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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 18 December 2020. Further details are contained in previous working papers, available at 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 2020, the General Assembly, in its decision 75/523, 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. Vice Admiral David Steel has been the Governor since 11 June 2020. 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. 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.

9. 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.

10. 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 the departure of the United Kingdom from the European Union (known as “Brexit”). The specialized committee on Gibraltar between the European Union and the United Kingdom, established by the withdrawal agreement, met in May and November 2020.

11. 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. 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. Since the signing, Spain and the United Kingdom have proceeded with the respective parliamentary and administrative procedure for the ratification of the Agreement. Following a technical meeting held in Madrid on 23 January 2020, the joint coordinating committees established by Spain and the United Kingdom in accordance with the memorandums on citizens’ rights, cooperation on environmental matters and cooperation in police and customs matters met in Spain and Gibraltar between February and October 2020. The regional Government of Andalusia, the municipal authorities of the Campo de Gibraltar and the Government of Gibraltar participated.

12. According to the administering Power, in 2020 Gibraltar made progress towards fulfilling the obligations outlined in the protocol on Gibraltar, including those related to tobacco, through changes in legislation, which allowed the United Kingdom to extend to Gibraltar both the Framework Convention on Tobacco Control and the Protocol to Eliminate Illicit Trade on Tobacco Products of the World Health Organization, thereby fulfilling a commitment under the protocol for the treaties and conventions to be extended to Gibraltar before 30 June 2020. On 28 June 2020, Gibraltar successfully fulfilled the commitment under the memorandum of understanding on tobacco and other products to reach a 32 per cent differential on tobacco prices with Spain by 30 June 2020. While there were some challenges for Gibraltar in maintaining that minimum price differential, especially for non-cigarette tobacco products, the administering Power continued to assess that Gibraltar was complying with the spirit of those commitments, which had ceased to apply at the end of the Brexit transition period. Furthermore, the administering Power indicated that in September 2020, Gibraltar implemented a working solution to the missed commitments under article 3, paragraph 3 of the protocol on Gibraltar concerning a system of traceability for all tobacco products in Gibraltar by 30 June 2020 and that the Government of Gibraltar had provided the European Commission, at the latter's request, with a comprehensive package of information on that working solution in early February, which illustrated the scope of the workaround and how it sought to comply with the commitments outlined in article 3, paragraph 3 of the protocol.

13. In the view of Spain, the obligation of the United Kingdom with regard to article 3, paragraph 3 of the protocol on Gibraltar concerning a system of traceability and security measures relating to tobacco products remained unfulfilled. Spain also recalled that pursuant to the memorandum of understanding on tobacco and other products signed between Spain and the United Kingdom, the Government of Gibraltar had committed to ensure that, by 30 June 2020, the average price differential of tobacco products would be no more than 32 per cent greater than the most recently published price for the equivalent tobacco products in Spain and that the objective had been reached only regarding the average retail price of cigarettes, but not that of other tobacco products, in particular, fine cut tobacco for which the Government of Gibraltar had not established the maximum retail price. Throughout 2020, Spain ensured the participation of the regional Government of Andalusia and the municipal authorities of the Campo de Gibraltar in the relevant bilateral coordinating committees.

14. According to the administering Power, during 2020 the Government of the United Kingdom worked to protect the interests of Gibraltar in Brexit negotiations with the European Union and fully involved the Government of Gibraltar throughout the negotiations. In addition, a number of technical talks were held with Spain regarding future relationship issues relating to Gibraltar.

15. On 31 December 2020, the Governments of Spain and the United Kingdom reached an agreement on, and submitted to the European Commission for the latter's consideration, the proposed framework for a legal instrument between the United Kingdom and the European Union setting out Gibraltar's future relationship with the European Union, which stated that it would be without prejudice to the issue of sovereignty and jurisdiction.

16. According to the administering Power, the proposed framework, on which the Government of the United Kingdom worked side by side with the Government of Gibraltar, would form the basis of a separate treaty between the European Union and the United Kingdom regarding Gibraltar. The United Kingdom also affirmed that the documentation and the negotiation of such an agreement would be without prejudice to the legal position of the United Kingdom on sovereignty and jurisdiction.

17. Spain, for its part, affirmed that the proposed framework serves as a basis for the elaboration of the negotiating directives of the European Union and that it implied no modifications by Spain on its position on Gibraltar or on the limit of that Territory.

III. Budget

18. According to the administering Power, the revenue of the territorial Government for the fiscal year 2019/20 was £696.5 million and its expenditure stood at approximately £676.4 million. For the fiscal year 2020/21, the original budget for 2019/20 was extended, following a limited budgetary process as a result of the coronavirus disease (COVID-19) pandemic, which focused only on the expenditure. The territorial Government estimated its overall expenditure budget at £730.9 million for 2020/21 and approved £28.9 million in expenditure on capital projects for 2020/21, to be funded through the Improvement and Development Fund. According to the administering Power, this represents a decrease from £82 million in 2019/20, as a result of the impact of the COVID-19 pandemic on construction.

19. 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.

20. 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

21. 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. In 2018/19, the gross domestic product (GDP) of Gibraltar was £2.3 billion, with a GDP per capita of £69,917.

22. 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 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

23. 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. In January 2020, a new Financial Services Act was enacted to provide Gibraltar with a consolidated regulatory framework.

24. 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 4 October 2020, Gibraltar had agreements on the exchange of tax information with 185 countries and territories, of which 169 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.

25. 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.

26. On 23 March 2020, the International Convention for the Suppression of the Financing of Terrorism was extended to Gibraltar. Gibraltar has transposed specific directives of the European Union relating to anti-money laundering and financing of terrorism.

27. Gibraltar adopted beneficial ownership regulations in June 2017. According to the administering Power, Gibraltar has established a public register of ultimate beneficial ownership of companies and legal entities which has been made accessible to the public.

28. 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.

29. 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.

C. Transportation

30. 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 2021, 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 this regard, the proposed framework for a legal instrument between the United Kingdom and the European Union setting out Gibraltar's future relationship with the European Union, which was under consideration by the European Commission at the time of writing (see also para. 15 above), contains provisions concerning mobility of persons and goods affecting changes to such areas as customs, police checks and border control.

31. 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.

32. 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).

33. 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.

34. 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

35. In 2019, visitors exceeded 11 million. There were approximately 240,000 visitors by air and nearly 10,790,000 by land, compared with approximately 217,000 and 10,402,000, respectively, in 2018.

V. Social conditions

A. Labour

36. 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 2020, the number of frontier workers ranged from approximately 14,300 to 14,700, including 9,100 to 9,500 nationals of Spain.

B. Social security and welfare

37. 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. There are also a range of means-tested benefits and allowances to provide support for families, the disabled and the elderly.

C. Public health

38. The Gibraltar Health Authority is responsible for providing medical and health services in the Territory, particularly residential services for the elderly.

39. The main public health challenge for Gibraltar during 2020 was the COVID-19 pandemic. According to the administering Power, the Government of Gibraltar is responsible for public health matters in the Territory and it ensured that the necessary staff, equipment, supplies and resources were made available to the Gibraltar Health Authority and to Public Health Gibraltar, including by setting up a field hospital with 300 beds and a new laboratory for testing and tracing.

40. In the communiqué adopted at the eighth meeting of the Overseas Territories Joint Ministerial Council, held virtually from 23 to 26 November 2020, the Government of the United Kingdom recognized the significant global impact and shared challenges of COVID-19 and congratulated the Territories on their handling of the response to the pandemic so far. The territories thanked the United Kingdom for the outstanding support received at the ministerial and official level throughout the pandemic. In the same communiqué, it was also stressed that the United Kingdom and the Territories had worked together closely to tackle COVID-19 and that that had underlined their strong links based on partnership, shared values and mutual respect.

41. Spain indicated that it had proactively cooperated with the United Kingdom and the local authorities of Gibraltar to address the COVID-19 pandemic, taking into account the risk to public health and had responded to requests for cooperation regarding the delivery of testing equipment, transit of passengers and exchange of information on regulations to support employers and workers affected by the pandemic.

D. Education

42. 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 6,000 students. The Territory's literacy rate is assumed to be nearly 100 per cent. The University of Gibraltar opened in September 2015.

43. According to the administering Power, government expenditure on education for the fiscal year ending 31 March 2020 (which was extended to 31 March 2021 owing to the COVID-19 pandemic) was £57.2 million, of which expenditure on improvements to school buildings accounted for nearly £2.86 million. According to the administering Power, the construction of four new school buildings (one lower primary school, one upper primary school and two secondary schools) was completed and the plans for the construction of three new schools were advanced. Students who obtain a place at a university in the United Kingdom are entitled to scholarships from

the Government of Gibraltar. As at September 2020, the number of students studying outside Gibraltar was 1,028.

E. Crime and public safety

44. 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.

45. According to the administering Power, the Royal Gibraltar Police have a budget of £17.374 million for 2020/21, providing for 259 police officers and 37 support staff. In 2019/20, 1,589 crimes (compared with 1,721 in 2018/19) were recorded by the Royal Gibraltar Police, 741 of which were detected (detection rate of 46 per cent), compared with 1,721 recorded crimes, with a detection rate of 54 per cent, in 2018/19.

F. Human rights

46. 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.

47. According to the administering Power, the Disability Act 2017 makes provisions for the betterment of persons with disabilities within society. The Equal Opportunities Act 2006 was amended in 2018 to protect women who are breastfeeding from being treated less favourably, and in 2017 to include certain provisions for the rights of persons with disabilities. Other Acts have also been amended to make them consistent with the Convention on the Rights of Persons with Disabilities.

VI. Environment

48. 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 and its Climate Change Act 2019 went into force in October that year. According to the administering Power, the Act set legally binding targets for emission reduction until 2045. Gibraltar also further developed its climate change strategy in 2020. The Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer was extended to Gibraltar with effect as from 18 October 2019. According to the administering Power, the appropriate legislation was drafted and operational measures were prepared in that regard.

49. 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.

50. 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 and the construction of a wastewater treatment plant is expected to be completed in 2022.

VII. Forum for Dialogue on Gibraltar

51. 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 2021.

VIII. Future status of the Territory

A. Position of the administering Power

52. At the 3rd meeting of the Special Political and Decolonization Committee (Fourth Committee) of the General Assembly on 15 October 2020, during the seventy-fifth session of the General Assembly, the representative of the United Kingdom stated that the relationship of his Government with its overseas territories was a modern one based on partnership, shared values and the right of the people of each Territory to choose to remain British. He stated that his Government’s responsibility was to ensure the security and good governance of the territories and their peoples and that territorial Governments were expected to meet the same high standards as the Government of the United Kingdom in maintaining the rule of law, respect for human rights and integrity in public life, delivering efficient public services and building strong and successful communities.

53. He added that, while the United Kingdom would carry out all the responsibilities of the sovereign Power, the Governments of the United Kingdom and its overseas territories were in agreement that the overseas territories were internally self-governing, subject only to the United Kingdom retaining powers to enable it to carry out its obligations under international law. He also added that the Joint Ministerial Council met annually to monitor and drive forward collective priorities.

54. He explained that his Government was committed to involving all overseas territories, including Gibraltar, in the negotiations on its future relationship with the European Union, in order to ensure that their priorities were taken into account at every stage of the process. He stated that his Government had established a dedicated Joint Ministerial Council on negotiations between Gibraltar and the European Union, an area in which Gibraltar had a particularly strong interest.

55. He also stated that the United Kingdom reaffirmed its long-standing commitment to the people of Gibraltar and 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.4/75/SR.3](#)).

B. Position of the territorial Government

56. It is noted that at the 3rd meeting of the Fourth Committee, on 9 October 2019, during the seventy-fourth session of the General Assembly, 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.

57. 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.

58. He stated 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

59. At the 4th meeting of the Fourth Committee, on 16 October 2020, the representative of Spain stated that Gibraltar had been militarily occupied by the United Kingdom in 1704, during the War of the Spanish Succession, and that under article 10 of the Treaty of Utrecht of 1713, 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. Thereafter, the people of Gibraltar had been expelled and replaced by colonists. The United Kingdom had subsequently illegally occupied the isthmus adjacent to Gibraltar, building installations during the nineteenth century and a fence in 1908. In 1934, it had added a landing strip, which was converted into an air force base in 1938, that jutted more than half a kilometre into the territorial waters of Spain. It had also added some two square kilometres to the overall size of the colony through land reclamation in Spanish territorial waters. Spain had protested against each successive development. He said that it was abundantly clear under the terms of the Treaty of Utrecht that Spain retained sovereignty over the isthmus and surrounding waters of Gibraltar and its air space and that Spain had never accepted the illegal British occupation and had continuously requested the return of its territories.

60. He went on to say that for more than half a century, the General Assembly had repeatedly mandated the United Kingdom and Spain to begin negotiations on ending the colonial situation, specifying in a long series of resolutions that the decolonization

of Gibraltar must be governed by the principle of territorial integrity. He said that the United Kingdom had, on occasion deliberately, ignored the doctrine of the United Nations. In 1967, it had held a referendum on questions of sovereignty, which had been condemned by the General Assembly in resolution 2353 (XXII). With the Brussels Declaration of 1984, the United Kingdom had reciprocated the desire of Spain to engage in a process of negotiation but had later broken it off unilaterally. Year after year, his country had called for that process to be reopened.

61. He stated that the question of Gibraltar was not only a matter of illegitimate occupation or violation of territorial integrity and that the presence of a colonial enclave in his country had harmful effects for the economy, environment and security, especially in the adjacent area of the Campo de Gibraltar. He added that the special tax system in Gibraltar had led to serious distortions in the local economy, including through illicit trafficking, to the detriment of the region's prosperity and the collection of tax revenue in Spain and the European Union.

62. He said that Spain wished to see the people of Gibraltar prosper. Spain and the United Kingdom had come to a series of agreements governing their relations with regard to Gibraltar during the transition period following the decision by the United Kingdom to leave the European Union, which would come to an end on 31 December 2020. Relations thereafter with regard to Gibraltar were still the subject of negotiation. His country was prepared to agree with the United Kingdom on a new system of regional cooperation that would benefit the inhabitants of both sides of the fence. It also wished to resume bilateral negotiations with the United Kingdom, in line with the doctrine of the United Nations, as soon as possible, with a view to developing an area of socioeconomic prosperity. Spain would, however, always defend the rights and interests of the inhabitants of the Campo de Gibraltar, who were the most affected by the issue of Gibraltar (see [A/C.4/75/SR.4](#)).

D. Negotiations between the United Kingdom and Spain

63. Within the framework of the Brussels Process, which is separate from the Forum for Dialogue on Gibraltar, no bilateral negotiations were held in 2020. 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.

64. 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

65. In the communiqué adopted at the eighth meeting of the Overseas Territories Joint Ministerial Council, the Government of the United Kingdom and the leaders of 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 those peoples to self-determination, a collective responsibility

of all parts of the Government of the United Kingdom. They committed themselves to exploring ways in which the overseas territories could maintain international support in countering hostile sovereignty claims. It was also stated that for those Territories with permanent populations that wished so, the United Kingdom would continue to support their requests for removal of the Territory from the list of Non-Self-Governing Territories. In the same communiqué, the Government of the United Kingdom acknowledged that its withdrawal from the European Union would have an impact on the overseas territories, particularly in the areas of eligibility for and access to funding and trade. It was agreed that the territories' links with the Commonwealth and the United Nations would continue to be important and that the United Kingdom was committed to strengthening those links. The United Kingdom also welcomed initiatives to develop links with regional organizations and with territories and countries neighbouring the overseas territories.

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 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.

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 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

68. On 5 August 2020, the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples decided, by consensus, through silence procedure in accordance with General Assembly decision 74/561, to continue its consideration of the question at its 2021 session and to transmit the relevant documentation to the 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 during its joint debate on agenda items 50 to 61 at its 2nd to 9th meetings, from 14 to 16 and on 20, 22 and 24 October, and on 3 and 4 November 2020. At the 3rd and 4th meetings, it heard statements by the representatives of the United Kingdom and Spain. At the same meetings, the representatives of Spain and the United Kingdom exercised the right of reply (see [A/C.4/75/SR.3](#) and [A/C.4/75/SR.4](#)).

70. At its 10th meeting, on 6 November, the Fourth Committee adopted without a vote a draft decision on the question of Gibraltar (see [A/C.4/75/L.8](#)), which was submitted by the Chair of the Committee (see [A/C.4/75/SR.10](#)).

X. Action taken by the General Assembly

71. On 10 December 2020, on the recommendation of the Fourth Committee, the General Assembly adopted decision 75/523 on the question of Gibraltar, without a vote. In that decision, the Assembly, recalling its decision 74/515 of 13 December 2019:

(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.