

Fordham International Law Journal

Volume 18, Issue 1

1994

Article 8

The Legal Status of Gibraltar: Whose Rock is it Anyway?

Simon J. Lincoln*

*

Copyright ©1994 by the authors. *Fordham International Law Journal* is produced by The Berkeley Electronic Press (bepress). <http://ir.lawnet.fordham.edu/ilj>

The Legal Status of Gibraltar: Whose Rock is it Anyway?

Simon J. Lincoln

Abstract

This Note argues that the right to self-determination, as expressed in Resolution 1514, empowers the people of Gibraltar with the right to determine their own destiny. Part I discusses the factual and legal background of the dispute over sovereignty of both the City of Gibraltar, as well as the isthmus connecting the city to Spain. Part II explains the British, Spanish, and Gibraltarian claims to the territory, analyzing the relevant U.N. resolutions, agreements and legislation that have defined the respective rights of the three parties. Part III argues that Gibraltar has the right to self-determination and that Great Britain should no longer represent Gibraltar in negotiations with Spain. This Note concludes that, in accord with Resolution 1514, Gibraltar has the right to self-determination, and the Spanish claim to territorial integrity does not supersede this right.

THE LEGAL STATUS OF GIBRALTAR: WHOSE ROCK IS IT ANYWAY?

*Simon J. Lincoln**

INTRODUCTION

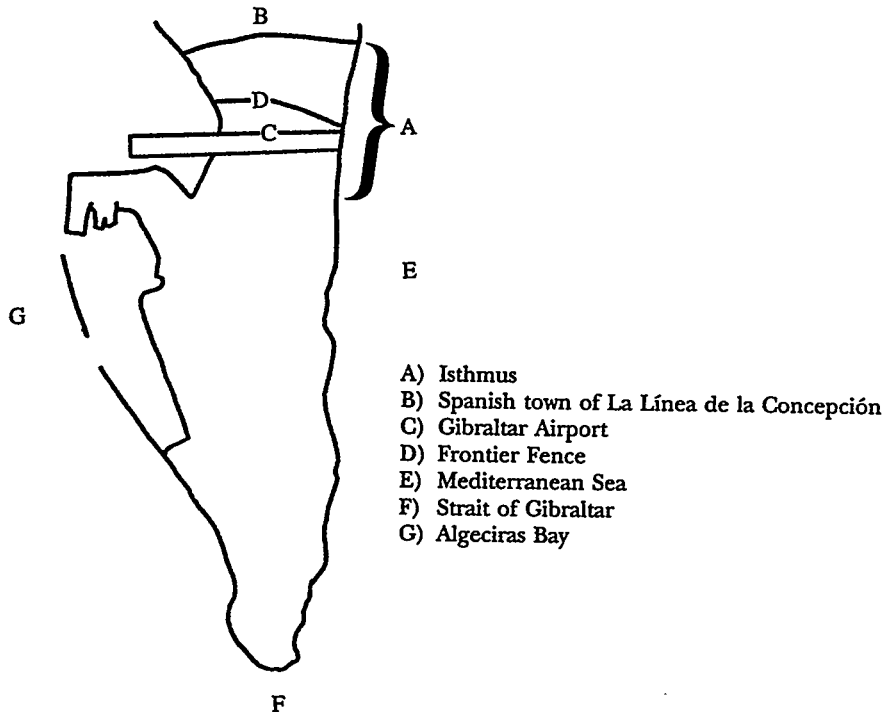
For 280 years, Great Britain¹ has ruled Gibraltar,² using it

* J.D. Candidate, 1995, Fordham University.

1. See J. E. S. FAWCETT, *THE BRITISH COMMONWEALTH IN INTERNATIONAL LAW* 3-4 (1963). At the time the British captured Gibraltar, the "Kingdom of Great Britain" was the official name of the Kingdom comprising Scotland, England, and Wales. *Id.* In 1801, the union between Great Britain and Ireland took place. *Id.* at 4. When the British established the Irish Free State in 1922, the six northern counties remained under the British Crown. *Id.*

Although the official title, "United Kingdom of Great Britain and Northern Ireland," is technically correct for events after 1922, for purposes of clarity and consistency, this Note will refer to the British state exclusively as "Great Britain."

2. See *GIBRALTAR YEARBOOK* 11 (Joe Garcia ed., 1993). Gibraltar comprises an area of approximately two and one-third square miles, with most of the area covered by a mountain of grey limestones, commonly known as the Rock. *Id.* Gibraltar is situated between the Mediterranean Sea to its east, the Atlantic Ocean to its west, the Straits of Gibraltar to its south, and Spain to its north. *Id.* Gibraltar lies 14 miles to the north of



primarily as a military base to protect British military and economic interests in the region surrounding the Strait of Gibraltar.³ Prior to British rule, sovereignty over Gibraltar changed hands between the Moors and the Spaniards several times, with Spain finally controlling the city from 1462 to 1704.⁴ Nine years after the British seized Gibraltar,⁵ Great Britain and Spain signed the Treaty of Peace and Friendship Between Great Britain and Spain ("Treaty of Utrecht" or "Treaty"),⁶ which marked the beginning of Britain's official rule in Gibraltar.⁷ Today, Great Britain insists that the cession of land by Spain in the Treaty of Utrecht granted the British sovereignty⁸ over Gibraltar.⁹ Conversely, Spain claims that it did not relinquish sovereignty in the Treaty,¹⁰ and that according to United Nations General Assembly ("U.N. General Assembly") Resolution 1514 ("Resolution

Africa, and is connected to Spain by a thin isthmus which is about one mile long and a half mile wide. *Id.* With nearly 30,000 civilian residents, Gibraltar is the second most densely populated area in Europe, and fourth such area in the world. *Id.*

3. See SCOTT C. TRUVER, *THE STRAIT OF GIBRALTAR AND THE MEDITERRANEAN 175-76* (1980). During the nineteenth century, Great Britain felt that Gibraltar was its "Key to the Mediterranean" with regard to ensuring the safety of shipping through the Strait of Gibraltar. *Id.* Gibraltar has played a role in various British military victories, including the defeat of German forces in North Africa during World War II. GEORGE HILLS, *ROCK OF CONTENTION* 438 (1974).

4. See *ROCK OF CONTENTION*, *supra* note 3, at 96-163.

5. See *id.* at 174-75. A joint Anglo-Dutch fleet defeated the forces of the Spanish king, Philip V, and captured Gibraltar on August 4, 1704. *Id.*

6. Treaty of Peace and Friendship Between Great Britain and Spain, July 13, 1713, Gr. Brit.-Spain, 28 Consol. T.S. 295, 330, reprinted in 1 *MAJOR PEACE TREATIES OF MODERN HISTORY 1648-1967* [M.P.T.] 177, 223 (Fred L. Israel ed., 1967) [hereinafter *Treaty of Utrecht*].

7. See *id.* art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 223. The Treaty granted Great Britain a "propriety" over the town of Gibraltar. *Id.* art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 223. In 1830, Great Britain made Gibraltar a British crown colony. RAND McNALLY, *WORLD FACTS IN BRIEF* 38 (1986). As a crown colony, Gibraltar does not have separate national status. *GIBRALTAR YEARBOOK*, *supra* note 2, at 13.

8. J.G. STARKE, *INTRODUCTION TO INTERNATIONAL LAW* 95 (9th ed. 1984). "Normally a state is deemed to possess independence and 'sovereignty' over its subjects and its affairs, and within its territorial limits." *Id.* A sovereign can control all affairs of a state or territory, which includes the power "to make laws, to execute and to apply them, to impose and collect taxes and levy contributions, to make war or peace, to form treaties of alliance or of commerce with foreign nations, and the like." *BLACK'S LAW DICTIONARY* 1396 (6th ed. 1990).

9. See *Treaty of Utrecht*, *supra* note 6, art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 223. The British stress that the Treaty granted Great Britain a "propriety . . . without any exception or impediment whatsoever." *Id.* art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 223.

10. *Id.* art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 223. Spain ceded "propriety" over Gibraltar to Great Britain. *Id.* art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 223. Spain

1514"),¹¹ Spain's right to territorial integrity¹² demands a return to Spanish rule.¹³

Nonetheless, Britain's armed forces continue to conduct operations in Gibraltar.¹⁴ Gibraltar, however, has grown into more than merely a British military base.¹⁵ Tourism, retailing, and financial services now dominate Gibraltar's economy,¹⁶ with Gibraltar Airport emerging as an integral part of the economy's growth.¹⁷

The dispute over the sovereignty of the City of Gibraltar has had deleterious effects, impeding the advancement of the otherwise promising economy of Gibraltar and the Campo area.¹⁸ The conflict, which includes a disagreement over

insists that a "propriety" is something less than sovereignty. ROCK OF CONTENTION, *supra* note 3, at 223.

11. G.A. Res. 1514, U.N. GAOR, 15th Sess., Supp. No. 16, at 66-67, U.N. Doc. A/L.323 (1960) [hereinafter Resolution 1514].

12. See ANTHONY D'AMATO, INTERNATIONAL LAW: PROCESS AND PROSPECT 59 (1987). The term "territorial integrity" generally refers to a nation's right to be free of a "permanent loss of a portion of one's territory." *Id.*

13. Resolution 1514, *supra* note 11, at 67. With regard to a nation's territorial integrity, Resolution 1514 reads: "Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations." *Id.*

14. John Darnton, *On the Rock, Spain Looks Nice - But Just For a Visit*, N.Y. TIMES, Mar. 13, 1983, at D5. "Military experts may differ on how strategic Gibraltar is in this day of intercontinental missiles, but the Rock does contain 30 miles of underground tunnels, a hidden strategic command center and berths for atomic submarines." *Id.* During the Cold War, the North Atlantic Treaty Organization used Gibraltar's radar base for early detection of Soviet missiles as well as tracking Soviet submarines through the Strait of Gibraltar. TRUVER, *supra* note 3, at 174.

15. RICHARD GOZNEY, THE ROYAL INSTITUTE OF INTERNATIONAL AFFAIRS, GIBRALTAR AND THE EC: ASPECTS OF THE RELATIONSHIP 10 (1993). "[R]evenue from the British Ministry of Defence, directly and indirectly, slumped to some 15% of the colony's income in 1992 (down from 50-70% in 1980) . . ." *Id.*

16. See *id.* at 10-14. Gibraltar remains attractive to tourists due to its duty free shopping. *Id.* at 3. Gibraltar also offers an attractive tax free regime for offshore trusts whose trust beneficiaries do not reside in Gibraltar. *Id.* at 12. Offshore companies who do not conduct business and are not resident in Gibraltar enjoy the same tax-free status. *Id.* "The financial service industry now contributes about as much as tourism to the wealth of Gibraltar." *Id.*

17. See GIBRALTAR YEARBOOK, *supra* note 2, at 24. In 1991, almost 100,000 visitors arrived in Gibraltar via the airport. *Id.*

18. See GOZNEY, *supra* note 15, at 6-8. As a result of the sovereignty dispute, the Government of Spain has refused to assist Gibraltar with its garbage disposal and with the "cross border supply of water or electricity." *Id.* at 6. The dispute may prevent Gibraltar's participation in the External Frontiers Convention and therefore impede "freer intra-EC cross border movements." *Id.* at 8; see EU: Proposal - Draft Regulation on a Uniform Format for Visas, Reuter Textline, Sept. 2, 1994, available in LEXIS, Europe Li-

sovereignty of the isthmus,¹⁹ has also strained relations between Great Britain and Spain.²⁰ These tenuous relations are further exacerbated by the presence of Gibraltar Airport²¹ on the isthmus.²² Although Great Britain and Spain are members of, and Gibraltar is associated with, the North Atlantic Treaty Organization ("NATO")²³ and the European Community ("EC" or "Community"),²⁴ the sovereignty dispute now stands at

brary, Txtwe File (noting that External Frontiers Convention has yet to come into force). The Spanish hinterland surrounding Gibraltar is known as the Campo de Gibraltar ("Campo area"). HOWARD S. LEVIE, *THE STATUS OF GIBRALTAR* 3, 5 (1983).

19. LEVIE, *supra* note 18, at 35-39. The British and Spanish differ as to whether the Treaty of Utrecht implicitly ceded the isthmus to Great Britain. *Id.*; *see supra* note 2 (describing isthmus).

20. *See* LEVIE, *supra* note 18, at x. "[S]ince the day it became a British possession, 'Gibraltar has been a thorn in the side of Spain.'" *Id.* "Gibraltar has become 'a running sore' in the relations between Great Britain and Spain, a canker which, except for a few relatively short periods of time, has adversely affected Anglo-Spanish relations during the almost [280] years of British ownership." *Id.*

21. *See* GIBRALTAR YEARBOOK, *supra* note 2, at 44. Gibraltar Airport is operated by the British Royal Air Force ("RAF"), and is used for both civilian and military purposes. *Id.* The main purpose of Gibraltar's RAF unit "is to provide an operating base for visiting RAF and NATO aircraft involved in the protection of NATO's southern flank." *Id.*

22. *See* GOZNEY, *supra* note 15, at 6-8; ROCK OF CONTENTION, *supra* note 3, at 460-61.

23. *See* NATO INFORMATION SERVICE, *THE NORTH ATLANTIC TREATY ORGANISATION, FACTS AND FIGURES 13-14* (1989). The North Atlantic Treaty Organization was formed on April 4, 1949, by ten European countries, the United States, and Canada, in accordance with Article 51 of the United Nations Charter. *Id.* at 3; *see* U.N. CHARTER art. 51 ("Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations . . ."). "The North Atlantic Treaty is the political framework for an international alliance designed to prevent aggression or to repel it, should it occur. It provides for continuous cooperation and consultation in political, economic and military fields." NATO INFORMATION SERVICE, *supra*, at 13. Great Britain was one of the original signatories of the North Atlantic Treaty. *Id.* at 9-11. Spain joined NATO on May 30, 1982. *Id.* at 11. British Forces Headquarters in Gibraltar "is commanded by the Commander British Forces who is also the NATO commander of the Gibraltar Mediterranean area" GIBRALTAR YEARBOOK, *supra* note 2, at 43; *see supra* note 21 (discussing Gibraltar Airport's role in NATO activities).

24. *See* Treaty Establishing the European Community, Feb. 7, 1992, [1992] 1 C.M.L.R. 573 [hereinafter EC Treaty], incorporating changes made by Treaty on European Union, Feb. 7, 1992, O.J. C 224/01 (1992), [1992] 1 C.M.L.R. 719, reprinted in 31 I.L.M. 247 (1992). The TEU, *supra*, amended the Treaty Establishing the European Economic Community, Mar. 25, 1957, 1973 Gr. Brit. T.S. No. 1 (Cmd. 5179-II), 298 U.N.T.S. 3 (1958), as amended by Single European Act, O.J. L 169/1 (1987), [1987] 2 C.M.L.R. 741, in *Treaties Establishing the European Communities* (EC Off'l Pub. Office, 1987). The twelve Member States of the Community are Belgium, Denmark, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and Great Britain. *Id.* Gibraltar is included in the Community under Article 227(4) of the EC Treaty, which

an impasse and continues to adversely affect the bond between these nations.²⁵

In addition to the British and Spanish views on the issue, a third view surfaced after the election of Chief Minister Joe Bossano in 1988.²⁶ Since his 1988 election, Chief Minister Bossano has been the primary advocate of Gibraltar's right to self-determination.²⁷ Bossano insists that in order to fully exercise this right, Gibraltarian government²⁸ officials must represent the people of Gibraltar²⁹ in negotiations with Spain.³⁰

applies to European territories whose external relations are controlled by a Member State. GIBRALTAR YEARBOOK, *supra* note 2, at 15. Article 227(4) reads: "The provisions of this Treaty shall apply to the European territories for whose external relations a Member State is responsible." EC Treaty, *supra*, art. 227(4). Gibraltar, however, is excluded from the EC's common tariff arrangements, common agricultural policy, and value added tax. GIBRALTAR YEARBOOK, *supra* note 2, at 15.

25. See GOZNEY, *supra* note 15, at 6-9 (discussing disagreements between Great Britain and Spain in Community).

26. GIBRALTAR YEARBOOK, *supra* note 2, at 35. In 1992, the people of Gibraltar re-elected Chief Minister Bossano's party, the Gibraltar Socialist-Labour Party ("GSLP"), with seventy-three percent of the vote. *Id.* at 34. "The GSLP have pursued policies of privatisation, increased 'autonomy' for Gibraltar, and have tried to attract financial services to the territory." U.K. FOREIGN COMMONWEALTH OFFICE, GIBRALTAR - A GENERAL BRIEFING NOTE 2 (Oct. 1994).

27. See GOZNEY, *supra* note 15, at i (citing Bossano's view that Gibraltar should have representation separate from Great Britain). The right to self-determination "connotes freedom of choice to be exercised by a dependent people through a plebiscite or some other method of ascertainment of the people's wishes." STARKE, *supra* note 8, at 121.

28. GIBRALTAR YEARBOOK, *supra* note 2, at 30-33. The Gibraltar Constitution divides the political responsibilities of the Government of Gibraltar between those officials appointed by the British Government and those officials elected by the people of Gibraltar. *Id.* at 30-32. The Governor is appointed by the British Government. *Id.* at 9. As head of the executive, "[t]he Governor retains responsibility for those matters which directly relate to external affairs, defence and internal security." *Id.* at 32. Field Marshal Sir John Chapple is the present Governor of Gibraltar. *Id.* at 10. The people of Gibraltar elect fifteen members to the House of Assembly. *Id.* at 32. "The Chief Minister is the elected member of the House [of Assembly] who, in the Governor's judgement, is most likely to obtain the greatest measure of confidence among the elected members." *Id.* The Chief Minister serves on the Council of Ministers, which is responsible for decisions relating to defined domestic matters. *Id.* Others who serve on the Council of Ministers "are appointed by the Governor after consultation with the Chief Minister." *Id.* The House of Assembly elects a Mayor, who carries out ceremonial functions on behalf of Gibraltar. *Id.* The British Crown retains the right to amend the Constitution of Gibraltar. *Id.*

29. See U.K. FOREIGN COMMONWEALTH OFFICE, *supra* note 26, at 1. "The people of Gibraltar are British Dependent Territories' Citizens." *Id.*

30. GOZNEY, *supra* note 15, at i. Chief Minister Bossano summed up his government's views on the future of Gibraltar:

The UK Government has repeatedly stated, since the 1960s, that it will not transfer the sovereignty of Gibraltar to Spain against the wishes of its inhabit-

This Note argues that the right to self-determination, as expressed in Resolution 1514,³¹ empowers the people of Gibraltar with the right to determine their own destiny. Part I discusses the factual and legal background of the dispute over sovereignty of both the City of Gibraltar, as well as the isthmus connecting the city to Spain. Part II explains the British, Spanish, and Gibraltarian claims to the territory, analyzing the relevant U.N. resolutions, agreements, and legislation that have defined the respective rights of the three parties. Part III argues that Gibraltar has the right to self-determination and that Great Britain should no longer represent Gibraltar in negotiations with Spain. This Note concludes that, in accord with Resolution 1514,³² Gibraltar has the right to self-determination, and the Spanish claim to territorial integrity does not supersede this right.

I. HISTORY OF THE ANGLO-SPANISH DISPUTE OVER SOVEREIGNTY OF GIBRALTAR

In 1713, Great Britain and Spain signed the Treaty of Utrecht,³³ marking the end of Spanish control and the beginning of British rule over Gibraltar.³⁴ This status was left undisturbed until the international community began to address the issue of decolonization.³⁵ U.N. debates on the principles of territorial integrity and self-determination³⁶ engendered two resolutions on the Gibraltar question,³⁷ which concerned the dispute

ants. However this minimal position is not enough to satisfy the aspirations of the Gibraltarians. My Government is willing to hold discussions with both UK and Spain but cannot be expected to participate in a forum in which the Government of the colony is present as part of the UK delegation as if the people of Gibraltar had no existence in their own right.

Id.

31. Resolution 1514, *supra* note 11, at 67.

32. *Id.*

33. See Treaty of Utrecht, *supra* note 6, art. X, 28 Consol. T.S. at 295, 1 M.P.T. at 177.

34. See *supra* note 5 (discussing Britain's capture of Gibraltar in 1704).

35. See Resolution 1514, *supra* note 11, at 66 ("The General Assembly . . . [s]olemnly proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations").

36. See U.N. GAOR, 18th Sess., annex 1, Agenda Item 23, addendum ch. XII, at 267-77, U.N. Doc. A/5446/Rev.1 (1963) [hereinafter Special Committee, 18th Sess.]; U.N. GAOR, 19th Sess., annex 8, Agenda Item 21, ch. X, at 291-314, U.N. Doc. A/5800/Rev.1 (1964) [hereinafter Special Committee, 19th Sess.].

37. G.A. Res. 2070, U.N. GAOR, 20th Sess., Supp. No. 14, at 59, U.N. Doc. A/6014

over the city as well as the isthmus.³⁸ Following passage of these U.N. resolutions, Great Britain and Spain have signed agreements that reflect their understanding of their responsibilities under both the Treaty and the resolutions.³⁹

A. *History of Gibraltar Prior to the Treaty of Utrecht*

The Moors were the first people to settle Gibraltar when Tariq ibn Zeyad, the lieutenant of Moorish General Musa ibn Nusayr, took Gibraltar in 711 A.D.⁴⁰ Between 1309 and 1462 A.D., Gibraltar underwent eight separate sieges, with different Muslim rulers controlling Gibraltar for all but the first twenty-four of those years.⁴¹ In 1462, the Spanish Kingdom of Castile captured Gibraltar from the Moors.⁴² Gibraltar remained under Spanish control⁴³ until a joint Anglo-Dutch fleet seized the town during the War of the Spanish Succession.⁴⁴ On August 4, 1704,

(1965) [hereinafter Resolution 2070]; G.A. Res. 2231, U.N. GAOR, 21st Sess., Supp. No. 16, at 74, U.N. Doc. A/6316 (1966) [hereinafter Resolution 2231].

38. See *supra* note 20 (discussing dispute over isthmus).

39. See The Lisbon Agreement, Apr. 10, 1980, Gr. Brit.-Spain, reprinted in GIBRALTAR YEARBOOK, *supra* note 2, at 5-6 ("The British and Spanish Government . . . intend in accordance with the relevant United Nations Resolutions . . . to resolve, in a spirit of friendship, the Gibraltar problem."); The Brussels Agreement, Nov. 27, 1984, Gr. Brit.-Spain, reprinted in GIBRALTAR YEARBOOK, *supra* note 2, at 6 (stating that "Spanish and British Governments will apply by not later than 15 February 1985 the Lisbon Declaration of 10 April 1980").

40. ROCK OF CONTENTION, *supra* note 3, at 23. The name Gibraltar is a Spanish corruption of the name given by the Moorish invaders, "Djabal Tarik," which means the Mount of Tarik. *Id.* at 13. Gibraltar was likely the starting point of the Moorish invasion of Spain in 711 A.D., which ended in the capture of much of the Iberian Peninsula, including Córdoba and Toledo. *Id.* at 23-30.

41. LEVIE, *supra* note 18, at 4-5. From 1309 to 1333, Gibraltar was in the possession of the Kingdom of Castile. *Id.* at 4.

42. ROCK OF CONTENTION, *supra* note 3, at 95.

43. DIEGO LAMELAS, THE SALE OF GIBRALTAR IN 1474 14, 22 (1992). In 1469, the Spanish king, Enrique IV, gave to the second Duke of Medina Sidonia the *señorio* of Gibraltar, which effectively granted the Duke both control over taxes for Gibraltar as well as the responsibility for defending it against Moorish attacks. *Id.* at 22. The Duke of Medina Sidonia sold Gibraltar for a period of two years to a group of Jewish converts to Christianity, known as Conversos, led by Pedro de Herrera, a prominent member of Córdoba's Jewish community. *Id.* at 14, 22. "They [the Conversos] were then tricked into handing over the city to the Duke of Medina Sidonia, who then expelled them from Gibraltar." *Id.* at 1.

44. See LEVIE, *supra* note 18, at 7-30. In 1701, Philip of Anjou was crowned King of Spain as Philip V. *Id.* at 8. The British feared that Philip V, who was the grandson of King Louis XIV of France, might form a close alliance between France and Spain. *Id.* at 8. At the same time, the Archduke Charles of Austria, the son of Holy Roman Emperor Leopold I, also claimed the Spanish throne. THE COLUMBIA ENCYCLOPEDIA 2589 (5th

the forces of the Spanish king, Philip V, agreed to surrender to the joint Anglo-Dutch fleet under the command of Admiral Sir George Rooke.⁴⁵ The overwhelming majority of Gibraltar's residents marched out of Gibraltar on August 7, 1704,⁴⁶ exhibiting their solidarity with Philip V.⁴⁷ Many of these expatriates settled a few miles north of Gibraltar in the Spanish town of San Roque.⁴⁸

B. *Spanish Cession of Gibraltar to Great Britain Through the Treaty of Utrecht*

On July 13, 1713, Great Britain and Spain marked the end of the War of the Spanish Succession by signing a peace treaty in the Dutch town of Utrecht.⁴⁹ Article X of the Treaty gave the British a "propriety"⁵⁰ over the town and castle of Gibraltar,⁵¹ in

ed. 1993). The War of the Spanish Succession began when Great Britain declared war against France and Spain on May 4, 1702. LEVIE, *supra* note 18, at 9. Great Britain, Holland, and most of the German states, who were allied in support of the claim to the Spanish throne of the Archduke Charles, fought against France, Spain, Portugal, Bavaria, and Savoy. THE COLUMBIA ENCYCLOPEDIA 2590 (5th ed. 1993).

45. ROCK OF CONTENTION, *supra* note 3, at 172-75.

46. *Id.* at 176. Seventy inhabitants of Gibraltar remained in the city, while approximately four to five thousand chose to leave. *Id.* A principal reason for this exodus was the disorderly behavior of the British military personnel, which included "the profanation by the Englishmen of places of worship and their mockery of religious objects." *Id.*

47. LEVIE, *supra* note 18, at 12. The terms of the surrender of the Spanish military were quite generous, but difficult to comply with for those supporting Philip V. *Id.* "Those who elected to stay would continue to enjoy the same status and the same exercise of religion as previously, but only after swearing allegiance to the Archduke Charles as Charles III." *Id.*

48. *Id.* These former inhabitants of Gibraltar were not about to forget their origins, establishing the "Town of San Roque Where the Most Noble and Loyal City of Gibraltar Dwells." *Id.* Some of the refugees settled further away from Gibraltar than San Roque, in Ronda, Málaga, and Medina Sidonia. ROCK OF CONTENTION, *supra* note 3, at 176.

49. Treaty of Utrecht, *supra* note 6, 28 Consol. T.S. at 295, 1 M.P.T. at 177. Representatives of Anne, Queen of Great Britain, and Philip, King of Spain, signed the Treaty of Utrecht. LEVIE, *supra* note 18, at 30.

50. See ROCK OF CONTENTION, *supra* note 3, at 223-24. The definition of the word "propriety" differs in Great Britain and Spain. The British felt the term "meant the land and everything upon the land within the confines of the city and fortifications of Gibraltar, and full sovereign rights there . . ." *Id.* at 223. The Spanish claim that under their civil law, a "propriety," far from granting sovereign rights to the land, gives its owner something similar to a right of possession. *Id.*

51. Treaty of Utrecht, *supra* note 6, art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 223-24. The first sentences of Article X of the Treaty read:

The Catholic King does hereby, for himself, his heirs and successors, yield to the crown of Great Britain the full and entire propriety of the town and castle

return for the British promise not to alienate this territory without first offering it to the Spanish Crown.⁵² In addition, the British agreed to allow the Roman Catholic residents of Gibraltar to remain there and practice their religion freely.⁵³ Great Britain also promised to ban Jewish and Moorish people from residing in Gibraltar,⁵⁴ to deny entry to Moorish warships seeking refuge,⁵⁵ and to assist the Spanish authorities in the fight against smuggling of contraband goods into Spain.⁵⁶ Although Spanish and British negotiators agreed upon the terms of the Treaty of Utrecht, their respective interpretations of the terms left the two

of Gibraltar, together with the port, fortifications, and forts thereunto belonging; and he gives up the said propriety to be held and enjoyed absolutely with all manner of right for ever, without any exception or impediment whatsoever. But that abuses and frauds may be avoided by importing any kind of goods, the Catholic King wills, and takes it to be understood, that the abovenamed propriety be yielded to Great Britain, without any territorial jurisdiction, and without any open communication by land with the country round about.

Id.

52. *Id.* art. X, 28 Consol. T.S. at 331, 1 M.P.T. at 224. The final sentence of Article X of the Treaty reads:

And in case it shall hereafter seem meet to the crown of Great Britain, to grant, sell, or by any means to alienate therefrom the propriety of the said town of Gibraltar, it is hereby agreed, and concluded, that the preference of having the same, shall always be given to the crown of Spain before any others.

Id.

53. *Id.* The Treaty also states: "Her Majesty the Queen of Great Britain does further promise, that the free exercise of their religion shall be indulged to the Roman Catholic inhabitants of the aforesaid town." *Id.* Provisions of this kind were common during this era when a Catholic monarch ceded territory to a Protestant country. LEVIE, *supra* note 18, at 40; *see supra* note 48 (noting that most residents of Gibraltar had left Gibraltar in 1704 and settled in San Roque).

54. Treaty of Utrecht, *supra* note 6, art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 224. "[N]o leave shall be given, under any pretense whatsoever, either to Jews or Moors, to reside or have their dwellings in the said town of Gibraltar[.]" *Id.* The British Government never fully complied with this provision, allowing small numbers of Jews to remain in Gibraltar. ROCK OF CONTENTION, *supra* note 3, at 227. Although Spain complained at first of Britain's non-compliance with the provision banning Jews and Moors from residing in Gibraltar, it has since dropped this line of objection. LEVIE, *supra* note 18, at 40.

55. Treaty of Utrecht, *supra* note 6, art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 224. The Treaty provides: "[N]o refuge or shelter shall be allowed to any Moorish ships of war in the harbour of the said town, whereby the communication between Spain and Ceuta may be obstructed, or the coasts of Spain be infested by the excursions of the Moors." *Id.*

56. *Id.* To prevent illegal trade between Spain and Gibraltar, the parties added this provision: "But if any goods be found imported by Gibraltar, either by way of barter for purchasing provisions, or under any other pretence, the same shall be confiscated, and complaint being made thereof, those persons who have acted contrary to the faith of this treaty, shall be severely punished." *Id.*

parties at odds soon after concluding the agreement.⁵⁷

C. *U.N. Consideration of the Gibraltar Question: Self-Determination vs. Territorial Integrity*

The international community began its consideration of the future of Gibraltar when the United Nations recognized the right to self-determination in Article 1 of the U.N. Charter.⁵⁸ In December 1960, the U.N. General Assembly,⁵⁹ focusing on the language contained in Article 1 of the U.N. Charter,⁶⁰ passed Resolution 1514.⁶¹ This Resolution outlined the principles under which colonial powers were to free territories under their control from colonialism.⁶² Because Gibraltar is a British col-

57. See *supra* note 50 (discussing differing opinions over word "propriety" in Treaty).

58. U.N. CHARTER art. 1. Article 1 states: "The Purposes of the United Nations are . . . [t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples . . ." *Id.* "The Charter was touted by the Truman administration as the new global Magna Carta, which would establish a new world order modeled on the federal structure of the United States and thus ensure collective security and the rule of law for all mankind." Thomas M. Franck, *Soviet Initiatives: U.S. Responses-New Opportunities for Reviving the United Nations Systems*, 83 AM. J. INT'L. L. 531, 532 (1989).

59. See UNITED NATIONS DEPARTMENT OF PUBLIC INFORMATION, BASIC FACTS ABOUT THE UNITED NATIONS 4-7 (1989). The General Assembly is one of the six principal organs of the United Nations. *Id.* at 4. The General Assembly is divided into seven committees that submit draft resolutions to the plenary meetings, where voting occurs by simple majority. *Id.* at 5. While General Assembly decisions "have no legally binding force for Governments," they do "carry the weight of world opinion on major international issues, as well as the moral authority of the world community." *Id.* at 7.

60. See *supra* note 58 (explaining Article 1 of U.N. Charter).

61. Resolution 1514, *supra* note 11, at 66-67. The following provisions of Resolution 1514 apply to Gibraltar:

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

5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories . . . to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.

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

Id. at 67.

62. *Id.* at 66-67. The International Covenant on Economic, Social and Cultural Rights, which was adopted by the U.N. General Assembly, states that all "peoples" have the right to self-determination. G.A. Res. 2200, annex, art. 1, U.N. GAOR, 21st Sess.,

ony,⁶³ this resolution became the basis for the analysis by the U.N. Committee of Twenty-Four (the "Special Committee")⁶⁴ on the situation in Gibraltar.⁶⁵ For two years, the Special Committee listened to the views of the British, Spanish, and Gibraltarian representatives,⁶⁶ and finally agreed upon a consensus, which structured the negotiations for the future status of Gibraltar.⁶⁷ The consensus, though cognizant of the interests of the citizens of Gibraltar, was absent of any explicit mention of Gibraltar's

Supp. No. 16, at 49, U.N. Doc. A/6316 (1966) [hereinafter *International Covenant on Economic, Social and Cultural Rights*]. Article 1 reads:

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

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Id. Article 2 notes that each party to the Covenant must "undertake[] to take steps . . . with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures." *Id.* art 2(1), at 49. The document entered into force on January 3, 1976. INTERNATIONAL HUMAN RIGHTS INSTRUMENTS OF THE UNITED NATIONS 1948-1982 86 (U.N.I.F.O. Editorial Staff ed., 1983).

63. See *supra* note 7 (noting Gibraltar's status as British Crown Colony).

64. See BASIC FACTS ABOUT UNITED NATIONS, *supra* note 59, at 163. The General Assembly established the Special Committee to discuss the implementation of Resolution 1514, entitled the Declaration on the Granting of Independence to Colonial Countries and Peoples. *Id.*; LEVIE, *supra* note 18, at 216 n.87.

65. See ROCK OF CONTENTION, *supra* note 3, at 448. The situation in Gibraltar was not entirely new to the United Nations, as Great Britain, in accord with U.N. requirements concerning dependent territories, had been providing the United Nations with information concerning Gibraltar's economic and political situation. *Id.* at 448-49.

66. Special Committee, 18th Sess., *supra* note 36, at 267; Special Committee, 19th Sess., *supra* note 36, at 291.

67. Special Committee, 19th Sess., *supra* note 36, at 314. At the end of the Special Committee's consideration of Gibraltar during the nineteenth session, the Committee adopted a consensus:

The Special Committee . . . affirms that the provisions of the Declaration on the Granting of Independence to Colonial Countries and Peoples are fully applicable to the territory of Gibraltar

In the circumstances, the Special Committee invites the United Kingdom and Spain to begin talks without delay, in accordance with the principles of the United Nations Charter, in order to reach a negotiated solution in conformity with the provisions of General Assembly resolution 1514 (XV), giving due account to the opinions expressed by the members of the Committee and bearing in mind the interests of the people of the Territory.

Id.; see *supra* note 11 (discussing Resolution 1514 - the Declaration on the Granting of Independence to Colonial Countries and Peoples).

right to self-determination.⁶⁸

Furthermore, in 1965 and 1966, the U.N. General Assembly passed Resolutions 2070 ("Resolution 2070")⁶⁹ and 2231 ("Resolution 2231"),⁷⁰ regarding the status of Gibraltar. Both Resolutions called for Great Britain and Spain to negotiate the future status of Gibraltar within the framework of Resolution 1514 and to report back to the Special Committee.⁷¹ Of the two Resolutions, only Resolution 2231 specifically demanded that Spain and Great Britain consider the interests of the people of Gibraltar.⁷²

D. *British and Spanish Acts and Agreements Subsequent to Resolutions 2070 and 2231*

After the United Nations addressed the Gibraltar question, Great Britain and Spain acted according to what each believed were its responsibilities under Resolution 2231.⁷³ The British

68. Special Committee, 19th Sess., *supra* note 36, at 314. The consensus did not explicitly give Gibraltar the right to self determination, but requested that Spain and the United Kingdom "bear[] in mind" the views of the people of Gibraltar. *Id.*

69. Resolution 2070, *supra* note 37, at 59.

70. Resolution 2231, *supra* note 37, at 74.

71. Resolution 2070, *supra* note 37, art. 2, at 59; Resolution 2231, *supra* note 37, art. 2, at 74. Resolution 2070 called on Spain and the United Kingdom "to begin without delay the talks envisaged under the terms of the consensus adopted on 16 October 1964 by the Special Committee . . ." Resolution 2070, *supra* note 37, art. 2, at 59; *see supra* note 67 (discussing consensus adopted by the Special Committee on October 16, 1964). Both Great Britain and Spain voted for Resolution 2231, which reads:

The General Assembly . . . [c]alls upon the two parties to continue their negotiations, taking into account the interests of the people of the Territory, and asks the administering Power to expedite, without any hindrance and in consultation with the Government of Spain, the decolonization of Gibraltar, and to report to the Special Committee on the Situation . . .

Resolution 2231, *supra* note 37, art. 2, at 74.

72. Resolution 2231, *supra* note 37, art. 2, at 74. Resolution 2231 called on "the two parties to continue their negotiations, taking into account the interests of the people of the Territory." *Id.* While Resolution 2070 did not explicitly mention the interests of the people of Gibraltar, it did refer to the consensus adopted by the Special Committee on October 16, 1964, which called for the parties to consider the views of the Gibraltarians. Resolution 2070, *supra* note 37, art. 1, at 59; *see* Special Committee, 19th Sess., *supra* note 67, at 314 (quoting Special Committee's consensus of October 16, 1964).

73. Resolution 2231, *supra* note 37, at 74. Prior to taking these actions, Great Britain proposed that the International Court of Justice ("ICJ") settle the issue. LEVIE, *supra* note 18, at 110. The proposal, submitted to Spain for approval on October 11, 1966, requested the ICJ to give a decision on five separate questions with regard to sovereignty over Gibraltar. *Id.* at 135-37. The ICJ was to determine the issue of sover-

held a referendum in Gibraltar to determine the "interests" of the Gibraltarians⁷⁴ and, as a result of the outcome, promulgated Gibraltar Constitution Order 1969 ("Gibraltar Constitution").⁷⁵ Then, in the 1980's, with Resolution 2231 as a guide, Spanish and British officials concluded two agreements that committed the two nations to negotiations concerning the sovereignty over Gibraltar.⁷⁶

1. Great Britain Empowers the People of Gibraltar Through a Referendum and a Constitutional Change

On September 10, 1967, in order to ascertain the political aspirations of the people of Gibraltar, Great Britain conducted a referendum in Gibraltar.⁷⁷ An overwhelming majority of Gibraltarians voted to retain their existing relationship with Great Britain, rather than strengthen their ties with the Spanish government.⁷⁸ In response to the results of the referendum, the British government promulgated the Gibraltar Constitution.⁷⁹ This Constitution effectively gave the people of Gibraltar the power to veto any decision regarding the transfer of sover-

eignty over the town, the isthmus, and the bay, as well as whether Great Britain had the right to fly over Spanish airspace. *Id.* Spain, however, declined the British request, effectively keeping the issue out of the ICJ. *Id.* at 110-11. One author believes that this was a tactical error on the part of Spain. *Id.* at 222 n.145. Levie writes:

If the Court had decided that Great Britain had no rights beyond the actual walls of Gibraltar, as it might well have done, this would undoubtedly have made the overall British position untenable; at the very least, it would have necessitated a softening of the positions of both Great Britain and the Gibraltarians.

Id. One commentator claims that this decision indicates the weakness of the Spanish position. Reginald Dale, *Spanish Intransigence Over Gibraltar*, 19 UNITED ASIA 154, 155 (1967). *Contra* GEORGE HILLS, FRANCO 444 (1967) (insisting that General Franco was confident that decision of ICJ would be in Spain's favor).

74. LEVIE, *supra* note 18, at 112.

75. Gibraltar Constitution Order 1969, 1 LAWS OF GIBRALTAR I (1984).

76. Lisbon Agreement, *supra* note 39, at 5-6; Brussels Agreement, *supra* note 39, at 6.

77. LEVIE, *supra* note 18, at 112, 224 n.160. The people of Gibraltar had two choices: "(A) To pass under Spanish sovereignty in accordance with the terms proposed by the Spanish Government to Her Majesty's Government on 18 May, 1966; or (B) Voluntarily to retain their link with Britain, with democratic local institutions and with Britain retaining its present responsibilities," *Id.* at 112.

78. *Id.* at 112. Of the more than 12,000 Gibraltarians who went to the polls to decide their future, only forty-four voted to pass under Spanish sovereignty. *Id.*

79. Gibraltar Constitution Order 1969, 1 LAWS OF GIBRALTAR I (1984).

eignty from the British Crown to another state.⁸⁰

The U.N. General Assembly, however, rejected the validity of the plebiscite in Resolution 2353,⁸¹ passed on December 19, 1967.⁸² In Resolution 2353, the General Assembly insisted that the referendum violated the provisions of Resolution 2231⁸³ and called on Great Britain and Spain to resume negotiations in accord with Resolutions 2070 and 2231.⁸⁴ Furthermore, in retaliation for the new Gibraltar Constitution, Spain closed the border to Gibraltar in June, 1969.⁸⁵

80. *Id.* pmb. The preamble of this Order states in part: "Her Majesty's Government will never enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another state against their freely and democratically expressed wishes." *Id.*

81. G.A. Res. 2353, U.N. GAOR, 22d Sess., Supp. No. 16, at 53, U.N. Doc. A/7013 (1967).

82. *Id.*

83. *Id.* The pertinent language reads as follows:

The General Assembly . . . [d]eclares the holding of the referendum of 10 September 1967 by the administering Power to be a contravention of the provisions of General Assembly resolution 2231 (XXI) and of those of the resolution adopted on 1 September 1967 by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Id. art. 2; see *supra* note 37 (discussing United Nations' passage of Resolution 2231). In the Western Sahara Advisory opinion, the International Court of Justice addressed the manner in which the United Nations conducts its analysis of a people's right to self-determination: "The right of self-determination leaves the General Assembly a measure of discretion with respect to the forms and procedures by which that right is to be realized." *Western Sahara*, 1975 I.C.J. 12, 36 (Oct. 16); see Visuvanathan Rudrakumar, *The 'Requirement' of Plebiscite in Territorial Rapprochement*, 12 *Hous. J. INT'L L.* 23 (1989) (arguing that Western Sahara Advisory opinion is implicit endorsement of U.N. resolutions regarding Gibraltar).

84. Resolution 2353, *supra* note 81, art. 3, at 53. With regard to the resumption of talks concerning sovereignty over Gibraltar, the resolution states:

The General Assembly . . . [i]nvites the Governments of Spain and the United Kingdom of Great Britain and Northern Ireland to resume without delay the negotiations provided for in General Assembly resolutions 2070 (XX) and 2231 (XXI) with a view to putting an end to the colonial situation in Gibraltar and to safeguarding the interests of the population upon the termination of that situation

Id.; see *supra* note 37 and accompanying text (discussing U.N. passage of Resolutions 2070 and 2231).

85. U.K. FOREIGN COMMONWEALTH OFFICE, *supra* note 26, at 1-2. Spain's decision to close the border "was in reaction to Gibraltar's new Constitution published the preceding month which gave the Government of Gibraltar a substantial measure of 'self-rule.'" *Id.* In reference to this act, General Sir William Jackson, the former Governor of Gibraltar, recently wrote: "Gibraltarians have no wish to become Spanish, particularly since they were cut off from Spain by the 15th siege, from 1969 to 1985." Gen. Sir

2. Anglo-Spanish Agreements to Negotiate Sovereignty Issues

In an attempt to resolve the dispute over Gibraltar, Spain and Great Britain concluded the first agreements regarding sovereignty over Gibraltar since the Treaty of Utrecht.⁸⁶ On April 10, 1980, Spanish Foreign Minister Sr. Oreja and British Foreign Secretary Lord Carrington signed the Lisbon Agreement.⁸⁷ In the Lisbon Agreement, the two parties agreed to resolve their dispute over Gibraltar through negotiations based on the relevant U.N. resolutions.⁸⁸ While Spain and Great Britain did not resolve the issue of Gibraltar's right to self-determination in the Lisbon Agreement,⁸⁹ they did commit themselves to begin negotiations.⁹⁰

William Jackson, *Why Not Make the Rock a Dominion?*, WKLY. TELEGRAPH, Dec. 1, 1993, at 18 [hereinafter *Dominion*].

86. Lisbon Agreement, *supra* note 39, at 5; Brussels Agreement, *supra* note 39, at 6; see Treaty of Utrecht, *supra* note 6, art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 223 (containing provisions regarding Gibraltar). The Lisbon Agreement referred specifically to the parties' obligation under U.N. resolutions to begin negotiations to resolve the Gibraltar question: "1. The British and Spanish Government . . . intend in accordance with the relevant United Nations Resolutions, to resolve, in a spirit of friendship, the Gibraltar problem. 2. Both Governments have therefore agreed to start negotiations aimed at overcoming all the differences between them on Gibraltar." Lisbon Agreement, *supra* note 39, arts. 1-2, at 5. While the Brussels Agreement did not specifically mention the U.N. resolutions, it did call for application of the Lisbon Agreement. Brussels Agreement, *supra* note 39, at 6.

87. Lisbon Agreement, *supra* note 39, at 5.

88. *Id.* art. 1. "The British and Spanish Government desiring to strengthen their bilateral relations and thus to contribute to Western solidarity, intend in accordance with the relevant United Nations Resolutions, to resolve, in a spirit of friendship, the Gibraltar problem." *Id.*; see *supra* notes 69-72 and accompanying text (discussing U.N. Resolutions 2070 and 2231).

89. See Lisbon Agreement, *supra* note 39, art. 5, at 6. While the Lisbon Agreement did not specifically mention the right to self-determination, it did state the general positions of both Spain and Great Britain with regard to the sovereignty issue:

The Spanish Government, in reaffirming its position on the re-establishment of the territorial integrity of Spain, restated its intention that in the outcome of the negotiations the interests of the Gibraltarians should be fully safeguarded. For its part the British Government will fully maintain its commitment to honour the freely and democratically expressed wishes of the people of Gibraltar as set out in the Preamble to the Gibraltar Constitution.

Id.; see Gibraltar Constitution Order 1969, 1 LAWS OF GIBRALTAR 1 (1984) (containing Britain's commitment to wishes of people of Gibraltar).

90. Lisbon Agreement, *supra* note 39, arts. 2, 4, at 5-6. Spain and Great Britain expressed their commitment to begin negotiations: "Both Governments have therefore agreed to start negotiations aimed at overcoming all the differences between them on Gibraltar To this end both Governments will be prepared to consider any proposals which the other may wish to make, recognising the need to develop practical cooperation on a mutually beneficial basis." *Id.*

On November 27, 1984, negotiations under the provisions of the Lisbon Agreement⁹¹ produced a more detailed arrangement, the Brussels Agreement.⁹² In the Brussels Agreement, Great Britain and Spain agreed to implement the Lisbon Agreement by February 15, 1985.⁹³ In order to achieve implementation of the Lisbon Agreement by the target date, the two sides agreed to establish an open border between Gibraltar and Spain⁹⁴ and to resolve the sovereignty issue through further negotiations.⁹⁵

E. Controversy Over the Isthmus and Its Airport

Related to the dispute over sovereignty of the City of Gibraltar is the controversy regarding the isthmus.⁹⁶ While the Treaty of Utrecht did not explicitly include the isthmus in the Spanish cession of territory, the British have nonetheless usurped a large portion of the isthmus area.⁹⁷ In 1938, Great Britain built an airport on the isthmus, which the British, in a 1987 agreement (the "Airport Agreement"),⁹⁸ agreed to share with Spain.⁹⁹ Gibraltar, however, has refused to implement the Airport Agree-

91. See Lisbon Agreement, *supra* note 39, at 6 ("Officials on both sides will meet as soon as possible to prepare the necessary practical steps which will permit the implementation of the proposals agreed to above.")

92. Brussels Agreement, *supra* note 39, at 6. Great Britain and Spain "agreed on the way in which the Spanish and British Governments will apply by not later than 15 February 1985 the Lisbon Declaration of 10 April 1980 in all its parts." *Id.*; see GOZNEY, *supra* note 15, at 4 (discussing political maneuvering by Spanish and British Governments leading up to conclusion of Brussels Agreement).

93. Brussels Agreement, *supra* note 39, at 6. The British Government, once again, stated its commitment to the language of the Gibraltar Constitution. *Id.*

94. *Id.* The two sides agreed that Spain and Gibraltar would grant each other's citizens equal rights in accord with the provisions of the EC Treaty. *Id.* The Agreement also called for "[t]he establishment of the free movement of persons, vehicles and goods between Gibraltar and the neighboring territory." *Id.*; see EC Treaty, *supra* note 24, art. 3(c) (calling for "abolition, as between Member States, of obstacles to freedom of movement for persons, services and capital").

95. Brussels Agreement, *supra* note 39, at 6. The two parties agreed to establish "a negotiating process aimed at overcoming all the differences between them over Gibraltar . . . Both sides accept that the issues of sovereignty will be discussed in that process." *Id.* This negotiating process is referred to as the "Brussels Process." U.K. FOREIGN COMMONWEALTH OFFICE, *supra* note 26, at 3.

96. See *supra* note 20 and accompanying text (discussing origins of dispute over isthmus).

97. See LEVIE, *supra* note 18, at 60-78.

98. Joint Declaration on Airport, Dec. 2, 1987, Gr. Brit.-Spain, reprinted in GIBALTAR YEARBOOK, *supra* note 2, at 7-8 [hereinafter Airport Agreement].

99. *Id.*

ment.¹⁰⁰ Due to Gibraltar's refusal, the European Community has excluded Gibraltar Airport (or "Airport") from participation in its Second Air Services Liberalisation Directive ("Air Services Directive" or "Directive").¹⁰¹

1. History of Dispute Over Sovereignty of the Isthmus

The small flat isthmus¹⁰² connecting the City of Gibraltar to the Spanish town of La Línea de la Concepción is not explicitly included in the territory ceded to Great Britain.¹⁰³ Five months after the Treaty was signed, Lieutenant Congreve, Britain's Lieutenant Governor of Gibraltar, ordered his troops to take a few hundred yards of the isthmus, much to the anger of the Spaniards.¹⁰⁴ Over the next two hundred years, Britain effectively asserted its control over most of the neutral ground¹⁰⁵ through various encroachments.¹⁰⁶ Finally, in 1909, the British Foreign Office instructed the appropriate authorities in Gibraltar to build a fence at the line where the sentries stood.¹⁰⁷ In 1942, over British protests, Spain occupied the remaining part of the isthmus.¹⁰⁸

100. GOZNEY, *supra* note 15, at 7.

101. Council Directive No. 89/463, O.J. L 226/14 (1989) (amending Council Directive No. 83/416, O.J. L 237/19 (1983)) [hereinafter Air Services Directive]; see GOZNEY, *supra* note 15, at 7 (discussing Gibraltar's exclusion from Directive).

102. See *supra* note 2 (describing isthmus).

103. See Treaty of Utrecht, *supra* note 6, art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 223. The Treaty ceded only "the town and castle of Gibraltar, together with the port, fortifications, and forts." *Id.* It specifically excluded territorial jurisdiction of "the country round about." *Id.*

104. LEVIE, *supra* note 18, at 61.

105. *Id.* at 66-67. In 1783, the British Secretary of State insisted that Britain had no right to sovereignty over any part of the isthmus, nor did it have any designs of acquiring that land. *Id.* However, the British finally concluded that a large section of the isthmus had always been a part of Gibraltar. *Id.*

106. *Id.* at 70. One such encroachment occurred in 1854, when the British created a "temporary" quarantine village on part of the isthmus for the victims of an epidemic. *Id.* The village later took on a permanent status when the British occupation outlasted the epidemic. *Id.*

107. *Id.* at 76-77. "The Spanish Government has frequently likened [the fence] to the 'Berlin Wall'; and the mere mention of the 'Fence' is enough to bring a black look to the face of most Spaniards." *Id.* at 78.

108. FOREIGN MINISTRY OF SPAIN, THE SPANISH RED BOOK ON GIBRALTAR 57 (1965) [hereinafter SPANISH RED BOOK]. The result is that there is no longer a neutral ground between the British and Spanish border guards. LEVIE, *supra* note 18, at 194 n.205.

2. Gibraltar Airport and Britain's Agreement to Share with Spain

In 1938, the British built Gibraltar Airport on their side of the isthmus,¹⁰⁹ which currently serves as a base for both the Royal Air Force and for commercial flights.¹¹⁰ Seeking to expand access to Gibraltar Airport, the British wanted the Airport to be included in the Air Services Directive.¹¹¹ The Directive was designed to eliminate restrictions on flights between EC Member States.¹¹² Spain, however, initially objected to Gibraltar Airport's inclusion in the Directive.¹¹³ In response to this objection, on December 2, 1987, after almost forty years of exclusive British control of the Airport, the foreign ministers of Spain and Great Britain agreed to share the Airport, signing the Airport Agreement.¹¹⁴ The Agreement, therefore, was a result of Great Britain's desire to have Gibraltar included in the Air Services Directive.¹¹⁵

According to the Airport Agreement, the Spanish government would be permitted to build a new terminal at the north-

109. LEVIE, *supra* note 18, at 79. Located on the isthmus is Gibraltar Airport, which was built in 1938 by Great Britain and extended immediately prior to the outbreak of World War II to accommodate British fighters and bombers. *Id.* Gibraltar Airport occupies most of the isthmus. *Id.*

110. GIBRALTAR YEARBOOK, *supra* note 2, at 44; *see supra* note 21 (discussing Gibraltar Airport's role in defense of NATO's southern region). At present, Gibraltar airport serves flights to and from England (London) and Morocco (Tangier and Marrakech). Telephone Interview with Kay Weisman, Gibraltar Information Bureau (Sept. 28, 1994) [hereinafter Weisman Interview].

111. *Id.*

112. *See* GOZNEY, *supra* note 15, at 7 (explaining Britain's interest in EC Air Services Directive).

113. *Id.* "The Spanish government were not prepared to see Gibraltar airport defined as British, because of Spain's claim to the isthmus, nor to see Gibraltar given an EC entitlement which, in their view, would have cut across the agenda of cross border cooperation under the Brussels Process." *Id.*

114. Airport Agreement, *supra* note 98, at 7. Regarding the reasons for Britain's decision to pursue an agreement to share the Airport, Gozney writes:

Prompted first by the imminence of the Directive, and then by the fact that Anglo-Spanish disagreement began to hold up the Directive, (Britain was a main advocate of air service deregulation within the EC) the two governments finally agreed a scheme which would allow British, Spanish and other airlines to use Gibraltar as something of a hybrid airport

GOZNEY, *supra* note 15, at 7.

115. GOZNEY, *supra* note 15, at 7. The Anglo-Spanish agreement on the airport, the Airport Agreement, took note of "the discussions within the Council of the European Community about the European Commission's proposals for liberalising air transport . . ." Airport Agreement, *supra* note 98, at 7.

ern end of the Airport, in Spanish territory, and would have full access to the Airport.¹¹⁶ In addition, Spanish and British authorities agreed to work together to coordinate the activities of each terminal in order to secure air safety.¹¹⁷ Neither side, however, compromised their respective legal positions with regard to the isthmus.¹¹⁸

After Great Britain and Spain signed the Airport Agreement, the European Council passed the Air Services Directive,¹¹⁹ which provided for inclusion of Gibraltar Airport upon implementation of the Airport Agreement.¹²⁰ Despite the signing of the Airport Agreement, Chief Minister Bossano has refused to implement its provisions.¹²¹ As a result of Chief Minister Bossano's refusal to implement the Airport Agreement, Gibraltar Airport continues to be excluded from participation in the Directive.¹²²

3. The European Community Calls for Implementation of the Airport Agreement in Its Air Services Directive and Denies Gibraltar's Challenge

On July 18, 1989, the European Community Council, with Spanish approval, passed the Air Services Directive, which facilitated the scheduling of inter-regional air services within the Community for the transport of mail, passengers, and goods.¹²³ Article 2(2) of the Directive specifically excludes Gibraltar Airport until Great Britain, Spain, and Gibraltar implement the Airport Agreement.¹²⁴ The exclusion of Gibraltar Airport from this

116. *Id.* art. 2, at 7. The Airport Agreement states: "The Spanish authorities will build a new terminal at La linea de la Concepcion [sic] adjacent to the northern side of the existing frontier-fence. Passengers using this terminal will have direct access to the airport through a gate in the south side of the terminal." *Id.*

117. *Id.* arts. 4.1-6, at 8.

118. *Id.* art. 7. The Airport Agreement reads:

The present arrangements and any activity or measure undertaken in applying them or as a consequence of them are understood to be without prejudice to the respective legal positions of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.

Id.

119. Air Services Directive, *supra* note 101, O.J. L 226/14 (1989).

120. *Id.* art. 2(2), O.J. L 226/14, at 15 (1989).

121. GOZNEY, *supra* note 15, at 7.

122. Air Services Directive, *supra* note 101, art. 2(2), O.J. L 226/14, at 15 (1989).

123. *Id.* art. 1, O.J. L 226, at 14 (1989).

124. *Id.* art. 2(2), O.J. L 226, at 15 (1989). Article 2(2) reads in part:

Directive and other air services legislation¹²⁵ has a detrimental economic effect on both Gibraltar and Spain.¹²⁶

On September 28, 1989, the Government of Gibraltar brought an action in the European Court of Justice ("Court") to annul Article 2(2) of the Air Services Directive.¹²⁷ As an associate member of the Community,¹²⁸ Gibraltar felt it was entitled to develop its airport within the Community, which would facilitate the free movement of people, goods, and services to and from Gibraltar.¹²⁹ The Council objected to the admissibility of the action on the grounds that the government of Gibraltar had no standing.¹³⁰ It insisted that the government of Gibraltar could not bring an action under Article 173(1) of the Treaty Establishing the European Community,¹³¹ as it was not a Member

Application of the provisions of this Directive to Gibraltar airport shall be suspended until the arrangements in the Airport Agreement made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 have come into operation. The Governments of the Kingdom of Spain and the United Kingdom will so inform the Council on that date.

Id. art. 2(2), O.J. L 226, at 15 (1989).

125. *See, e.g.*, Council Regulation No. 95/93, O.J. L 14 (1993) (excluding application of regulation to Gibraltar Airport until implementation of Airport Agreement); Council Regulation No. 2408/92, O.J. L 240 (1992) (also excluding Gibraltar Airport until implementation of Airport Agreement).

126. *See* GOZNEY, *supra* note 15, at 8. Gozney insists that Spain and Gibraltar would both benefit from a settlement of the airport dispute, writing:

[T]he economies of Gibraltar and Cádiz Province . . . would receive a significant boost from flights into Gibraltar Airport from Madrid, probably from Frankfurt and perhaps from Brussels and one or more capitals in Scandinavia. The extra employment at the airport and . . . [increase] of potential shoppers would benefit Gibraltar. The beaches and mountain villages of Cádiz Province would receive more tourists, and more Northern Europeans looking for second homes; the airports of Seville and Málaga are each over 100 kms from Gibraltar and the Campo.

Id.

127. *Gibraltar v. Council*, Case C-298/89, (Eur. Ct. J. June 29, 1993) (not yet reported); *see supra* notes 123-124 and accompanying text (discussing Article 2(2) of Council Directive 89/463).

128. *See supra* note 24 (explaining Gibraltar's membership in Community).

129. GOZNEY, *supra* note 15, at 8. The Government of Gibraltar claims that by excluding Gibraltar Airport, the legislation "frustrates the achievement of the harmonious development of economic activities and closer relations between member states and in thus doing perpetuates competitive distortions instead of removing them." *Transport*, EUROPEAN UPDATE, June 9, 1993, at 504-05.

130. *Gibraltar v. Council*, slip. op. ¶ 9.

131. EC Treaty, *supra* note 24, art. 173, ¶ 1. Paragraph one of Article 173 provides in part: "The Court of Justice shall review the legality of acts of the Council and the Commission It shall for this purpose have jurisdiction in actions brought by a Member State" *Id.*

State.¹³² Furthermore, the Council maintained that a directive could not be the subject of proceedings under Article 173(2).¹³³ The representatives from Gibraltar argued that this is a "defined domestic matter" within the meaning of the Gibraltar Constitution,¹³⁴ which granted the government of Gibraltar the right to initiate these proceedings under British law.¹³⁵ Moreover, they claimed that the provision that excluded Gibraltar Airport from the Air Services Directive constituted a "decision" within the meaning of Article 173(2),¹³⁶ and that Gibraltar was uniquely affected by it.¹³⁷

The Court first ruled that Gibraltar could not bring an action under Article 173(1), as it was not a Member State "applicant" within the meaning of that Article.¹³⁸ Furthermore, the Court noted, Gibraltar could not initiate an action to challenge a directive under Article 173(2), as a directive is a "measure of a legislative nature," not a "decision."¹³⁹ The Court then considered whether Article 2(2) of the Directive could, by itself, constitute a "decision," despite the fact that it is within a directive.¹⁴⁰ The Court found that where a directive contains a limitation that is "temporary or territorial in nature," the court must construe

132. *Gibraltar v. Council*, slip. op. ¶ 9. The Council insisted that, according to British law, only the Governor of Gibraltar could bring an action of this nature in the European Court of Justice. *Id.*; see *supra* note 28 (explaining role of Governor of Gibraltar).

133. *Gibraltar v. Council*, slip. op. ¶ 9. Paragraph two of Article 173 allows a legal person to bring an action "against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former." EC Treaty, *supra* note 24, art. 173, ¶ 2.

134. *Gibraltar v. Council*, slip. op. ¶ 10. The Gibraltarians insisted that both tourism and the airport's civil air terminal were both "defined domestic matters." *Id.*; see Gibraltar Constitution Order 1969 § 55, 1 LAWS OF GIBRALTAR 1, 46 (1984) (explaining "defined domestic matter").

135. *Gibraltar v. Council*, slip. op. ¶ 10.

136. See *supra* note 133 (quoting language of article 173(2)).

137. *Gibraltar v. Council*, slip. op. ¶ 10. Gibraltar claimed that it was "directly and individually concerned by virtue of the nature of its participation in the procedure for the authorization of air services, as the body responsible for improving the well-being of the population of Gibraltar and as the owner of the airport terminal." *Id.*

138. *Id.* ¶ 14; see *supra* note 131 (quoting language of Article 173(1)).

139. *Gibraltar v. Council*, slip. op. ¶¶ 15-16. The Court looked to Article 189 for the definitions: "A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods. A decision shall be binding in its entirety upon those to whom it is addressed." EC Treaty, *supra* note 24, art. 189.

140. *Gibraltar v. Council*, slip. op. ¶¶ 16-23.

the provision to be "of the same general nature" as the rest of the directive.¹⁴¹ The provision places a temporary limitation on the use of Gibraltar Airport, which will become void upon implementation of the Airport Agreement.¹⁴² Article 2(2) of the Directive is, therefore, not a "decision."¹⁴³ In conclusion, the Court ruled that the government of Gibraltar did not have standing to bring the action and dismissed the application.¹⁴⁴

II. *THE VIEWS OF SPAIN, GREAT BRITAIN, AND GIBRALTAR ON THE SOVEREIGNTY DISPUTE*

The debate over sovereignty of Gibraltar has focused on the legal rights of the parties according to both the Treaty of Utrecht¹⁴⁵ and the concept of self-determination as developed in the United Nations.¹⁴⁶ Spain, not willing to allow Gibraltar's right to self-determination obstruct Spanish territorial integrity, is committed to attaining Spanish sovereignty over Gibraltar.¹⁴⁷ Great Britain, on the other hand, while committed to upholding the interests of the Gibraltarians, is anxious to settle the issue in order to reduce tensions with Spain and enable the two nations to cooperate more fully within the European Community.¹⁴⁸ Although not clear on its future aspirations, Gibraltar seeks its right to self-determination and the opportunity to represent itself in negotiations with Spain.¹⁴⁹

A. *Spain's Right to Territorial Integrity*

Spain's view on the status of Gibraltar has changed very lit-

141. *Id.* ¶ 18.

142. *Id.* ¶ 20.

143. *Id.* ¶ 23.

144. *Id.* ¶¶ 23-24.

145. Treaty of Utrecht, *supra* note 6, art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 223.

146. *See supra* note 27 and accompanying text (discussing self-determination); *supra* note 61 and accompanying text (quoting U.N. Resolution 1514).

147. *See, e.g.,* ROCK OF CONTENTION, *supra* note 3, at 474 (discussing Spain's 1973 promise to respect political rights of Gibraltarians in exchange for return of Gibraltar to Spain).

148. *See* JOSEPH J. GARCIA, GIBRALTAR: THE MAKING OF A PEOPLE 196-99 (1994) (discussing Great Britain's change in policy over Airport to satisfy Spanish demands over EC air services).

149. *Id.* at 194-95. One author claims that Bossano is clearly working toward an independent Gibraltar, but is reluctant to "press these political objectives until such a time as the Rock had become economically strong enough to be able to claim them." *Id.*

tle since 1713.¹⁵⁰ At the time of the Treaty of Utrecht, Spanish officials insisted that the Treaty had not transferred sovereignty to Great Britain, but rather granted the British something akin to possession.¹⁵¹ In conjunction with Spain's views on the Treaty of Utrecht, the Spanish have embraced the right to territorial integrity as stated in Resolution 1514.¹⁵² Spain claims that, according to Resolution 1514, its territorial integrity supersedes Gibraltar's right to self-determination.¹⁵³ Spanish officials feel that Great Britain has the power to transfer sovereignty to Spain, and that the British should not allow the views of the Gibraltarians to obstruct the resolution of this matter.¹⁵⁴

1. The Treaty of Utrecht Allows Spain to Retain Sovereignty Over Gibraltar and the Isthmus

When Great Britain and Spain concluded the Treaty of Utrecht, the Spanish government believed that the Treaty recognized British possession, but not sovereignty, of Gibraltar.¹⁵⁵ Spain has claimed for over two centuries that a strict construction of the word "propriety" gives the British something less than sovereignty.¹⁵⁶ Moreover, Spain argues that even if the word "propriety" generally includes sovereignty, the cession in this Treaty was explicitly limited in its scope.¹⁵⁷ The Spanish contend that the Treaty grants Great Britain a "propriety," but "without territorial jurisdiction."¹⁵⁸ Under this construction, Spain

150. See Special Committee, 18th Sess., *supra* note 36, at 273 (explaining Spain's continued reliance on Treaty of Utrecht).

151. See *supra* note 50 (explaining Spanish view that cession of "propriety" does not include transfer of "sovereignty").

152. See Resolution 1514, *supra* note 11, art. 6, at 67 ("Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations."); LEVIE, *supra* note 18, at 104.

153. LEVIE, *supra* note 18, at 104.

154. See GOZNEY, *supra* note 15, at 7 (discussing Spanish anger over Britain's reluctance to force Gibraltar to implement Airport Agreement).

155. See Treaty of Utrecht, *supra* note 6, art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 223-24. The Treaty of Utrecht granted Great Britain a "propriety" over Gibraltar. *Id.* art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 223-24.

156. See *supra* note 50 (explaining differences of interpretation of "propriety").

157. LEVIE, *supra* note 18, at 32; see Treaty of Utrecht, *supra* note 6, art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 223-24.

158. LEVIE, *supra* note 18, at 32; see Treaty of Utrecht, *supra* note 6, art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 223-24. The Treaty of Utrecht reads in part: "But that abuses and frauds may be avoided by importing any kind of goods, the Catholic King

would retain sovereignty over Gibraltar.

The Spanish government also insists that the cession of land in the Treaty of Utrecht does not include the isthmus.¹⁵⁹ Spain claims that there is no explicit or implicit cession of land beyond the walls and fortifications of the City of Gibraltar.¹⁶⁰ While the British negotiators at Utrecht did propose the cession of the isthmus in accord with the cannon shot rule,¹⁶¹ Spain insists that its negotiators adamantly refused to include any extra territory in the Treaty.¹⁶² Consistent with this view, the Spaniards were outraged when the British decided to build a frontier-fence on the isthmus without Spanish approval.¹⁶³ Spain protested, insisting that while the Treaty granted Britain a "propriety" over the town and castle of Gibraltar, it not only denied Great Britain "territorial jurisdiction" over the surrounding territory, but also forbade any "communication" with that land.¹⁶⁴ Spain further claims that it allowed the isthmus to function as a neutral ground despite the fact that it falls under Spanish sovereignty.¹⁶⁵

2. Spain's Territorial Integrity Precludes Gibraltar's Right to Self-Determination

In an attempt to bring the question of Gibraltar under the principles of Resolution 1514,¹⁶⁶ Spain turned to U.N. General

wills, and takes it to be understood, that the abovenamed propriety be yielded to Great Britain without any territorial jurisdiction and without any open communication by land with the country round about." *Id.*, art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 223-24.

159. LEVIE, *supra* note 18, at 61.

160. *Id.*

161. *Id.* "The 'Cannon Shot' rule . . . held that a sovereign could exercise authority over the sea that fell within a cannon's range from the shore." *INTERNATIONAL LAW* 951 (Barry E. Carter & Philip R. Trimble eds., 1991).

162. LEVIE, *supra* note 18, at 61. The Spanish negotiators agreed to concede only the land "which is contained within [Gibraltar's] walls and fortifications . . ." *Id.*

163. *Id.* at 77. Spain continued to insist that the isthmus was Spanish territory according to the Treaty of Utrecht. *Id.* at 78. Ironically, although the fence dealt a serious blow to Spanish national pride, it also ended Britain's "creeping territorialism," which had previously enabled Britain to slowly take control over much of the neutral area. *Id.*

164. *See* Treaty of Utrecht, *supra* note 6, art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 223-24 (granting a "propriety" to Great Britain "without any Territorial Jurisdiction, and without any open Communication by Land with the Country round about").

165. LEVIE, *supra* note 18, at 62-63.

166. Resolution 1514, *supra* note 11, at 66-67.

Assembly Resolution 1541 ("Resolution 1541"),¹⁶⁷ which presents a two part test to determine whether a territory is considered a Non-Self Governing Territory and therefore eligible for decolonization under Resolution 1514.¹⁶⁸ First, the territory must be "geographically separate" from the colonial power.¹⁶⁹ The second requirement is that the territory be "distinct ethnically and/or culturally" from the ruling nation.¹⁷⁰ The population of Gibraltar, according to the Spanish representatives at the United Nations, is geographically, culturally, and economically closer to Spain than it is to the administering power, Great Britain.¹⁷¹ Spain contends, therefore, that Resolution 1514 applies to the Gibraltar situation.¹⁷²

When the United Nations first considered the question of

167. G.A. Res. 1541, U.N. GAOR, 15th Sess., Supp. No. 16, at 29, U.N. Doc. A/4684 (1960) [hereinafter Resolution 1541].

168. *Id.* annex, at 29. Principle I of the annex to Resolution 1541 states that there is an obligation for a nation to transmit information to the United Nations concerning dependent territories that are of the colonial type. *Id.* princ. I. Principle IV then explains that the obligation to transmit information exists "in respect of a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it." *Id.* princ. IV.

169. *Id.* princ. IV; see *supra* note 168 (citing "geographically separate" requirement in Resolution 1541).

170. Resolution 1541, *supra* note 168, princ. IV, at 29; see *supra* note 168 (citing Resolution 1541 requirement that territory be "distinct ethnically and/or culturally" from administering power).

171. Special Committee, 18th Sess., *supra* note 36, at 273. The Spanish representative stated: "From the demographic point of view, the two regions were so close to each other that the inhabitants of the town, who were not generally of Spanish origin, spoke Spanish as their mother tongue, read the Spanish Press and listened to and watched Spanish radio and television programmes." *Id.*

172. *Id.* at 273-74. The Spanish representative insisted that Gibraltar should be subject to the decolonization process outlined in Resolution 1514, and should be returned to Spain. *Id.*

The Moroccans claim that if Gibraltar is returned to Spain, then Spain's North African territories of Ceuta and Melilla should be returned to Morocco. Crispian Balmer, *Spanish Enclave Forgotten by Time Faces Complicated Future*, Reuter Newswire - Western Europe, June 2, 1993, available in LEXIS, News Library, Reuna File. One Spanish commentator, Professor Maria Muniz of Madrid's Carlos III University, insists that the populations of Ceuta and Melilla are ethnically Spanish, and therefore not subject to the principles of decolonization under Resolution 1514:

In [R]esolutions 1514 and 1542, the United Nations states that territories wanting to be decolonized must be geographically separate from the colonizer and the populations must be culturally and ethnically different In the Ceuta and Melilla case the first condition is fulfilled, but the second is not, as about two thirds of the population is originally Spanish In addition, the cities have been Spanish territory since the sixteenth century, long before the Moroccan state came into existence in 1956.

Gibraltar from 1963 to 1966, Spanish representatives returned to the idea that Gibraltar is irreversibly connected to Spain, and that Resolution 1514 precludes Gibraltar's right to self-determination.¹⁷³ During the Special Committee meeting in 1963, the Spanish representative claimed that Resolution 1514 did not support self-determination for Gibraltar, as Spain's territorial integrity took precedence.¹⁷⁴ The Spanish official claimed that Spain and Gibraltar were not only geographically united, but also connected economically and demographically.¹⁷⁵ The Spanish representative added that Gibraltar, in addition to being connected to Spain, actually lived at Spain's expense through its vast smuggling operations.¹⁷⁶

The Spanish representatives continued their criticism of Gibraltar's right to self-determination when the Special Committee convened in 1964, stating that the Gibraltarians did not qualify as a "people" within the meaning of Resolution 1514,¹⁷⁷ and therefore were not entitled to self-determination.¹⁷⁸ They further insisted that the present population of Gibraltar was "pre-fabricated" by the British in order to facilitate British rule.¹⁷⁹ These representatives reiterated the argument that Gibraltar and

Alejandro Gomez, *Spain: The Legion Between Decadence and Modernization*, Inter Press Service, July 4, 1992, available in LEXIS, News Library, Inpres File.

173. See *supra* notes 59-72 and accompanying text (discussing U.N. debates and resolutions concerning Gibraltar).

174. Special Committee, 18th Sess., *supra* note 36, at 273-74.

175. *Id.* at 273. The Spanish representative insisted that Gibraltar was "part of Spanish territory from the economic point of view, since it was not viable without Spain." *Id.*; see *supra* note 171 (discussing demographic connection between Spain and Gibraltar).

176. Special Committee, 18th Sess. *supra* note 36, at 273. The Spanish representative suggested that smuggling "was by far the most important activity of Gibraltar, for everything there was organized so that smuggling could be carried on with impunity." *Id.* Spain further insisted that the colonial authorities in Gibraltar, through inaction, encouraged the smuggling. *Id.* Figures from 1992 indicate that Gibraltar based smugglers made approximately thirty six million dollars from their illegal tobacco trade in the south of Spain. GOZNEY, *supra* note 15, at 14. Spain also claims that drug-traffickers based in Gibraltar deliver drugs, especially hashish, from North Africa to the beaches of Spain. *Britain and Spain to Coordinate Gibraltar Drugs Fight*, Reuter Newswire - Western Europe, July 23, 1990, available in LEXIS, News Library, Wires File.

177. Resolution 1514, *supra* note 11, at 66-67. One of the Spanish representatives, Mr. Barcia Trelles, labelled the population of Gibraltar a "pressure group" as opposed to a "people." Special Committee, 19th Sess., *supra* note 36, at 296.

178. Special Committee, 19th Sess., *supra* note 36, at 296.

179. *Id.* After recounting how the British had "custom-tailored" a civilian population to suit British needs in Gibraltar, the Spanish representative concluded: "[T]here was no doubt that the population of the Rock of Gibraltar was a population 'prefabri-

Spain are inextricably linked,¹⁸⁰ claiming that Gibraltar would suffer severe economic consequences should Spain close the border.¹⁸¹ When the United Nations passed Resolutions 2070 and 2231,¹⁸² Spain supported both measures, satisfied that neither resolution recognized Gibraltar's right to self-determination.¹⁸³

3. British Acts Granting Gibraltar Any Power Over Sovereignty Are Breaches of the Treaty of Utrecht

In addition to their claim of territorial integrity, Spain contends that certain British actions constitute a breach of the Treaty of Utrecht.¹⁸⁴ According to Spain, the limited transfer of power to the Gibraltar Government through the Gibraltar Constitution of 1969¹⁸⁵ amounts to a breach of the Treaty of Utrecht's¹⁸⁶ reversionary provision.¹⁸⁷ This provision prohibits the British Crown from transferring the power of sovereignty to any other entity unless first offered to Spain.¹⁸⁸ The Spanish insist that the reversionary provision prevents Gibraltarians from determining their own political destiny.¹⁸⁹ Spain further contends that Britain's failure to enforce the Airport Agreement

cated', as it were, to suit the London Government, and that it was of a purely artificial nature." *Id.*

180. *Id.* at 294.

181. *Id.* Mr. Hidalgo, one of the Spanish representatives, insisted that, should Spain close the border, Gibraltar would be "irreparably affected." *Id.*

182. Resolution 2070, *supra* note 37, at 59; Resolution 2231, *supra* note 37, at 74.

183. See LEVIE, *supra* note 18, at 114 (noting that Spanish Government felt that U.N. actions supported Spanish position).

184. See *id.* at 41-42. Spain claimed that any legal alteration in the status of Gibraltar's relationship with Great Britain constituted a breach of the reversionary provision of the Treaty of Utrecht. *Id.*; see Treaty of Utrecht, *supra* note 6, art. X, 28 Consol. T.S. at 331, 1 M.P.T. at 224 (containing text of reversionary provision).

185. Gibraltar Constitution Order 1969, 1 LAWS OF GIBRALTAR 1 (1984); see *supra* notes 77-79 and accompanying text (noting that Constitution Order was preceded by Referendum of 1967, where over 99% of Gibraltarians who participated voted for British rule).

186. Treaty of Utrecht, *supra* note 6, art. X, 28 Consol. T.S. at 331, 1 M.P.T. at 224.

187. See LEVIE, *supra* note 18, at 114 (noting that Gibraltar Constitution Order 1969 grants Gibraltarians veto power over aspect of British foreign policy and that Spain responded by closing border). Significantly, Great Britain recognizes that, when granting independence to former colonies, it essentially transfers sovereignty. *Id.* at 41.

188. Treaty of Utrecht, *supra* note 6, art. X, 28 Consol. T.S. at 331, 1 M.P.T. at 224.

189. LEVIE, *supra* note 18, at 40-42. Spain insists that "Great Britain cannot unilaterally alter the bond uniting the Town [of Gibraltar] with the British Crown without first giving Spain the first refusal of redeeming it." SPANISH RED BOOK, *supra* note 108, at 18.

grants the government of Gibraltar too much power over Gibraltar's foreign affairs.¹⁹⁰ Spain argues that the reversionary provision compels the British to act in accordance with the Airport Agreement, with or without Gibraltar's approval.¹⁹¹

B. *Great Britain's Claims of Absolute Sovereignty and Willingness to Transfer Certain Powers to Gibraltar*

Following the signing of the Treaty of Utrecht,¹⁹² Great Britain claimed that the Treaty granted the British absolute sovereignty over both the town of Gibraltar and the isthmus.¹⁹³ They further insisted that they would adhere to the provisions of the Treaty.¹⁹⁴ Since the United Nations began its scrutiny of the Gibraltar question,¹⁹⁵ Great Britain has supported the Gibraltarians right to decide between British and Spanish rule.¹⁹⁶ Although sovereignty over Gibraltar remains under the British Crown, the British have been increasingly willing to transfer some of their power to the Gibraltarians.¹⁹⁷ In agreements with Spain regarding Gibraltar, the British, in accord with their responsibilities under the Gibraltar Constitution, insist on Gibraltarian approval of any transfer of sovereignty.¹⁹⁸ Today,

190. GOZNEY, *supra* note 15, at 6-8.

191. *Id.* at 7; *see supra* note 184 (discussing Spain's view that legal alteration of British rule over Gibraltar constitutes breach of Treaty of Utrecht). In addition to Spain's displeasure over Gibraltar's power to veto the Airport Agreement, Spain considers the British illegal squatters on this land. GOZNEY, *supra* note 15, at 6-7; *see supra* notes 159-65 and accompanying text (discussing Spain's views on sovereignty over isthmus). The Spanish refused to compromise their position on the issues of territorial integrity and self-determination in either of the three agreements, the Lisbon Agreement, the Brussels Agreement, and the Airport Agreement. *See supra* notes 89, 118 (citing language in agreements that preserved Spain's legal position on issues).

192. Treaty of Utrecht, *supra* note 6, art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 223.

193. ROCK OF CONTENTION, *supra* note 3, at 223, 235-36.

194. *Id.* at 227. In Spain's view, the British had to fulfill all of the conditions of the Treaty of Utrecht, or Gibraltar would revert back to Spanish possession. *Id.* Great Britain also believed that Gibraltar would revert to Spain if it did not adhere to the Treaty, and acted accordingly. *Id.* at 227, 233.

195. Special Committee, 18th Sess., *supra* note 36, at 267. The Special Committee considered the subject of Gibraltar for the first time on September 11, 1963. LEVIE, *supra* note 18, at 103-04.

196. *See* Special Committee, 18th Sess., *supra* note 36, at 271 (noting Great Britain's support for Gibraltarian aspirations).

197. *See* Gibraltar Constitution Order 1969, 1 LAWS OF GIBRALTAR 1 (1984) (granting Gibraltar veto power over British decisions to transfer sovereignty).

198. *See* Brussels Agreement, *supra* note 39, at 6 (noting British commitment to abide by Gibraltar Constitution).

Great Britain would prefer for Gibraltar and Spain to resolve this dispute, so that the three parties can cooperate economically and politically.¹⁹⁹

1. Spain Ceded Sovereignty Over Gibraltar and the Isthmus to the British Crown

Great Britain, upon signing the Treaty of Utrecht, felt that the Treaty transferred sovereignty over Gibraltar to the British Crown.²⁰⁰ The British disagree with Spanish claims that the "propriety" transferred to Great Britain was "without territorial jurisdiction."²⁰¹ The first sentence of the Treaty, according to the British, grants Great Britain sovereignty "forever" and "without any exception or impediment."²⁰² British commentators point out that while the language in the first sentence of the

199. See Simon Courtauld, *A Summer of Discontent*, SPECTATOR, Sept. 20, 1993, at 56. In response to a "bizarre decision" by Chief Minister Bossano "to ban British citizens from coming to work in the colony . . .," one journalist stated: "[T]he Foreign Office is quite happy for Bossano to take any action which may release the British Government from its responsibilities for this embarrassing wart on the bottom of the Iberian Peninsula." *Id.* However, an official from the British Foreign Office insisted that the British are willing to wait for an equitable solution, declaring: "We are not in a hurry to get shot (rid) of Gibraltar." Brian Mooney, *Spain and Britain Remain Deadlocked over Gibraltar Sovereignty*, Reuters North European Service, Jan. 14, 1987, available in LEXIS, News Library, Reuna File. The same British official, realizing that approval of any agreements under the Brussels Process by the Government of Gibraltar might take a long time, stated: "[T]he Spanish have to accept that this is bound to be a long-term process and that cooperation, not pressure, is their only realistic hope . . ." *Id.* When Great Britain agreed to return Hong Kong to the Chinese, Spanish hopes that the British would leave Gibraltar were boosted. GARCIA, *supra* note 148, at 185. Joseph Garcia noted the differences between the two situations:

Despite the fact that Spain and China each laid a claim to a small British colony, the truth was that Hong Kong and Gibraltar were indeed completely different cases. Britain's hands were tied in the former instance, given that the bulk of the territory was bound to revert to China in 1997, whereas her sovereignty over Gibraltar as ceded at Utrecht in 1713 was to be 'enjoyed absolutely with all manner of right for ever, without any exception or impediment whatsoever.' There was also the question of the preamble to the 1969 Constitution, by which Britain had committed herself not to alter the status of the Rock without the consent of its inhabitants.

Id. at 186.

200. LEVIE, *supra* note 18, at 31-32; see Treaty of Utrecht, *supra* note 6, art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 223.

201. See *supra* notes 155-65 and accompanying text (explaining Spanish interpretation of Treaty's cession of Gibraltar).

202. Treaty of Utrecht, *supra* note 6, art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 223; see LEVIE, *supra* note 18, at 31 (insisting that language of Treaty clearly granted full sovereignty).

Treaty deals with the cession of title, the language in the second sentence discusses limits on the size of the territory involved in the cession.²⁰³ Therefore, the British contend that the negotiators at Utrecht purposely placed the language "without territorial jurisdiction" in the second sentence in order to limit the size of the territorial cession, thereby excluding the Campo area from the cession.²⁰⁴ The term "without territorial jurisdiction," according to the British, does not affect the cession of title to the town of Gibraltar.²⁰⁵

The British further insist that at no time throughout the negotiations did Spanish diplomats suggest that Britain was to receive anything less than sovereignty over the town.²⁰⁶ Also, the first paragraph of the Treaty grants Britain a "propriety . . . without any exception or impediment."²⁰⁷ These words would be meaningless, according to the British, if the Treaty did not grant full sovereignty to the British Crown.²⁰⁸ The British claim that the Royal Navy's capture of Gibraltar wrested sovereignty of the land from Philip V,²⁰⁹ and that the Treaty of Utrecht then granted sovereignty to the British Crown.²¹⁰

203. LEVIE, *supra* note 18, at 32; Treaty of Utrecht, *supra* note 6, art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 223; *see supra* note 51 (quoting language of first two sentences of Treaty of Utrecht).

204. *See* LEVIE, *supra* note 18, at 32. Because the term "without territorial jurisdiction" is in the second paragraph of the Treaty, "to accomplish this construction [the Spanish reading of the Treaty] requires . . . the movement of the territorial jurisdiction limitation from the second paragraph to the first." *Id.* The Treaty under the Spanish construction would essentially read: "The Catholic King does hereby . . . , yield to the Crown of Great Britain the full and entire propriety of the town and castle of Gibraltar, together with the port, fortifications, and forts thereunto belonging, [but] without territorial jurisdiction." *Id.*; *see* Treaty of Utrecht, *supra* note 6, art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 223; *supra* note 51 (quoting actual construction of first two sentences of Treaty).

205. LEVIE, *supra* note 18, at 32.

206. *Id.* at 30. Levie writes:

[T]here was never once a suggestion by any French, Spanish, or British sovereign or negotiator that the cession was to be anything less than absolute, less than full title and sovereignty. In other words, there was nothing whatsoever mentioned at any time by any person to indicate that the cession of Gibraltar was to differ in any manner from the then quite commonplace procedure by which one sovereign transferred the title to territory to another.

Id. at 30-31.

207. Treaty of Utrecht, *supra* note 6, art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 223; *see supra* note 50 (discussing legal definition of "propriety").

208. LEVIE, *supra* note 18, at 31.

209. *Id.* at 33.

210. *Id.*

Moreover, British officials maintain that the Treaty of Utrecht implicitly entitled Great Britain to extra land under the cannon shot principle.²¹¹ Throughout the negotiations in Utrecht, the British negotiators proposed that the cession of Gibraltar include some extra territory.²¹² The British proposal was based upon the "cannon shot" rule.²¹³ Although one British official claimed that the isthmus was a part of the fortifications of Gibraltar,²¹⁴ the British Ambassador to Spain, William Stanhope, offered the cannon shot principle as the British justification for its claim to the extra land.²¹⁵

2. British Support for Gibraltar's Right to Self-Determination in the United Nations

Throughout the debates in the Special Committee in 1963 and 1964,²¹⁶ and the votes on Resolutions 2070 and 2231 in 1965 and 1966,²¹⁷ the notion that the people of Gibraltar should decide their own future guided the British delegation.²¹⁸ The British agreed with the Gibraltar representative, Chief Minister Sir Joshua Hassan, that Gibraltar had the right to determine its future according to Resolutions 1514 and 1541,²¹⁹ and that the

211. *Id.* at 61; *see supra* note 161 (explaining "cannon shot" rule).

212. LEVIE, *supra* note 18, at 61. The British "proposed that the cession of Gibraltar include 'an area of ground of two cannon shot round Gibraltar.'" *Id.*

213. *See supra* note 161 (discussing "cannon shot" rule).

214. Letter from Lord Bolingbroke, Principal Secretary of State for Foreign Affairs, to British Representative in Madrid, Mr. Lawless (Feb. 24, 1713), in SPANISH RED BOOK, *supra* note 108, at 27. The claim that part of the isthmus was within Gibraltar's 'fortifications' was a direct reference to the Treaty of Utrecht. Treaty of Utrecht, *supra* note 6, art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 223; *see supra* note 51 (quoting provisions of Treaty of Utrecht that pertain to extent of cession of title).

215. Letter from William Stanhope, British Minister in Madrid, to the Spanish Secretary of State, Marqués de Grimaldo (Aug. 19, 1723), in SPANISH RED BOOK, *supra* note 108, at 30. "[W]hen a town is yielded, there is tacitly yielded at the same time, all the ground commanded by its artillery, since otherwise the cession would be of little use." *Id.*

216. Special Committee, 18th Sess., *supra* note 36, at 267-77; Special Committee, 19th Sess., *supra* note 36, at 291-314.

217. Resolution 2070, *supra* note 37, at 59; Resolution 2231, *supra* note 37, at 74.

218. *See* Special Committee, 18th Sess., *supra* note 36, at 271. "The United Kingdom Government, for its part, was always ready to consider any proposal for a change in the existing situation put forward by the people or their elected representatives." *Id.* The Gibraltar representative, Chief Minister Sir Joshua Hassan, noted that "the United Kingdom Government had repeatedly assured them that there could be no question of discussing the future of Gibraltar with anyone other than the people of Gibraltar." *Id.* at 270.

219. Resolution 1514, *supra* note 11, at 66; Resolution 1541, *supra* note 167, at 29.

only realistic option for Gibraltar was to maintain an alliance with Great Britain.²²⁰ However, the British have given no indication that they would support Gibraltar's right to self-determination if it would lead to independence, as they are not willing to breach the reversionary provision of the Treaty of Utrecht.²²¹ When the United Nations passed Resolutions 2070 and 2231,²²² the British Government, in furtherance of its support for Gibraltar's right to decide between British and Spanish sovereignty, voted only for Resolution 2231.²²³ It did so, according to the British Ambassador, because this resolution called on the parties to take into account the interests of the people of Gibraltar.²²⁴

3. Britain's Actions in Accord with Its Interpretation of Resolution 2231 and the Treaty of Utrecht

Britain's view that the Gibraltarians should take an active part in deciding their future prompted the British government to sponsor a referendum in Gibraltar in 1967.²²⁵ The British Ambassador to the United Nations insisted that this referendum was consistent with Resolution 2231, which called on both Spain and Great Britain to take into account the interests of the people of Gibraltar.²²⁶ The overwhelming support in the referendum for maintaining ties with Great Britain left no doubt as to the will of the people of Gibraltar²²⁷ and prompted the British to promulgate the Gibraltar Constitution.²²⁸ Subsequently, when the

220. Special Committee, 18th Sess., *supra* note 36, at 271.

221. GARCIA, *supra* note 148, at 212-13. "While rejecting outright the notion that Utrecht is a bar to anything, it must be pointed out that for as long as Her Majesty the Queen remains as Queen of Gibraltar there is no breach of any Treaty." *Id.* The British insist that "self-determination/qua independence is not possible given the terms of the Treaty of Utrecht, and the political reality of a territorial claim by Spain." U.K. COMMONWEALTH OFFICE, *supra* note 26, at 2.

222. Resolution 2070, *supra* note 37, at 59; Resolution 2231, *supra* note 37, at 74.

223. LEVIE, *supra* note 18, at 222-23 n.147.

224. *Id.*

225. *See supra* note 77-78 (describing 1967 referendum and results).

226. Resolution 2231, *supra* note 37, art. 2, at 74.

227. *See supra* note 78 (discussing results of referendum).

228. Gibraltar Constitution Order 1969, 1 LAWS OF GIBRALTAR 1 (1984). When Gibraltar joined the EC, the Gibraltar Constitution of 1969 allowed the government of Gibraltar to maintain a great deal of independence. GARCIA, *supra* note 148, at 209. "[D]irectives from Brussels had to be approved by the House of Assembly before they became law in Gibraltar, in the same way as Parliament must before they become statutory in Britain." *Id.* at 209-10.

British signed the Lisbon Agreement²²⁹ and the Brussels Agreement,²³⁰ Great Britain maintained its commitments under the Gibraltar Constitution,²³¹ insisting that it could modify the relationship it had with Gibraltar without contravening the reversionary provision of the Treaty of Utrecht.²³² However, the British government will not grant complete independence to the people of Gibraltar, because, in its view, such an act would breach the Treaty of Utrecht.²³³

C. *The Gibraltarian View: The Right to Self-Determination Is Paramount*

Prior to the Brussels Agreement²³⁴ and the Airport Agreement,²³⁵ Gibraltarian officials pursued a course of self-determination as a means to continue its union with Great Britain.²³⁶

229. Lisbon Agreement, *supra* note 39, at 5-6.

230. Brussels Agreement, *supra* note 39, at 6.

231. Gibraltar Constitution Order 1969, 1 LAWS OF GIBRALTAR 1 (1984); *see* Lisbon Agreement, *supra* note 39, art. 5, at 6 (containing British commitment to honor preamble to Gibraltar Constitution); Brussels Agreement, *supra* note 39, at 6 ("The British Government will fully maintain its commitment to honour the wishes of the people of Gibraltar as set out in the preamble of the 1969 Constitution.").

232. LEVIE, *supra* note 18, at 41. To avoid the problem of the reversionary provision, which continues to impede Gibraltar's right to self-determination, one proponent of Gibraltar's right to self-determination, former Governor General Sir William Jackson, suggests that Great Britain grant Gibraltar dominion status. *Dominion*, *supra* note 85, at 18. General Sir William Jackson served as Governor of Gibraltar from 1978 to 1983. GIBRALTAR YEARBOOK, *supra* note 2, at 10. Dominion status entails "almost complete institutional separation . . . while more intangible, but powerful, ties remain, which not only prohibit war between Great Britain and the dominions, but strongly influence them to act together in a crisis, as well as in many of the more ordinary occasions of international life." ALFRED COBBAN, *THE NATION STATE AND NATIONAL SELF-DETERMINATION* 158 (1970). Canada, Australia, and New Zealand have dominion status under the British Crown. *Dominion*, *supra* note 85, at 18. If Gibraltar were granted dominion status, it would "have the chance of enjoying internal self-government; it would be internationally recognised as fully independent while retaining British institutions under the Crown." *Id.* "Most important, [dominion status] would be a way of enabling Gibraltar to become independent without Spain having the opportunity to exercise its right to reclaim the peninsula under Article 10 of the Treaty of Utrecht, 1713." *Id.*

233. *See supra* note 221 and accompanying text (discussing Britain's refusal to breach Treaty of Utrecht).

234. Brussels Agreement, *supra* note 39, at 6.

235. Airport Agreement, *supra* note 98, at 7-8.

236. *See, e.g.*, Special Committee, 18th Sess., *supra* note 36, at 270. Sir Joshua Hassan, the Gibraltarian representative, told the Special Committee that the people of Gibraltar desired to be freely associated with Great Britain, as was their right under Resolution 1541. *Id.* The annex to Resolution 1541 lists three ways for a colony to reach self-government: "a) Emergence as a sovereign independent state; b) Free association

Dissatisfied with the British position in the Brussels Process,²³⁷ and unwilling to accept Spanish rule, many Gibraltarians, led by Chief Minister Bossano, began to emphasize Gibraltar's right to choose independence, despite British and Spanish opposition to this option.²³⁸ Chief Minister Bossano continues to pursue Gibraltar's right to self-determination in the United Nations.²³⁹ He is convinced that Great Britain can no longer adequately serve the interests of the people of Gibraltar.²⁴⁰ In Bossano's

with an independent state; or c) Integration with an independent state." Resolution 1541, *supra* note 167, annex, at 29. Sir Joshua Hassan ruled out the possibilities of independence and full integration with Great Britain, stating:

Gibraltar was not and could never be a fully independent, self-supporting nation, relying on its own resources for its economy, defence and conduct of its relations with other states There were practical reasons which made . . . integration with an independent State[] extremely difficult to implement. Conditions of life in Gibraltar differed in many ways from those in the United Kingdom. Geographical reasons, too, would make such integration very difficult. There were also political reasons. For example, if Gibraltar chose to be integrated with the United Kingdom, it would be represented in the British Parliament by one member in a body of over 600. Gibraltar would lose its individuality and be swallowed up.

Special Committee, 18th Sess., *supra* note 36, at 270.

237. See *supra* note 95 (explaining "Brussels Process").

238. U.K. FOREIGN COMMONWEALTH OFFICE, *supra* note 26, at 2. "[S]ome Gibraltarians (including Bossano) argue for self-determination by which they effectively mean a right to choose independence. Popular support has grown strongly over the last two years (all the political parties support it)." *Id.*

239. See *Question of Gibraltar*, Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, 1406th mtg., at 2, U.N. Doc. A/AC.109/PV.1406 (1992) [hereinafter *Bossano Address, July 28, 1992*] ("in the case of Gibraltar there is the same right to self-determination as there is in the case of any other Non-Self-Governing Territory"); *Question of Gibraltar*, Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, 1421st mtg., at 2, U.N. Doc. A/AC.109/PV.1421 (1993) [hereinafter *Bossano Address, July 14, 1993*] ("my peoples look to this Committee as its natural protector on the question of decolonization and in the defence of its right to self-determination"); *Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, Special Political and Decolonization Committee, 48th Sess., Agenda Item 18, at 4, U.N. Doc. A/AC.4/48/SR.3 (1993) [hereinafter *Bossano Address, Oct. 12, 1993*] ("priority should be given to the principle of self-determination over bilateral agreements"); Hon. J. J. Bossano, Chief Minister of Gibraltar, *The Right to Self-Determination 9*, Address to the U.N. Fourth Committee (Oct. 11, 1994) (on file with the *Fordham International Law Journal*) [hereinafter *Bossano Address, Oct. 11, 1994*] ("I condemn the Government of the Kingdom of Spain for failure to respect the right to self-determination of my people as they are required to do as Members of this Organisation").

240. *Bossano Address, July 14, 1993, supra* note 239, at 12. Chief Minister Bossano asked: "How can I sit down to talk about my decolonization in the capacity of representative of the delegation of the administering Power that is supposed to be decolonizing

view, Gibraltar's views on the dispute are best expressed by Gibraltarian representatives.²⁴¹

1. Gibraltar's Right to Free Association: Gibraltar in the United Nations in 1963-1964

In 1963 and 1964, the Gibraltarian representative, Sir Joshua Hassan, called on the Special Committee²⁴² to recognize Gibraltar's right to self-determination under Resolution 1514.²⁴³ Sir Joshua Hassan claimed that, although comprised of many different religious and ethnic groups,²⁴⁴ the residents of Gibraltar managed to achieve a remarkable degree of unity in all aspects of life, including commerce, politics, and the arts.²⁴⁵ The United Nations, according to Hassan, should therefore consider the Gibraltarians a "people" within the context of Resolution 1514.²⁴⁶ The Gibraltarians noted, moreover, that during a meeting of the Special Committee concerning the status of the Spanish North African territories of Ceuta and Melilla,²⁴⁷ Spain argued that the right of these territories to self-determination should take precedence over Morocco's right to territorial unity.²⁴⁸ According to the Gibraltarian representatives, if the people of Ceuta and Melilla are entitled to self-determination, so

me?" *Id.*; see *supra* note 30 (quoting Chief Minister Bossano's views on British representation of Gibraltar).

241. See *supra* note 30 (discussing Bossano's views on direct negotiations between Gibraltar, Spain, and Great Britain).

242. See *supra* note 64 (explaining Special Committee).

243. Special Committee, 18th Sess., *supra* note 36, at 270; Special Committee, 19th Sess., *supra* note 36, at 301.

244. Special Committee, 19th Sess., *supra* note 36, at 298. Gibraltar is comprised of Maltese, Jews, Moroccans, Spanish, Italians, Portuguese, British, Irish, Cypriots, and others. *Id.*

245. *Id.* at 299. The Gibraltarians insisted that their lawful immigration from many different lands was comparable to that of the United States. *Id.* They went on to claim that the people "had been so effectively welded together as to constitute a distinct entity." *Id.*

246. *Id.* With regard to the question of nationhood, one author states: "[A]ny territorial community, the members of which are conscious of themselves as members of a community, and wish to maintain the identity of their community, is a nation." COBAN, *supra* note 232, at 107.

247. See *supra* note 172 (discussing status of Spanish North African territories of Ceuta and Melilla).

248. Special Committee, 19th Sess., *supra* note 36, at 301; Resolution 1514, *supra* note 11, at 66-67; see *supra* note 61 (quoting language of Resolution 1514 concerning self-determination and territorial integrity).

are the Gibraltarians.²⁴⁹ Sir Joshua Hassan maintained that the essential conflict between territorial integrity and self-determination is the same in both Gibraltar and Spain's North African territories.²⁵⁰ Hassan pointed out that, as a "people," Gibraltarians could choose their own path to self-government under Resolutions 1514 and 1541.²⁵¹ For practical reasons, the only legitimate path for Gibraltar to follow, according to Hassan, was one of free association with Great Britain.²⁵²

2. Gibraltar's Pursuit of Self-Determination and the Right to Represent Itself

The present Chief Minister of Gibraltar, Joe Bossano, continues to push for U.N. recognition of the right to self-determination for the people of Gibraltar.²⁵³ As opposed to his predecessors, however, who preferred that the British represent Gibraltar, Chief Minister Bossano has expressed his unhappiness with British representation of Gibraltar in negotiations under the Brussels Process.²⁵⁴ Chief Minister Bossano has asked Spain to accept that officials from the Gibraltar government should represent its own constituents in inter-governmental talks.²⁵⁵

a. The Failure of the Brussels Agreement and the Airport Agreement to Satisfy Gibraltar's Interests

Chief Minister Bossano fears that Great Britain and Spain will decide the issue of sovereignty in negotiations under the Brussels Agreement²⁵⁶ without any regard for the interests of the Gibraltarians.²⁵⁷ His primary concern is that the Brussels Agree-

249. Special Committee, 19th Sess., *supra* note 36, at 301.

250. *Id.* Sir Joshua Hassan stated: "It was surprising that Spain should now seek the help of paragraph 6 of [R]esolution 1514 (XV) in view of the fact that the Spanish representative had vehemently opposed Morocco's claims to Ceuta and Melilla." *Id.* King Hassan II of Morocco certainly thought there was a parallel between the two situations, stating: "If the British returned Gibraltar to Spain, then the Spanish must return Ceuta and Melilla to us." Gomez, *supra* note 172.

251. Special Committee, 18th Sess., *supra* note 36, at 270; *see supra* note 236 (discussing three options for "people" to exercise self-determination).

252. Special Committee, 18th Sess., *supra* note 36, at 270.

253. *See supra* note 239 (citing Chief Minister Bossano's visits to United Nations).

254. GOZNEY, *supra* note 15, at 7.

255. *Bossano Address, July 28, 1992, supra* note 239, at 57.

256. Brussels Agreement, *supra* note 39, at 6.

257. *See* Dominique Searle, *Gibraltar Leader Hopes Big Poll Win Will Change UK Stance*, *TIMES*, Jan. 15, 1992. "Mr. Bossano insists that the framework of the Brussels

ment does not provide for separate Gibraltarian representation at these talks.²⁵⁸ According to Bossano, Gibraltar's lack of representation at negotiations preceding the Airport Agreement,²⁵⁹ which resulted in an agreement that did not reflect the will of the people of Gibraltar, has exacerbated this concern.²⁶⁰ Shortly after Great Britain and Spain concluded the Airport Agreement, Chief Minister Bossano refused to implement it because, in his view, the agreement would give Spain too much control over Gibraltar's air services.²⁶¹

b. Applicability of Gibraltar's Right to Self-Determination in International Law

To prevent Spain and Great Britain from ignoring Gibraltar's interests through the Brussels Agreement, Chief Minister Bossano, in a July 28, 1992 address before the Special Committee, called on the United Nations to recognize Gibraltar's right to self-determination.²⁶² In his address, Bossano referred to the

Agreement decolonisation of the rock under a United Nations resolution means that the aim is really a final deal with Spain." *Id.* Bossano, in fact, would like Gibraltar to be almost entirely self-governing, with Great Britain retaining only formal sovereignty. Graham Barrett, *What are Britain and Spain to do About Gibraltar?*, MELAGE, July 1, 1992, at 11.

258. See GOZNEY, *supra* note 15, at i ("My Government is willing to hold discussions with both UK and Spain but cannot be expected to participate in a forum in which the Government of the colony is present as part of the UK delegation . . .").

259. Airport Agreement, *supra* note 98, at 7.

260. See GARCIA, *supra* note 148, at 198. "Bossano described the concessions as 'totally unacceptable to Gibraltar.'" *Id.* (citation omitted).

261. *Id.* Chief Minister Bossano found unacceptable the provision of the Airport Agreement that gave Spain some control over flights from Gibraltar to third countries. *Id.* "And the prospect that flights between Gibraltar and Spanish destinations would be treated as internal Spanish flights came in for particular criticism, as this seemed to come close to acknowledging that the isthmus was terrain under Spanish sovereignty." *Id.*

262. *Bossano Address, July 28, 1992, supra* note 239, at 51. It is not clear how the people of Gibraltar would decide to exercise their right to self-determination. See GARCIA, *supra* note 148, at 209-14 (discussing Gibraltar's options in exercising self-determination). One option for Gibraltar is that of free association with NATO. *Id.* at 211-12. Gibraltar could follow the example of various island groups of Micronesia, who have freely associated with the United States. *Id.* at 211. "They retained local self-government and even the power to conduct their own foreign policy in consultation with Washington. In return for military facilities, the United States was committed to defend the islands for 15 years and provide US\$2.39 billion in economic assistance over that period." *Id.* at 212. For Gibraltar, Garcia suggests a similar solution involving NATO:

At least for Spain it would remove the irritant of having a colony on her doorstep, while at the same time the Rock would remain bound to the same for-

International Covenant on Economic, Social and Cultural Rights²⁶³ (or "ICESCR") which states that all peoples have the right to self-determination.²⁶⁴ Bossano insisted that the Special Committee could not infringe upon this right due to a territory's lack of size or resources.²⁶⁵

In response to Spanish claims that the Treaty of Utrecht precludes Gibraltarian self-determination, Bossano maintained that, according to U.N. General Assembly Resolution 2734 ("Resolution 2734"),²⁶⁶ the principles embodied in the U.N. Charter supersede obligations under any other international agreement.²⁶⁷ Therefore, Bossano argues that the right to self-determination takes precedence over the reversionary provision of

eign and defence policy as Madrid and London through the Community and NATO. There can be little doubt that if Britain abandoned the Rock, including the military base, the Gibraltar government could then benefit from leasing the base to NATO or to the United States, as Micronesia has done. The fact that Britain and Spain are both in NATO and the EC means that the security of the Western Mediterranean would not be affected in any way, given that the military facilities on the Rock would continue to be held by the alliance.

Id.

263. *International Covenant on Economic, Social and Cultural Rights*, *supra* note 62, annex, at 49.

264. *Id.* art. 1; see *Bossano Address, July 28, 1992*, *supra* note 239, at 48-50 (noting that both Spain and Great Britain signed International Covenant on Economic, Social and Cultural Rights). "A failure by a State party to comply with an obligation contained in the Covenant is, under international law, a violation of the Covenant." *The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, 9 HUMAN RIGHTS Q. 122, 131 (1987).

265. *Bossano Address, July 28, 1992*, *supra* note 239, at 47. In his speech before the Fourth Committee on October 12, 1993, Bossano noted the similarity of the status of Gibraltar to that of Anguilla, stating:

The Committee would recall that, also in 1967, Anguilla had freely and democratically decided to secede from the new post-colonial State of Saint Kitts and Nevis and return to a colonial relationship with the United Kingdom of Great Britain and Northern Ireland. The Fourth Committee had accepted that restoration of the colonial relationship. Accordingly the people of Gibraltar could not understand the criticism of their decision not to unite with Spain. They had the right to be accorded the same treatment by the United Nations as any other Non-Self-Governing Territory.

Bossano Address, Oct. 12, 1993, *supra* note 239, at 6.

266. G.A. Res. 2734, U.N. GAOR, 25th Sess., Supp. No. 28, at 22-24, U.N. Doc. A/8028 (1970).

267. *Id.* at 22. The relevant language reads as follows:

The General Assembly . . .

1. *Solemnly reaffirms* the universal and unconditional validity of the purposes and principles of the Charter of the United Nations as the basis of relations among States irrespective of their size, geographical location, level of

the Treaty of Utrecht.²⁶⁸ He insists that, should the people of Gibraltar choose to exercise their self-determination through independence, the reversionary provision must not prevent such a result.²⁶⁹

Although the United Nations has not recognized Gibraltar's right to self-determination,²⁷⁰ Gibraltarians claim that various U.N. resolutions establish that this right exists.²⁷¹ In U.N. General Assembly Resolution 2189 ("Resolution 2189"),²⁷² the General Assembly called on the Special Committee to take steps to enable the populations of small territories to exercise their right

development or political, economic and social systems and declares that the breach of these principles cannot be justified in any circumstances whatsoever;

2. *Calls upon* all States to adhere strictly in their international relations to the purposes and principles of the Charter, including . . . the principle of equal rights and self-determination of peoples

3. *Solemnly reaffirms* that, in the event of a conflict between the obligations of the Members of the United Nations under the Charter and their obligations under any other international agreement, their obligations under the Charter shall prevail

Id. The vote for Resolution 2734 was: 120 for, one against, and one abstention. 13 UNITED NATIONS RESOLUTIONS 36 (Dusan J. Djonovich ed., 1976).

268. *Bossano Address, Oct. 11, 1994, supra* note 239, at 8-9. Chief Minister Bossano claimed that the reversionary provision is outdated, stating:

Since the 1960s, Spain has argued that the Treaty of Utrecht overrides the principle of self-determination. But of course, that Treaty was done in a different age where no fundamental rights were recognised. It is for this reason, that Spain was able to include, as a condition, that the United Kingdom should prohibit the presence in Gibraltar of persons of the Jewish and Muslim faith who were anathema in those days to the Catholic King of Spain. Needless to say, in keeping with our international obligations, the Constitution of Gibraltar guarantees religious freedom. It would be absurd for the Kingdom of Spain to suggest that the Constitution of Gibraltar is in breach of the Treaty of Utrecht of 1713 and that therefore they are entitled to recapture the place.

Id.

269. *Id.* Other treaties that created colonial situations have been altered according to the wishes of the inhabitants of the colony. *LEVIE, supra* note 18, at 42.

270. *See supra* note 72 and accompanying text (discussing resolutions concerning Gibraltar and how they addressed interests of Gibraltarians).

271. *Bossano Address, Oct. 11, 1994, supra* note 239, at 7-8. "[T]he message constantly emanating from the resolutions of the Fourth Committee and the General Assembly on the question of decolonisation appear to us to be a vindication of everything we ourselves believe." *Id.*; *see, e.g.*, Resolution 1514, *supra* note 11, art. 2, at 67 (noting that "all peoples have the right to self-determination"); Resolution 2734, *supra* note 266, at 22 (discussing "principle of equal rights and self-determination of peoples" as principle of U.N. Charter).

272. G.A. Res. 2189, U.N. GAOR, 21st Sess., Supp. No. 16, at 5-6, U.N. Doc. A/L.506 (1966).

to self-determination.²⁷³ According to Gibraltar, the ICESCR confirms that the right to self-determination applies to peoples of Non-Self Governing Territories,²⁷⁴ such as Gibraltar.²⁷⁵

c. Bossano Appeals for Direct Negotiations with Spain

After establishing the applicability of self-determination to Gibraltar, Chief Minister Bossano demanded that Spain talk to the government of Gibraltar directly, rather than through the British under the Brussels Process.²⁷⁶ Only after Spain agrees to speak directly to Gibraltar officials, Bossano stated, can the two sides effectively negotiate their differences.²⁷⁷ In a speech before the Special Committee on July 14, 1993,²⁷⁸ Bossano suggested that Spain follow the lead of a growing number of Spanish citizens who now support Gibraltar's right to self-determination, most notably the organization known as "La Asociación Española de Amigos de Gibraltar".²⁷⁹

In a recent address before the U.N. Fourth Committee,²⁸⁰ Bossano insisted that self-determination for Gibraltar will not infringe on Spain's territorial integrity.²⁸¹ It would be impossible, he continued, to restore the territorial integrity of every nation as it stood almost 300 years ago, as many territories have changed hands since that time, and new nations have been established.²⁸² He insisted that the United Nations must not deny

273. *Id.* One author summed up the principle behind Resolution 2189: "[A]s a consequence of the recognition of the right of self-determination, States are under a specific obligation to promote, as required by the will expressed by the populations of dependent territories, the establishment of independent states in such territories" HANNA BOKOR-SZEGO, *NEW STATES AND INTERNATIONAL LAW* 46 (1970).

274. *International Covenant on Economic, Social and Cultural Rights*, *supra* note 62, annex, art. 1, at 49.

275. *Bossano Address, July 28, 1992*, *supra* note 239, at 48-50.

276. *Id.* at 56.

277. *Id.* at 53.

278. *Bossano Address, July 14, 1993*, *supra* note 239, at 2.

279. *Id.* at 3-5; see D. Juan Pina, President of La Asociación Española de Amigos de Gibraltar, Gibraltar: Una Pequeña Nación Vecina de España, Address to the U.N. Fourth Committee (Oct. 11, 1994) (on file with Asociación Española de Amigos de Gibraltar). Referring to both Spanish newspaper articles and opinion polls, Bossano noted that the number of Spaniards in favor of annexation of Gibraltar has markedly decreased in the past few years. *Bossano Address, July 14, 1993*, *supra* note 239, at 6.

280. *Bossano Address, Oct. 12, 1993*, *supra* note 239, at 4.

281. *Id.* at 7. Chief Minister Bossano stated: "Restoring the territorial integrity of Spain to the way it had been in 1713 was not the doctrine of the United Nations." *Id.*

282. *Id.* Bossano explained:

anyone the right to self-determination because of actions by a colonial power almost 300 years ago.²⁸³ Finally, he urged the Fourth Committee to recognize that Gibraltar's right to determine its own destiny was of greater importance than the present political interests of Spain and Great Britain.²⁸⁴

III. THE RIGHT TO DETERMINE THE FUTURE OF GIBRALTAR RESTS SOLELY WITH THE PEOPLE OF GIBRALTAR

According to Resolution 1514,²⁸⁵ Gibraltar has the right to self-determination.²⁸⁶ Gibraltar's self-determination does not interfere with Spain's territorial integrity²⁸⁷ and supersedes the reversionary provision of the Treaty of Utrecht.²⁸⁸ Moreover, control over the isthmus must remain with the government of Gibraltar, despite Spanish claims that it never relinquished sovereignty over the area.²⁸⁹ Cooperation between the three parties in the implementation of these principles would promote economic growth in the region.²⁹⁰

A. Spain's Misguided Claims to Gibraltar

In its claim to Gibraltar, Spain has mistakenly relied on both the reversionary provision of the Treaty of Utrecht and the right

All the colonial territories that had achieved self-determination had created a situation different from that which had existed prior to colonialism. Indeed, when the development of imperialism and colonialism had established new populations in new territories, it had done so by fragmenting what had existed before.

Gibraltar had undoubtedly formed a part of Spain in 1703, but Portugal had also at one time been part of Spain and many Territories had in the past been part of something else.

Id.

283. *Id.* "The United Kingdom, not Gibraltar, had fragmented Spain in 1704." *Id.*

284. *Id.* "The only important matter was to honour the wishes of the inhabitants of Gibraltar, not the interests of the United Kingdom and Spain." *Id.*

285. Resolution 1514, *supra* note 11, at 66.

286. *Id.* at 66-67; *see supra* note 61 (citing provisions of Resolution 1514 relevant to Gibraltar).

287. *See supra* note 281 and accompanying text (explaining that United Nations resolutions do not call for restoration of territorial integrity as it existed in 1713).

288. *See supra* note 267 and accompanying text (explaining that U.N. Charter supersedes other international treaties by virtue of Resolution 2734).

289. *See supra* notes 96-144 and accompanying text (discussing isthmus dispute).

290. *See GOZNEY, supra* note 15, at 8-9 (discussing damage to economies of Gibraltar and Campo area resulting from sovereignty dispute).

to territorial integrity in Resolution 1514. The reversionary provision in the Treaty of Utrecht is anachronistic to the principles embodied in the U.N. Charter.²⁹¹ Spain and Great Britain have followed the Treaty at their will, often ignoring some of the Treaty's provisions because of either inconvenience or the changing international sense of morality. Another anachronistic provision prohibited the British from granting Jews or Moors the right to reside in Gibraltar.²⁹² Great Britain failed to comply, allowing both Jews and Moors to live as full citizens in Gibraltar.²⁹³ Yet another outdated provision prohibited Gibraltar from "open communication by land" with the Campo area.²⁹⁴ Although the rationale behind this section, to prevent smuggling, remains relevant today,²⁹⁵ the parties generally ignore the provision.²⁹⁶ It follows that the parties should discard the reversionary provision of the Treaty, as it impedes Gibraltar's right to self-determination.²⁹⁷ According to Resolution 2734,²⁹⁸ new

291. See *supra* note 58 (noting U.N. Charter's commitment to principle of self-determination).

292. Treaty of Utrecht, *supra* note 6, art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 224. "[N]o leave shall be given, under any pretence whatsoever, either to Jews or Moors, to reside, or have their dwellings in the said town of Gibraltar" *Id.*

293. See *supra* note 54 (discussing Great Britain's failure to keep Gibraltar free of Jews despite provision in Treaty of Utrecht requiring British authorities to do so); Bosano Address, Oct. 11, 1994, *supra* note 239, at 8 ("in keeping with our international obligations, the Constitution of Gibraltar guarantees religious freedom").

294. Treaty of Utrecht, *supra* note 6, art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 224. The precise language prohibits "any open communication by land with the country round about." *Id.* art. X, 28 Consol. T.S. at 330, 1 M.P.T. at 224.

295. See *supra* note 176 (discussing Spanish view of smuggling problem in Gibraltar and economic effect on region).

296. See GARCIA, *supra* note 148, at 189. The land border between Gibraltar and Spain has been open since February 5, 1985. *Id.* The provision is antithetical to one of the foundations of the European Community, which calls for the free movement of capital, services and people between member states. See EC Treaty, *supra* note 24, art. 3(c) ("the abolition, as between Member States, of obstacles to freedom of movement for persons, services and capital").

297. See Resolution 2734, *supra* note 266, at 22 (discussing General Assembly principle that U.N. Charter supersedes all other international obligations). One commentator insists that even if Gibraltar chose to become independent, the change would not amount to a transfer of sovereignty within the meaning of the reversionary provision of the Treaty of Utrecht. J.E.S. Fawcett, *Gibraltar: The Legal Issues*, 43 INT'L AFFAIRS 236, 250-51 (1967). J.E.S. Fawcett argues that "alienation" within the meaning of the reversionary provision refers to alienation by cession, which is effectively a contractual agreement. *Id.* at 250. Fawcett explains that cession does not "include transfer of title by operation of law as, for example, transfer by succession upon independence." *Id.* Fawcett then presents an overview of the method by which Great Britain grants independence to its colonies:

principles of international law incorporated in the U.N. Charter, such as the right to self-determination, supersede all other international obligations, including the Treaty of Utrecht.²⁹⁹

While the reversionary provision is outdated, Spain's territorial integrity with regard to Gibraltar simply has not existed since 1713.³⁰⁰ The international situation in 1713, as Chief Minister Bossano explained, differs from today's world in many respects.³⁰¹ Various wars and treaties have caused drastic changes in international borders and national allegiances.³⁰² An important aspect to the debate about territorial integrity with regard to Gibraltar is that the Moors, and not the Spaniards, first settled Gibraltar.³⁰³ According to the Spanish rationale, Spain's claim to Gibraltar would rank second to that of Morocco.³⁰⁴

B. *Great Britain Should Continue to Support Gibraltar's Right to Self-Determination*

Great Britain, through the Gibraltar Constitution, has shown an increasing willingness to transfer power to the Gibraltar government.³⁰⁵ The British are trapped, however, between

In British constitutional practice, the grant of independence is essentially a withdrawal of restrictions upon the jurisdiction and authority of the government of the territory, both legislative and executive. Internally there is a capacity for sovereignty in the people of the territory, which through the stages of representative government and self-government is gradually enlarged until independence is enacted. Territorial title then passes by the international law of succession, and there is no 'alienation' in the sense of Article X.

Id. at 250-51.

298. Resolution 2734, *supra* note 266, at 22-24.

299. See *supra* note 58 and accompanying text (noting that right to self-determination is recognized in U.N. Charter); Resolution 2734, *supra* note 267, at 22 (calling on international community not to breach principles of U.N. Charter under "any circumstances whatsoever").

300. See *supra* note 281 (noting that Spain's right to territorial integrity does not call for restoration of national unity as of 1713).

301. See *Bossano Address, Oct. 12, 1993, supra* note 239, at 7 (explaining that nations have fragmented since 1703 and that many nations would not exist upon return to status quo of 1703).

302. *Id.*

303. See *supra* note 40 and accompanying text (stating that Gibraltar was first settled by Moors).

304. See Special Committee, 19th Sess., *supra* note 36, at 298. Indeed, under Spanish logic, Morocco might have a legitimate claim to Spanish territory up to the Guadalquivir River. *Id.*

305. See Gibraltar Constitution Order 1969 pmb., 1 LAWS OF GIBRALTAR 1 (1984) (citing Great Britain's responsibilities under Gibraltar Constitution regarding future transfer of sovereignty over Gibraltar).

their desire to cooperate with their EC partner, Spain,³⁰⁶ and fulfilling their responsibilities to the people of Gibraltar.³⁰⁷ Great Britain should continue to protect the people of Gibraltar from Spain's will until such time as Spain and the United Nations recognize Gibraltar's right to determine its own future.³⁰⁸ In so doing, the British should insist on direct representation by the government of Gibraltar.³⁰⁹ This would allow Gibraltar to express its aspirations directly to both Spain and Great Britain and would prevent the two nations from concluding agreements that will be rejected later by the government of Gibraltar.

C. The Failure of the International Community to Recognize Gibraltar's Right to Self-Determination

According to Resolution 1514,³¹⁰ all peoples have the right to self-determination.³¹¹ Gibraltarians are a "people" who, despite belonging to many different ethnicities, have forged a unique cultural, political, and economic entity that is neither Spanish³¹² nor British.³¹³ The International Covenant on Economic, Social and Cultural Rights³¹⁴ confirms that all peoples have the right to self-determination.³¹⁵ Moreover, the United Nations has established that the size of a territory should have no

306. See *supra* notes 113-15 and accompanying text (discussing EC Air Services Liberalisation Directive, which was made possible by Anglo-Spanish agreement on Gibraltar airport).

307. See Gibraltar Constitution Order 1969 pmb., 1 LAWS OF GIBRALTAR 1 (1984) (citing Great Britain's responsibilities under Gibraltar Constitution regarding future transfer of sovereignty over Gibraltar).

308. See *supra* note 72 and accompanying text (stating that United Nations resolutions do not explicitly mention Gibraltar's right to self-determination).

309. See *supra* notes 86-90 and accompanying text (noting that negotiations under Lisbon Agreement and Brussels Agreement included only British and Spanish representatives).

310. Resolution 1514, *supra* note 11, at 66-67.

311. *Id.* at 67.

312. See LEVIE, *supra* note 18, at 112 (discussing results of referendum where overwhelming majority of Gibraltarians voted to retain close ties to Great Britain). "[I]f Gibraltar were retroceded to Spain there is every reason to believe that a substantial number of the Gibraltarians would leave for Great Britain." *Id.* at 229 n.195.

313. See *supra* notes 244-46 and accompanying text (noting unique aspects of people of Gibraltar and general definition of nationhood).

314. *International Covenant on Economic, Social and Cultural Rights*, *supra* note 62, annex, at 49.

315. *Id.* art. 1; see *supra* notes 62, 264 (discussing provisions of International Covenant on Economic, Social and Cultural Rights).

bearing on the exercise of this right.³¹⁶ In its review of Gibraltar, therefore, the United Nations acted improperly by not recognizing the rights of the Gibraltarians as a "people."³¹⁷

Gibraltar's right to self-determination must include the right to represent its own citizens in negotiations with Spain.³¹⁸ According to Resolution 2734, the reversionary provision should in no way prevent Gibraltarians from discussing its future status with Spain and Great Britain.³¹⁹ It is only through direct negotiations between Spain and Gibraltar that the two sides can cooperate both economically and politically.

Once the international community recognizes Gibraltar's right to determine its own destiny, and Spain agrees to speak directly to Gibraltarian representatives, the Spanish and Gibraltarian people will reap a number of benefits by virtue of their membership in NATO and the Community.³²⁰ NATO could benefit from an increase in military cooperation between Gibraltar and Spain.³²¹ In addition, Gibraltar could become a full Member State of the European Community,³²² thereby connecting it economically to both Spain and Great Britain even more closely than it is now. Gibraltar and Spain would gain a great deal economically due to the free movement of people and goods.³²³

316. Resolution 2734, *supra* note 266, art. 1, at 22.

317. See LEVIE, *supra* note 18, at 222 n.146. Howard Levie believes that "the Special Committee . . . has completely disregarded this right of self-determination and has been seeking to award territory . . . against the wishes of the people who reside on that territory." *Id.* Levie further states that it was the Arab and Latin American states who led the General Assembly in these decisions, and that they were more concerned with their own territorial integrity than with the right to self-determination of small colonies that wished to remain loyal to their colonial rulers. *Id.*

318. *E.g.*, Lisbon Agreement, *supra* note 39, at 5-6; Brussels Agreement, *supra* note 39, at 6.

319. See Resolution 2734, *supra* note 266, arts. 2-3, at 22 ("in the event of a conflict between the obligations of the Members of the United Nations under the Charter and their obligations under any other international agreement, their obligations under the Charter shall prevail").

320. See GOZNEY, *supra* note 15, at 8-9 (discussing damage to economies of Gibraltar and Campo area resulting from sovereignty dispute); see also PHILIP DENNIS, GIBRALTAR AND ITS PEOPLE 89-90 (1990) (discussing benefits of greater cooperation between Gibraltar and Spain under NATO).

321. DENNIS, *supra* note 320, at 89. "With their knowledge of Spanish, Gibraltarians could provide a useful liaison role between British and Spanish forces." *Id.*

322. GOZNEY, *supra* note 15, at 22-23.

323. See *supra* note 126 and accompanying text (discussing inability of Spain and Gibraltar to agree on airport situation and subsequent negative economic effects); U.K.

D. *Gibraltar and Spain Should Share the Airport*

While the international community should allow Gibraltar to exercise its right to self-determination, sovereignty over the isthmus remains a source of conflict that the parties must resolve as part of an overall settlement.³²⁴ Great Britain's present claim to the isthmus is questionable under the Treaty of Utrecht.³²⁵ Unfortunately, it is impossible to recreate the situation that existed prior to British encroachments onto the isthmus.³²⁶ The people of Gibraltar built and developed Gibraltar Airport and depend upon it for air services to destinations outside the Iberian Peninsula. Gibraltarians should not have to compromise their control over the Airport due to a sovereignty dispute between two colonial powers that dates back to 1713. Rather than serve as an obstacle to Gibraltar-Spanish relations, all EC Member States, including Spain, should be entitled to use Gibraltar Airport in accord with EC Air Services Directives and Regulations.³²⁷ However, while Spain would have the opportunity to use the Airport, it would not have a right to control air services in Gibraltar. Ultimate control over air services must remain with the government of Gibraltar.

It is likely that the Community will continue to subject Gibraltar to exclusion from its air services legislation until the parties settle their differences concerning operations in Gibraltar Airport. This exclusion is detrimental to Gibraltar and the Campo area, as both have a great deal to gain economically from the increase in flights that a settlement would bring.³²⁸ Neither side benefits if the present impasse continues.

FOREIGN COMMONWEALTH OFFICE, *supra* note 26, at 4 (noting that sovereignty dispute is responsible for traffic delays of up to four hours at border).

324. See *supra* notes 96-144 and accompanying text (describing dispute over isthmus).

325. See *supra* notes 102-08 and accompanying text (describing origins of dispute over isthmus).

326. See *supra* notes 104-07 and accompanying text (discussing British encroachment onto isthmus and building of frontier-fence).

327. *E.g.*, Air Services Directive, *supra* note 101, O.J. L 226/14 (1989); Council Regulation No. 95/93, O.J. L 14 (1993); Council Regulation No. 2408/92, O.J. L 240 (1992).

328. See *supra* note 126 (discussing probability of extra flights between Gibraltar and other European airports if parties resolve dispute).

CONCLUSION

The people of Gibraltar, by virtue of Resolution 1514,³²⁹ have the right to self-determination. Although Spain would like to effect a return to its territorial integrity of 1704,³³⁰ the interests of the people of Gibraltar must come first. Such an arrangement will enable the governments of Great Britain, Spain, and Gibraltar to cooperate in economic, military, and political matters, which will ultimately benefit the people in the region. The United Nations should disregard the anachronistic reversionary provision of the Treaty of Utrecht³³¹ and recognize Gibraltar's fundamental right to self-determination.

329. Resolution 1514, *supra* note 11, at 66-67.

330. See *ROCK OF CONTENTION*, *supra* note 3, at 172-75 (discussing British capture of Gibraltar from Spain).

331. Treaty of Utrecht, *supra* note 6, art. X, 28 Consol. T.S. at 331, 1 M.P.T. at 224.