny of the territory and not the territory the destiny of the people' (*Western Sahara [Advisory Opinion] [Separate Opinion of Judge Dillard]* ICJ Rep 116 at 122).

2. The Role of the United Nations

21 The UN includes Gibraltar on its list of non-self-governing territories, for which the administering power is obliged to transmit information in accordance with Art. 73 (e) UN Charter. UN General Assembly Resolution 1514 (XV) of 14 December 1960 (GAOR 15th Session Supp 16 vol 1, 66) set out principles on decolonization for territories 'which [had] not yet attained independence'. The declaration recognized the right of self-determination of all peoples, but also stated that '[a]ny attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations'. In 1963 The Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, created by UN General Assembly Resolution 1654 (XVI) of 27 November 1961 (GAOR 16th Session Supp 17 vol I, 65), conducted a first hearing on Gibraltar. Gibraltarian political leaders testified that they desired free association with Great Britain. Spain insisted that separation of Gibraltar from Spain would breach its territorial integrity.

22 The Special Committee reached a consensus (adopted in UNGA Res 2070 [XX] [16 December 1965]), inviting Spain and the UK to conduct conversations in order to find 'a negotiated solution in conformity with the provisions of General Assembly resolution 1514 (XV), giving due account to the opinions expressed by the members of the Committee and bearing in mind the interests of the people of the Territory' ('Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples' [1965] GAOR 19th Session Annexes, Annex No. 8 Part I, 314). The consensus was unusual, as were the references to the 'opinions expressed by the members of the Committee' (which diverged), and 'interests' (not wishes) of the inhabitants. Shortly thereafter, Spain adopted a range of restrictive measures directed against Gibraltar. For instance, Spain notified the → *International Civil Aviation Organization* of a protective zone over Spanish lands and waters around Gibraltar. The UK refused to negotiate under such circumstances. When

the UN General Assembly adopted Resolution 2231 (XXI) of 20 December 1966 which affirmed the consensus, negotiations began. In the course of these negotiations, Great Britain submitted a draft → *compromis* to Spain to refer legal aspects of their dispute to the → *International Court of Justice (ICJ)*. Spain opposed submission on the proposed terms.

23 The UK responded with a referendum in Gibraltar, over strong objections of Spain and the Special Committee. 12,138 voters favoured retaining the status quo, while 44 voters preferred Spanish sovereignty. Gibraltarians and the UK saw the referendum as an act of self-determination. The phrasing of the question, however, probably tilted the vote in favour of the UK's preferred outcome. Ever since, the UK has taken the position that Gibraltar should no longer be included on the UN list of non-self-governing territories, and later affirmed that the criteria used by the Committee were outdated. Spain maintained that as long as Gibraltar's relationship with the UK continued in one form or another, it would remain a non-self-governing territory. According to Spain, Gibraltar remains an integral part of Spain, and territorial integrity hence pre-empts decolonization. The UK views the principle of territorial integrity as inapplicable.

3. Gibraltar's Relationship with the UK

24 In 1969 the Gibraltar Constitution Order enlarged Gibraltarian autonomy. It built on and superseded the Constitution of 1964, which gave Gibraltar a limited degree of self-government. Even under the 1969 Gibraltar Constitution Order, the UK still exercised close control over local affairs. From the Spanish perspective, the preamble contains a controversial commitment:

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 otherwise provides, 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.

25 In the early 1990s the UK and Gibraltar began considering how to modernize Gibraltar's constitution. The resulting 2006 Gibraltar Constitution Order assigns greater powers to elected representatives, and reduces the role of British government appointees. The 1969 Constitution contained a closed list of matters devolved to Gibraltar. The 2006 Constitution devolves all matters to the Government of Gibraltar save for an exhaustive list of special responsibilities of the Governor. Devolved powers include ministerial appointments with the exception of the chief minister, law and order, and public finance. Human rights provisions are fully aligned with the → *European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)*. Gibraltarians approved the constitution by referendum. The UK conducts foreign and defence policy and is the Member State responsible for Gibraltar under European Union ('EU') and under international law.

26 The 2006 Constitution replicates the sovereignty preamble to the 1969 Constitution. Enduring British sovereignty is said to accord with the wishes of Gibraltarians. For the first time, the Constitution recognizes a restricted right of self-determination. This provision mirrors the UK's stated position that Gibraltarians' right of self-determination is conditioned on Spain's right of first refusal should Britain ever relinquish sovereignty ('internal self-determination'; Rigo Sureda 282). In view of British sovereignty and Spain's secondary claim, it is doubtful whether under present political conditions independence is a realistic option for Gibraltar.

D. Gibraltar in the European Union

27 Gibraltar is within the European Community by virtue of Art. 355 (3) Consolidated Version of the

Treaty on the Functioning of the European Union ([signed 13 December 2007, entered into force 1 December 2009] [2008] OJ C115/47; ‘TFEU’) and the UK’s act of accession to the EC (→ *European Community and Union, Association of Overseas Countries and Territories*). Gibraltar is not part of the UK but is a European territory for whose external relations the UK is responsible. Under the Act of Accession Gibraltar is excluded from four areas of Community policy: the Community Customs Territory and Common Commercial Policy, the Common Agricultural Policy, the Common Fisheries Policy, and the requirement to levy value added tax. The treaty provisions on free movement of goods do not apply to Gibraltar (Case C-30/01 *Commission v United Kingdom* [2003] ECR I-9481). Gibraltarians enjoy the right of free movement within the EU. Ordinarily the Gibraltar legislature implements EU measures, even though under Community law the UK is responsible for implementing Community law in Gibraltar. Spain has regularly included jurisdictional reservations with respect to the extension of EU measures to Gibraltar, especially in maritime and aviation matters. This situation has given rise to complex questions on EC law.

28 For example, the *exequatur* procedure in the *Goran U* case concerned the question of whether Spanish courts could recognize the validity of a judgment issued by the courts of Gibraltar in view of the UK’s title over Gibraltar under the 1713 Treaty of Utrecht. The Spanish Supreme Court noted that the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters ([done 27 September 1968, entered into force 1 February 1973] OJ L299/32) did not apply to Gibraltar. It found that the judgment did not come from a foreign State in the exercise of its jurisdiction deriving from undisputed sovereignty over a certain territory, and hence denied *exequatur*.

29 In June 2004 Gibraltarians voted for the first time in the European elections. The UK extended the right to vote to Gibraltar to comply with a ruling by the → *European Court of Human Rights (ECtHR)* in *Matthews v United Kingdom*. The European Parliament (Representation) Act 2003 (UK) chapter 7 provided for the creation of a new electoral region combining Gibraltar with the existing South West England electoral region. Spain challenged this combined electoral district before the ECJ in Case C-145/04 *Kingdom of Spain v United Kingdom of Great Britain and Northern Ireland*. The ECJ in its judgment on 12 September 2006 rejected the Spanish argument that a Member State could not autonomously determine which individuals enjoyed such a relationship with that State to merit a right to vote in European elections.

30 EU legislation often involves communications between Member States’ competent authorities or decisions which have effect in some other Member State. In the past, Spain routinely protested against the UK designating competent authorities in and for Gibraltar in the context of EU instruments. It took the view that EU Member States may not communicate directly with Gibraltar authorities, as the UK is responsible for its external relations, and that therefore all official communication must be sent to the UK. This is the rationale for the Agreed Arrangements relating to Gibraltar Authorities in the Context of EU and EC Instruments and Related Treaties of 19 April 2000 (‘Postboxing Arrangement’). Spain and the UK put this mechanism in place after a series of Gibraltar-related difficulties within the EU.

31 Since 1 June 2000 the UK Government/Gibraltar Liaison Unit for EU Affairs in the Foreign and Commonwealth Office has been the channel for all formal communication between Gibraltar’s competent authorities and their EU counterparts. It applies to a broad range of EU related treaties and instruments, and may be extended to any other treaty by common agreement. In 2007 two additional postboxing arrangements were agreed. The first relates to mixed agreements and helped to unblock Community conclusion of several important international agreements (‘Agreed Arrangements relating to Gibraltar Authorities in the Context of Mixed Agreements’). The second addition concerns international agreements to which the EU is not a party (‘Agreed Arrangements relating to Gibraltar Authorities in the Context of Certain International Treaties’).

E. Technical Co-operation

32 In December 2004 Spain and the UK established the Trilateral Forum and a Joint Commission to improve cross-border co-operation. The Forum has achieved important tangible benefits for Gibraltarians on several technical matters. Gibraltar participates fully in these discussions and attaches great importance to their parity with the British and Spanish governments. Hitherto, Spain had refused to accept Gibraltar as a direct interlocutor. The three parties agreed at the outset that these practical agreements would have no implications for sovereignty, jurisdiction or control. The Spanish expectation is that the Forum and the Brussels process will proceed in parallel.

33 Two years of negotiations produced a set of practical agreements: lifting Gibraltar's exclusion from EU aviation legislation, ending Spanish airspace restrictions, joint use of the airport, eased border traffic flows and controls, interoperability of fixed and mobile phone networks and recognition of Gibraltar's direct dialling code, a lump-sum settlement of British pension obligations to former Spanish workers in Gibraltar, and the opening of a Cervantes Institute in Gibraltar (see The Córdoba Ministerial Statements and Agreements reprinted in Miller at 44). In July 2009 the Spanish Foreign Secretary was the first Spanish minister to visit Gibraltar in more than 300 years, to meet his British counterpart and Gibraltar's chief minister. In December 2009 a Spanish ferry service across the bay from Algeciras opened. This new spirit of dialogue and co-operation on Gibraltar is encouraging, and provides the basis for progress on technical matters. The Forum's ongoing work concentrates on co-operation on the environment, financial services and taxation, judicial, customs and police co-operation, and education.

F. Outlook

34 Gibraltar has been an irritant in Anglo-Spanish relations for almost 300 years. The intensity of feelings triggered by the territorial dispute has varied over time. In the 19th century, Gibraltar had a low profile in bilateral relations. During most of the 18th century and again after World War II, however, tensions ran high. The period since restoration of democracy in Spain has been characterized by relative calm.

35 Thorny questions of sovereignty remain. The trend in State practice is for enclaves to return to the mainland, irrespective of a valid treaty cession (see eg → *Goa, Conflict*; → *Hong Kong*; → *Macau*; → *Walvis Bay*), but each case was subject to highly particular considerations. Even though Spain transferred sovereignty to the UK in perpetuity, Spain has taken a determined position in negotiations that it holds a right as reversioner, in the event that UK administration terminates. Considering current perspectives, the most likely solutions are to return sovereignty over Gibraltar to Spain or to create an autonomous status for Gibraltar within the European Union. Hong Kong, which exists as a Special Administrative Region of China, and Trentino-Alto Adige, where local autonomy is guaranteed by treaty between Austria and Italy, offer potential models for political accommodation. Key elements of a political settlement were already present in the 2002 proposal for a condominium. All indications are that a strictly legal solution to Gibraltar is unlikely. Even though bringing the sovereignty dispute before the ICJ could unblock the sovereignty impasse, a full and final settlement hinges on political negotiations.

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