



General Assembly

Distr.: General
25 February 2020

Original: English

Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Gibraltar

Working paper prepared by the Secretariat

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Note: The information contained in the present working paper has been derived from information transmitted to the Secretary-General by the administering Power under Article 73 *e* of the Charter of the United Nations as well as information provided by the Government of Spain and that available in public sources, including those of the territorial Government. Information was transmitted by the administering Power on 9 December 2019. Further details are contained in previous working papers, available from <https://www.un.org/dppa/decolonization/en/documents/workingpapers>.



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I. General

1. Gibraltar is a Non-Self-Governing Territory administered by the United Kingdom of Great Britain and Northern Ireland. According to the administering Power, the basis of the current relationship between the Government of the United Kingdom and its Non-Self-Governing Territories is enshrined in the constitution of each Territory; sovereignty over Gibraltar was ceded to the United Kingdom by Spain under the Treaty of Utrecht in 1713, with territorial waters flowing from sovereignty over the land. For its part, Spain claims that, under article 10 of the Treaty, it ceded only the city and castle of Gibraltar, its port, defences and fortresses. Against the backdrop of its long-standing appeal to Spain and the United Kingdom to hold talks on the question of Gibraltar (see resolution [2070 \(XX\)](#), adopted on 16 December 1965), in 2019, the General Assembly, in its decision 74/515, among other things, urged the Governments of Spain and the United Kingdom, while listening to the interests and aspirations of Gibraltar that were legitimate under international law, to reach, in the spirit of the Brussels Declaration of 27 November 1984, a definitive solution to the question, in the light of the relevant resolutions of the Assembly and applicable principles, and in the spirit of the Charter of the United Nations (see sects. VIII to X below).

2. The Territory is a narrow peninsula extending southward from the south-western coast of Spain, to which it is connected by an isthmus of approximately 1.6 km. The Spanish port of Algeciras lies 8 km across the bay to the west, and the continent of Africa is situated 32 km across the Strait of Gibraltar to the south. According to the administering Power, the area of Gibraltar is 5.8 km²; according to Spain, which claims sovereignty over the Territory, it is 4.8 km². Issues relating to the isthmus and waters off Gibraltar continue to be a subject of contention.

3. The population of the Territory was 34,003 (2016 data). The currency of the Territory is the Gibraltar pound, circulating at par with the pound sterling. The Territory's main trading and commercial transactions are with European countries, the United States of America and North African countries. The British Overseas Territories Act 2002 provides for the granting of British citizenship to citizens of British overseas territories.

II. Constitutional, legal and political issues

4. Under the Gibraltar Constitution Order 2006, the Government of Gibraltar consists of the elected ministers represented in the Council of Ministers together with the British Crown, who is represented in Gibraltar by the Governor. Lieutenant General Edward Davis, who had been the Governor since January 2016, completed his tenure on 18 February 2020. On the same day, Nicholas Pyle was installed as interim Governor. In accordance with the 2006 Constitution, the Governor is responsible for the conduct of external affairs, defence, internal security (including the police, in conjunction with the Gibraltar Police Authority) and for certain appointments to public office as conferred on him by it. The elected Government of Gibraltar is responsible for all other matters.

5. Following an election, the Governor appoints a Chief Minister, who is the elected member of the Gibraltar Parliament who, in the Governor's judgment, is most likely to command the greatest measure of confidence among the members of the Parliament. Other ministers are appointed by the Governor, acting in accordance with the advice of the Chief Minister, from among the elected members of the Parliament. In accordance with the 2006 Constitution, the Parliament may make laws for the peace, order and good government of Gibraltar, while the British Crown retains full

power to make laws, from time to time, for the same above-mentioned purposes. According to the administering Power, such powers have not been exercised by the British Crown since the 2006 Constitution came into force. The 2006 Constitution also makes provisions regarding Crown lands in Gibraltar.

6. Gibraltar has a supreme court allowing for appeals to a court of appeal and subsequently to Her Majesty in Council, acting on the advice of the Judicial Committee of the Privy Council.

7. The Gibraltar Socialist Labour Party/Liberal Party of Gibraltar alliance headed by Fabian Picardo won the general elections held on 17 October 2019 with 52.5 per cent of the vote, winning 10 seats in the Parliament, while the Gibraltar Social Democrats earned 6 seats and Together Gibraltar, 1. Subsequently, Mr. Picardo, who had been serving as Chief Minister since 9 December 2011, was re-elected for a third term. The next election must be held by 24 February 2024.

8. Under the 2006 Constitution, it is recognized that, without prejudice to the administering Power's ultimate responsibility for Gibraltar's compliance with European Union law, matters that are the responsibility of the elected ministers shall not cease to be so even though they arise in the context of the European Union. Following the creation of a new electoral region, for the purposes of the European parliamentary elections only, consisting of Gibraltar and the south-western region of England (known as the "combined region"), Gibraltarians took part in European parliamentary elections for the first time in June 2004 and subsequently June 2009, May 2014 and May 2019. Voters in Gibraltar also participated in the referendum on the membership of the United Kingdom in the European Union, on 23 June 2016, and 96 per cent voted to remain in the European Union. According to the administering Power, in 2019, the United Kingdom has been responsible for representing the priorities of the overseas territories in negotiations of the departure of the United Kingdom from the European Union (known as "Brexit") and a clear objective of the negotiations was to achieve an agreement that worked for all parts of the United Kingdom family, including Gibraltar.

9. The United Kingdom continues to believe that, as a separate Territory recognized by the United Nations and included since 1946 in its list of Non-Self-Governing Territories, Gibraltar enjoys the individual and collective rights accorded by the Charter of the United Nations. The United Kingdom also believes that the people of Gibraltar enjoy the right of self-determination. The administering Power is clear that the 2006 Constitution sets out the relevant competences for the Governments of the United Kingdom and Gibraltar.

10. For its part, Spain maintains the position that the 2006 Constitution does not affect the international capacity of Gibraltar; that its adoption was a reform of the colonial regime, which remains unaltered; and that it did not affect in any way the pending decolonization process of Gibraltar, to which the principle of territorial integrity applies, not that of self-determination, as stated in General Assembly resolution [2353 \(XXII\)](#). In that context, Spain stresses that the participation of Gibraltar in any international instrument must be made through the United Kingdom as the administering Power responsible for the international relations of the Territory, including in the fields of international financial services, human rights and the environment.

11. On 30 January 2020, the withdrawal agreement and the political declaration on the future relations between the European Union and the United Kingdom were ratified by the European Council. The former also included a protocol on Gibraltar. The Gibraltar Parliament passed the European Union Withdrawal (Application of International Agreements) Act 2019 and the European Union (Withdrawal Agreement) Act 2020 to prepare for Brexit, including the transition period that was

set out in the withdrawal agreement and foreseen to end on 31 December 2020, with the possibility of an extension if a decision is taken jointly by the European Union and the United Kingdom.

12. On 29 November 2018, Spain and the United Kingdom, with the involvement of the Government of Gibraltar, concluded four memorandums of understanding on citizens' rights, tobacco and other products, cooperation on environmental matters and cooperation in police and customs matters, as well as an agreement to conclude a treaty on taxation and the protection of financial interests. On 4 March 2019, the International Agreement on Taxation and the Protection of Financial Interests between Spain and the United Kingdom regarding Gibraltar was signed. Following a technical meeting held in Madrid on 23 January 2020, the first meetings of the committees set up under the memorandums were held in Algeciras, Spain, on 26 and 27 February 2020.

III. Budget

13. According to the administering Power, the revenue of the territorial Government for the fiscal year 2018/19 was £706.6 million and its expenditure stood at approximately £648.8 million. For the fiscal year 2019/20, the territorial Government estimated its overall government revenue at £696.5 million, with an overall government expenditure budget of £676.4 million. Of the estimated revenue in 2019/20, income taxes represent the largest share (47 per cent), followed by duties, taxes and other receipts (27 per cent). In addition, the territorial Government approved £82 million in expenditure on capital projects for 2019/20, to be funded through the Improvement and Development Fund, a slight decrease from £84.4 million in 2018/19.

14. Spain considers Gibraltar to be a tax haven and that, under that regime, the profits obtained abroad by companies registered in Gibraltar are not subject to taxation. Spain recalls that, in October 2013, the European Commission initiated a formal investigation procedure to verify whether certain provisions of the tax regime of Gibraltar were applied in breach of State aid rules of the European Union and, in October 2014, decided to extend its investigation to Gibraltar's practice of granting tax rulings to some companies. Spain also recalls that, in its decision SA.34914 (2013/C) of 19 December 2018 on the State aid implemented by the United Kingdom as regards the Gibraltar corporate income tax regime, the Commission found that the corporate tax exemption regime of Gibraltar for interest and royalties, as well as the tax treatment granted by the Government of Gibraltar on the basis of its tax rulings in favour of five Gibraltar companies, constituted individual State aid measures under a State aid scheme unlawfully put into effect by Gibraltar. The Commission concluded that that State aid scheme was incompatible with internal market regulations of the Union and ruled that the recovery of the aid, which the Commission estimated to amount to around €100 million in unpaid taxes, should be immediate and effective. The Commission also decided that the United Kingdom should ensure the implementation of that decision within four months, keep it informed of the progress of the national measures taken to implement the decision until the completion of the recovery of the aid and, on request by the Commission, submit to it information on the national measures that have been taken, and those planned, in order to comply with the decision.

15. The administering Power maintains that Gibraltar adheres to all relevant European Union directives in relation to financial supervision and regulation, direct taxation and the fight against money-laundering. In the view of the administering Power, in August 2018, the European Commission confirmed that, in relation to

Directive 2013/34/EU, requiring limited liability companies to publish their annual financial statements, and Directive 2011/16/EU on administrative cooperation in the field of taxation, the Commission had not identified any inconsistencies or non-conformities in the practice of Gibraltar. The administering Power also recalls that Gibraltar was not part of the 2017 screening exercise of the European Council by which it established the list of the European Union of non-cooperative jurisdictions for tax purposes. Furthermore, according to the administering Power, in its decision of 19 December 2018, the Commission expressly found that the tax ruling practice under the Income Tax Act 2010 did not constitute a State aid scheme within the meaning of article 107 (1) of the Treaty on the Functioning of the European Union, ruled that only 5 of the 165 Gibraltar tax rulings investigated by the Commission were contrary to State aid rules of the European Union, expressly did not identify any selective advantage in relation to the other 160 rulings investigated, and therefore found that those rulings did not break State aid rules of the European Union, and welcomed the significant actions taken by Gibraltar to enhance its tax ruling procedure, reinforce its transfer pricing rules, enhance taxpayers' obligations and improve transparency regarding its implementation of its territorial system of taxation. The administering Power recalls that, with respect to the comments made by Spain on regional selectivity during the course of the investigation, the Commission also expressly noted that it did not express doubts with regard to regional selectivity.

IV. Economic conditions

A. General

16. Gibraltar has no known natural resources and lacks agricultural land. The economy has increasingly focused on tourism and the provision of financial services, including banking, insurance, shipping and portfolio management, in addition to online gaming. The forecast gross domestic product (GDP) of Gibraltar grew to £2.3 billion in 2018/19, with an estimated GDP per capita of £69,917.

17. Before 1980, the economy was largely dependent on expenditure by the Ministry of Defence of the United Kingdom. According to the administering Power, the situation changed dramatically over the years as United Kingdom military spending went from accounting for 60 per cent of the Gibraltarian economy to less than 6 per cent. According to the administering Power, the British Forces Gibraltar comprises some 1,000 personnel, which includes service personnel of the United Kingdom, regular and reserve personnel of the Royal Gibraltar Regiment, civil servants of the Ministry of Defence and locally employed civilians.

B. Banking and financial services

18. According to the administering Power, Gibraltar has a well-developed private financial sector that is regulated by the Financial Services Commission. The regulatory scope extends to all forms of financial services, and Gibraltar's legislation, systems and administrative practices, which, in the view of the administering Power, are in full compliance with its European Union obligations, have been independently tested through reviews conducted by the Financial Action Task Force, the International Monetary Fund and others. Gibraltar is also participating in the national risk assessment and peer review process of the Task Force.

19. Tax evasion is a predicate offence for money-laundering and subject to the reporting of suspicious transactions. The Financial Intelligence Unit of Gibraltar, as a member of the Egmont Group of Financial Intelligence Units, systematically shares

information with other members of the Group. According to the administering Power, as at 3 September 2019, Gibraltar had agreements on the exchange of tax information with 174 countries and territories, of which 163 remain in force. Since September 2015, tax information has been provided to the United States, the first country with which Gibraltar had made such an agreement, in accordance with the Foreign Account Tax Compliance Act agreement on the automatic exchange of information, and, since September 2016, with the United Kingdom under a similar agreement, the International Co-operation (Improvement of International Tax Compliance) (United Kingdom) Regulations 2015. Regulations for the automatic exchange of information with States members of the European Union, the International Cooperation (Improvement of International Tax Compliance) Regulations 2015, came into force in January 2016 in order to fulfil the requirements of the Common Reporting Standard of the Organization for Economic Cooperation and Development. Furthermore, the Fourth Anti-Money Laundering Directive of the European Union and the register of beneficial ownership came into force in the Territory on 26 June 2017. On 1 and 15 October 2019, the United Kingdom and Gibraltar, respectively, signed an agreement to eliminate double taxation with respect to taxes on income and on capital gains and to prevent tax evasion and avoidance.

20. In December 2019, the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism, a permanent monitoring body of the Council of Europe, adopted the fifth-round mutual evaluation report at its fifty-ninth plenary session, in Strasbourg, France. The report provided a summary of the measures in place in Gibraltar to combat money-laundering and financing of terrorism as at the date of the on-site visit from 1 to 12 April 2019, analysed the level of compliance with the recommendations of the Financial Action Task Force and the level of effectiveness of the system in Gibraltar to combat money-laundering and financing of terrorism, and provided recommendations on how that system could be strengthened.

21. Gibraltar adopted beneficial ownership regulations in June 2017. According to the administering Power, Gibraltar is committed to the establishment of a public register of ultimate beneficial ownership and has established a central register held in a secure offline database and appointed a registrar for the management of the regulations. In accordance with the regulations, data on new company incorporations must be provided to the registrar within 30 days.

22. The Government of Spain recalls that the European Anti-Fraud Office of the European Commission concluded in a 2014 report that there was reason to believe that crimes of tobacco smuggling and money-laundering from Gibraltar had been committed, affecting the financial and other interests of the European Union.

23. The administering Power indicates that legal opinions have since been obtained by the Government of Gibraltar that suggest that allegations in the report of the Office were unfounded.

24. Positive discussions on fiscal and tax matters relating to Gibraltar have been held since 2018 between Spain and the United Kingdom, with the involvement of the Government of Gibraltar (see para. 12 above).

C. Transportation

25. Enhancements to road transportation arrangements in and out of Gibraltar were agreed upon at talks held in Córdoba, Spain, in 2006. They included the introduction at the fence/frontier of lanes in both directions, and red and green channels for both people and vehicles. As of February 2020, proportionate customs and police checks remained necessary, given that Gibraltar continued to be outside the common customs

territory of the European Union as had been the case in the pre-Brexit period. Moreover, the United Kingdom and Gibraltar did not belong to the Schengen area for external border control purposes. In the view of the administering Power, since 26 July 2013, the Government of Spain has at times imposed disproportionate and time-consuming checks at the border between Gibraltar and Spain; although the situation has improved, it remains unpredictable.

26. The European Commission dispatched three technical fact-finding missions to La Línea de la Concepción and Gibraltar, in September 2013, July 2014 and October 2015. The Commission issued recommendations to the authorities of the United Kingdom and Spain following its first two missions.

27. Spain stresses that the checks at the fence are carried out only to ensure strict compliance with legislation of Spain and the European Union, in particular the Schengen Borders Code and its procedures, and are in no manner politically motivated. The checks are essential for Spain to fulfil its obligations vis-à-vis the whole of the European Union and are especially necessary given that illicit trafficking of various forms is common in the area and that Gibraltar is neither in the Schengen area nor in the European Union Customs Union. Moreover, Spain underlines that the police and customs checkpoint at La Línea de la Concepción (the fence) does not correspond to the demarcation of the border recognized by Spain in accordance with the Treaty of Utrecht. Spain further stresses that it has fully complied with the recommendations of the European Commission regarding the management at the fence of the flow of persons, vehicles and goods and, in 2015, completed the restructuring of the customs checkpoint and the installation of 13 automatic electronic passport-reading machines in each direction, which has made transit more fluid.

28. In the context of Brexit, the United Kingdom considers it as necessary and in the interests of the populations on both sides to safeguard the continued fluid flow of persons and goods between Gibraltar and Spain and to protect the close economic interrelationship that has been built over decades (see also paras. 33–34 below). For its part, Spain considers that any potential negative effect on the close social and economic relations between Gibraltar and the Campo de Gibraltar should be adequately addressed.

29. The United Kingdom continues to be responsible for all international obligations relating to aviation safety and security in respect of the airport, a military airfield available for civilian flights, with the Ministry of Defence retaining ownership of and operational responsibility for the military aviation aspects of the airfield. According to the administering Power, legislation enacted by the Gibraltar Parliament provides for civil aviation safety and security, making civil aviation a responsibility of the Government of Gibraltar. Such responsibility continues to be rejected by Spain. Spain holds the position that the occupation by the United Kingdom of the isthmus on which the airfield was built is illegal and that it does not comply with public international law because it is not included among the areas ceded by the Treaty of Utrecht. For its part, the United Kingdom maintains that its sovereignty extends over the whole territory of Gibraltar.

30. The Strait of Gibraltar is a principal water route; the Territory's port facilities are used by many long-distance liners and cargo ships. According to the United Kingdom, it applies a three-nautical-mile area for British Gibraltar territorial waters (or less where the median line with other territorial waters applies), in line with the United Nations Convention on the Law of the Sea. According to Spain, it exerts its sovereign rights and jurisdiction over its territorial waters, including all maritime areas around Gibraltar (with the only exception being its port facilities).

31. The administering Power regularly challenges State vessels of Spain and protests to the Government of Spain about illegal incursions into British Gibraltar

territorial waters by State vessels of Spain, citing articles 17 to 19 of the United Nations Convention on the Law of the Sea, on the meaning of innocent passage, and the Convention on the International Regulations for Preventing Collisions at Sea.

32. Spain is of the view that what the United Kingdom describes as “illegal incursions” by Spanish vessels are routine activities of its ships in Spanish waters, given that Spain exercises sovereignty over them.

D. Tourism

33. According to the administering Power, visitors in 2018 increased to 11 million from 10.5 million in 2017. In 2018, there were approximately 217,000 visitors by air and nearly 10,402,000 by land, compared with approximately 278,000 and 9,876,600 in 2017, respectively. According to the administering Power, the number of visitors by sea, who are mostly cruise passengers, was 576,397 in 2018.

V. Social conditions

A. Labour

34. In 2018, there were 29,995 jobs in the Territory, compared with 28,029 in 2017, an increase of 1.97 per cent. According to the administering Power, as of October 2018, the distribution of jobs among the five largest industrial sectors was 4,068 in banking and finance, 4,062 in building and construction, 3,800 in gaming and betting, 2,876 in health and social work and 2,824 in retail and wholesale trade. The unemployment rate stood at 0.46 per cent of the resident population and 0.30 per cent of the total workforce, which included frontier workers. In 2019, the number of frontier workers ranged from approximately 14,500 to 15,300, including 9,200 to 9,800 nationals of Spain.

B. Social security and welfare

35. The social security and welfare sectors in Gibraltar continue to be governed by various social security acts, as mentioned in previous working papers, covering areas such as employment injury, disablement and industrial death benefits, unemployment benefits, maternity grants and allowances, death grants, old-age pensions, survivor's benefits and guardian's allowances.

C. Public health

36. The Gibraltar Health Authority, a department of the territorial Government, is responsible for providing health care in the Territory. The territorial Government continues to cope with the needs of older persons.

D. Education

37. Education in Gibraltar is free and compulsory for children between 4 and 15 years of age. The language of instruction is English. Public education comprises 11 primary and 2 secondary schools, in addition to the Gibraltar College of Further Education and the Vocational Training Centre, serving more than 5,000 students. The Territory's literacy rate is assumed to be nearly 100 per cent. The University of Gibraltar opened in September 2015.

38. According to the administering Power, government expenditure on education during the fiscal year ending 31 March 2019 was £50.2 million, of which expenditure on improvements to school buildings accounted for nearly £1.48 million. According to the administering Power, the Government of Gibraltar has prioritized the construction of seven new school buildings, and some of those projects are already under way or completed. The first of the new schools, for children between 4 and 8 years of age, opened in September 2018. The construction of two co-educational schools and another school for students from 6 to 10 years of age was completed in September 2019. Students who obtain a place at a university in the United Kingdom are entitled to scholarships from the Government of Gibraltar. In 2020, the number of students studying outside Gibraltar was 1,086.

E. Crime and public safety

39. Law enforcement in the Territory is the responsibility of the Royal Gibraltar Police, in conjunction with the Gibraltar Police Authority. The Governor has ultimate responsibility for the integrity, probity and independence of policing in Gibraltar and for the policing aspects of national security, including internal security.

40. According to the administering Power, the Royal Gibraltar Police had a budget of £16.137 million in 2018/19, providing for 240 police officers and 37 support staff. In 2018/19, 1,721 crimes (compared with 1,878 in 2017/18) were recorded by the Royal Gibraltar Police, 926 of which were detected (detection rate of 54 per cent), compared with 1,878 recorded crimes, with a detection rate of 55 per cent, in 2017/18.

F. Human rights

41. The following major international human rights instruments apply in Gibraltar: International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and European Convention for the Protection of Human Rights and Fundamental Freedoms. The 2006 Constitution includes a chapter on the fundamental rights and freedoms of the individual. According to the administering Power, the Government of Gibraltar formally requested the extension of the Convention on the Elimination of All Forms of Discrimination against Women to the Territory in 2013 and of the Convention on the Rights of the Child in 2016. In addition, in October 2016, the Gibraltar Parliament adopted the Civil Marriage Amendment Act 2016, which made provision for same-sex marriage. Gibraltar is scheduled to hold a referendum on 19 March 2020 on legalizing abortion under certain circumstances, following the approval of an amendment to the Crimes Act 2011.

VI. Environment

42. In 2016, the Government of Gibraltar requested the administering Power to extend its ratification of the Paris Agreement to Gibraltar. Gibraltar declared a climate emergency in May 2019 in order to pledge to make Gibraltar carbon neutral by 2020 and reduce emissions by 50 per cent by 2035. The Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer was extended to Gibraltar. According to the administering Power, the appropriate legislation has been drafted and operational measures have been prepared in that regard.

43. Spain considers it important for the Gibraltarian authorities to build a sewage treatment plant, in compliance with the law of the European Union, and recalls that,

in its judgment of 4 May 2017 in *European Commission v. United Kingdom*, the European Court of Justice declared that the United Kingdom had failed to fulfil its obligations under the European Union directive on urban wastewater treatment, in Gibraltar.

44. According to the administering Power, the territorial Government had commenced a process to award the contract for the construction and operation of a wastewater treatment plant in Gibraltar. The construction of a wastewater treatment plant is expected to be completed in 2021.

VII. Forum for Dialogue on Gibraltar

45. Negotiations between the United Kingdom and Spain on the subject of Gibraltar led, in 2004, to the establishment of the trilateral Forum for Dialogue on Gibraltar. Since 2010, no meetings have been held. From 2012 to 2018, the United Kingdom expressed the desire to continue with the Forum and, in the interim, offered an informal, ad hoc dialogue involving, as appropriate, all relevant parties to the issues under discussion. Spain expressed the position that the Forum no longer existed and should be replaced with a new “ad hoc” mechanism for local cooperation in the interest of social well-being and regional economic development, in which the people of the Campo de Gibraltar and Gibraltar were represented. No ad hoc talks had been convened as of February 2020.

VIII. Future status of the Territory

A. Position of the administering Power

46. At the 3rd meeting of the Special Political and Decolonization Committee (Fourth Committee) of the General Assembly, on 9 October 2019, during the seventy-fourth session of the General Assembly, in a statement made in exercise of the right of reply, the representative of the United Kingdom said that her Government had sovereignty over Gibraltar and the waters surrounding it and that, as a separate Territory recognized by the United Nations and included since 1946 on its list of Non-Self-Governing Territories, Gibraltar enjoyed the rights accorded to it under the Charter of the United Nations. The people of Gibraltar enjoyed the right to self-determination. The 2006 Gibraltar Constitution, which had been endorsed by referendum, provided for a modern and mature relationship between Gibraltar and the United Kingdom.

47. She also stated that the United Kingdom reiterated that it would not enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another State against their freely and democratically expressed wishes; nor would it enter into a process of sovereignty negotiations with which Gibraltar was not content.

48. At the 7th meeting of the Fourth Committee, on 15 October 2019, the representative of the United Kingdom said that her Government was fully committed to involving all overseas territories in negotiations on leaving the European Union. To that end, it had established the Joint Ministerial Council on European Union Negotiations to discuss the priorities of overseas territories, as well as a separate Joint Ministerial Council to discuss the particularly strong interest and priorities of Gibraltar and to develop shared, substantive programmes of work to strengthen ties between the United Kingdom and that Territory.

49. She also reiterated that the United Kingdom reaffirmed its long-standing commitment to the people of Gibraltar and that it would neither enter into arrangements under which the Territory's people would pass under the sovereignty of another State against their freely and democratically expressed wishes nor participate in a process of sovereignty negotiations with which Gibraltar was not content (see [A/C.4/74/SR.7](#)).

B. Position of the territorial Government

50. At the 3rd meeting of the Fourth Committee, on 9 October 2019, the Deputy Chief Minister of Gibraltar said, *inter alia*, that the people of Gibraltar had first appeared before the Committee in 1963 and had therefore been waiting for over half a century to realize their right to self-determination. Since 1963, Gibraltar had been addressing the United Nations to assert its right to self-determination, but the lack of response seemed to suggest that the United Nations did not wish to work with Gibraltar. In 2007, a new Constitution had come into force in Gibraltar, under which Gibraltar enjoyed a greater degree of self-governance than ever before. The Constitution had been sent to the Special Committee, and once again, there had been no reply. Every year, Gibraltar had stated that it would welcome a visiting mission, but the United Nations had not come.

51. He stated that Gibraltar embraced the same values as all countries that had previously been unable to exercise the right to self-determination: democracy, good governance, human rights and the rule of law. The right of peoples to determine their own future underpinned those values. The people of Gibraltar were separate and distinct from the colonial Power, defined by an influx of different nationalities that had enriched its society for over 300 years. Furthermore, the tactics of coercion used under the Spanish dictator General Franco through the closing of the border between Gibraltar and Spain must never again be used as a political weapon.

52. He stated that, later that month, Gibraltar and the United Kingdom could be leaving the European Union, even though the overwhelming majority of the people of Gibraltar had voted to remain. Gibraltar had held discussions with States members of the European Union, including Spain, which had resulted in special provisions on Gibraltar in the withdrawal agreement. It was clear that goodwill and mutual respect were possible in finding positive solutions that were in the interests of both sides. It was crucial to ensure that, in the context of Brexit, citizens and businesses were able to continue with their daily lives.

53. He concluded by saying that his Government hoped to work with the Special Committee and the Fourth Committee to remove Gibraltar from the list of Non-Self-Governing Territories and that the freely and democratically expressed wishes of the people of Gibraltar must be paramount (see [A/C.4/74/SR.3](#)).

C. Position of Spain

54. At the 3rd meeting of the Fourth Committee, on 9 October 2019, the representative of Spain stated that Gibraltar, the last colony in Europe, was the anachronistic remnant of an unjust past. In 1704, the United Kingdom, as an ally of one of the belligerents in the Spanish War of Succession, had occupied Gibraltar, failing to restore it to the sovereignty of Spain after the hostilities had ceased. He said that, under the Treaty of Utrecht, Spain had ceded to the United Kingdom only the town and castle of Gibraltar, together with its port, fortifications and forts, without ceding territorial jurisdiction. The United Kingdom had then proceeded to exploit moments of weakness of Spain, including a series of yellow fever outbreaks between

1815 and 1854, to occupy the isthmus and surrounding waters, thereafter refusing to withdraw and expanding the territory that it had illegally occupied by constructing fences and military installations. Spain had never accepted occupation by the United Kingdom and would continue to request restitution of the territories seized from it by force.

55. He went on to say that, for over half a century, the General Assembly and the Fourth Committee had mandated Spain and the United Kingdom to begin negotiations on ending the colonial situation, specifying in a series of resolutions that the decolonization of Gibraltar must be governed by the principle of territorial integrity rather than the principle of self-determination, and setting 1 October 1969 as the deadline for decolonization. He stated that those negotiations could take place only with full respect for international law and within the framework of established United Nations doctrine. However, he said that, in that connection, the administering Power had behaved erratically: it had deliberately ignored resolutions of the United Nations when it had held a referendum on questions of sovereignty in 1967, which had been condemned by the Assembly in its resolution [2353 \(XXII\)](#), and it had unilaterally suspended negotiations after appearing to move towards a mutually acceptable solution. No progress had been made in over 50 years, with the logic of force continuing to prevail over the force of logic.

56. He stated that the question of Gibraltar was far more than a matter of illegitimate occupation or violation of territorial integrity. He said that the presence of a colony within Spain produced harmful effects beyond the political sphere. Gibraltar's special tax regime distorted the region's economy to the detriment of the treasuries of Spain and Europe. While his Government felt that the prosperity of Gibraltarians could help to improve relations and provide social and economic benefits, it would not allow the economic imbalance or the tax regime, which enabled illicit trafficking, to harm the Campo de Gibraltar.

57. He stated that, in the context of negotiations to ensure that the United Kingdom would leave the European Union in an orderly manner, Spain and the United Kingdom had negotiated a series of agreements and memorandums of understanding that would apply to Gibraltar, in order to mitigate the negative repercussions, provided that the comprehensive agreements reached with the European Union were ratified by the United Kingdom. He concluded by saying that Spain remained open to dialogue and was ready to reach an agreement with the United Kingdom in order to put in place a new regional cooperation scheme that would benefit the inhabitants on both sides of the border, including the Spanish population of the Campo de Gibraltar, which was most affected by the problems arising from the colonial situation (see [A/C.4/74/SR.3](#)).

58. At the same meeting, in a statement made in exercise of the right of reply, the representative of Spain said that the United Nations had noted on many occasions that the status of Gibraltar as a colony undermined the territorial integrity of Spain. The United Kingdom and Spain should engage in bilateral negotiations to resolve the dispute and ensure the decolonization of Gibraltar, as proposed by the United Nations. The General Assembly, in its resolution [2353 \(XXII\)](#), had stipulated that any colonial situation which partially or completely destroyed the national unity and territorial integrity of a country was incompatible with the purposes and principles of the Charter of the United Nations. In that resolution, the Assembly had also stated that the 1967 referendum had contravened various resolutions on the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. Spain regretted the efforts of the administering Power and the authorities of the colonized Territory to change their political relationship and deny the existence of colonial ties, while at the same time claiming the right to self-determination.

59. He stated that Spain did not recognize any legal basis of British sovereignty over the maritime areas of Gibraltar, namely, the Treaty of Utrecht of 1713. Spain had ratified the United Nations Convention on the Law of the Sea on the clear understanding that that instrument was not applicable in the case of Gibraltar. His Government was clear about the limits of its territory, which included the waters surrounding Gibraltar. Spanish ships had been operating in those waters without incident since time immemorial; the recent controversy had arisen only in response to certain alleged incidents (see [A/C.4/74/SR.3](#)).

D. Negotiations between the United Kingdom and Spain

60. Within the framework of the Brussels Process, which is separate from the Forum for Dialogue on Gibraltar, no bilateral negotiations were held in 2019. The Government of the United Kingdom has made it clear, in the preamble to the 2006 Constitution of Gibraltar, that it would “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”. Moreover, the United Kingdom has also declared that no sovereignty-related talks can be entered into without the consent of Gibraltar, and that it will never enter into a process of sovereignty negotiations with which Gibraltar is not content.

61. For its part, the Government of Spain continued to demand the renewal of bilateral sovereignty talks with the Government of the United Kingdom. It considers that the position of the United Kingdom goes against the doctrine established in the relevant General Assembly resolutions and against the commitment made with Spain in the Brussels Declaration of 1984.

E. Discussions between the United Kingdom and Gibraltar

62. In the communiqué adopted at the sixth meeting of the Overseas Territories Joint Ministerial Council, held in London in 28 and 29 November 2017, the United Kingdom and the overseas territories indicated that the principle of equal rights and self-determination of peoples, as enshrined in the Charter of the United Nations, applied to the peoples of the overseas territories. They reaffirmed the importance of promoting the right of the peoples of the territories to self-determination, a collective responsibility of all parts of the Government of the United Kingdom. They committed themselves to exploring the ways in which the overseas territories could maintain international support in countering hostile sovereignty claims. For those Territories with permanent populations who wished it, the United Kingdom would continue to support their requests for removal from the list of Non-Self-Governing Territories.

63. Furthermore, in the same communiqué, the Government of the United Kingdom made clear that the result of the referendum on its membership in the European Union did not change its position on sovereignty over the Territories and underlined that the United Kingdom would 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, nor enter into a process of sovereignty negotiations with which Gibraltar was not content.

64. According to the administering Power, at the seventh meeting of the Joint Ministerial Council, held in 2018, the Government of the United Kingdom and the leaders of the overseas territories reiterated the positions reflected in the communiqué of the sixth meeting, and the United Kingdom affirmed that it would continue to engage on constitutional issues more regularly with individual Governments and representatives of overseas territories to ensure that the constitutional arrangements

worked and developed effectively, to promote the best wishes of those territories and the United Kingdom. At the time of reporting, the eighth meeting of the Joint Ministerial Council had not been convened.

65. In November 2018, the Government of the United Kingdom and Gibraltar approved the Concordat concerning the Implementation of the Gibraltar Protocol to the Withdrawal Agreement and related Memoranda of Understanding, in which they reaffirmed the 2006 Constitution and also reaffirmed that matters that were the competence of the Government of Gibraltar would remain so and their intention to ensure that the valued and historic links between the United Kingdom and Gibraltar grew, deepened and endured.

66. The Government of the United Kingdom and Gibraltar have both recognized that the Constitution of Gibraltar provides for a modern and mature constitutional relationship between the two sides. The Government of Gibraltar believes it important to review the 2006 Constitution, together with the United Kingdom, to assess what further progress or changes are necessary and appropriate. The review should include the consideration of human rights issues and the question of removal of Gibraltar from the list of Non-Self-Governing Territories. According to the administering Power, in March 2016, the Gibraltar Parliament established the Select Committee on Constitutional Reform in order to assess what changes to the 2006 Constitution were necessary or desirable. The Select Committee was reconstituted in December 2019. While the United Kingdom has expressed its views about the mechanisms for delisting, both Governments note that, under Article 73 *e* of the Charter, the United Kingdom is obliged to continue to submit annual reports until such time as the General Assembly removes a Territory from its list of Non-Self-Governing Territories.

IX. Consideration by the United Nations

A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

67. A representative of Spain attended the Caribbean regional seminar, held in Grand Anse, Grenada, from 2 to 4 May 2019, and made a statement, as did a representative of Gibraltar (see [A/74/23](#), annex II).

68. The Special Committee considered the question of Gibraltar at its 3rd and 4th meetings, on 17 June 2019, at which it had before it the 2019 working paper prepared by the Secretariat concerning the Territory ([A/AC.109/2019/8](#)). As reflected in the summary record ([A/AC.109/2019/SR.3](#)), statements were made by the representative of Spain and the Chief Minister of Gibraltar. On the proposal of the Chair, the Committee decided to resume the consideration of the question at its next session and to transmit the relevant documentation to the General Assembly in order to facilitate the consideration of the question by the Fourth Committee.

B. Special Political and Decolonization Committee (Fourth Committee)

69. The Fourth Committee of the General Assembly considered the question of Gibraltar at its 3rd meeting, on 9 October 2019, at which it heard statements by the representative of Spain and the Deputy Chief Minister of Gibraltar. In addition, at the 7th meeting, on 15 October, the representative of the United Kingdom made a

statement. At the 3rd meeting, the representatives of Spain and the United Kingdom exercised the right of reply (see [A/C.4/74/SR.3](#)).

70. At its 9th meeting, on 17 October, the Fourth Committee adopted without a vote a draft decision on the question of Gibraltar ([A/C.4/74/L.4](#)), which was submitted by the Chair of the Committee (see [A/C.4/74/SR.9](#)).

X. Action taken by the General Assembly

71. On 13 December 2019, on the recommendation of the Fourth Committee, the General Assembly adopted decision 74/515 on the question of Gibraltar, without a vote. In that decision, the Assembly, recalling its decision 73/519 of 7 December 2018:

(a) Urged the Governments of Spain and the United Kingdom, while listening to the interests and aspirations of Gibraltar that were legitimate under international law, to reach, in the spirit of the Brussels Declaration of 27 November 1984, a definitive solution to the question of Gibraltar, in the light of the relevant resolutions of the General Assembly and applicable principles, and in the spirit of the Charter;

(b) Took note of the desire of the United Kingdom to continue with the trilateral Forum for Dialogue;

(c) Took note of the position of Spain that the trilateral Forum for Dialogue did not exist any longer and should be replaced with a new mechanism for local cooperation in which the people of the Campo de Gibraltar and Gibraltar were represented;

(d) Welcomed the efforts made by all to resolve problems and advance in a spirit of trust and solidarity, in order to find common solutions and move forward in areas of mutual interest towards a relationship based on dialogue and cooperation.
