



## Status of Gibraltar – The Dispute over the Sovereignty after Brexit

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### Abstract

Brexit is one of the main issues in EU modern history, which should be dealt with very carefully and with less losses. Brexit caused many political and legal debates regarding different issues, including the Status of Gibraltar, which is affected with the referendum results in 2016. The main factors that defined the final position of Gibraltarians regarding Brexit were geographical and economical factors. Gibraltar is surrounded by water and the only land border neighbor is Spain (which in turn the member of EU). The main factors of economic wellbeing of population are defined by the imported products, services, and labor forces from Spain. Besides the economic factors, Brexit opened the debates on Gibraltar's Sovereignty, that is the main subject for discussion Between UK and SPAIN more than 300 years. This is the best opportunity given to Spain for offering the joint Sovereignty Model and for strengthening position over Gibraltar. The article offers a historical review of Gibraltar's Status over the centuries, discusses the main interests of UK and Spain over mentioned territory, offers the main pros and cons of joint sovereignty model and in final part based on given facts and analysis presents conclusion regarding given issue.

**Keywords:** Gibraltar, Spain, Brexit, Joint Sovereignty

## **Introduction**

Gibraltar has been under British rule for over 300 years. At first Britain used Gibraltar mainly as a military base to protect British military and economic interests in the region around the Strait of Gibraltar (Truver, 1980, 175-176). Before that Gibraltar was controlled by the Moors and by Spain. In 1462-1704, Spanish sovereignty extended over it (Lincoln, 1994, 286). 9 years after the conquest of Gibraltar by Great Britain, the Treaty of Peace and Friendship between Britain and Spain (1713) was signed, which meant the official rule of Great Britain over Gibraltar.

Despite the above, the signatory states still give a different interpretation of the treaty, but according to UN General Assembly Resolution 1514, Spain has the right to request the extension of its sovereignty over Gibraltar (UN General Assembly N1514, 1960).

Modern Gibraltar is not only a military base of Great Britain, but the opportunity for development of financial services and tourism, which is an indicator of its economic growth. However, recent events, in particular the decision to leave the European Union, reflected the economic and legal situation of Gibraltar and caused certain problems.

In order to correctly determine the new legal status of Gibraltar, it is necessary to study the issue in detail both from a historical point of view, as well as taking into account the internal and external political and legal factors that affect the current situation; All the circumstances that support the positions of Great Britain, Spain and Gibraltar should be analyzed and compared to what extent they are in accordance with the generally recognized principles of international law.

### **1. Legal Status of Gibraltar before WWII**

The Moors were the first to settle in Gibraltar in 711 B.C. (Lamelas, 1992, 14-22). Between 1309 and 1462, Gibraltar endured 8 different military blockades under different Muslim rulers. In 1462, the Spanish Kingdom of Castile liberated Gibraltar from the Moors, after which it remained under Spanish rule until 1704, when King Philip V of Spain surrendered to the Anglo-Saxons under Admiral George Rooke. Most of the population of Gibraltar left the territory of Gibraltar in solidarity to Philip V and settled in the nearby Spanish territory of San Roque.

In 1713, Great Britain and Spain signed the Treaty of Utrecht, which replaced Spain's sovereignty with Britain's. According to Article 10 of the Treaty of Utrecht, British sovereignty extended to the territory of Gibraltar only on condition that, in case of alienation of Gibraltar, Britain would first offer this territory to Spain. However, the British allowed the local Catholic population to remain and exercise their right to practice their religion and confession freely (Lincoln, 1994, 293). Great Britain, at the request of Spain,

banned the settlement of Moors and Jews on Gibraltar and gave Spain a condition of help in the fight against smuggled goods (Ibid).

## **2. Gibraltar during Decolonization Process**

During the UN discussion on the principle of territorial integrity and self-determination of the nation questions about Gibraltar arose.

In 1960, the United Nations General Assembly placed special emphasis on the content of the first article of its charter, and based on it, Resolution N1514 was adopted, which provided the liberation of the colonies. Since Gibraltar was a British colony, the United Nations, through a special committee, began to study the issue of Gibraltar. During the 2 years of work, the committee heard the views of the representatives of Britain, Spain and Gibraltar, based on which it reached a consensus on the debates to determine the further status of Gibraltar.

In 1965 and 1966, the UN General Assembly passed Resolutions N2070 and N2231 on the status of Gibraltar, according to which Britain and Spain were instructed to hold negotiations, taking into account the provisions of Resolution N1514, and determine the future status of Gibraltar. Of the three resolutions, only Resolution N2231 mentioned the wishes and well-being of the people of Gibraltar (UN Resolution N2070, 1965; UN Resolution N2231, 1966).

## **3. The Negotiations Between Britain and Spain in Late XX century**

Following the placing of the Gibraltar issue on the agenda of the United Nations, Britain and Spain presented their positions in relation to their obligations under Resolution N2231.

On September 10, 1967, the British held a referendum to determine the interests of the population of Gibraltar. The majority of the population of Gibraltar took part in the referendum, where their position was to strengthen relations with Britain, as a result of which Britain adopted the Constitution of Gibraltar (Gibraltar Constitution Order, 1969).

According to the constitution, Gibraltar could use the veto on the transfer of its sovereignty from Britain to another country. However, the UN General Assembly passed Resolution N2353 on December 19, 1967, rejecting the validity of the referendum because it was not in accordance to the provisions of Resolution N2231. At the same time, Spain closed border with Gibraltar in June 1969 (Lincoln, 1994, 298).

To resolve the created conflict situation, Spain and Great Britain resumed negotiations and on April 10, 1980 signed the Treaty of Lisbon, according to which the parties decided to resolve the disagreement through negotiations in accordance with the requirements of the UN General Assembly resolutions. On November 27, 1984, the Brussels Agreement was

signed between them, which covered more detailed issues arising during the negotiation process and determined the fulfillment of the obligations under the Lisbon Treaty by February 15, 1985. In order to fulfill the obligations defined by the mentioned agreements, Spain opened the border to Gibraltar, which was closed in 1969.

#### **4. The Issues raised during the Negotiations**

The Isthmus, which connects Gibraltar and Spain, was not included in the Treaty of Utrecht. Five months after its signing, Britain called on its own military forces to occupy the Isthmus area, which was controlled for the next 200 years.

In 1938, the Britain built an airport in the Isthmus, that is used for both military and commercial purposes. In 1942, despite the protests of the British, the Spanish occupied the territory of the Isthmus, thus the neutral territory between Spain and Britain no longer existed (Ibid).

After the creation of the European Union, Britain wanted the Isthmus airport to be regulated by the EU directives and to carry out flights in the direction of the EU countries, although Spain initially did not support the mentioned offer. In 1987, an agreement was signed between Spain and Great Britain, according to which the control of both states was extended to the airport. According to the agreement, the Spanish authorities had the right to build a new terminal in the northern part of the airport, and at the same time, both countries would have the opportunity to jointly coordinate both terminals to ensure security. Following the signing of the Airport Agreement, the European Union has included Gibraltar Airport under the jurisdiction of its directives.

#### **5. Referendum in 2016**

On June 23, 2016, referendum regarding to EU membership were held in England, Wales, Scotland, Northern Ireland and Gibraltar.

The Brexit referendum in Gibraltar was significant for two reasons: it was the first British referendum held in a British overseas territory, and at the same time, Gibraltar was directly involved in the decision-making process on one of the most important issues in modern British history.

Out of 24,119 eligible voters in Gibraltar, 20,172 (83.6%) took part in the referendum, of which 19,322 (95.9%) voted to remain in the European Union (EU Referendum Results). The unanimity of Gibraltar was also expressed in the united position of the Parliamentarians of Gibraltar. Their position regarding the mentioned issue was determined by geographical and economic factors. For Gibraltar, which is completely surrounded by water and has its only land border with Spain, it is almost entirely dependent on imported products, services and labor forces. Access to the EU market and

more than 10,000 workers crossing the Spanish border every day have largely driven Gibraltar's economic development in recent decades (Toszek, 2019, 92).

Brexit has opened a new window of opportunity to resolve the historic dispute, which involves both peaceful coexistence on the border between Spain and neighboring Gibraltar, and the issue of sovereignty that underlies the dispute with the United Kingdom.

The current Spanish government made two important decisions in 2016: it announced the need to negotiate the status of Gibraltar and proposed a joint sovereignty model to resolve the dispute (Del Valle Galvez, 2017, 20-21).

On 29 March 2017, the European Council received a formal letter from British Prime Minister Theresa May announcing the UK's intention to withdraw from the EU, followed by the EU's position that no agreement between the EU and the UK could apply to the territory of Gibraltar after the UK leaves the EU Without an agreement between the Kingdom of Spain and the United Kingdom (Ibid). This means that any decision on the future application of EU law in Gibraltar depends on an agreement between the UK and Spain.

## **6. Model of Joint Sovereignty**

The main provisions of the joint sovereignty model project submitted by Spain to the UN and EU in 2016 included the following:

- Gibraltar will be granted transitional joint sovereignty of the United Kingdom and Spain;
- Citizens of Gibraltar will be granted dual British and Spanish citizenship;
- Gibraltar will be granted the status of autonomy;
- Spain will be responsible for Gibraltar's foreign relations;
- Gibraltar will remain as a part of the European Union;
- The border control between Spain and Gibraltar will disappear (Ibid).

There are several arguments against joint sovereignty, namely:

- Joint sovereignty came into question after the 2002 referendum in Gibraltar. Unlike the 2001-2002 negotiations, the UK has taken a different position since 2006, according to which it will not consider certain changes in this matter without Gibraltar's consent. This decision is reflected in the decision of the Fourth Committee of the United Nations General Assembly. That is why bilateral negotiations between Spain and Great Britain do not offer a

prospect of progress, which is due to Gibraltar's boycott of joint sovereignty.

- The idea of joint sovereignty was a proposal made unilaterally by the conservative government, which did not include the support of other political forces in Spain.
- This proposal links cross-border cooperation with the resolution of the sovereignty dispute, which is quite problematic given that Great Britain and Gibraltar have already rejected joint sovereignty. In any case, the Blair-Znarr joint sovereignty talks have shown how difficult it can be to reach an agreement given the existence of nuclear "red lines".

## Conclusion

In the process of reviewing the status of Gibraltar, it is necessary to take into account the fundamental interests of the actors of this process, in particular:

- Restoration of some form of sovereignty over the lost city of the kingdom for Spain;
- the immeasurable strategic value and advantage for the United Kingdom of maintaining naval and air bases and intelligence operations in the Strait of Gibraltar;
- For Gibraltar, the power to decide its future, taking into account its specific identity.

In the current situation, it is in the best interest of all parties to reach a temporary agreement to normalize cross-border coexistence, which can be adopted according to the formula known as "Modus Vivendi" in international law. This type of document represents a temporary agreement between the subjects of international law, which gives rise to obligations for the temporary regulation of a certain situation and can later be replaced by a formal and permanent agreement.

It is necessary to reach an agreement on at least the following issues:

- Border - The issue of control at the border checkpoint is crucial for cross-border standardization, especially considering that thousands of workers cross it every day. In more detail, the border traffic agreement becomes more necessary in light of the new EU regulation on strengthening checks at external borders, the latter of which came into effect on April 7, 2017 (EU, Regulation 2017/458);
- Jurisdiction over navigation and the issue of police intervention in Gulf waters;

- financial activity and fiscal transparency;
- Normalizing the use of the airport by suspending existing restrictions and removing European regulations.

An agreement on cross-border coexistence can be adopted taking into account three main elements:

- Continuity of application of EU law in existing conditions until new conditions enter into force;
- UK-Spain negotiations involving Gibraltar, the EU and regional and local authorities based on their respective competences;
- Formally, the "Modus Vivendi" agreement must be accepted by the UK and Spain, and if necessary, the EU intervenes to guarantee the implementation of the agreement.

Although negotiations between the European Union and the United Kingdom regarding the site of Gibraltar have started since September 2021, a final agreement has not yet been reached. This process is complicated by the fact that the provisions of the aforementioned agreement must be acceptable to all actors, namely Gibraltar, the United Kingdom, Spain and the European Union.

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