

Gibraltar: Challenges in the post-Brexit era

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ABSTRACT. The triangular relationship between Spain, United Kingdom and Gibraltar has been historically complex, fraught with political difficulties and pending legal controversies. What is certain is that a small territory in the south of the Iberian Peninsula and with a strategic position on the Strait of Gibraltar has been home to a Gibraltarian people with very diverse origins and which has acquired its own identity throughout history. The framework of institutional and legal relations between the three parties has undergone a profound shake-up with the United Kingdom's exit from the European Union, forcing a reconfiguration of the entire framework of cross-border relations. Paradoxically, Brexit, as well as a crisis, may be an unexpected opportunity to deepen Gibraltar's European status and to rethink traditional starting positions on all sides. It seems the right time for Spain to abandon its traditional positions anchored in Francoism and begin to recognise that all future decisions in the territory must consider the existence of a Gibraltarian people with the right to freely decide their future. The Brexit crisis could be a good occasion also for the UK to reconsider the constitutional framework in its relations with Gibraltar and the persistence of colonial links.

Keywords: Brexit, British Overseas Territories, British-Spanish relations, Gibraltar, self-determination, Spain

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Introduction

The small territory of Gibraltar is probably one of the most singular territories in the world. It is notable for its small size. It is barely 5 km long and 1.2 km wide. It is located in the south of the Iberian Peninsula at the mouth of the bay known as the Bay of Algeciras by the Spanish and the Bay of Gibraltar by the British. Gibraltar is strategically located at one end of the Strait of Gibraltar, which connects the Atlantic Ocean with the Mediterranean Sea and is one of the world's main transoceanic shipping lanes. It is also only 14 km from the north coast of Africa. As a result, this territory finds itself at the meeting point of the Mediterranean and the Atlantic on one side and Europe and Africa on the other.

One of the peculiarities of the territory is that most of it is an imposing limestone promontory that rises vertically some four hundred meters above sea level, giving it a unique landscape profile. Since ancient times, this geographical feature, which marked the end of the known world for the ancient Mediterranean peoples, has been a reference point for the many navigators who have sailed its waters and which, together with the Jebel Musa Mountain on the North African coast, formed the legendary Pillars of Hercules (see [Figure 1](#)). An important body of legends and myths have grown up around 'the Rock' since ancient times and these have been narrated by various classical authors (James, 1771). Human presence dates back many millennia and the sequence of cultures

and peoples that at some point have inhabited the Rock is surprising, leaving in their archaeological and architectural wake an enormous and valuable cultural legacy. In a way, as will be argued below, such geographical and historical circumstances must be considered to properly understand the origin of the controversies and complex situations that are discussed in this paper.

Figure 1: Satellite image of the Strait of Gibraltar.



Source: NASA. Image taken on 19 February 2013. (Public Domain). Available at: <https://garystockbridge617.getarchive.net/amp/media/gibraltar-world-wind-view-annotated-044f55>

Indeed, we will discuss how Gibraltar is currently trying to seek a legal status concerning the European Union that will normalise its complicated relations with its northern neighbour, Spain, which has been characterised by a long history of tensions and disputes. In the cross-border relations between Spain and its small neighbour, Gibraltar, normality has been the exception and tensions and problems have been the norm. In a way, the complicated nature of Spanish-Gibraltarian relations stems in part from their geographical position and history. In this paper, we will address how Brexit has acted as an earthquake that has shaken the legal and institutional foundations of cross-border relations between Gibraltar and the European Union, and with Spain in particular. However, this crisis provides an unexpected window of opportunity for the reordering of Gibraltar's complex relations with its neighbour.

Gibraltarian identity

The fact is that this small territory, conquered in 1704 by the followers of Archduke Charles of Habsburg in the context of a civil war in Spain following the death leaving no heir of King Charles II, the last of the Spanish Habsburgs, and legally ceded to the British Crown in 1713 under the terms of the Treaty of Utrecht, has been progressively settled by a population that has gradually acquired its distinctive features and has shaped a singular Gibraltarian identity.

People is a concept with many meanings. There are many communities whose status as a people does not derive from a shared ethnic origin, whether single or by majority. Gibraltar is one such territory. Its cultural background is very diverse and with a heterogeneous ethnic origin that makes the Gibraltarian people a true melting pot. Moreover, the fact that the number of inhabitants is relatively small is not an impediment to its configuration as a people with their own identity.

Archer (2005) has argued that Gibraltarians constitute a separate and distinctive people, notwithstanding the political stance taken by the government of Spain. Various factors – environmental, ethnic, economic, political, religious, linguistic, educational and social – are adduced by him to explain the emergence of a sense of community on the Rock and an attachment to the United Kingdom.

Of course, we cannot understand the current issues without also considering the various factors that have converged to form today's Gibraltarian identity. It is true that, for most of the period, British authorities have primarily regarded Gibraltar as a fortress and governed it autocratically, with a strict separation between garrison and civilian population. Gradually, however, in the second half of the twentieth century, this division was diluted with the emergence of a powerful Gibraltarian identity deeply rooted in Britishness (Constantine, 2009).

Different factors have played a major role in shaping Gibraltar's present-day identity in the 20th century. Firstly, the gradual establishment of institutions of self-government that progressively generate autonomy in decision-making vis-à-vis the British authorities, starting with the establishment of the City Council in 1921 strengthened by British acquiescence to higher levels of self-government in the 1969 Constitution Order and in the 2006 Constitution (Constantine, 2009).

One important factor was the forced evacuation of the civilian population, mainly women children and the elderly, during World War II. In May and June 1940, some 13,000 civilians were evacuated to French Morocco. After the French surrendered to Nazi Germany, these civilians had to be relocated. Subsequently, 12,000 civilians were moved to London and from there rehoused in Northern Ireland, some 2,000 were moved to Madeira and some 1,500 crossed the Atlantic to the island of Jamaica (Stockey & Grocott, 2012, p. 80). With a strong sense of identity, Gibraltarians began to organise to advocate for improvements in their living conditions in this forced exile. In fact, upon returning from the evacuation, the first political and civil rights groups were established. Thus, in 1942, the Association for Advancement of Civil Rights (AACR) was created, which would be a crucial formation in Gibraltar's political life until the 1980s (Garcia, 1994).

In short, the various conflicts that accompanied the evacuation reinforced the patriotic feeling and the emergence of a common interest of the Gibraltarian people. The evacuation required an enormous common sacrifice that deeply marked contemporary

Gibraltarian history and strongly cemented the birth of a sense of a people forged in the struggle against adversity.

This process of entrenching Gibraltarian identity is reinforced by the gradual expansion of English as a language of Gibraltar. It should be borne in mind that before the Second World War the predominant language in Gibraltar among the working classes was Spanish. In this respect, it is important to highlight the changes introduced in the Gibraltar education system after 1944, with a national curriculum imported directly from the UK (Howes, 1951).

Another key factor was the aggressiveness of Spanish dictator General Franco towards Gibraltar and the closure of the border and postal, telephone and telegraphic communications in 1969. As Martínez del Campo, Canessa & Orsini (2019) put it, in the 1940s, Franco began a campaign to recover Gibraltar, and it was during this campaign that Gibraltarians developed the clearest articulation of their unique collective identity through a nationalist discourse that would make them new British subjects, albeit with their ethnic peculiarities.

The closure of the border was definitive in disassociating the people of Gibraltar from their traditional links with Spain, a country associated with Franco's intransigence and aggressiveness. The closure of the border had a modest economic impact, which was gradually resolved with the incorporation of Moroccan labour; but it did have a strong social impact, dividing families and creating, above all among the younger population, a feeling of strong hostility towards Spain.

This closure of the border was preceded by a hardening of the Spanish position which brought the controversy to the United Nations (UN) in the framework of debates on decolonisation after the adoption of the important GA Resolution 1514, Declaration on the Granting of Independence to Colonial Countries and People ((UNGA Res 1514 (XV), 15 December 1960). In the midst of the decolonisation process, Franco's dictatorial regime found unexpected allies in a group of countries that had recently gained independence and that formed a common front against the colonial powers. In this context, in the early 1960s, the General Assembly passed a set of Resolutions on Gibraltar urging Spain and the United Kingdom to resolve disputes through bilateral negotiations; in other words, without the people of Gibraltar freely deciding their future (see UNGA 2231(XXI), 20 December 1966; UNGA Res 2353(XXII), 19 December 1967; UNGA Res 2429(XXIII), 18 December 1968). The Spanish regime led by foreign minister Castiella, interpreting the approach as a diplomatic victory, used a particularly hostile and aggressive tone against the Gibraltarian population, describing it as an "imported population" (Red Book, 1965). This circumstance, paradoxically, generated in Gibraltar a need to reinforce and assert its identity as a people.

In this way, a differentiated identity was sought, which took refuge in English as a main language. From being largely the preserve of the colonial establishment and the elite, it emerged as pre-eminent in official use, the media and culture, and the higher oral registers (Picardo, 2018). The Spanish-language press, quite abundant before the closure of the border, virtually disappeared and Spanish as a common language faded in Gibraltar.

The existence of a Gibraltarian people with their own identity and diverse roots is highly significant. However, the Spanish traditional official position has been to ignore its existence and defend the territory's incorporation into the Spanish state. For Spain, the existence of a colonial situation in Gibraltar violates Spain's territorial integrity and must be ended through bilateral negotiations between the UK and Spain. Negotiations on

sovereignty, according to UN doctrine, belong exclusively to the governments of Spain and the United Kingdom. In other words, Spain does not recognise the existence of a Gibraltarian people and consequently claims that the exercise of a right of self-determination is not appropriate.

However, the existence of a Gibraltarian people, with their own separate identity, is at this point quite undeniable.

Nevertheless, as a further element of the complexity of the Spain-UK-Gibraltar triangle, Gibraltar's constitutional relationship with the UK, while appearing to respect a certain scope of self-determination for the people of Gibraltar, still maintains deep roots in the colonial past with a significant reservation of powers for the metropolis, falling under the ambit of Peace Order and Good Governance powers (Leathley, 2007). This reservation of powers represents a further distortion in the delicate triangle of relations.

Gibraltar in the collective Spanish imagination

Spain's complex relations with Gibraltar cannot be properly interpreted if we do not understand the role that this small territory represents in the Spanish collective imagination. Indeed, it is not easy to explain why the extremely small rocky territory with a population of only around 30,000 has an important and prominent role in the political and media life of a country of around 50 million inhabitants, with its own political and economic problems and territorial cohesion tensions.

There are two reasons for this. The first is the abusive use of the Gibraltar issue by Franco's dictatorship as a catalyst for nationalist sentiments and as a unifying social element that sought to legitimise the regime in the face of an external enemy (Verdú Baeza, 2021). The lack of nationalist references in a plural and diverse country without strong elements of internal cohesion made Gibraltar a very easy lever to use to whip up nationalist sentiments when the dictatorship needed it. Somehow, this vision has been deeply rooted in important sectors of Spanish society, especially in the conservative parties, and has survived for various reasons in the current Spanish democracy, curiously among large sectors of the young population. Even after fifty years, the relative fragility of Spanish democracy explains the persistence of strong Francoist myths that permeate broad layers of society in different spheres.

The second reason is precisely its geographical position and its role in the historical process of the formation of the nation. Spain is a complex country, the legacy of several important historical processes that took place on the Iberian Peninsula and that have defined a Spanish identity that is not entirely clear well into the 21st century. This Spanish identity, which is nourished by its pre-Roman, Roman, Visigoth, Byzantine, etc. origins, began to be forged with the Muslim presence on the Iberian Peninsula for almost seven centuries and its subsequent expulsion by a group of Christian kingdoms on which a common Hispanic monarchy was consolidated, the first institutional basis of what would later become Spain. Gibraltar is in some way at the geographical epicentre of this historical process. Its very name derives from the first Arab conqueror of the Iberian Peninsula, Tarik, Gibraltar as Mount of Tarik, (De Ayala, 1845, p. 5), who arrived on the northern shore of the strait in 711. The strait was key in the interplay of wars and alliances between the Christian and Muslim kingdoms in the final phase of their confrontation, and Gibraltar played a strategic role in the Christian advance towards the last Muslim stronghold on the peninsula, the Kingdom of Granada, which finally fell to the Catholic Monarchs in 1492. In fact, Queen Isabella the Catholic (a founder of the myth of Hispanic unity under God) stated in her last will and testament dated 1502 that "the *city of Gibraltar*

shall always be held in the Crown and Royal Patrimony" and asked her heirs "*never to give or transmit it*" (Suárez, 1992, p. 87; my emphasis).

Throughout the history of what is now Spain, numerous territories have been ceded, recovered or exchanged on the five continents, but the fact is that the cession of Gibraltar under the Treaty of Utrecht in 1713 is substantively different from the rest of any other ceded territory. Nor is Gibraltar just one other territory ceded or exchanged throughout Spanish history. Gibraltar is part of Iberia. And it is perhaps for this reason that Spain is rankled by the continued existence of a small, pesky, separate jurisdiction. It is as if, in the Spanish psyche, the sacred and historic struggle to reclaim Iberia from the enemy remains incomplete... but for one Rock.

It is difficult to understand the difficulties of normalising relations with Gibraltar in contemporary Spain, the vehemence of Spanish diplomats when it comes to Gibraltar, the social pressure and the aggressiveness of the media, without taking into account these conditioning factors identified above and which have deeply permeated broad sectors of the Spanish population.

Gibraltar and Spain: Some extraordinarily complex relations

Leaving aside the attempts to recover Gibraltar using force in the 18th century (1705, 1727 and 1779), Spanish-British relations over the last two centuries have had an important distorting element that has deteriorated relations between two theoretically allied states with powerful trade and economic relations. The different issues around Gibraltar have poisoned the relations in the triangle Spain-UK-Gibraltar.

The most acute diplomatic tension was perhaps reached in the 1960s when Gibraltar was included in the list of Non-Self-Governing territories within the UN framework. This meant that practically all the foreign action of the Franco dictatorship, which was gradually emerging from its isolation and which had joined the UN in 1955, focused on the Gibraltar issue as an essential (and sometimes the only) axis of Spanish diplomacy. Spain interpreted the UN General Assembly resolutions on Gibraltar as supporting its position. The UK, for its part, reacted by calling a referendum in 1967 that resulted in a massive endorsement by the Gibraltarian population of British sovereignty over the Rock. The enactment of the Gibraltar Constitution of 1969 responds to the British commitment made in the referendum and attempts to settle the diplomatic battle. This text modernized the legal-political framework of the territory and expressly stated that the British Government would not enter into any agreement whereby the Gibraltarian people would be brought under the sovereignty of another state against their freely and democratically expressed will (UK House of Commons, 2002). Despite being a constitution granted by the UK with express reservation of powers, the fact is that it increased the level of Gibraltarian self-government and enshrined the commitment to respect the will of the Gibraltarian people, which would come to be key in the evolution of the controversies. In the face of Franco's intransigence, all possibilities of a Spanish-British agreement on Gibraltar within the UN framework were exhausted. Thus, this process has produced an annual reiteration of statements by the UN's Special Committee on Decolonisation (C-24), albeit with some nuances, which contain the need to continue negotiating with less and less influence on the parties to the dispute.

Spain's transition to democracy after the death of the dictator could have been an opportunity to modify the starting assumptions of the negotiations. It should also be borne in mind that Spain needed the approval of the United Kingdom in its desire to normalise its international relations with neighbouring countries and join NATO and the European

Communities (now the EU). In this context, the Lisbon Declaration of 1980 and the Brussels Declaration of 1984 on Gibraltar were approved and contributed to improving the negotiating environment and facilitating Spain's entry into the mentioned international organisations. However, in no way do they represent a transformative element or a significant advance in the general negotiating framework. Despite the birth of a still fragile democracy in Spain, the emotional legacy of what happened during the dictatorship and mentioned earlier in this paper, had deeply permeated broad layers of Spanish society, and weighed down the necessary reordering of Spanish foreign policy on Gibraltar. Since then, relations between Spain and Gibraltar have been marked by great instability. In general, during periods of Socialist government, the search for an improvement in cross-border relations has prevailed (most notably the period when the Tripartite Forum for Dialogue was in force, between 2006 and 2011). In contrast, during periods of conservative Popular Party government, confrontation and increased tension have usually been theoretically benefiting the alignment of the most nationalist sectors and fitting in better with the interests of the ultra-conservative media that traditionally support the Popular Party.

In short, the set of political and legal controversies (land boundaries of the cession, legal nature of the waters adjacent to the Rock, etc.) that are commonly known as 'the Gibraltar question' have not found an adequate framework where they can be dealt with between the parties in accordance with the principles and values of a democratic society to seek a formula for a solution with aspirations of permanence that guarantees stability and respect for the interests and rights of the parties, in particular those of the Gibraltarian people.

In this context, the UK's decision to leave the European Union has been a real earthquake that has shaken the state of the Gibraltar issue.

The instability of relations, the tension caused by a permanent Spanish claim, the distortions caused by an uneven playing field generated a particularly vulnerable starting point in view of the withdrawal of Gibraltar from the European Union.

The fact is that European institutions and legal framework had provided Gibraltar with a successful economic model and have been a driving factor to help normalize relations with Spain.

The flight of the black swan

The result of the referendum held on 23 June 2016 on the UK's membership of the European Union was an unexpected upheaval, a perfect example of what is known as the "Black Swan" theory in international relations.

Black Swan is an unexpected and unpredictable event that produces important consequences on a large scale. The referendum result has hit the European integration process hard and, in addition to being one of the most powerful earthquakes in Europe's political and legal architecture in recent years, it has had a major impact on Gibraltar. This small territory in the south of the Iberian Peninsula was the British constituency where the vote against leaving the EU was highest: some 96% of the territory's voters voted against Brexit and in favour of EU membership (UK Parliament, 2017). The challenge that arose after the result in favour of leaving the European Union is how to articulate this deep Gibraltarian European affinity in a post-Brexit scenario fraught with uncertainties. As Trinidad (2017) argues, the challenges presented by Brexit are the most serious Gibraltar has faced since the Spanish blockade of 1969-1985, when all land, sea,

air and communications links between Spain and Gibraltar were severed. It should be borne in mind that the consequences of this closure of the border, as well as of postal and telephone communications, in the dark period of Franco's dictatorship in Spain have endured for generations and it can be said that some of its wounds have not yet healed.

Brexit presents serious challenges to both sides of the *Verja*/border. On one hand, for Spain, Gibraltar's exit from the EU could seriously affect what is known as Campo de Gibraltar: a neighbouring area that is economically depressed, lacks state investment and has the highest unemployment rates in Spain. The Gibraltar economy has a significant and positive economic impact on the Campo de Gibraltar region. The economies of Gibraltar and the Campo are closely linked. Geographical proximity makes possible a considerable volume of exchange of productive factors between the two. Some time ago a study pointed out that around 18.5% of the Gross Domestic Product of the Campo de Gibraltar economy was due to its interaction with Gibraltar (Fletcher, 2015). The consequences of Brexit could affect some ten thousand cross-border workers who commute daily to work in Gibraltar and who are in a very vulnerable legal position (Ribes Moreno, 2021). If Brexit leads to restrictions being imposed on the daily movement of labour across the land border, this will seriously damage several key sectors of Gibraltar's economy.

On the other hand, the possible effects of Brexit on Gibraltar were initially described by Chief Minister Fabian Picardo as an “existential threat” (Politico, 2016). Although this statement has been nuanced, it is certain that Brexit could have serious economic as well as political effects.

Professor Fletcher has described Gibraltar's transformation over recent decades from economic dependence on the UK (in particular on the Royal Navy dockyard) into “a much higher gross value-added economy”, based on services, which was now “incredibly resilient” (House of Lords, 2017). This transformation was driven by Gibraltar's geography, which left no room for manufacturing or heavy industry, and had been underpinned by access to the EU Single Market in services. Such access is described as “a fundamental tool” in Gibraltar's economic development (House of Lords, 2017). Consequently, losing access to the Single Market in services would be a severe blow to Gibraltar's economy. Of course, border restrictions could also negatively affect tourism, an economic activity that is also vital to Gibraltar.

On the other hand, Brexit has had serious political consequences. Until Gibraltar's exit, the EU played a key role in facilitating the complex border relations between Spain and Gibraltar (Del Valle, 2014). As Canessa (2023) warns, whatever the dispute, the EU will now naturally take the side of Spain, one of its largest member states, over that of a third country, whatever its previous status within the EU. This is a hard reality of Brexit.

Of course, Brexit has had a strong seismic effect on the prevailing pro-European sentiment in Gibraltar. Indeed, this strong pro-European Gibraltarian sentiment shared overwhelmingly by almost the entire population has deep-rooted causes that lie in the peculiarities of this small, unique territory. They can be summarised in three central ideas.

Firstly, the diverse melting pot of cultures that makes up the people of Gibraltar has European roots that have resulted in a complex Gibraltarian identity anchored in turn in the multiple European populations that make it up (Gold, 2010). The current Gibraltarian population includes British origins, but also Spanish, Portuguese, Maltese, Genoese, etc., who have settled in Gibraltar at various stages of its historical evolution and who, despite their differences, share a common cultural heritage.

Secondly, since the UK and Gibraltar joined the European Communities in 1973, the legal framework resulting from a negotiation that designed an *ad hoc* scheme for the territory has provided a successful economic and social model that has underpinned a relatively high quality of life with one of the highest per capita incomes in the world. Gibraltar's thriving and dynamic economic activity is based primarily on the services sector, which has survived positively and with agility through several global and local crises. Access to the European Union's internal market has been a key factor in the success of this economic model (Garcia, 2021).

Thirdly, the European Union has been a harmonising factor in the difficult relations with its close neighbour, Spain, and has played a buffer role in the different crises that have occurred in recent years. The EU has provided a stable and reliable institutional framework in which to channel some of the disagreements with its European neighbour that have occurred with some frequency and on some occasions generated serious risks of escalation with unforeseeable consequences.

A never-ending negotiation process

Understandably, given the factors mentioned above, the Brexit process generated significant disquiet in Gibraltar almost as soon as the referendum result was known. Different formulas were sought to provide a European legal framework as a substitute for membership of the European Union.

An important factor to bear in mind is that, during this first phase, the Spanish government in the hands of the Partido Popular saw Brexit as an opportunity to launch a strong campaign to insist on its traditional postulates of 'recovery of Spanish sovereignty' over the territory (Del Valle, 2016). It should be considered that in the negotiating process, Spain enjoys a privileged position that gives it a *de facto* right of veto over any eventual agreement (Abellán, 2019). The regulation of the withdrawal process contained in article 50 of the Treaty of the European Union, led to several situations where unanimity was required to reach any agreement (European Council, 2017). Consequently, Spain could eventually paralyse the whole process if it identified an agreement contrary to its interests. In addition to the legal keys, Spain has also had the political support of the rest of the Member States, as clearly expressed in clause number 24 contained in the negotiating guidelines of the 27 in 2017. This has been interpreted as an implicit right of veto in favour of Spain (Verdú Baeza, 2021):

After the United Kingdom leaves the Union, no agreement between the EU and the United Kingdom may apply to the territory of Gibraltar without the agreement between the Kingdom of Spain and the United Kingdom (European Council, 2017).

Rather naïvely and showing total ignorance of the reality and feelings of the Gibraltarian people, the then-Spanish foreign minister, J. M. García-Margallo, presented in September 2016 a proposal for co-sovereignty on the basis that Gibraltar would accept it as a formula for remaining anchored in the European space (Espada, 2017). In October 2016, Spain took its offer of Spanish-British co-sovereignty for Gibraltar to the UN. The Spanish ambassador to the United Nations, Román Oyarzun, defended before the UN Fourth Committee (The Special Political and Decolonization Committee) a proposal that included the possibility of Gibraltarians acceding to Spanish nationality without renouncing British nationality; the maintenance of Gibraltar's institutions of self-government within the framework of a broad regime of autonomy; the continuity of the Rock's fiscal regime as long as it is compatible with EU law; and the dismantling of the

border controls, which currently hinder free transit between the territory and its Spanish surroundings.

This proposal was greeted with some enthusiasm by the Spanish press and by many Spanish academics in an uncritical manner (Martin Martinez, 2017; Ortega, 2017). However, the offer of co-sovereignty had three serious drawbacks. First, the proposal was technically a botched, full of contradictions and serious legal errors that made it unfeasible. Secondly, it had not been previously negotiated with the UK. Thirdly, it did not have the acquiescence of the Gibraltar government (The Guardian, 2016).

The reality showed how unfounded the proposal was, as the people of Gibraltar were not willing, under any circumstances, to accept this proposal. Garcia (2019) put it bluntly: Gibraltar will never accept shared sovereignty.

Once the 'shared sovereignty' formula had been discarded by both parties, multiple options were put forward and promoted that would seek a European fit for Gibraltar after Brexit, using different historical and geographical references. For Mut-Bosque (2018, p. 16), the search for an *ad hoc status* for Gibraltar could be the best option.

When the Spanish Conservative government was mired in corruption cases in 2018 (BBC, 2018), Spain initiated a major shift in its approach to the Gibraltar issue, which has allowed an innovative negotiating process to begin. The main milestone of this new approach is the so-called New Year's Eve Agreement.

On 1 January 2021, the transitional period provided for in the Withdrawal Agreement, which was signed by the European Union and the United Kingdom on 17 October 2019 and entered into force on 1 February 2020 (UK Parliament, 2019), came to an end. Gibraltar was not included in the so-called Christmas Eve Agreement of 24 December 2020 between the EU and the UK. Spain and the United Kingdom had to intensify their negotiations on the territory to avoid a hard Brexit *in extremis* in the territory. On 31 December 2020, a few hours before New Year's Day, Spain and the United Kingdom reached an "agreement in principle" that could change the Rock's relations with its Spanish surroundings more than any other event in the last 300 years and which contains the guidelines for negotiations with the European Union (Government of Gibraltar, 2020). The agreement, which can certainly be described as historic, provides that its content does not prejudge the sovereignty issue and that the future treaty will safeguard the respective positions of Spain and the UK (El País, 2020).

Highlights of the New Year's Eve Agreement include the following points:

- The future agreement between the EU and the UK will contain provisions to enable the application to Gibraltar of the most relevant parts of the Schengen *acquis* necessary to achieve the elimination of controls over all physical barriers and on the movement of persons between Gibraltar and the Schengen area. But it seems clear that eliminating the border is not an easy task. As Professor Canessa (2023) puts it, the border has a profound significance for Gibraltarian identity. Without the border, not only do Gibraltarians feel physically threatened but there are profound identitarian issues too, since that border – mental and physical – has a role in maintaining Gibraltarian identity.
- The future treaty will include a "tailor-made solution", based on the adaptation to Gibraltar of the EU customs union, from which it has hitherto been excluded. Customs controls at the border will be eliminated as unnecessary, but "measures

will be necessary to avoid distortions in the internal market, especially in the economy of the neighbouring region", Andalusia. To this end, Gibraltar will have to apply "substantially" the same tariffs and trade policy as the EU, including customs duties, VAT, prohibitions and restrictions for security reasons, as well as providing the EU with reliable statistics on its imports of goods.

- The New Year's Eve Agreement is a political agreement whose aims and objectives must be included in a binding treaty between the United Kingdom and the European Union. It is a complex, profoundly innovative legal design and, if it goes ahead, it will create the paradox that Gibraltar would probably be almost more deeply imbricated in the European Union than it was before Brexit, since its European status provided for important exceptions and, like the United Kingdom, it was outside the area of freedom of movement of persons. This integration of Gibraltar into this area appears to be extremely positive for both parties.

Translating this Spanish-British political agreement into the legal language of a binding treaty between the European Union and the United Kingdom is an unprecedented and highly complex challenge. In addition, the negotiating process has been influenced by other factors, such as the difficulties that have arisen over the Irish question, which have generated mistrust between the negotiating parties. As if that were not enough, the electoral processes in Gibraltar and Spain, where there has been a significant delay in forming a government, have temporarily paralysed the negotiating process.

Looking to the future: The need for profound changes

Nothing is set in stone. At the time of writing this paper, it is difficult to foresee whether the so-called New Year's Eve Agreement will eventually be transformed into a binding treaty that opens a new period in cross-border relations with an original approach to Gibraltar's European membership.

In any case, regardless of the signing of a treaty regulating Gibraltar's relations with its European neighbourhood, what seems necessary is that, after so many years of controversy, the debate should involve new parameters and abandon the maximalist positions that polarise public opinion and contaminate the political environment. All parties should carry out an honest exercise of critical analysis of their positions and behaviours and, in some cases, revise and reformulate them profoundly. In a very synthetic way, we can summarise some of the central proposals:

The UK should reconsider its constitutional relationship with Gibraltar, reviewing its reservation of powers over the Gibraltarian government that seriously curtails its level of self-government. Is it not time to revise the current colonial status of the territory? As Yousuf and Chowdhury (2019) point out, the provisions of colonial governance, as evidence of the persistence of colonial constitutionalism, are prevalent in the Gibraltar Constitution and have endured since the time of Gibraltar's initial acquisition by Great Britain. In this regard, Ballantine Perera (2021) states that, even though the 2006 Constitution has been described as a non-colonial document, the reserve powers remain in place. She also contends that reserve powers function as a vehicle, colonial as they may be, to prevent Gibraltar from tipping over into formal decolonization.

In addition, it would be positive to re-evaluate the use of Gibraltar as a base for nuclear-powered or nuclear-armed submarines. The fact is that the Bay of Algeiras or Gibraltar is a semi-enclosed bay with no clearly defined maritime demarcations, intense maritime traffic and an enormous population density on the Gibraltarian side and, above

all, on the Spanish side (with around 300,000 inhabitants). It does not seem logical to have such vessels, sometimes undergoing overhaul and repair, in a dock located just a few hundred meters from a Spanish city without coordinated protocols in the event of accidents with possible radioactive contamination, an objective risk inherent to this maritime activity (Romero Bartumeus, 2020). The United Kingdom must be aware that the arrival of these ships, whether British or American, in Gibraltar, is a deeply hostile act towards Spain, an allied country, and its population.

As regards Gibraltar, it would be good to rethink some policies, although very profitable economically, and which encourage an uneven playing field. The simplest example is the tax policy on tobacco, which generates powerful smuggling mafias in the area, which on the Spanish side defy the forces of law and order and have a devastating effect on a large part of the social fabric of the border area (Cepillo Galvin, 2023).

Spain's attitude towards the people and government of Gibraltar needs to be thoroughly reviewed. It is well known that Spain denies the existence of a people in Gibraltar and therefore its traditional position is based on the need to decolonise the territory through diplomatic negotiations with the United Kingdom without considering the will of the people of Gibraltar, but only taking into consideration their interests by invoking the doctrine of the United Nations generated back in the 1960s.

Conclusion: Towards the necessary recognition by Spain of the Gibraltarian people.

Many of the diplomatic distortions stem from the fact that Spain remains anchored in its traditional thesis whereby it denies recognition of the people of Gibraltar and *aspires to an end to a colonial situation that violates Spain's territorial integrity* (Spanish Ministry of Foreign Affairs, 2024; my emphasis).

The denial of the Gibraltarians' status as a people has been commonplace in Spain. In this regard, Professor Andrés Sáenz de Santa María (2015) argues that "... there are no people of Gibraltar, nor is the right of self-determination recognised as the way to resolve this colonial situation".

However, this traditional position needs a profound rethink. It is true that the territory, although once part of the historical origin of what is now Spain, was ceded by means of a valid legal title, the Treaty of Utrecht, whose continued validity and binding legal force is recognised by both parties.

It is also true that, under the United Nations Resolutions, Gibraltar is a non-self-governing territory and this clearly indicates that the process of decolonization should be carried out through negotiation between Spain and the United Kingdom. But this approach should be understood and interpreted in accordance with the historical context in which it arose, that is, the decolonization process that began with the approval of UN General Assembly Resolution 1514, in which the United Kingdom as a colonial power did not enjoy the special sympathy of the new states that emerged from the decolonization process.

Meanwhile, the Spanish argument that there were (and are) no people of Gibraltar but an imported and artificial population that has replaced the original inhabitants of the Rock who have disappeared a long time ago has become quite untenable (Red Book, 1965). A people with plural and diverse origins have settled on the legally ceded territory. Through a rather uneasy historical process, they have cobbled together Gibraltarian identity. As Trinidad (2021) argues, if Spain were able to prove that Gibraltar is legally

part of Spain, it would follow automatically that the Gibraltarians could not be considered a 'people' with the right to determine the external political status of the(ir) territory.

But Gibraltar is *not* legally an integral part of the Kingdom of Spain. It is a territory ceded to the British Crown. It is indisputable that a people with their own identity has been established on that territory.

The concept of self-determination of peoples has been evolving since its formation in the 1960s (Quane, 1998). Nothing should prevent the people of Gibraltar from being able to freely determine their future, in accordance with the right of self-determination (Trinidad, 2021).

Spain should modify its policy towards Gibraltar and combine the aspiration for theoretical territorial integrity with the right to self-determination of the Gibraltarian population. In other words, the necessary modernisation of Spanish foreign policy requires an express recognition of the existence of a people in Gibraltar and to accept that no agreements can be made without the freely expressed will of the Gibraltarian people.

If such a step is taken, the reversion clause of Article X of the Treaty of Utrecht would take a new meaning and British-Spanish relations would have to be reoriented. It also seems clear that Gibraltar's constitutional relationship with the United Kingdom needs to be modernised through a thorough review of the British reservation of powers.

It is on this basis, with the complexity of a scenario full of tangled nuances, that future relations must be negotiated in a post-Brexit scenario, with a softening and re-reading of traditional positions.

As Ballantine Perera (2019) maintains, solutions remain elusive and change can only take place with nuanced readings on how relationships formally understood as colonial have transformed since the mid-20th century.

In short, Brexit has transformed a somewhat unexpected crisis into an opportunity to review in depth the difficult relations in the complex Spain-Gibraltar-United Kingdom triangle. The search for a new European status for Gibraltar would be a good opportunity to rethink some of the traditional postulates that have been maintained by all parties and that have been contaminating relations in this small and unique territory in the deep south of Europe.

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