

# GIBRALTAR: SOVEREIGNTY DISPUTES AND TERRITORIAL WATERS

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## INTRODUCTION

**“the Gibraltarian and Spanish authorities try to counteract any act which could be interpreted...as furthering sovereignty claims...”**

Ostensibly, friction between Spain and the UK since 1997, relates to the non-respect by Spanish fishing vessels of the territorial waters of the Crown Colony of Gibraltar (CCG), actions taken by the British authorities to counteract this and the obstructionist policies of the Spanish in relation to border crossings between Spain and Gibraltar. Whether fish-related issues or the issuance of Gibraltarian identity cards, the Gibraltarian and Spanish authorities try to counteract any act which could be interpreted in the international community as furthering the sovereignty claims of the UK, Spain or indirectly, the Gibraltarians. As in the past the essence of the problem remains that Spain contests the UK's sovereignty over the entire CCG and especially British jurisdiction over part of the isthmus joining it to Spain with the airport constructed on it, and consequently does not accept that the CCG has a right to any territorial waters.<sup>1</sup>

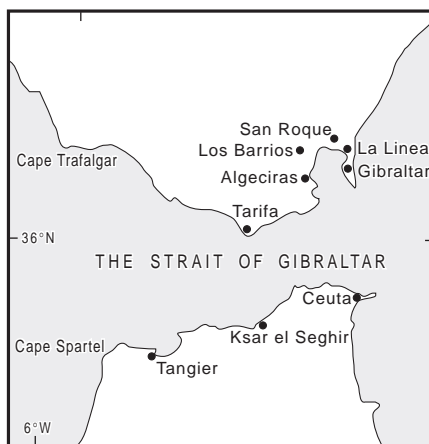


Figure 1: Gibraltar and the Western Mediterranean Region

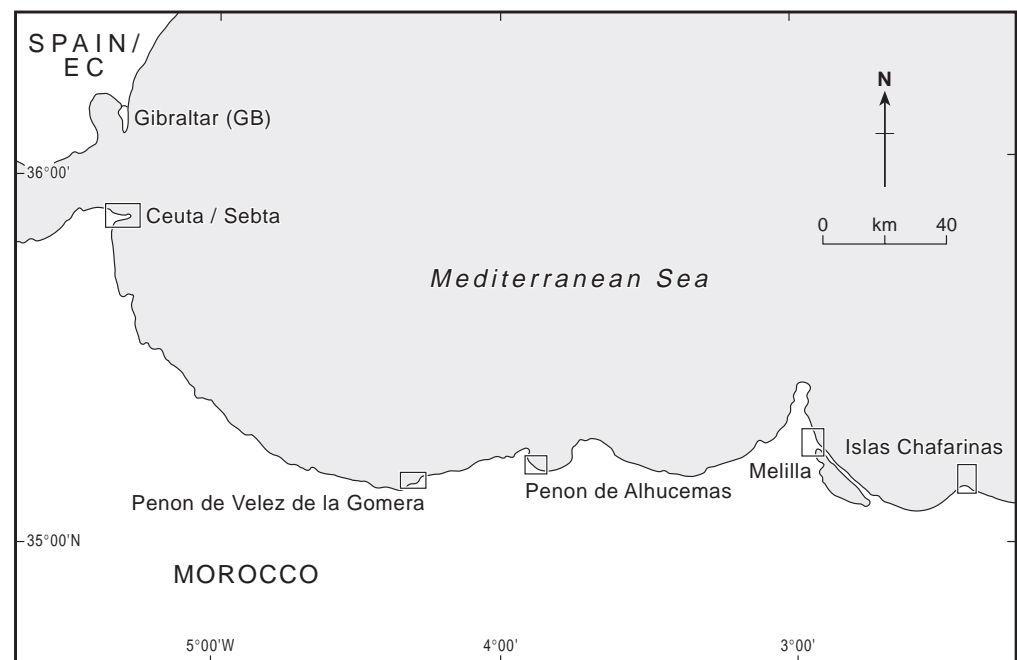
According to the Chief Minister of Gibraltar:

*The Government has been vigilant throughout this crisis (1997-1999) to ensure that the fishermen were not being used by others as a Trojan Horse to*

*launch an indirect assault on the sovereignty and control of Gibraltar waters... The Government's position... has been to ensure... that nothing should happen which creates any doubt about the validity of our laws or their applicability or about the Royal Gibraltar Police's (and other enforcement agencies) right to enforce those laws in the whole of Gibraltar waters. Those are the issues that raise questions of sovereignty, jurisdiction and control, which are the issues of fundamental importance to Gibraltar.*<sup>2</sup>

Like the CCG problem, other regional sovereignty disputes are the legacy of the Strait's historical geopolitical organisation. The Strait of Gibraltar is the only natural entrance to the semi-enclosed Mediterranean Sea (see Figures 1 and 2). It is 58km (36 nautical miles (nm)) long and narrows to 12.5km (7.6nm).<sup>3</sup> For stability and development in the Strait area, any lasting resolution of the Spanish and UK sovereignty dispute must also take cognisance of the Spanish and Moroccan territorial dispute on the southern shore of the Strait. Both states claim sovereignty over Ceuta, Melilla, Penon de Velez de la Gomera, Alhucemas and the Chafarinas Islands.<sup>4</sup> Spain claims the five African Sovereign Territories (Plazas) on historical grounds, for security reasons and UN territorial integrity of the state principles. Spain stresses that the majority of residents there are Spanish. Morocco argues that the UN principles of decolonisation must be applied; that Spanish bases there threaten Moroccan security; and that the UN territorial integrity principles apply. Morocco insists that Spanish arguments for the recovery of Gibraltar substantiate Morocco's to the Plazas.<sup>5</sup>

Figure 2:  
Disputed  
Territories in  
the Strait of  
Gibraltar  
Region

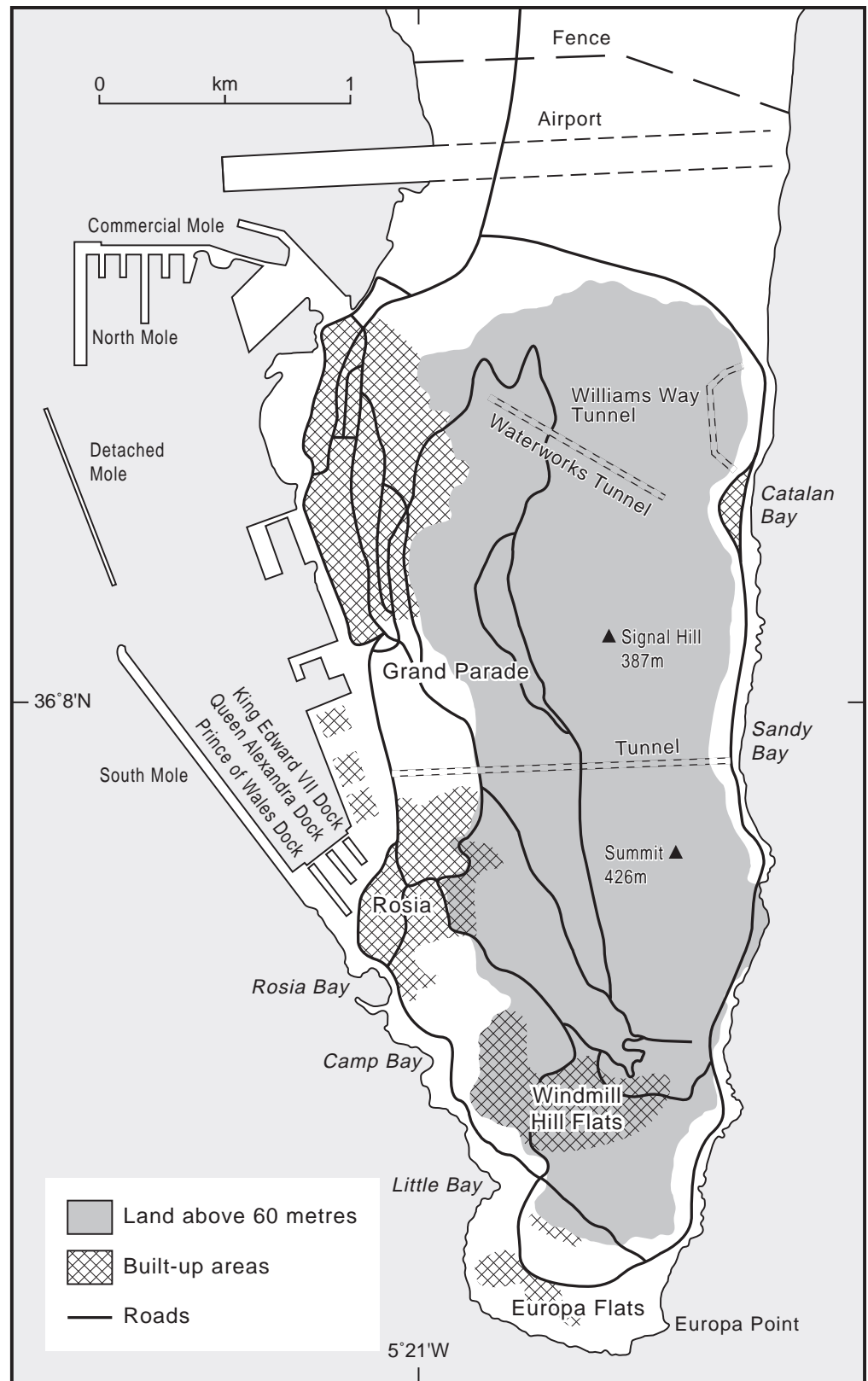


## HISTORICAL BACKGROUND

With the Christian Reconquest of Iberia, Spain established the strategic Plazas in Africa; and in 1642 reconquered the Gibraltar peninsula. The *Treaty of Utrecht* (1713) gave the English Crown sovereignty over the Gibraltar peninsula, currently an area of 4.8 x 1.6km, with 800 meters of land boundary with Spain. The CCG is the second most densely populated area in the EU with 27,192 civilians (20,772 Gibraltarians)<sup>6</sup> according to the 1997 census; and about 1,850 British servicemen in the early 1990s. The population is of heterogeneous origin including British, Genoese, Maltese, and Jewish. English is the official language, but Spanish is widely spoken, a major reason for this being that there is a long tradition of Spanish women marrying males resident in Gibraltar. About four-fifths of the population are Roman Catholic, but there are also Protestant, Jewish, Hindu and Muslim communities. The

CCG hosts a UK/NATO base, and offers major international port, commercial and offshore-banking facilities (see Figure 3).

Figure 3: The Crown Colony of Gibraltar



In relation to the waters of Ceuta and the CCG, the distance between them is less than 24nm. In the event of the UK retroceding the CCG, the entire waters of the Strait's entrance would become Spanish. In the historical context, regional disputes have rendered delimiting maritime zones difficult but have prevented a single state from gaining sovereignty over an entire stretch of water (see Figure 4).

Figure 4:  
The  
Strait of  
Gibraltar:  
Territorial  
Seas

0 - 3 nautical miles offshore



0 - 12 nautical miles offshore



## SOVEREIGN AND POLITICAL STATUS OF THE CROWN COLONY OF GIBRALTAR

Gibraltar was under Spanish sovereign control from 1462 to 1704; its political status between 1704 and 1713 was that of a territory occupied by allied forces, including Britain, in the name of a claimant to the Spanish throne. Gibraltar's status between 1713 and 1880 would seem to have been that of a territory taken by right of conquest, but legitimised in the form of a cession (Article X, Treaty of Utrecht, 1713, Appendix I) to Great Britain. Gibraltar was designated a Crown Colony in 1830. This status was altered in 1950, when Legislative and Executive Councils were created. In 1964, the Gibraltar Constitution was introduced. The Gibraltar Constitution Order was promulgated in 1969 stipulating that the sovereign status would not be changed without the consent of the people of Gibraltar. In retaliation, Spain closed the border with Gibraltar and imposed flight path restrictions implementing an economic blockade which lasted until 1985.

Since the 1950s, democratic institutions have been introduced and there has been the development of several political parties. Britain granted full UK citizenship to the Gibraltarians in 1981. The territory consists of a single constituency with a block voting system under which each elector may vote for up to eight candidates. However, concerning citizenship, it is the intention of the British government that the offer of British citizenship should "*be on a non-reciprocal basis as far as the right of abode is concerned.*" Consultations with the British Overseas Territories showed that there is a fear among these mostly small communities that "*reciprocity*" would give unrestricted access to not only British but also other EU citizens. This would, potentially, make possible an inflow of people on a scale that could dramatically alter the social cohesion and character of the communities. "*Precedents have already been set for British citizenship being offered without reciprocity in the case of the Falklands and Gibraltar.*" Within the EU, neither France nor the Netherlands nor Portugal require reciprocity in exchange for full metropolitan citizenship.<sup>7</sup>

**The Lisbon Agreement... committed both parties to further "substantive discussions."**

**...however, substantive discussions on the sovereignty issue did not take place.**

In preparation for Spanish entry into NATO (1982) and the EC (1986), *realpolitik* led to the Spanish-UK *Lisbon Agreement* (1980) and the joint *Brussels Communiqué* (1984). The Lisbon Agreement provided for the re-establishment of communications in the Gibraltar region, an ending of Spanish restrictions, and committed both parties to further "*substantive discussions.*" This included the equality and reciprocity of rights for Spaniards in Gibraltar and Gibraltarians in Spain with the free movement of persons, vehicles and goods between Gibraltar and the "*neighbouring territory.*" The establishment of negotiations aimed at promoting development and both sides accepted that "*the issue of sovereignty will be discussed in the process.*"<sup>8</sup> Despite setbacks in Anglo-Spanish relations after the Lisbon Agreement, a Joint Communiqué was issued in Brussels in 1984, in which both parties agreed to apply the terms of the Lisbon Agreement. This led to the opening of the frontier in 1995, however substantive discussions on the sovereignty issue did not take place.

## UK AND SPANISH CLAIMS: THE UK CASE

Britain stresses that Gibraltar was ceded to the Crown by the Treaty of Utrecht in 1713, and that the treaty was confirmed in subsequent treaties. Title to the southern part of the isthmus connecting the Rock to Spain "*is based on continuous possession over a long period of time.*"<sup>9</sup> However, under the Treaty of Utrecht, Spain has right of "*first refusal*" should Britain decide to relinquish sovereignty over Gibraltar. Longevity of occupation, and the democratically expressed wish of the people of Gibraltar to remain under British rule retaining their links with the UK are also key arguments used i.e. UN General Assembly resolution 1541, the 'self determination' principle. Britain held a referendum in Gibraltar (1967) in which 12,138 of the 12,237 voters chose "*voluntarily to retain their links with the UK.*" The UN General Assembly condemned the referendum.<sup>10</sup> However, the UK promulgated the Gibraltar Constitution Order in 1969, in which it was stated that "*Her Majesty's government will never enter into negotiations under which the people of Gibraltar would pass*

*under the sovereignty of another state against their democratically expressed wishes.*"<sup>11</sup>

According to a British White Paper issued in 1999:

**“because of the Treaty of Utrecht... Gibraltar could become independent only with Spanish consent.”**

*Over the years, the Gibraltarian people’s sense of identity has been strengthened and the right of self-determination has become a theme in the territory. The British Government... supports the principle of right of self-determination, but this must be exercised in accordance with the other principles or rights in the UN Charter as well as other treaty obligations. In Gibraltar’s case, because of the Treaty of Utrecht, this means that Gibraltar could become independent only with Spanish consent.*<sup>12</sup>

However in another section of the report it is stated that “*suggestions from Overseas Territory governments for specific proposals for constitutional change will be considered carefully.*”

On constitutional matters, the British White Paper (1999) says that, while Britain has concluded that neither integration into the UK nor Crown Dependency status offer more appropriate alternatives to the present arrangements in respect of all the overseas territories “*these arrangements need to be revisited, reviewed and where necessary revised.*” The report states that the British authorities are committed “*to ensuring good government, sustainable political, economic and social development in the Overseas Territories and to guaranteeing their security and defence.*” The commitment to the defence of the Overseas Territories was reiterated in the Strategic Defence Review published in July 1998.

## **THE SPANISH CASE**

Spanish claims to the CCG have been largely based on the UN Principle of the territorial integrity of the state, attempting to counteract those of the UK stressing the UN Principle of Self-Determination. However, the term “*national determination*” is not used, as the Gibraltarians are not considered to be a nation and besides it is stipulated in Article X of the Treaty of Utrecht that Spain would have first choice in the event of the UK relinquishing sovereignty.<sup>13</sup>

Unlike the majority of interstate disputes since 1945, the issue is one of decolonising a territory rather than a people; as to date they have resisted any form of unification with Spain. However in the past decade, the people of Gibraltar have been calling for a decolonising of the administration of the CCG and new forms of sovereign relations with the UK. In 1997, Gibraltar’s Chief Minister spoke of the desire

*...to achieve decolonisation, to shed the colonial status through a process of constitutional modernisation which while preventing a status of political dependency with the UK, will give a modern, non-colonial status, something along the lines of the Isle of Man or the Channel Islands.*<sup>14</sup>

The most recent Spanish proposals for the recuperation of Gibraltar were presented by Spain’s Foreign Minister, Abel Matutes to the UK Foreign Minister on 10 December 1997, and were made public in December 1998.<sup>15</sup> Spain claims that according to “*the Brussels declaration... [with reference to] the free movement of persons, vehicles and goods and... air communications... All of those measures were implemented...*” However, this did not “*result in any evidence of a British willingness to negotiate on sovereignty.*” Sr. Matutes suggested a fresh approach in Spain’s claim to Gibraltar:

**a fresh approach in Spain’s claim to Gibraltar...**

*a) Accepting... the legal validity of the Treaty of Utrecht... we are now very far from the exceptional circumstances in which... Gibraltar was occupied... and ceded in 1713... That is why the UN has issued repeated*

*resolutions...expressing the need...to negotiate the decolonisation of Gibraltar based on the principle of territorial integrity.*

*b) The isthmus to the north of Gibraltar was not ceded...in maintaining our claim, we have been obliged...to oppose any action which might be used as an argument by Britain in order to reinforce any claim to the isthmus.*

*c)...regarding the waters off Gibraltar...as the Spanish Government stated when it signed the UN Convention on the Law of the Sea on 5 December 1984, we do not recognise any rights or situations in respect of maritime areas of Gibraltar not included in Article X of the Treaty of Utrecht.*

Sr. Matutes suggests that,

*Deadlock...is perhaps due in part to the fact that the two parties and the people of Gibraltar are tied to a concept of sovereignty which belongs to the past and which has now acquired a new meaning [because of the]...process of European construction and...decentralisation which has characterised the construction of a democratic Spanish State composed of autonomies based on the 1978 Constitution.*

**“...the two parties and the people of Gibraltar are tied to a concept of sovereignty which belongs to the past...”**

Sr. Matutes insists that,

*Sovereignty as a legal and historical right is still the same, and that is what Spain’s claim relates to.*

Also,

*undertakings entered into by the British Crown with regard to “the wishes” of the people of Gibraltar is not legally binding on Spain...The preamble of the Gibraltar constitution is an arrangement between third parties, a further difficulty created by the British Government of the time in order to resist the clear call issued by the UN for a bilateral solution regarding the decolonisation...The 1967 referendum...continues to be used as an argument...we must not act as though the present political context were the same as that in which the idea of the free and democratic expression of “wishes” was conceived, since there is no justification today for such a precautionary measure to allay the Gibraltarian people’s fears of being incorporated into a non-democratic Spanish political system.*

The following scenario was proposed by Sr. Matutes:

1. Article 144 of the Spanish Constitution authorises the Cortes Generales to extend the system of territorial autonomy which applies to the rest of Spain to those territories not included in the provincial organisation, Gibraltar should have a statute similar, as regards its level of political and administrative autonomy, to that of the Spanish Autonomous Communities.

That involves the following, in particular:

*The democratic rights and freedoms established...by the Spanish Constitution of 1978 would be automatically extended to Gibraltar, which has them set out in a similar way in its 1969 Constitution...Gibraltar’s statute would protect its individual linguistic and cultural identity in a Spanish context. Negotiation of the statute would include determining which powers would be granted to the Government of Gibraltar in accordance with the definition of the powers*

*which may be assumed by the autonomies pursuant to Article 148 of the Spanish Constitution.*

The statute would also provide for the organisation of the territory's institutions of self-government, including the special judicial system. It would likewise provide for any special arrangements which may be agreed in respect of the economic and tax system. Spain would not have any objection to accepting the present definition of Gibraltar's status within the EU.

2. With regard to the individual status of the people of Gibraltar, Sr. Matutes states that it is not Spain's wish to force them to change their nationality and that a special preferential system for acquiring Spanish nationality or maintaining dual nationality could be negotiated.
3. Spain is "*prepared to accept a transition period during which sovereignty would be exercised jointly by Spain and the UK, at the end of which transfer to Spain would be completed.*"<sup>16</sup>

Appealing to the people of Gibraltar Sr. Matutes states that:

**"Spain offers Gibraltar an obvious improvement as regards its present situation and future prospects..."**

*Spain offers Gibraltar an obvious improvement as regards its present situation and future prospects...Spain's proposal represents an improvement because...the 1969 Constitution describes a typically colonial system in which, above the local authorities, there is a Governor representing the British Crown who retains extensive discretionary powers to impose legislation or to veto laws approved by the legislature of Gibraltar...In the Spanish system...there is a genuine distribution of power between the State and the autonomies: the powers of each are expressly limited by law and any conflict between them is thus dealt with through the legal system.*

Here it should be noted that within fourteen months of Sr. Matutes' proposals, Gibraltar's first civilian Governor was sworn in, in February 1999 breaking the tradition of military governors going back nearly 300 years.

The Matutes proposals also states that:

*Because of...political tensions...Gibraltar cannot contemplate a prosperous future since it lacks firm support and cooperation, both at national and European level, which would otherwise devolve to the Spanish State or to Spain and the UK jointly.*

Pointedly the proposals warn that:

**"...Spain would have to continue to prevent Gibraltar from existing and prospering at the expense of Spain..."**

*In the event of not finding a solution soon Spain would have to continue to prevent Gibraltar from existing and prospering at the expense of Spain...[especially in] the area near Gibraltar which suffers the worst effects of the presence in its vicinity of a large free market which is virtually uncontrolled in its own territory...[and with] illegal trafficking and unfair competition...[Spain] does not agree with the propaganda attempt of the Gibraltar authorities to persuade us and the international community that tax evasion and money laundering have been eradicated...[and] operations being carried out in Gibraltar under the protection of a company and tax system which lacks transparency.*<sup>17</sup>

Sr. Matutes warns that maintenance of the *status quo* will certainly mean Spain's continued,



*vigilance in counteracting moves to separate Gibraltar from British cover, since this is incompatible with the status of the colony in international law. Those moves clearly contradict the spirit of the negotiating process, based on UN resolutions and the Brussels declaration... Our action to stop any deviation from that path will be particularly strong in the context of Europe. The status of Gibraltar under Article 227(4) of the Treaty of Rome... requires that the UK should effectively take responsibility for representing the territory in international relations, including intra-Community relations.*

Spain will continue to oppose,

*Gibraltar's attempts to establish itself as an interlocutor in respect of the institutions and other Member States of the Union... in particular to various actions which appear to be unrelated but which share the same objective of giving Gibraltar its own international identity.*

Sr. Matutes lists out the areas which are deemed to be most offensive in this respect:

*The claim that the judicial authorities and officials with responsibility in financial matters (banking, insurance) should be considered independent and direct interlocutors with the national authorities of the other Members of the Union. The issue of identity cards claiming to be necessary as valid travel documents despite the fact that they are not issued by national authorities as required. The attempt to record on passports and driving licenses specific references to Gibraltar which are a clear departure from the European rules... We will continue to oppose any change in the constitutional status quo of Gibraltar which detracts from the momentum established by the Brussels Process... [Including] recent announcements and polls of the Gibraltar authorities expressing the view that they would like a change of status which, while maintaining a theoretical link of sovereignty with the UK or even complete integration, would seek to get round the UN instructions regarding decolonisation and Spain's desire for a bilaterally-negotiated decolonisation.*

The Matutes proposals were rejected by all political parties and opinion polls in Gibraltar. The Gibraltar Government has urged Britain to formally reject them stating that the proposals remain on the table as long as they have not been formally rejected by the British Government.

## **ECONOMIC RIVALRIES**

Concerning Spanish recriminations about financial matters, the old dream of making the CCG the Hong Kong of the Mediterranean is still alive. In 1999, the Gibraltar Finance Centre issued a special report stating that it wanted to establish links with the Islamic world. It says:

*Given our deep cultural and geographical ties with North Africa and indeed our Islamic past, as highlighted by the construction of the Ibrahim-Al-Ibrahim Mosque, we are now developing an even greater working relationship with the Middle East and North Africa. Gibraltar is already recognised as a quality European and Mediterranean Finance Centre. We would now like to see it developed likewise as an Islamic Finance Centre, not just a European one.<sup>18</sup>*

Until the mid 1980s, Gibraltar's economy was dependent on Ministry of Defence employment. However, it has undergone major structural change to a private sector economy trying to diversify through increased tourism via the Costa del Sol, the provision of financial services and through niche sectors e.g. satellite communications. Gibraltar's financial sector is regulated by a Financial Services Commissioner who reports to a Commission made up of senior UK and Gibraltar financial experts. In March 1997 the British Government gave the Financial Services

Commission permission to ‘passport’ (i.e. authorise) Gibraltar-based insurance firms to operate elsewhere in the European Economic Area.<sup>19</sup>

Anti-money laundering legislation, on an all-crimes basis, came into force in Gibraltar in 1996. According to the Foreign Office, this legislation is to UK and EU standards. Gibraltar also signed up to the recommendations of the Financial Action Task Force and agreed to undergo mutual evaluation process within the Overseas Group of Banking Supervisors, of which it is a member. While concerning illicit trafficking, according to the British authorities:

*Drug smuggling from Morocco to Spain, using fast launches based in Gibraltar, and tobacco smuggling directly to Spain, have been matters of great concern in the mid-1990s. However, measures were taken by the Governments of Gibraltar to ban the fast launches and to licence the tobacco trade. As a result, smuggling using boats based in Gibraltar has almost completely disappeared.*<sup>20</sup>

Here it should be noted that due to the fiscal regimes in both Gibraltar and the Spanish Plazas, trafficking, particularly of alcohol and tobacco has always been part of the local cultures.

#### **MARITIME CLAIMS: FISHING AND THE TERRITORIAL WATERS DISPUTE**

Spain has never officially recognised British sovereignty over territorial waters around the CCG and especially in the Bay of Algeciras/Gibraltar area. The Bay is about 5nm (8km) wide between Point Algeciras and Europa Point. From the midpoint of this line to the Spanish mainland is just over 6nm (11km) (see Figures 4 and 5). Spain claims that Britain has no right to territorial waters, except for a small portion in the Gibraltar port area in accordance with the Spanish interpretation of the Treaty of Utrecht. In 1967, Britain stated that it “*fully reserved its right with regard to British territorial waters on the Gibraltar side of the median line in the Bay.*”<sup>21</sup> According to UK arguments for territorial waters (and air space) in the Bay and Straits area around Gibraltar, both international customary and conventional law would seem to support the British claim.<sup>22</sup>

Over 520 incursions by Spanish fishermen of the claimed British territorial waters were recorded by Gibraltar police in 1998. In January 1999, in the House of Commons, British Foreign Office Minister Joyce Quin stated that:

*...the deployment of a fisheries protection vessel, to aid in calming the situation in British waters around Gibraltar, remains one of a number of options.*

She added that:

*The Gibraltar nature protection ordinance provides that the use of, inter alia, any seine or gill net or pot or device for raking the sea bed for the purpose of killing or taking any wild animal, constitutes an offence. The use of any fishing equipment other than fishing lines is therefore unlawful. Spanish fishing boats have used a variety of nets and rakes.*<sup>23</sup>

**“British waters extend to a limit of 3nm around Gibraltar. The limit is restricted to 2nm on the west side...where a median line exists between British and Spanish waters.”**

Ms. Quin stated that:

*British waters extend to a limit of three nautical miles around Gibraltar. The limit is restricted to two nautical miles on the west side, in the Bay of Algeciras, where a median line exists between British and Spanish waters.*

It was added that a map showing British claims to territorial waters in the Gibraltar areas is now available in the Libraries of the House. Ms. Quin stated that

*Between 1991 and 1997, Spanish fishermen entered Gibraltar waters and fished in moderate numbers, kept away from the harbour and Admiralty waters, and respected the authority of the law enforcement agencies. We have been seeking to return to that situation, including through discussion with the Spanish authorities.*

Concerning the *Agreement on Fishing* reached in February 1999, according to the Chief Minister of Gibraltar:

*Between 1991, when the Nature Protection Ordinance...was passed and 1997, when this crisis erupted, the Spanish fishermen did fish in Gibraltar waters in breach of our laws. But no-one in Gibraltar felt threatened or challenged by that, because it was done without politically motivated challenge to the validity of our laws and to the authority of our police. Before 1997 when fishermen were asked to go they did so, thereby, recognising our authority and sovereignty over the waters. In 1997 they started to refuse to leave when asked to do so, alleging that they recognised neither the validity of our laws, nor the authority of our police to enforce them, because they were Spanish waters.<sup>24</sup>*

According to the Chief Minister, the Gibraltar authorities proposed that both parties returned to the status quo, that prevailed,

*...between 1991 to 1997...returning to a tolerant enforcement of the law that enabled some fishing to take place (without the law ceasing to apply to them). On their part it meant a return to recognition of our laws and our ability to legislate for those waters and the authority of the Royal Gibraltar Police and therefore an end to the defiance of British sovereignty, jurisdiction and control over the waters.*

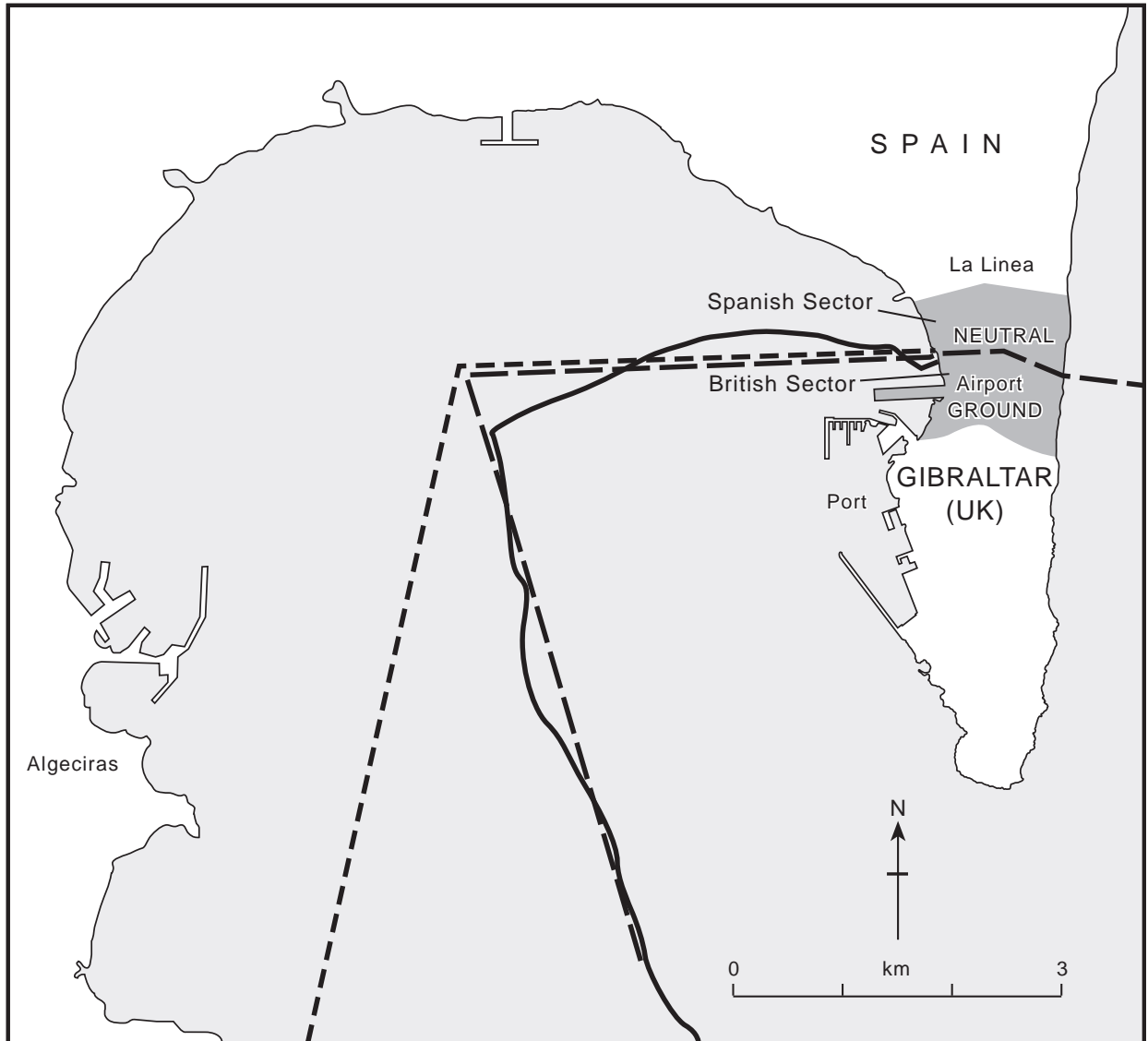
The following proposition was made to Spain by the Gibraltar authorities in February 1999:

1. The fishermen declare their respect of Gibraltar's right to pass fishing laws, and declare their respect for the validity of the Nature Protection Ordinance.
2. The fishermen commit themselves to respect the orders of the Gibraltar law enforcement agencies in the application of that law.
3. In those circumstances the Government has agreed that Gibraltar should once again enforce the Ordinance with the same degree of tolerance as was the case between 1991 and 1997.
4. In the understanding it is acknowledged that such fishing as occurs is the result of tolerant enforcement of the law by Gibraltar and not because the Spanish fishermen have any right to fish nor because the law is invalid or inapplicable to them. The fishermen accept that they remain fully liable to the Ordinance in all parts of Gibraltar waters at all times.

In the February 1999 Agreement it was accepted that: in the following circumstances the law will be enforced strictly:

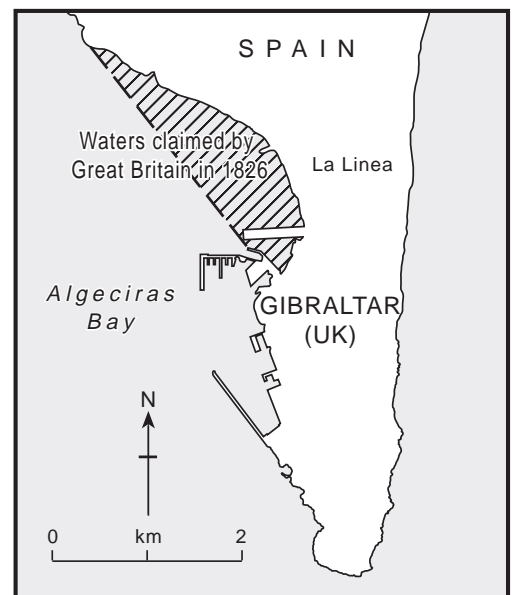
- (a) if the fishermen come closer than 225 meters to the shore or harbour.
- (b) if the number of fishing boats on the Western Side (excluding *luceros* which do not fish) exceeds four at any time.
- (c) If the entrances to the harbour are obstructed or shipping movements are obstructed or interfered with.<sup>25</sup>

The Gibraltar Authorities reiterated that the success of the “*understanding*” was also dependent on lack of heightened tension between the two communities; and that it could not work if Spain carries out its threat to leave frontier restrictions in place.



- Median Line drawn in accordance with the principles of the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone
- - - Boundary of Spanish Prohibited Area
- - - Boundary of Line of Spanish port of Algeciras / La Linea as announced by Spain in 1967

Figure 5: Gibraltar/Algeciras Bay: Territorial Waters



## GIBRALTAR AND THE EU

In the context of the recent fishing dispute, the respective diplomatic and media wars emphasised the issue of implementation of EU directives, especially in relation to tax and financial dealings. According to the Gibraltar Authorities,

*Spain is in non compliance with dozens of directives, and is the subject of legal proceedings by the European Commission in 25 cases, compared to only three or four in the case of Gibraltar.*

Referring to representations made by the Spanish authorities to the EU President, Gibraltar's Chief Minister stated complaints that 51 directives had not been implemented in Gibraltar were unfounded. *"Of these 31 have been implemented...8 are in the pipeline, 5 are not applicable and we have not been advised by the UK of 9."*<sup>26</sup>

With UK admission to the EEC/EU (1973), Gibraltar fell under Article 227(4) of the *Treaty of Rome*, relating to European Territories for whose external relations a member state has responsibility. British Dependent Territory citizens from Gibraltar *"are defined as British nationals for EU purposes"*, thus giving them the right of free movement within the EU. Gibraltar has exemptions from Community policy in four areas - the Common Agriculture and Fisheries Policies, the Common Customs Tariff, *"the free movement of goods (but not services) and the levying of VAT."* Although the Gibraltar Government is responsible for giving effect *"to European Community (EC) legislation in the territory, the UK is answerable to the European Court of Justice for the implementation and enforcement of EC obligations in Gibraltar."*<sup>27</sup>

As Gibraltarians do not have the vote in elections to the European Parliament, this has become a particularly acrimonious issue in Gibraltar and has occasioned protest and much lobbying by the people of Gibraltar *vis-a-vis* the British and EU authorities. The UK has made clear that as a result of a recent European Court of Human Rights ruling, it will seek amendment of the 1976 EC Act on Direct Elections which requires the unanimous agreement of all member states, including Spain. Spain feels that the people of Gibraltar, and indeed the British administration there, have all the advantages of EU membership with an *a la carte* menu of duties.

## SECURITY IN THE STRAITS REGION

With Spanish membership of NATO (1982), the government made it clear that the Plazas are an integral part of Spain and have to be defended. As NATO does not have sovereign prerogative in relation to the territories of its member states, it has studiously avoided involvement in the CCG and Plaza disputes. To date, NATO states have avoided using the Plazas due to Moroccan sensitivities on the issue. Despite UK and Spanish membership, full usage of Gibraltar's facilities by NATO states has been retarded.<sup>28</sup>

Gibraltar's political and economic organisation have overshadowed those of Ceuta for centuries. However, Ceuta is one of Spain's principal ports; the EU and NATO's only major territory and port linking Europe, Africa and the Arab world.<sup>29</sup> In terms of oil transit and number of vessels, the Strait ranks third, after Bab al Mandeb and Dover. As well as being a vital corridor for east-west shipping; the Strait offers the main N-S highway link between the EU and Maghreb/Africa which will be enhanced via the proposed bridge between Spain and Morocco which has international support. Likewise the Strait facilitates hydrocarbon pipeline systems between the Algerian deposits, Morocco and the EU.

Modern weaponry and Spanish membership of NATO have diminished Gibraltar's strategic importance. Yet the Strait provides the entrance to the Mediterranean through which NATO vessels transit, as was witnessed during the Gulf War and

crises in the former Yugoslavia. Likewise the Strait is vital to US allies such as Israel and Saudi Arabia. Gibraltar is the second most important strait after Lombok in terms of numbers for transit of military-related vessels.

## CONCLUSIONS

Concerning the territorial waters dispute which came to international media attention between 1997-99, the *de facto* British presence in Gibraltar since the 18<sup>th</sup> century gives it a right to territorial waters in the Bay and Straits area around Gibraltar; both international customary and conventional law support the British claim.<sup>30</sup> However, the exact extent of these waters is very difficult to define *de jure* due to seaward extensions in the port, harbour and airport areas of the Crown Colony since 1713, as with British movement northwards in the isthmus area. Hence all the minor maritime claims are only symptomatic of the larger sovereignty dispute.

Despite legal differences between the Gibraltar and Spanish Plazas disputes, they can be viewed as a colonial heritage; decolonising territories rather than peoples is the issue. If Gibraltar were retroceded, Morocco states that it will use all means at its disposal to regain the Plazas. Among the people of Gibraltar there is no desire for any formal sovereign links with Spain. For centuries Spain has made it clear that it will not renounce its claims to Gibraltar, but since the Anglo-Spanish Lisbon Agreement (1980) and the Brussels Communiqué (1984) has tried to engage in peace process dialogue to further “*substantive discussions*” promoting that “*the issue of sovereignty will be discussed in the process.*” Spain fears that the UK authorities, by using the ‘self-determination principle’ enshrined in the Gibraltar Constitution (1969), may be creating a Gibraltarian nation with future aspirations to statehood as may be the situation in the Falkland Islands, and indeed played a key role in French policy in the creation of the state of Djibouti.

Since the 1980s, both British and Spanish governments had hoped NATO membership, and EU integration with EU citizenship would lessen the intensity of the Gibraltar problem. With the opening of the Gibraltar boundary (1985), Spain and the UK had hoped for better inter-community links. Actions taken by the authorities in Madrid, Gibraltar and London since 1997 have debilitated this, as is proven by the intensity of passion, and indeed jingoism, expressed in sections of the respective media.

As has been illustrated since 1973, when the UK and Republic of Ireland joined the EEC, EU membership does not provide a panacea for sovereignty disputes. Serious and substantial bilateral discussions between Spain and the UK, involving trilateral negotiations with the people of the disputed territory, is the only way forward, but aided by the EU and international community as has been illustrated in the Northern Ireland peace process.

The British Government supports the principle of right of self-determination, but in Gibraltar’s case, because of the Treaty of Utrecht, this means that Gibraltar could become independent only with Spanish consent. As this is highly unlikely, an imaginative framework plan drawing on the experience gained in the Northern Ireland peace process has to be initiated by the UK authorities within the context of the Lisbon Agreement. Otherwise the Gibraltar problem will continue to retard better Anglo-Spanish relations, and detract from regional security.

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<sup>1</sup> O’Reilly, G. (1992) *Gibraltar: Spanish and UK Claims*, Territory Briefing, 4, Durham: International Boundaries Research Unit.

<sup>2</sup> Chief Minister of Gibraltar; Official Press Release reported in *Panorama Newsweekly*, 4 February 1999.

<sup>3</sup> O’Reilly, G. (1987) “Strait of Gibraltar”, pp.104-105 in G. Blake, J. Dewdney and J. Mitchell (eds) *The Cambridge Atlas of the Middle East and North Africa*, Cambridge: Cambridge University Press.

<sup>4</sup> O’Reilly, G. (1994) *Ceuta and the Spanish Sovereign Territories: Spanish and Moroccan*

- 5 *Claims, Boundary and Territory Briefing*, 1: 2, Durham: International Boundaries Research Unit.
- 6 O'Reilly, G. (1993) "Disputed Territories in the Gibraltar Region: The Crown Colony of Gibraltar and the Spanish Sovereign Territories in North Africa", in *Mediterranean Social Science Review*, 1: 7-16.
- 7 BIS, British Government *White Paper on British Overseas Territories*, March 1999.
- 8 BIS, British Government *White Paper on British Overseas Territories*, March 1999.
- 9 Lisbon Statement, in House of Commons, Seventh Report from the Foreign Affairs Committee, Session 1980-81, *Gibraltar: The Situation of Gibraltar and UK Relations with Spain*, together with Appendices thereto; The Proceedings of the Committee relating to the Report; and the Minutes of Evidence taken before the Committee on 18, 25 February, 18, 25 March and 6 May, with Appendices, London: HM Stationery Office, 22 July 1981.
- 10 BIS, British Government *White Paper on British Overseas Territories*, March 1999.
- 11 UN General Assembly, Resolution 2353 (XXII). 19 December 1967.
- 12 BIS COI (1969) *Gibraltar: The Dispute with Spain*, Cmd 715615.
- 13 BIS, British Government *White Paper on British Overseas Territories*, March 1999.
- 14 Government of Spain (1968) *The Red Book on Gibraltar: Gibraltar in the Spanish Cortes*, Madrid: 1965. Also *Negotiations on Gibraltar (A New Spanish Red Book)*.
- 15 *Gibraltar Digest*, 3 March 1977.
- 16 Official translation of the Matutes Proposals, *Panorama Newsweekly*, 7 December 1998.
- 17 See O'Reilly, G. (1994) *Ceuta and the Spanish Sovereign Territories: Spanish and Moroccan Claims, Boundary and Territory Briefing*, 1: 2. Durham: International Boundaries Research Unit: 25-26.
- 18 Dubious financial operations, and also trafficking and smuggling form part of the 'business culture' of Gibraltar, Ceuta and Melilla. Mutual recriminations have gone on for centuries. Whatever the respective stances and policies of the British and Spanish governments within their respective jurisdictions, it must be noted that besides the obvious criminal element which exists in any society, there are individuals and quasi-family dynasties with much financial and indirect political power often going back centuries. Distance from central governments may render verification all the more difficult.
- 19 <sup>18</sup> Gibraltar Financial Centre, special report in *Panorama Newsweekly* 22 March 1999.
- 20 BIS, British Government *White Paper on British Overseas Territories*, March 1999.
- 21 BIS, British Government *White Paper on British Overseas Territories*, March 1999.
- 22 BIS COI. (1969) *Gibraltar: The Dispute with Spain*, Cmd 715615.
- 23 For historical and legal analyses of the respective British and Spanish positions on territorial waters and air space in the Bay and Straits of Gibraltar area see O'Reilly, G. (1992) *Gibraltar: Spanish and UK Claims*, Territory Briefing, 4, Durham: International Boundaries Research Unit, 7-17.
- 24 Statement by the British Foreign Office Minister made in the House of Commons in January 1999 and quoted in *Panorama Newsweekly*, 25 January 1999.
- 25 Chief Minister of Gibraltar, Press Release, quoted in *Panorama Newsweekly*, 4 February 1999.
- 26 Chief Minister of Gibraltar, Press Release, quoted in *Panorama Newsweekly*, 4 February 1999.
- 27 Chief Minister of Gibraltar, Press Release, quoted in *Panorama Newsweekly*, 4 February 1999.
- 28 BIS, British Government, *White Paper on British Overseas Territories*, March 1999.
- 29 O'Reilly, G. (1990) "Gibraltar et le Detroit: Colonie britannique et Passage geostrategique", in *De Gibraltar a' Panama'*, in *Herodote: revue de geographie et de geopolitique*, 57: 59-75.
- 30 O'Reilly, G. (1988) "The Greater Maghreb Union: Geostrategic and Geopolitical Significance", in *Gulf Report*, 16: 2-8.
- 31 Law of the Sea, 516 UN Treaty Series 205, 15 UST 1606 (1958). *United Nations Convention on the Law of the Sea*: (UNCLOS, A/CONF.62/122, 7 Oct. 1982 - Articles 2(1), 2(2), 3, 15, 35-44.