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

Gibraltar

Working paper prepared by the Secretariat

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Note: The information contained in the present working paper has been derived from information transmitted to the Secretary-General by the administering Power under Article 73 *e* of the Charter 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 30 December 2011. Further details are contained in previous working papers posted on the United Nations website <http://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. The Territory is a narrow peninsula extending southward from the south-west coast of Spain, to which it is connected by an isthmus approximately 1.6 kilometres long. The Spanish port of Algeciras lies 8 kilometres across the bay to the west; the continent of Africa is situated 32 kilometres across the Strait of Gibraltar to the south. According to the administering Power, the area of Gibraltar is 5.8 square kilometres; according to Spain, which claims sovereignty over the Territory, it is 4.8 square kilometres. Issues relating to the water off Gibraltar continue to be a subject of contention.

2. According to the administering Power, in 2010 the population in the Territory was 29,441. 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.

3. 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. According to the administering Power, the British Overseas Territories Act 2002 provides for the grant of the right to British citizenship to "British Overseas Territory citizens".

II. Constitutional, legal and political issues

4. Under Constitution Order 2006, the Governor of Gibraltar, Vice-Admiral Sir Adrian James Johns since October 2009, represents the British Crown in the Territory. The Governor is responsible for the conduct of external affairs, defence, internal security (including the police, in conjunction with the Police Authority for Gibraltar) and for certain appointments as conferred on him by the Constitution. Following an election, the Governor, acting at his discretion, shall appoint as Chief Minister the elected member of the Parliament who, in his judgement, is most likely to command the greatest measure of confidence of his peers. Other ministers shall be appointed by the Governor, acting in accordance with the advice of the Chief Minister, from among the elected members of the Parliament.

5. Furthermore, according to the 2006 Constitution, the Governor shall dissolve the unicameral 17-member Parliament in preparation for the next general election four years from the date of the first meeting of Parliament after any general election, unless Parliament has already been dissolved. Under the Gibraltar Constitution, the British Crown retains full power to make laws from time to time for the peace, order and good government of Gibraltar. Included in those powers are laws amending or revoking the Constitution.

6. According to territorial Government figures, the Gibraltar Socialist Labour Party/Gibraltar Liberal Party alliance headed by Fabian Picardo won the general elections held on 8 December 2011 with approximately 49 per cent of the votes, against 47 per cent for the Gibraltar Social Democrats. The next election is expected to take place in 2015.

7. Gibraltar has a Supreme Court allowing for appeals to a Court of Appeal and then to Her Majesty in Council, acting on the Privy Council's advice. The 2006 Constitution provides for the establishment of a Judicial Service Commission, which was set up under the Judicial Service Act 2007, Act No. 2007-26. The Commission has executive powers, subject only to an exceptional power of veto by the Governor, to advise the Governor in respect of certain matters, such as the appointments to the offices of the Chief Justice and other members of the judiciary. The Governor, with the prior approval of a Secretary of State, may disregard the advice of the Commission in any case where he judges that compliance with that advice would prejudice the British Crown's service. The Constitution also makes provisions regarding Crown lands in Gibraltar.

8. After a 10-year campaign to exercise the right to vote in European elections, in June 2004 Gibraltarians took part in European parliamentary elections, based on the fact that they were considered by the administering Power to be part of the south-west England region for electoral purposes.

9. The Government of Spain maintains the position that the 2006 Constitution represented a modernization of the Territory's Government that in no way affected 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 self-determination does not apply.

III. Budget

10. In his budget speech delivered on 4 July 2011, the Chief Minister indicated that as at 31 March 2011 the revenue of the territorial Government was £382 million and its expenditures stood at £353.7 million. A total of £158 million was spent during the year: £95 million through the Improvement and Development Fund and £63 million through Government-owned companies. The highest possible rate of effective personal tax in Gibraltar was 24.9 per cent with the company tax rate at 10 per cent.

IV. Economic conditions

A. General

11. Gibraltar has no known natural resources and lacks agricultural land. With the downsizing of the military base since the 1980s, the economy has increasingly focused on tourism and the provision of financial services, including banking, insurance, shipping and portfolio management, as well as online gaming.

12. Prior to 1980, the economy was largely dependent on the United Kingdom Ministry of Defence expenditures. The Gibraltar operating base includes military and civilian personnel. After the territorial Government expressed concern that the Ministry of Defence had to reduce the amount of work that it outsourced to local construction companies, an agreement was reached between the territorial Government and the Ministry of Defence that the base cannot reduce its workforce below an agreed level except by voluntary redundancies. In 2011, the Ministry of

Defence appointed a Special Representative to Gibraltar to work on a range of issues connected with the continued presence of the base. According to the territorial Government, employment by the United Kingdom Ministry of Defence increased by 2.7 per cent during 2010/2011.

13. In his 2011 budget speech, the Chief Minister stated that Gibraltar's economy had continued to grow, jobs and employment had risen to a new record level, taxes had continued to fall, and pay and pensions had continued to rise. In 2010, the economy grew by 6.5 per cent to £954 million gross domestic product (GDP). For the same year, GDP per capita stood at approximately £32,415.

B. Trade

14. According to the administering Power, the Territory's total imports amounted to approximately £1.9 billion for 2010. Around 25 per cent of its non-fuel imports originate from the United Kingdom. Other sources of non-fuel imports include Germany, the Netherlands and Spain. The Territory's total exports for 2010 were approximately £1.5 billion. Exports were mainly re-exports of petroleum and petroleum products supplied to shipping. The Territory's main economic and trading transactions are with European countries, the United States of America and North African countries.

C. Banking and financial services

15. Gibraltar has a well-developed financial sector, which is regulated by an independent statutory body, the Financial Services Commission. The Gibraltar Finance Centre is charged with the marketing and promotion of financial services. According to the Government of Gibraltar, during 2010/2011 the Finance Centre completed its transition from offshore tax haven to onshore European finance services centre and was since well placed to seize the opportunities offered under a new tax regime that went into effect in January 2011.

16. Twelve banks operate in Gibraltar, all of which are large multinational operations. In 2011, the Organization for Economic Cooperation and Development Global Forum on Transparency and Exchange of Information for Tax Purposes issued a peer review report on Gibraltar. The Global Forum made recommendations where elements of Gibraltar's Exchange of Information regime have been found to be in need of improvement; for instance, with respect to the availability of ownership and accounting information. Gibraltar's progress in these areas and actual practice in exchange of information with its Exchange of Information partners will be considered in a phase 2 review, which is scheduled to commence in the first half of 2014.

D. Transportation, communications and utilities

17. Road transportation arrangements in and out of Gibraltar were agreed upon at Córdoba 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. Customs and police checks remain necessary, since Gibraltar does not belong to the European

Union Customs Union. Moreover, the United Kingdom (and thus Gibraltar) does not belong to the Schengen area for external borders control purposes.

18. The United Kingdom continues to be responsible for all international obligations relating to aviation safety and security in respect of Gibraltar 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. In July 2010, the British (National Air Traffic Services) and Spanish (Aeropuertos Españoles y Navegación Aérea) air control service providers reached an agreement on technical procedures helping to provide safe passage for aircraft using Gibraltar Airport.

19. 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 3-mile area of British Gibraltar Territorial Waters (or less where the median line with other territorial waters applies)". For its part, Spain "exerts its sovereign rights and jurisdiction over its territorial waters that include all maritime areas around Gibraltar (with the only exception of its port facilities)".

E. Tourism

20. According to the United Kingdom, in 2010 the tourism sector recorded an increase to approximately 11.5 million visitors. Arrivals by land comprise mainly day visitors arriving from Spain; arrivals by air are primarily from the United Kingdom; arrivals by sea include ferry arrivals from Morocco and day trips from cruise ships.

V. Social conditions

A. Labour

21. According to the administering Power, in 2010 the largest number of jobs was created in the construction industry (165), followed by the Finance Centre (103), the gambling industry (98), the transport and communications sectors (56) and the wholesale and retail sectors (46). The number of employed Gibraltarians increased the same year by 102, mainly as a result of an increase in the number of women taking part-time jobs. The unemployment rate stood at 1.8 per cent of the work force, with a monthly average in 2010 of 415 unemployed persons.

B. Social security and welfare

22. The social security and welfare sectors in Gibraltar continue to be governed by various social security acts mentioned in previous working papers. According to the territorial Government, in April 2011 old age pensions and widow's benefits increased by 3.5 per cent. As of 2012, community care payments to the elderly are a statutory right paid in conjunction with old age pensions.

C. Public health

23. The Gibraltar Health Authority, a department of the territorial Government, is responsible for providing health care in the Territory, which, as at 2010, had an infant mortality rate of nil. According to the territorial Government, the 2010/2011 health budget was £78.65 million.

D. Education

24. Education in Gibraltar, governed by the Education and Training Act of 1974, is free and compulsory for children between the ages of 4 and 15. The language of instruction is English. According to the United Kingdom, public education in Gibraltar comprises 11 primary schools and 2 secondary schools, as well as the Gibraltar College of Further Education and the Vocational Training Centre, serving approximately 5,000 students. Expenditure on education during the year ending in March 2011 was approximately £26 million. School buildings improvement costs were in the region of £1.3 million.

25. Students who obtain a place at a university in the United Kingdom are entitled to Gibraltar Government scholarships. According to the territorial Government, university student grants increased by 10 per cent in 2010 and by another 6 per cent in the academic year 2011/12.

E. Crime and public safety

26. Law enforcement in the Territory is the responsibility of the Royal Gibraltar Police, in conjunction with the Gibraltar Police Authority established under the Constitution and Police Act 2006. In accordance with the Act, 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.

27. The 2010/2011 annual report of the Gibraltar Police Authority indicates that the overall crime figure amounts to 3,731 cases in the year under review. According to the report, the overall detection rate rose from 63 to 71 per cent, reflecting the use of added resources deployed to front-line policing, and there were 187 serious offences in violence-related crimes as opposed to 147 the previous year.

F. Human rights

28. The following major international human rights instruments apply in Gibraltar: the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination and the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Constitution of the Territory includes a chapter on the fundamental rights and freedoms of the individual.

29. According to the administering Power, it was encouraging Gibraltar to accept the extension of the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women at the earliest opportunity.

VI. Forum for Dialogue on Gibraltar

30. Negotiations between the United Kingdom and Spain on the subject of Gibraltar led in 2004 to the establishment of a Forum for Dialogue on Gibraltar. In 2006 the first ministerial meeting of the Forum agreed on a package of issues, known as the Córdoba Statements. In 2008, in London, the second ministerial meeting agreed on six additional areas of cooperation, namely, environmental issues; financial services and taxation; judicial, customs and police cooperation; education; maritime communications and safety; and visa-related issues. In 2009, in Gibraltar, the third ministerial meeting agreed on a detailed framework for negotiations on the aforementioned six areas. In 2010, the Forum met at senior official level in Gibraltar and discussed the progress being made by working groups on the six areas. The ministerial meeting to be held the same year did not take place. Since 2010, no meetings have been held.

VII. Future status of the Territory

A. Position of the administering Power

31. In a statement in exercise of the right of reply before the Special Political and Decolonization Committee (Fourth Committee) of the General Assembly on 4 October 2011, the Deputy Permanent Representative of the United Kingdom to the United Nations, *inter alia*, reaffirmed the long-standing commitment of the administering Power to never allow the people of Gibraltar to pass under the sovereignty of another State against their wishes, or to enter into sovereignty negotiations that they opposed. Although his delegation would support the Committee's consensus decision on Gibraltar, the reference to the Brussels Process must be seen in that context. Welcoming the fact that all parties remained committed to the ongoing trilateral dialogue between the Governments of the United Kingdom, Spain and Gibraltar, the United Kingdom would continue to work in the tripartite Forum for Dialogue. The United Kingdom, he said, had no doubt about its sovereignty over Gibraltar and its territorial waters, but was ready to consider any mechanism to advance negotiations that found favour with the other two parties (see A/C.4/66/SR.3).

32. Further, in the view of the speaker, Gibraltar's self-determination was not constrained by the Treaty of Utrecht, except insofar as article X gave Spain the right of refusal should the United Kingdom ever renounce sovereignty. Noting that Gibraltar disagreed that such a constraint existed, his Government held that independence would be an option only with Spanish consent. The Constitution of Gibraltar did not in any way diminish British sovereignty and the United Kingdom retained full international responsibility for Gibraltar. The speaker concluded by saying that, in the view of his Government, the principle of territorial integrity had never been applicable to the decolonization of Gibraltar.

B. Position of the territorial Government

33. On 4 October 2011, addressing the Fourth Committee, the then Chief Minister of Gibraltar said, *inter alia*, that it was incomprehensible that Spain continued to deny Gibraltar its right to self-determination. Since Spain had lost Gibraltar in 1704, Gibraltar's exercise of its right to self-determination could not affect Spain's territorial integrity. Furthermore, Gibraltar rejected the 1713 Treaty of Utrecht not because it was anachronistic, but because no bilateral treaty retained validity under international law if it conflicted with the Charter principle of self-determination by the people of Non-Self-Governing Territories. The support of the United Kingdom of the Treaty was equally discreditable.

34. The speaker went on to say that the calls of Spain for the United Kingdom to discuss the transfer of the sovereignty of Gibraltar in bilateral negotiations violated the Charter and would never be acceptable to the people of Gibraltar. Spain could not claim the Territory and the United Kingdom could not cede it. In the speaker's view, the bilateral Brussels Process would never resume. Gibraltar remained committed, however, to the trilateral Forum for Dialogue, which benefited all three parties by resolving problems and leading to cooperation agreements among them that at the same time safeguarded the sovereignty of Gibraltar (see A/C.4/66/SR.3).

C. Position of the Government of Spain

35. On 4 October 2011, the Permanent Representative of Spain made a statement before the Fourth Committee saying, *inter alia*, that the principle of territorial integrity was essential in the case of Gibraltar, as the General Assembly had made clear in its relevant resolutions and decisions. Further, Spain and the United Kingdom had been negotiating to find the most convenient solution to their only bilateral dispute. For Spain, the speaker continued, the solution was the restitution of both the territory transferred from Spain under the Treaty of Utrecht and the land later occupied illegally by the United Kingdom. The interests of the people of Gibraltar had to be taken into account. Spain supported the principle of self-determination where applicable, but, in the speaker's view, it did not apply to Gibraltar as it was intended for populations of colonized Territories and not for settlers imposed by an occupying Power to the detriment of the original inhabitants, whose rights were defended by the United Nations.

36. The speaker went on to say that international law underscored the validity of the Treaty of Utrecht, which, as the United Kingdom itself had repeatedly recalled, ruled out independence without Spain's consent. Spain remained certain that a political solution, based on negotiations that took the special circumstances of Gibraltar into account, would settle the issue once and for all. The speaker concluded by saying that his Government would continue to work within the Forum for Dialogue on Gibraltar with a view to resolving issues relating to local cooperation for the well-being and economic development of the inhabitants of Gibraltar and the Campo de Gibraltar (see A/C.4/66/SR.3).

D. United Kingdom-Spain negotiations

37. There were no bilateral negotiations on Gibraltar held in 2011 within the framework of the Brussels Process, which is separate from the Forum for Dialogue on Gibraltar. In early 2012, the Government of Spain continued to demand the renewal of bilateral sovereignty talks with the Government of the United Kingdom. For its part, the United Kingdom has made clear that no sovereignty-related talks would be entered into without the consent of Gibraltar.

E. United Kingdom-Gibraltar discussions

38. The Governments of the United Kingdom and Gibraltar have both recognized that the current Constitution provides for a modern and mature constitutional relationship between the two sides, one which is not based on colonialism.

39. As reflected in previous working papers, both the Government of the United Kingdom and the territorial Government believe that the de-listing and decolonization criteria of the United Nations are anachronistic, and, at the same time, they recognize that under Article 73 *e* of the Charter of the United Nations, the United Kingdom is obliged to continue to submit annual reports until such time as the General Assembly votes in favour of the removal of a Territory from its list of Non-Self-Governing Territories.

VIII. 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

40. A representative of Spain attended the Caribbean regional seminar on the implementation of the Third International Decade for the Eradication of Colonialism held in Kingstown, Saint Vincent and the Grenadines, from 31 May to 2 June 2011, and made a statement.

41. The Special Committee discussed the question of Gibraltar in a meeting on 13 June 2011, and had before it the 2011 working paper prepared by the Secretariat concerning the Territory (A/AC.109/2011/13). As reflected in the summary record of the meeting (A/AC.109/2011/SR.3), statements were made by the representative of Spain and by the leader of the opposition in 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)

42. The Fourth Committee of the General Assembly considered the question of Gibraltar in a meeting on 4 October 2011. As reflected in the summary record of the meeting (A/C.4/66/SR.3), the Committee heard statements by the then Chief Minister of Gibraltar, and a petitioner, Fabian Picardo, the then leader of the

opposition. At the same meeting, statements were made by the Permanent Representative of Spain and, in exercise of the right of reply, by the Deputy Permanent Representative of the United Kingdom, who referred to the statement made by the representative of Spain. At its meeting on 10 October 2011, the Fourth Committee adopted without a vote draft decision A/C.4/66/L.4 on the question of Gibraltar, which had been submitted by the Chair of the Decolonization Committee (see A/C.4/66/SR.6).

C. Action by the General Assembly

43. On 9 December 2011, the General Assembly, on the recommendation of the Fourth Committee, adopted without a vote decision 66/522 on the question of Gibraltar. The decision reads as follows:

The General Assembly, recalling its decision 65/521 of 10 December 2010 and the statements agreed to by the Governments of Spain and the United Kingdom of Great Britain and Northern Ireland in Brussels, on 27 November 1984,¹ and in Madrid, on 27 October 2004, and noting the establishment, pursuant to the latter, of the tripartite Forum for Dialogue on Gibraltar, separate from the Brussels Process, under the statement made jointly by the Governments of Spain, the United Kingdom and Gibraltar on 16 December 2004:

(a) Urges both Governments, while listening to the interests and aspirations of Gibraltar, to reach, in the spirit of the statement of 27 November 1984, a definitive solution to the question of Gibraltar, in the light of relevant resolutions of the General Assembly and applicable principles, and in the spirit of the Charter of the United Nations;

(b) Welcomes the continuing commitment to the trilateral Forum for Dialogue, including in the six additional areas of cooperation announced in 2009.

¹ See A/39/732, annex.