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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 12 December 2018. Further details are contained in previous working papers, available from www.un.org/en/decolonization/workingpapers.shtml.



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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 2018, the General Assembly, in its decision 73/519, 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. According to the administering Power, in 2018, the population of the Territory was 34,003. 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 has been the Governor since January 2016. 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, which had won the general elections in 2011, again won the general elections held on 26 November 2015 with 68 per cent of the votes, winning 10 seats in the Parliament, against 31 per cent for the Gibraltar Social Democrats, which won the remaining 7 seats, with 0.6 per cent of votes rejected. Mr. Picardo was re-elected as Chief Minister. The next election is expected to be held in 2019.

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 again in June 2009 and in May 2014. Voters in Gibraltar 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, at the seventh meeting of the Overseas Territories Joint Ministerial Council, held in London on 4 and 5 December 2018, the United Kingdom reaffirmed that it was responsible for representing the priorities of the overseas territories in exit negotiations and that a clear objective of the negotiations was to achieve an agreement that worked for all parts of the United Kingdom family, including Gibraltar.

9. On 25 November 2018, the withdrawal agreement and the political declaration on the future relations between the United Kingdom and the European Union was endorsed by the European Council. The former also included a protocol on Gibraltar. On 29 November, 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.

10. 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.

11. 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.

III. Budget

12. According to the administering Power, as at March 2018, the revenue of the territorial Government for the fiscal year 2017/18 was £635.8 million and its expenditure stood at approximately £614.8 million. For the fiscal year 2018/19, the territorial Government estimated its overall government revenue at £651.7 million, with an overall government expenditure budget of £627.8 million. Of the estimated revenue in 2018/19, income taxes represent the largest share (45 per cent), followed by duties, taxes and other receipts (27 per cent). In addition, the territorial Government approved £72 million in expenditure on capital projects for 2018/19, to be funded through the Improvement and Development Fund, an increase from £62.7 million in 2017/18.

13. 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 of 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.

14. 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 five 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

15. 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 £2.18 billion in 2017/18, with an estimated GDP per capita of £64,934.

16. 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 Gibraltar economy to accounting for 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

17. 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.

18. 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, Gibraltar has agreements on the exchange of tax information with 104 countries and territories, of which 88 are in force, including with Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Malta, the Netherlands, Poland, Portugal and Sweden. 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 member States 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.

19. On 14 October 2015, the Committee of Ministers of the Council of Europe adopted a resolution by which it agreed to the request of the United Kingdom on behalf of Gibraltar to provide for the evaluation of Gibraltar by the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism. Furthermore, in the communiqué adopted at the sixth meeting of the United Kingdom-Overseas Territories Joint Ministerial Council, held in London on 28 and 29 November 2017, the overseas territories and the United Kingdom welcomed the progress made by the territories with financial centres in implementing the arrangements set out in the exchange of notes on law enforcement exchange of beneficial ownership information, including establishing new and secure systems for the collection, exchange and use of beneficial ownership data, where they did not already exist. The Joint Ministerial Council welcomed the cooperation of the territories in international efforts to promote tax transparency and tackle financial crime. It reiterated its commitment to showing leadership in tackling corruption. 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.

20. 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. In accordance with the aforementioned regulations, data on new company incorporations must be provided to the registrar within 30 days.

21. 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.

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

23. Positive discussions on fiscal and tax matters relating to Gibraltar took place during 2018 between Spain and the United Kingdom, with the involvement of the Government of Gibraltar (see para. 9 above).

C. Transportation

24. 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 at February 2019, proportionate customs and police checks remained necessary, given that Gibraltar did not belong to the common customs territory of the European Union. 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.

25. 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.

26. 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.

27. In the context of the decision by the United Kingdom to leave the European Union (known as “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. 32–33 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.

28. 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.

29. 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).

30. 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.

31. 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

32. In 2017, the tourism sector recorded an increase in visitors for the first time since 2012, to 10.5 million visitors, compared with 10.1 million visitors in 2016. Visitors by air (around 243,000) and by land (around 9,877,000) increased in 2017, compared with 2016 (approximately 231,000 and 9,464,000, respectively), whereas the number of visitors by sea, who are mostly cruise passengers, remained steady at around 420,000 in 2017, as it had in the previous year.

V. Social conditions

A. Labour

33. In 2017, there were 28,029 jobs in the Territory, compared with 27,073 in 2016, an increase of 3.5 per cent. According to the administering Power, as at October 2017, the distribution of jobs among the five largest industrial sectors was 3,590 in gaming and betting, 3,401 in building and construction, 2,826 in banking and finance, 2,775 in retail and wholesale trade and 2,639 in health and social work; the unemployment rate stood at 0.55 per cent of the resident population and 0.37 per cent of the total workforce, which included frontier workers. Between January and November 2018, the number of frontier workers ranged from 13,000 to 14,000, including between 8,000 and 9,000 nationals of Spain.

B. Social security and welfare

34. 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

35. 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

36. 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.

37. According to the administering Power, government expenditure on education during the fiscal year ending in March 2018 was £49.5 million, of which expenditure

on improvements to school buildings accounted for £769,174.44. 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. The first of the new schools, for children between 4 and 8 years of age, opened in September 2018. Students who obtain a place at a university in the United Kingdom are entitled to scholarships from the Government of Gibraltar. In 2018, 922 students attended universities in the United Kingdom.

E. Crime and public safety

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

39. According to the administering Power, the Royal Gibraltar Police had a budget of £15.962 million in 2017/18, providing for 239 officers and 35 support staff. In 2017/18, there were 2,481 crimes recorded by the Royal Gibraltar Police, 1,424 of which were detected, according to the administering Power.

F. Human rights

40. 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.

41. According to the administering Power, at the seventh meeting of the Joint Ministerial Council, held in 2018, the United Kingdom and the leaders of the overseas territories reaffirmed the communiqué adopted at the sixth meeting of the Joint Ministerial Council in which they committed themselves to ensuring the political, economic, social and educational advancement of the people of the territories and their just treatment and protection from abuses, discussed their shared resolve to continue to promote respect for human rights and compliance with international obligations in the territories and welcomed the constructive engagement of the territories in the preparations for the universal periodic review process of the Human Rights Council in that regard.

VI. Environment

42. According to the administering Power, at the seventh meeting of the United Kingdom-Overseas Territories Joint Ministerial Council, held in 2018, the Government of the United Kingdom and the overseas territories reiterated the positions set out in the communiqué adopted at the sixth meeting of the Joint Ministerial Council, in which they had committed themselves to continuing the practice of mutual engagement ahead of international forums on climate change to

ensure that the views and priorities of the overseas territories were fully reflected in negotiations. The United Kingdom reiterated its commitment to working with the overseas territories on the issue of extending the application of treaties concerning climate change to the territories, including taking forward the work to extend its ratification of the Doha Amendment to the Kyoto Protocol to those territories that had indicated their readiness for it.

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 process took longer than expected due to requirement to source the necessary technology for the operation of a system to process seawater, rather than drinking water. The construction of a wastewater treatment plan was expected to be completed in 2020.

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 at December 2018.

VIII. Future status of the Territory

A. Position of the administering Power

46. At the 4th meeting of the Special Political and Decolonization Committee (Fourth Committee) of the General Assembly, on 10 October 2018, during the seventy-third session of the General Assembly, in a statement made in exercise of the right of reply, the representative of the United Kingdom said that his 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 the list of Non-Self-Governing Territories, the people of Gibraltar enjoyed the right to self-determination. He further stated that the 2006 Constitution of Gibraltar, which had been endorsed by referendum, provided for a modern and mature relationship between Gibraltar and the United Kingdom.

47. He also stated that his Government 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. His Government was committed to safeguarding Gibraltar, its people and its economy, and the Governments of Gibraltar and the United Kingdom remained firmly

committed to the Trilateral Forum for Dialogue as the most credible, constructive and practical means of strengthening relations among the United Kingdom, Gibraltar and Spain for the benefit of all parties. His Government regretted that Spain had formally withdrawn from those talks in 2011.

48. He went on to state that Gibraltar had a vigorous parliamentary democracy of its own and was responsible for everything apart from foreign affairs, defence and internal security. It was still the position of his Government that the fundamentals of the constitutional relationship were correct, although it was open to a dialogue on proposals put forward by Gibraltar. His Government, refuting the allegations that the United Kingdom had illegally occupied the isthmus and surrounding waters, pointed out that, under international law, as established by the United Nations Convention on the Law of the Sea, territorial waters flowed from sovereignty over the land. He stated that therefore, it followed inexorably that the State which was sovereign over the land, as in the case of the United Kingdom, was also sovereign over the territorial waters out to three nautical miles or to the median line.

49. He stated that his delegation would continue to uphold British sovereignty and use a range of proportionate naval and diplomatic responses to illegal incursions by Spanish State vessels into British Gibraltar territorial waters and that the Government of Gibraltar would continue to cooperate fully with the European Commission and the Code of Conduct Group in relation to one aspect of its tax regime, with support from the Government of the United Kingdom. He was confident that the Gibraltar tax regime would be found to comply with all applicable European Union and international standards. He stated that the European Commission had recognized the commitment that the Government of Gibraltar had made to tackle tobacco smuggling between Gibraltar and Spain, as well as the significant steps that it had already taken, and that the Government of Gibraltar had repeatedly made clear its desire to work more closely and directly with its Spanish counterparts to deal with the issue.

50. He concluded by saying that the Governments of the United Kingdom and Gibraltar stood ready to engage with Spain to establish new and deeper forms of cooperation to address issues of mutual importance in the wider region through dialogue that fully reflected the wishes, interests, rights and responsibilities of the people and Government of Gibraltar ([A/C.4/73/SR.4](#)).

51. At the 7th meeting of the Fourth Committee, on 15 October 2018, the representative of the United Kingdom stated that the United Kingdom reaffirmed its long-standing commitment to the people of Gibraltar, and reiterated its position (see [A/C.4/73/SR.7](#)).

B. Position of the territorial Government

52. At the 3rd meeting of the Fourth Committee, on 9 October 2018, the Deputy Chief Minister of Gibraltar said, *inter alia*, that, in the communiqué adopted by the Joint Ministerial Council in November 2017, the Governments of the United Kingdom and its overseas territories had declared that the principle of equal rights and self-determination as enshrined in the Charter of the United Nations applied to the peoples of the overseas territories and that the United Kingdom would continue to support delisting requests. To that end, Gibraltar and the United Kingdom had stated that they would welcome a visiting mission, but the United Nations had not come. He stated that, in 2006, Gibraltar and the United Kingdom had agreed upon a new Constitution, under which Gibraltar enjoyed a greater degree of self-governance than ever before and that, although the Constitution had been submitted to the Special Committee, once again, there had been no reply. He stated that, since 1963, Gibraltar had been addressing the United Nations as an enthusiastic supporter of

decolonization, but the lack of response seemed to suggest that the United Nations did not wish to work with Gibraltar. He said that Gibraltarians had freely and democratically expressed their wishes, but Spain impeded progress on those issues; its outdated attitude towards Gibraltar had caused the decolonization process to stall.

53. He stated that Brexit would create a challenge for both Gibraltar and Spain and that the land border between the two continued to be used as a political weapon. He said that border controls conducted by Spain had often caused lengthy delays for traffic and pedestrians crossing in either direction and that, in 2016, the Government of Spain had threatened to close the border, as it had done under the Spanish Dictator General Franco nearly 50 years earlier. He also said that, while Spain had said that a relationship with the European Union would be possible only if Gibraltar agreed to shared sovereignty with Spain, which 98 per cent of Gibraltarians had rejected in a 2002 referendum, since the beginning of 2018, Spain and Gibraltar had engaged in direct discussions to protect the people on both sides of the border. The Government of Gibraltar welcomed that positive approach, based on dialogue and cooperation rather than conflict and confrontation, and stood ready to engage with the Government of Spain in forming a new relationship that would benefit Gibraltarians and their neighbours.

54. 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 days when countries and regions could be handed over from one monarch to another without the consent of their people had ended long ago ([A/C.4/73/SR.3](#)).

C. Position of Spain

55. At the 3rd meeting of the Fourth Committee, on 9 October 2018, the representative of Spain stated that the continued status of Gibraltar as the last colony in Europe was all the more unjustifiable since the administering Power, the United Kingdom, was a Spanish ally in many other areas. 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 waters or territorial jurisdiction; yet, ignoring the terms of that Treaty, the United Kingdom had illegally occupied the isthmus and surrounding waters. He stated that the occupation by the United Kingdom was contrary to international law and violated the integrity of Spanish territory; therefore, Spain would continue to request restitution until decolonization had been completed.

56. He went on to say that 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 only take place with full respect for international law and within the framework of established United Nations doctrine. He said that 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 General Assembly in its resolution 2353 (XXII). He stated that it had unilaterally suspended negotiations after appearing to move towards a mutually acceptable solution and that no progress had been made in over fifty years. He also stated that, given the successful decolonization of other Territories of the United Kingdom, it was clear that the fundamental obstacle was the Government's lack of political will.

57. He stated that focusing exclusively on issues of sovereignty would reduce that serious problem to a conflict between Governments. He said that, in reality, the presence of a colony within Spain produced harmful effects beyond the political sphere. He said that Gibraltar's special tax regime distorted the region's economy to the detriment of the treasuries of Spain and Europe and that, 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 to be used to harm the economy, environment or public safety of Campo de Gibraltar, particularly by enabling the illicit trafficking of tobacco. Spain remained open to dialogue and was ready to reach an agreement with the United Kingdom in order to form a new regional partnership.

58. He stated that, in the wake of the decision by the United Kingdom to leave the European Union, his Government hoped that the forthcoming relationship between Gibraltar and the European Union, which would inevitably pass through Spain, would benefit Campo de Gibraltar and the inhabitants on both sides of the border. He concluded by saying that Spain would continue to defend the rights and interests of those Spaniards, who were most affected by the problems arising from the colonial situation ([A/C.4/73/SR.3](#)).

59. At the 7th meeting of the Fourth Committee, on 15 October, in a statement made in exercise of the right of reply, the representative of Spain said that the United Nations had noted, clearly and 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. General Assembly resolution 2353 (XXII), which stated that any colonial situation that 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, made no reference to the supposed right to self-determination of the people of Gibraltar, as it did not exist. She said that, in that resolution, the General Assembly stated that the 1967 referendum had contravened various resolutions on the implementation of the declaration on decolonization. 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.

60. She stated that Spain welcomed the consultations between the Government of the United Kingdom and Gibraltar on Brexit, as Gibraltar would be particularly affected by that decision. Spain recalled that, in guidelines issued on 29 April 2017, the European Council had advised that, from the moment that Brexit became effective, all treaties of the European Union would cease to apply to the United Kingdom or its territories, including Gibraltar, over which any future agreements between the United Kingdom and the European Union would be dependent on agreement between the United Kingdom and Spain. Spain and the United Kingdom were engaged in advanced negotiations on the withdrawal of Gibraltar from the European Union, with the aim of protecting the rights of all workers, including cross-border workers, and establishing a fairer future relationship between Gibraltar and Campo de Gibraltar ([A/C.4/73/SR.7](#)).

D. Negotiations between the United Kingdom and Spain

61. Within the framework of the Brussels Process, which is separate from the Forum for Dialogue on Gibraltar, no bilateral negotiations were held in 2018. 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.

62. 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

63. In the communiqué adopted at the sixth meeting of the Overseas Territories Joint Ministerial Council, 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.

64. 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.

65. 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.

66. 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 which 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.

67. 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 a Select Committee on Constitutional Reform in order to assess what changes to the 2006 Constitution were necessary or desirable. 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

68. A representative of Spain attended the Pacific regional seminar, held in Saint George's from 9 to 11 May 2018, and made a statement, as did a representative of Gibraltar (see [A/73/23](#), annex II).

69. The Special Committee considered the question of Gibraltar at its 3rd meeting, on 11 June 2018, at which it had before it the 2018 working paper prepared by the Secretariat concerning the Territory ([A/AC.109/2018/8](#)). As reflected in the summary record ([A/AC.109/2018/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)

70. The Fourth Committee of the General Assembly considered the question of Gibraltar at its 3rd meeting, on 9 October 2018, 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 4th and 7th meetings, held on 10 and 15 October, the representatives of Spain and the United Kingdom exercised the right of reply (see [A/C.4/73/SR.4](#) and [A/C.4/73/SR.7](#)).

71. At its 23rd meeting, on 8 November, the Fourth Committee adopted without a vote a draft decision on the question of Gibraltar ([A/C.4/73/L.5](#)), which was submitted by the Chair of the Committee (see [A/C.4/73/SR.23](#)).

X. Action taken by the General Assembly

72. On 7 December 2018, on the recommendation of the Fourth Committee, the General Assembly adopted decision 73/519 on the question of Gibraltar, without a vote. In that decision:

The General Assembly, recalling its decision 72/520 of 7 December 2017:

(a) Urged the Governments of Spain and the United Kingdom of Great Britain and Northern Ireland, 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 of the United Nations;

(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.
