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**A CO-OPERATIVE CONFLICT:
GIBRALTAR IN A EUROPEAN CONTEXT**

INTRODUCTION

The flaring up of the longstanding conflict over the Falkland Islands into a short but bloody war, and the collapse of Yugoslavia into civil war, both illustrate dramatically the propensity of protracted conflicts to explode into bloody confrontation. In his speech at the time of the signing of the Charter of Paris, marking the end of the Cold War in November 1990, and during his visit to London in May 1991, Prime Minister Gonzalez of Spain gently reminded the British government that the question of Gibraltar was not one that has been finally resolved. Gibraltar, like Cyprus and Northern Ireland, is a conflict waiting for resolution. All three conflicts display the processes of protracted conflict, and for some, the new factor that might break the deadlock is the European Community. The Community is a new framework which makes an old conflict look different and could provide the degree of movement to break historic deadlocks in a new context. But the European Community is not a panacea, and although clearly it is an important factor in developments concerning Gibraltar, it is not the only factor. Indeed, proposed EC legislation can exacerbate the situation. However, no one expects the Gibraltar conflict to flare up into a crisis or,

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even worse, into violence, yet it remains a real conflict with such latent propensities for escalation. The Falklands and events in Eastern Europe suggest that we neglect such conflicts at our peril.¹

GIBRALTAR AS 'THE ROCK'

Gibraltar's rationale as a British colony has come to an end. Gibraltar, Britain and Spain are, therefore, thinking of its future. In March 1991 the British Army finally withdrew its battalion-strength force from the colony, although permanent Royal Navy and RAF detachments remain for the time being. But they, too, are likely to be reduced in the future. For example, such little military use is made of the airport that the Ministry of Defence wishes to reduce, on economic grounds, its contribution to its full scale operation thus prejudicing the civilian operations on which the Gibraltar Government relies. The changes that British military withdrawal imply are considerable. In terms of Gibraltar's economy, this is significant since the Ministry of Defence was Gibraltar's largest employer providing 1,600 jobs and the garrison contributed about £14 million a year to an economy with a GDP of £200 million. The withdrawal of some 700 men and 800 dependents has also had an impact upon the population which has been reduced by some 5%, thereby releasing much-needed housing and land for commercial purposes. The Gibraltar regiment now is the prime security force in the colony, and it has increased its permanent cadre from 63 to 150 men and the number of soldiers is rising to 250. (The total population of Gibraltar is approximately 30,000 people).

The reasons for this reduction in British presence are not hard to see. With Spain a member of NATO, WEU and the European Community and the general improvement in Anglo-Spanish relations over Gibraltar, there can be little real threat to the security of the Rock from that quarter. Indeed the Spanish Navy with its new Harrier equipped carrier, the *Principe De Asturias*, has already exercised with British forces. It is clear that Spain is

1. It is interesting to note that Gibraltar and the Falkland Island recently agreed to co-operate on political and economic matters. *Independent*, 15. September 92.

capable, willing and is trusted to fulfill many of the NATO functions in the Western Mediterranean and Eastern Atlantic. These functions have themselves changed as a result of the ending of the Cold war. Gibraltar, therefore, has little military role. There are some difficulties in that Spain does not utilise Britain's GIBMED NATO command structure in the region and it communicates with Gibraltar via the Naples or Lisbon commands, not directly, but this seems to work acceptably. Moreover, Spain would like Rota to act instead of Gibraltar as the NATO Headquarters for controlling the Straits.² Recently Spain and NATO have made a Coordination Agreement for the defence and control of the Straits of Gibraltar and its approaches.³ More generally, the British view is that the NATO-Spain relationship is developing well. Britain's function there strategically is reduced to providing for diversity in the Alliance framework should that be politically or militarily advisable, and also to maintain a British option, such as proved so useful in the Falklands war and of help in the Gulf war. Britain has therefore put its military installations on the Rock on a care and maintenance basis, so that it can be reinforced rapidly and effectively at short notice. The strategic need for Gibraltar has, like the proverbial old soldier, just withered away. However, the dispute over the future of Gibraltar remains, even though all three parties - Britain, Spain and Gibraltar - seem determined that it should not cause any future anxiety to any party.

The political parameters

Britain acquired Gibraltar by conquest in 1704 in the context of the war of Spanish succession. This conquest was fully recognised by Spain in the Treaty of Utrecht in 1713. However, it was agreed between Britain and Spain at that time that should British sovereignty end, then that sovereignty will be transferred to Spain, unless Spain declines to accept sovereignty. However, the Spaniards have tried to hurry this process by a number of sieges, the last of which was an economic blockade instituted by General

2. *El pais*, 26 May, 91.

3. *El pais*, 20 June, 92

Franco and not lifted in part until 1982, and fully in 1985. In 1967 a referendum was held in Gibraltar with a turnout of 96% of the electorate in which 12,138 voted to retain the link with Britain (99.6%).

The Gibraltarians themselves are not British Spaniards but a mixture of Genoese, Maltese, British, Sefardic Jews, Portuguese, Muslims and Hindus. The right of entry of many of these Gibraltarians is questioned by Spain on the basis of British undertakings at the time of Spanish recognition of the British conquest of Gibraltar. In particular, one result of the economic blockade of the Rock in the 1960s and 1970s was the importation of some 2,000 Moroccan workers (whose living and working conditions are deplorable) to replace the Spanish workforce. The population has a fierce resolve to remain British and Gibraltarian. Although the Gibraltar lobby in Westminster has lost some of its force, the population is well organised politically and in trade unions. While Governor, who is the Queen's personal representative, retains direct control over Gibraltar's internal security, defence and external affairs, the 15 person elected House of Assembly, from which Ministers and the Chief Minister are drawn has, since 1969, run all other matters on the Rock.

The Gibraltar Constitution order which came into force in August 1969 states categorically, "Whereas Gibraltar is part of Her Majesty's dominions and Her Majesty's Government have given assurance to the people of Gibraltar that Gibraltar will remain part of Her Majesty's dominions unless or until an Act of Parliament otherwise provides, and furthermore that Her Majesty's Government will never enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another state against their freely and democratically expressed wishes." The words "never" and "democratically expressed" are of crucial importance. Spain has to win the hearts and minds of the Gibraltarians making the question of Gibraltar a tripartite question. While the present constitution of Gibraltar can be revoked, amended or replaced by the Queen in Council, any changes made against the wishes of the Gibraltarians would, in all probability, lead to a situation requiring martial law. In this context the wealth of affection

Gibraltar has in Britain, especially among those connected with the services, and in British trades unions (60% of Gibraltarians are members of UK unions) means that the Gibraltarians have all-party support in Britain and a practical and political veto as well as a constitutional one. The question is, indeed, tripartite.

THE 1980S : POLITICAL EVOLUTION AND ECONOMIC CHANGE

The Gibraltar question was in a state of impasse during the last years of General Franco's rule in Spain. The blockade of the Rock was total and the inhabitants of the Rock had a profound disgust and distrust of all aspects of the Franco regime. However, as part of its liquidation of Franco's inheritance and as a necessary part of its integration into Western Europe - politically, economically and militarily - the Spanish Government joined with Britain in an Anglo-Spanish statement on Gibraltar which was issued in Lisbon on 10th April 1980. Both governments agreed to start negotiations with the purpose of overcoming all their differences over Gibraltar. They agreed on the re-establishment of direct communications in the region and the Spanish Government decided to suspend the application of the measures then in force. They recognised the need to develop practical cooperation on a mutually beneficial basis.

This agreement remained a dead letter for several reasons so it was not until the mid-1980s that the Lisbon agreement began to be given reality.⁴ At that point, too, it was evident that Spain would need Britain's cooperation if it was to achieve its ambitions in terms of the European Community, NATO and, later, Western European Union. Moreover, Britain was concerned that it should share fully in the trade emanating from the rapid development of the Spanish economy. Thus, in 1984 the two Foreign Ministers agreed in Brussels to the opening of bilateral negotiations on the future of the Rock, including questions of sovereignty - 'the Brussels process'. In exchange for this, Madrid accepted the immediate and total

4. See Jaxier Diez- Hochleitner: "Les relations hispano-britanniques au sujet de Gibraltar-état actuel," *Annuaire français de droit international*, vol. XXXV, 1989, p. 174.

opening of the gates which had isolated Gibraltar for 15 years from the rest of the continent. At midnight on 4th February 1985 the frontier was opened fully after the conclusion of the Anglo-Spanish agreement of 27th November 1984.

As a result of that agreement on 5th February 1985, the British and Spanish Foreign Ministers and the then Gibraltar Chief Minister, Sir Joshua Hassan, met in Geneva. They agreed to cooperate on cultural and economic questions and that there should be annual meetings of Foreign Ministers, at which sovereignty could be discussed. British impediments to Spanish membership of the Community were lifted and Spaniards obtained the rights of employment and to own property in Gibraltar one year before the entry of Spain into the Community. In return for this, free movement across the border was guaranteed and the Spanish Government cooperated with the British Government over the air space in the region. Thereafter, relations continued to improve, but no great progress was made over the question of sovereignty. While Britain would not force a change of sovereignty upon the inhabitants of Gibraltar, nevertheless it was prepared to foster closer ties between Gibraltar and Spain in order to achieve greater integration of the Rock into the Spanish economy in the longer term, with a view to inducing a change of heart on the part of the Gibraltarians. Moreover, Spain, for its part, recognised that a transfer of sovereignty against the wishes of the Gibraltarians would be undesirable and that it would take a long time to change the minds of the Rock's population.

Ministerial meetings have continued on a regular basis supplemented in May 1991 with the first visit to London by a Spanish Prime Minister since the brief visit of Calvo Sotelo in January 1982. The agenda normally has two items: the question of sovereignty, and that of local cooperation. In addition, meetings of officials are held whenever necessary in order to further cooperation. Normally they take place at a tempo of three times a year. While the former Chief Minister of Gibraltar, Sir Joshua Hassan attended meetings, this was not the case after the election of Mr. Joe Bossano. Bossano does not want to form part of the British delegation, and he feels

that the process is one that reflects the interests of Spain and Britain, rather than that of Gibraltar, particularly since the issue of sovereignty is permanently on the agenda. However, in a poll conducted by the Gibraltar Chronicle and the Gibraltar Broadcasting Service of three percent of the electorate, sixty percent of those asked wished that the Gibraltar could participate in the Brussels process.⁵

For the present, the Governor of Gibraltar attend the metings and there is now no political representation of Gibraltar, although the Governor does inform the Gibraltar government about the meetings. The Deputy Governor attends the metings of officials. Although Britain would not object to Gibraltar being represented by a separate delegation, Spain will not countenance this. Bossano, therefore, continues to be invited under the same conditions as Sir Joshua Hassan, but he declines the invitation. Bossano thinks that it would be useful to talk with Spain but only when he feels that he is properly recognised by Spain. In a press conference on March 1, 1993 following the most recent meeting of the two Foreign Minsters in madrid, Mr. Solana, the Spanish Foreign Minister said that "it is not our wish to exclude Gibraltarian participants from the meetings". Bossano is, however, willing to countenance talks with regional and local authorities in Spain and would welcome informal taks between officials from Spain, Gibraltar and Britain.⁶ The net result of this is a tendency, on the part of the Gibraltarians, to be rather suspicious of the Foreign and Commonwealth Office, and to see the FCO as something of an ally of Spain. The Gibraltarians also consider that the discussions on local cooperation are looked at by Spain from the point of view of their implicatons for soveignty. Thus the Gibraltarians feel that they cannot consider cooperation on its functional merits, but that they have to see the additional implications for their position on sovereignty.

5. *The Times*, 13 May, 91. It is unclear whether this meant participation as part of, or separate from the British delegation.

6. *The European*, 9-12 April, 92.

The gentle process of building bridges to foster a greater integration of Gibraltar in Spain was, therefore, interrupted by the election victory of Joe Bossano's Gibraltar Socialist Labour Party on 24th March 1988 with 58% of the vote. Bossano's election caused some anxiety because of his left-wing and nationalist positions. In particular, Bossano questioned the negotiations that had been developing from the Brussels agreement, since his party had boycotted the vote on the Bill implementing the Brussels agreement in the Gibraltar Assembly. In particular, Bossano opposed the opening of Gibraltar's airport to the Spanish airlines, including the building of a terminal on the northern side of the airport so that passengers would have direct access to the airport from Spain.

The opposition of Bossano's government to the Anglo-Spanish agreement on airports lies in its fear that it will be interpreted as placing the airport de facto inside Spain, since passengers to Spain would be exempt from Gibraltar custom control, and the isthmus on which it is built is claimed by Spain as its territory. The Gibraltar Government has, therefore, refused to sign the agreement so that it remains inoperative. In retaliation for the Gibraltar House of Assembly's refusal to ratify the 1987 Airport Agreement, Spain has threatened to build its own airport on the Spanish side of the border. Indeed, on his visit to London in 1991 Mr. Gonzalez said "We need an airport in that zone and we have to solve that matter in a rational way. Otherwise we will have to consider a way that is not economical."⁷ Moreover, Spain has blocked the European air liberalisation agreement being applied to Gibraltar because of its dissatisfaction at the failure to implement the Anglo-Spanish airport agreement. However, both the British and Spanish governments recognise that it would not be helpful to impose the Airport Agreement upon the Gibraltar government since the impediment is political rather than legal. The Spanish claim to the isthmus on which the airport is situated is what heightens the fears of the Gibraltar government despite Spanish protestations that their primary concern is functional.

7. *The Guardian Weekly*, 19 May, 91.

At the recent ministerial meeting in March 1993 the airport question was again raised. The British Foreign Secretary, Mr. Douglas Hurd, told the press conference following the meeting on March 1st that "within the possibilities that exist today we have charted I think a possible way forward". He continued that

on the airport point, this is one of the subjects which we have indentified for further work. There is a genuine difference about the nature of implementation and to some extent decisions of the European Community have altered the situation since the Agreement was signed. However, without going into the details, which we did not today, this is a subject which we have indentified as useful for further work.

The situation at present is that Gibraltar is suspended from the EC air liberalisation measures until such time as it agrees to implement the 1987 Anglo-Spanish Airport Agreement, but from the Gibraltarian point of view, the new EC provision that came into effect on January 1, 1993 make the Anglo-Spanish Airport Agreement incompatible with European Community law. In any case, there is a difference between the British and Spanish interpretations of the Airport Agreement, since the UK says Spain will only have joint use of the airport and will be consulted on working arrangements whereas Spain argues that the Agreement gives it joint control, and that it will be able to exercise a right to decide on matters such as flight authorisations and not merely be consulted. The Gibraltarian government view is that the 1987 Agreement and Community law "pull in different directions" Since the 1992 EC Third Air Liberalisation Package meant that "All air traffic arriving at Gibraltar Airport from any Community Airport would be domestic, not international, traffic thereby removing questions of sovereignty."⁸

The new EC legislation may, therefore, create a window of opportunity to move out of the impasse between Britain, Spain and Gibraltar over the Airport Agreement. If this can be achieved, there will be economic benefits, both to Gibraltar and to the neighbouring Spanish regions, which will obviate the need for Spain to build a new airport in the region. Moreover, it

8. *Gibraltar Briefing*, Office of the Chief Minister, Government of Gibraltar, December 1992.

might then enable Spain to renew maritime communications between Spain and Gibraltar, and facilitate the lifting of Spain's veto over the EC External Frontiers Convention unless Gibraltar is suspended or excluded therefrom.

That the question of the airport is a mess is acknowledged by all parties: it is also one which hurts both Gibraltar and Spain besides embarrassing Britain. The search is, therefore, on for a form of words which will release all parties from the painful dilemma in which they are trapped. The airport dispute has given rise to a case brought by the Gibraltar government in the European Court which has put both Britain and Spain, for different reasons, somewhat on the defensive which gives an added momentum to the search for a political solution.

Of even greater significance is Spain's refusal to sign the European External Frontiers Convention because of its position regarding the sovereignty of the isthmus thus denying Gibraltar, which is clearly part of the Community, free movement in the Community. Both Britain and Gibraltar adamantly reject the Spanish position but the matter did not yield to the efforts of either the Dutch or Portuguese Presidencies of the EC. Gibraltar joined the EC in 1973 as a European territory for whose external relations a member-state is responsible, namely, Britain. The appropriate Article of the Treaty of Rome is Article 227(4). Gibraltar's position, however, is special in that it is exempted from certain Community measures such as the Common Agricultural Policy, value-Added Tax and its position outside the customs territory. Nevertheless, the Treaty provisions providing for the free movement of capital, services and persons apply to Gibraltar. When Spain joined the Community, it, therefore, accepted the then existing provisions for Gibraltar. Gibraltar, for its part, has complied with all its EC obligations arising from Spain's entry. The continuing refusal of Spain, therefore, to accept the External Frontiers Convention of the EC, unless Gibraltar is suspended or excluded, is strongly opposed by both Britain and Gibraltar. It also raises the issue of Gibraltar to a more central place in Community policies and politics. While Gibraltar has been willing to accept the compromise formulae proposed by the Dutch and

Portuguese Presidencies of the EC, Spain remains adamant. Thus, the issues of the airport, the exact boundary on the isthmus between Gibraltar and the Spanish mainland, and the External Frontiers Convention are linked, but the growing integration of the Community indicates that a serious attempt is at hand to untie this particular Gordian knot.

Gibraltar's economic transformation

While Bossano has reacted strongly against the 'Brussels process' between Britain and Spain and all its works, he has been very proactive in creating a new economic framework for Gibraltar in the context of the region as a whole in the wake of the departure of the British military. Gibraltar has benefitted greatly from the ending of the blockade. Its annual revenue from tourism has multiplied and the Chief Minister had evolved a strategy to develop the economy of the Rock and in particular to make the colony a major financial centre. The economy is growing at a substantial rate in terms of real growth in GDP. Gibraltar is being transformed physically with major foreign investment on reclaimed land from Denmark of £120 million. Such large long term investments in infrastructure have to some degree shielded Gibraltar from the worst ravages of the depression. Even the former RN dockyard has reached a state of 'economic viability' in the sense that "to close it now would yield a net loss for the Gibraltar economy, with the resultant social benefits outweighing the savings."⁹ The Gibraltar Government has increased capital spending substantially, mainly on infrastructure.¹⁰ Home ownership is increasing significantly as is output per person.

As a financial centre Gibraltar now has some 40,000 firms registered with an annual rate of establishment of the order of 4-5,000. Bossano has travelled widely to encourage registration, particularly of investors leaving Hong Kong. Gibraltar's status within the EC makes it an ideal offshore base in that it is outside the Community's Common Customs Territory, the

9. *Lloyd's List*, 18 January, 91.

10. From £4 million to £8 million in 1988 and again to £16 million in 1989.

Common Agricultural Policy and VAT and, therefore, does not require any dispensation for a special fiscal arrangement. The idea is that the Rock will be the financial servicing area, import and export channel and tax refuge for companies whose factories will be sited across the frontier in the Spanish hinterland. Recent proposed Spanish tax legislation is not likely to prejudice this.¹¹ It is noteworthy that some 80% of the new jobs created in 1990 in Gibraltar were filled by cross-frontier labour.

Gibraltar joined the EC with Britain, under Article 227(4), whereby it is classified as a European territory whose external relations are assumed by a member state.¹² Gibraltar does not take part in European elections since it is separate from Britain and it is too small to form a constituency. However, it does have good relations with a support group of MEPs and is satisfied with its arrangements to work through the UK representation in Brussels.

The derogations that Gibraltar has from the Treaty of Rome suit its particular and peculiar economic and political position well. In addition, both the Gibraltar and UK governments accept that Gibraltar should stay outside of the Single Market that will be completed by 1993. Entering the Common Customs Territory, that is not charging duties on EC imports and remissions to the Community of duties on non-EC imports would have a seriously damaging effect on Gibraltar's revenue. The CAP would lead to substantial increase in food prices in a country which has no agriculture and Gibraltar has little interest in the liberalisation of trade in manufactured goods. However, even outside the Common Customs Territory, Gibraltar is "Well placed to take advantage of liberalisation of banking, insurance, securities and other financial services throughout the EEC".¹³ Gibraltar has

11. See, *Financial Advisor*, 23 May, 91 and *Investment International*, June 1991

12. See, Diez-Hochleitner, *op.cit.*, pp. 178 *et seq.* for a legal analysis.

13. S.A. Seruya, "Commerce, the EEC link", in Joe Garcia (ed.), *Gibraltar Yearbook 1990*, Gibraltar, Mediterranean Sun Publishing, 1990, p. 40.

also begun to draw upon the structural funds of the Community.¹⁴ In addition, it proposes to apply for EC funding for a cross border development. In the EC context Bossano sees Gibraltar as having the effective powers of a member state except in defence and foreign affairs, almost as a thirteenth member.

One area in which Britain, Spain and Gibraltar have developed a smooth working co-operation is over crime in the region. A number of British nationals living in Spain are suspected of crimes in the United Kingdom. Various loopholes in the law have been plugged, and the number of extraditions is increasing so that southern Spain is no longer the heaven for suspected British criminals that it once was. Recently, the United Kingdom, Spain and Gibraltar have agreed that Gibraltar is covered by three treaties against crime in the region.¹⁵ This has given rise to tripartite meeting, especially on the question of drugs,¹⁶ since the Spaniards are concerned that Gibraltar may be used for drug-running and as a heaven for narco-dollars in the future.

Gibraltar's strategy is thus to take full advantage of its EC status as well as its ties with Britain, Spain and the Commonwealth. But Bossano's vision is not narrow: he sees Gibraltar's future not in any exclusive terms, but in the context of the rest of the world. Bossano has, therefore, been remarkably sanguine, innovative and courageous about the economic effects of the run-down of the British military presence in the Colony. He is now thinking of the Gibraltar Investment Fund investing abroad to provide income on a more balanced basis if the narrow based Gibraltar economy gets into trouble. But all of this has a political connotation as expressed in Bossano's 1992 election manifesto: "There is no political self-determination without economic viability."

14. It received "\$237, 223 from the UK's 1990 European social fund allocation to finance training and just under \$2 million ... from the European regional development fund ... , *Hansard*, 15 January, 91., Mr. Garel-Jones, Written Answer.

15. *The Guardian*, 27 February, 90.

16. *The Independent*, 25 July, 90.

Bossano's dream

Bossano once advocated the integration of Gibraltar with the UK, but if Bossano had his way now he would look for a form of independence for Gibraltar. Bossano's election manifesto stated that "Gibraltar's future has always been clear. It is based on the application of the principle of self-determination to Gibraltar without pre-conditions. It is based on developing a self-governing status for a self-contained Gibraltar in the new European Union of the year 2000." This view is supported by the General Secretary of the Gibraltar National Party, Mr. Garcia, who wrote to *The Times* on May 8, 1992 that "At a time when the people of eastern Europe have assumed the right to self-determination it would be shameful for both Britain and Spain to deny this fundamental right to the Gibraltarians. That the Gibraltarians should want to determine their own future in the new Europe of the 1990s is not anachronistic. What is an anachronism is the Spanish claim."

But the right of self-determination is legally and politically rejected by both Spain and Britain. Spain holds to its rights under the Treaty of Utrecht-rights which are mostly acknowledged by Britain. Furthermore, Spain makes it very clear that from its point of view the principle of territorial integrity should take precedence over that of self-determination. It is salutary to bear in mind that Spain won the argument in the UN General Assembly on this basis in the 1960s. The dominant view then was that there should be a process of decolonisation through restitution of Gibraltar to Spain. However, the position in the General Assembly now is likely to be somewhat different. But Britain too might have some *arrieres-pensees* about independence. While Britain is willing to put the military facilities on a care and maintenance basis, this is not the same as total withdrawal since their use has been substantial in military operations in the last decade. While military access might be maintained after independence the prime objection to independence is political and legal - the Treaty of Utrecht.

Bossano's position has been strengthened by his excellent showing in the elections of January 16, 1992. On a turnout of 71.7%, his Gibraltar

Socialist Labour Party won 73% of the votes cast, well above the 58% of 1988. The new Gibraltar Social Democrats, representing the middle class and well-to-do, who while not wishing for Spanish sovereignty, are inclined to be more accommodating towards Spain, did not do well. The Gibraltar National Party, formed after the election was called, made virtually no impact at all. Bossano is, therefore, in a position to act.

Bossano is looking for constitutional reform giving Gibraltar greater autonomy. At present this is limited by Britain in matters of defence and foreign affairs as well as an overview of economic, commercial and financial matters to ensure that adequate standards are maintained. In addition, EC legislation circumscribes Gibraltar's potential for manoeuvre. Britain is not against the granting of further autonomy in principle but will need to examine proposals carefully. Bossano is reportedly thinking of transferring responsibility for Gibraltar's defence and foreign affairs to the EC leaving formal sovereignty with Britain.¹⁷ Such views may not necessarily be anathema to Spain.¹⁸ Indeed, Spain's then Minister for European Affairs, Carlos Westendorp told *The European* that "they might be willing to consider an arrangement whereby Gibraltar might enjoy local self-government, with overall foreign and defence affairs resting with the European Community or a joint arrangement between Spain and the UK (the so-called Andorra solution)".¹⁹ Moreover, there is a precedent in the proposal to make the Saar an European territory in the late 1940s. But the political and legal problems are significant even if the potential economic gains from a resolution of the airport and frontier issues giving a real economic spur are evident.

On the constitutional issue Bossano's 1992 manifesto calls for "the definition of our political status [which] will determine whether and how we survive into the next century". He is particularly concerned to make sure that "implementation of community directives remains under local control".

17. *The Times*, 15 February, 92.

18. *The Observer*, 11 August, 91. and *The Times*, 5 May, 92.

19. *The European*, 9-12 April, 92.

Bossano also points out that the economic situation of Gibraltar has changed thus calling into question U.K. reserve powers in that domain since Gibraltar is no longer economically dependent on the U.K.²⁰ However, economic questions do have an impact upon foreign affairs which remain, *par excellence*, Britain's domain.

In terms of constitutional development, Bossano does not see the Treaty of Utrecht as an impediment to independence that cannot be overcome. This could also be achieved by a 'British' as well as an EC route. His argument is that as long as sovereignty resides in the "Crown of Great Britain", as Article X puts it, then the terms of the Treaty are being complied with. Thus, just as some competences have been transferred to Her Majesty's Ministers in Gibraltar, so can defence and foreign affairs be transferred provided that sovereignty rests with the Crown of Great Britain. In short, Bossano seems to argue that Gibraltar would have Dominion status as recognised in the Statute of Westminster and the *inter se* doctrine would persist. As with the European proposal there are many political, constitutional and practical ramifications, not the least being the reaction of Spain, but Bossano - and Gonzalez - are surely both right that Gibraltar's future status needs to be in accord with a new Europe and not merely to remain an European anachronism. Bossano is doing much to improve Gibraltar's economic status but his long-term political structural position is weakening. His electoral strength reflects his economic success which requires a degree of cooperation from Spain. Spain, to Bossano's chagrin, has got what it wants in terms of the EC, WEU and NATO. Moreover, Britain has to look to British as well as Gibraltarian interests. But both Spain and Britain acknowledge Gibraltar's interests. We are not in a zero-sum situation since Spain will benefit from Gibraltar's economic success. There are possibilities for a European solution but this depends greatly on Spain's hopes, fears and policies. However, the driving force is Gibraltar's growing sense of identity. As Bossano put it, "In practice, we are the

20. *Gibraltar Chronicle*, 14 January, 92.

thirteenth state of the EC ... One thing must be understood: I am not English and I am not Spanish. I am the product of 300 years of British presence in a Mediterranean colony and my people are a reality."²¹

SPANISH PERCEPTIONS AND POLICY

The British annexation of Gibraltar has always been a sore point with Spain and Spanish governments over the centuries have never ceased to demand the reintegration of Gibraltar into Spain, despite the legal status of the colony, and Spain's clear Treaty obligations. Nevertheless, the British have, over the centuries, strengthened their position by various measures which cannot always find justification in the legal framework established at the beginning of the eighteenth century. A case in point is the control of the isthmus between the Rock and the mainland, since Article X of the Treaty of Utrecht, states that Spain has ceded "the city and castle of Gibraltar, together with its harbour, defences and fortress" and, from the Spanish point of view, nothing more. Thus Spain claims sovereignty over the whole of the isthmus and denies Gibraltar its territorial waters. On the other hand, the British have long established their control on the isthmus to a point half-way between the Rock and the Spanish town of La Linea. To add fuel to the flames, the airport is built upon the isthmus, and some of the new building required for the economic development of Gibraltar at the present time involves use of the isthmus and, indeed, infilling to provide more land space. However, in a period of almost 300 years, it is to be expected that, over a contentious issue, temporary advantage will be capitalised upon and then ferociously defended, while being vigorously contested by those whom the wheel of fortune has not favoured.

From the Anglo-Spanish agreement in Lisbon of 1980 until the present day, there has been a serious and successful effort on the part of both Spain and Britain to ameliorate their relations over Gibraltar. Nevertheless, as prime Minister Gonzalez told the BBC in October 1986, Gibraltar was like

21. *El Mundo*, 1 March, 93, (author's translation).

an irritating "pebble in the bottom of Spain's shoe" that naturally bothered Spaniards because the pebble had not been removed.²² Moreover, the King of Spain, on a state visit to Britain, referred to the dispute as a "relic of history" that had to be overcome. More recently, in his speech to the Conference on Security and Co-operation in Europe, held in Paris in November 1990, at which the Charter of Paris was signed, Prime Minister Gonzalez raised the question of Gibraltar with considerable concern.

While it is certainly not the Spanish intention to signal the start of a new campaign over Gibraltar, nevertheless, Gibraltar was a major item of discussion when Prime Minister Gonzalez made an official visit to London in May 1991.

Gonzalez's approach was a measured one. He put the question of Gibraltar firmly in an Anglo-Spanish context, but without forgetting the Gibraltarians, and he stressed that all else was well between Britain and Spain, but that the full measure of this cooperation bilaterally, and in other fora, could not be reached until the question of Gibraltar had been resolved. In his speech at a dinner at Downing street, Gonzalez said: "Nevertheless, I fear that the desired fluidity of relations between members of the Community and Allies who share many ideas in common will be reached with difficulty whilst the Gibraltar problem continues. Bilateral relations as well as Community relations and those at a multilateral level suffer because of this problem, a residue of history. That is a clear symptom that a solution must be found acceptable to Spain and Great Britain in which it would not be prudent to forget the Gibraltarians, nor, of course, to work only to meet their wishes. Possibly it falls on Great Britain given her special relationship with her colony to make an imaginative effort. We are, as we have always been, prepared to help this effort."²³ The British press also speculated that the Spaniards were willing to contemplate joint control of the colony under the two Crowns with effective autonomy for Gibraltar. Although there had been some Spanish interest in this idea previously, the

22. *AP*, 10 October, 86.

23. *Gibraltar Chronicle*, 8 May, 91.

Foreign Office was reported as stating that, "Joint sovereignty is not something we are considering."²⁴ In fact the British position in the meetings was largely unchanged. Mr. Major stressed that "independence is not an option for Gibraltar"²⁵ but Britain was willing to agree to better cross-border cooperation, and even to ask the EC to fund cross-border investments.²⁶ Moreover, Britain did reiterate its commitment to respect the wishes of the Gibraltarians as stated in the preamble to the 1969 Constitution.

For Spain an anomalous situation must be rectified. Since colonialism has no place in the Europe of the late twentieth century, the territory should be returned to Spain. The Spaniards have no particular interest in getting the Gibraltarians into Spain and, indeed, the Gibraltarians are not in any sense Spanish. The constitutional provision for Gibraltar within Spain would involve a high degree of autonomy which would be greater than that of any other region in Spain, since it would have to accommodate a very different judicial system, and a very different customs regime. This the Spanish government is willing to contemplate despite the fact that other regions in Spain are likely to complain. Indeed, the greater the degree of autonomy for Gibraltar in Spain the less likely it is to form a precedent for existing regions in Spain. The Spanish Government sees virtue in making Gibraltar a very special case. There is, however, in the Spanish view, no question whatsoever that the Gibraltarians, despite their origins as immigrants, will have to leave Gibraltar. Spain is concerned, above all, about the question of sovereignty, and not about turning Gibraltarians into Spaniards or refugees. On the other hand, the concern over sovereignty is real and Spain cannot contemplate any other resolution of the problem than the return of Gibraltar to Spanish sovereignty but autonomy can have many facets which need to be explored. This, after all, is what is provided for legally should British sovereignty end, and, therefore, as far as Spain is concerned, there is no

24. *The Independent*, 9 May, 91.

25. *Gibraltar Chronicle*, 8 May, 91.

26. *The Independent*, 9 May, 91.

possibility of independence for Gibraltar.²⁷ Spain thus puts the emphasis upon the interests of the Gibraltarians rather than upon their wishes, although it hopes that their wishes will coincide with their interest.

In the discussions over sovereignty in the meetings held with the British government, the Spaniards are willing to make some suggestions, although the British feel that the appropriate strategy is not to discuss sovereignty, but to develop local cooperation which will then give rise to a more propitious atmosphere for the discussion of the questions of sovereignty. Spanish thoughts on sovereignty include the idea of a transfer of sovereignty, and then a lease-back to the British authorities for a period of some 25 or 50 years. This would give the possibility for a long period of adjustment for the Gibraltarians to the notion of local autonomy within a Spanish context but with a British safeguard. It would also give time to the hinterland on the Spanish mainland, so that regional interests could be developed. Additional Spanish territory might be leased to enhance Gibraltar's economic viability.²⁸ Another idea which Spain is willing to contemplate is a limited period of co-sovereignty, for example, a period of 50 years, perhaps along the lines similar to the dual sovereignty exercised over Andorra by Spain and France.

Although the Gibraltarians are aware of these options, there appears to be no direct discussion of them. Indeed, Spain has very few direct exchanges with the Gibraltar government, even on an informal basis, on the question of sovereignty. There is, of course, much more official and informal exchange between the Gibraltar authorities and the Spanish regional authorities over questions of local cooperation. Indeed, Mr. Bossano professes to have friendlier and closer relations with the nationalists in Andalusia than his fellow socialist (and Andalusian) Prime Minister in

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

28. *El Sol*, 21 May, 91.

Madrid. The local Spaniards, for example, want to restore the ferry between Gibraltar and Algeciras, but Madrid will not do so until the airport question is resolved.

The Spaniards have little credence in the idea of the present Gibraltar constitution giving the Gibraltarians a veto over sovereignty, and they have suggested that the United Kingdom would not have to hold a referendum on any change in the position on sovereignty, but merely to consult with the Gibraltar government. Their view, fortified by the General Assembly in the 1960s as we have seen, is that the principle of territorial integrity and, therefore, restitution takes precedence over that of self-determination. This is not, however, a view which the present British government holds, nor is it one that any future British government appears likely to hold. The Spaniards think that there is movement, although hardly perceptible, on the question of sovereignty in a direction of the eventual return of Gibraltar to Spain. The Gibraltarians suspect that the Spaniards feel this, and, therefore, the Gibraltarians are adamant in making no concessions whatsoever on sovereignty, and drag their feet in implementing their own rhetoric on the need for local cooperation. One aspect of this is their adamant rejection of the airport agreement. The Gibraltarians also suspect that the British government, and in particular the Foreign and Commonwealth Office, would like to move in a direction desired by Spain despite the British government's position favouring local cooperation, but maintaining the status quo over sovereignty. The British government is committed to discussing the question of sovereignty, but not to changing it other than through the conditions expressed in the Constitution. The question, therefore, is whether the interests of Gibraltar will change, and commensurate with that, whether there will be a change in the wishes of the Gibraltarians. The British government feels that their interests may change through the development of local cooperation, but the Spaniards point out that the Gibraltarians are willing to do little other than make an agreement on the disposal of refuse. Bossano sees the interests of Gibraltar as a financial centre in a European context, and "dreams" of a European solution.

Spain is not willing to give the Gibraltarians an independent voice on the sovereignty issue, since presumably this would strengthen Gibraltar's position on seeking independence in a European context. The Spaniards, however, would like to develop more local cooperation but will not permit sea links to be established. In their analysis, the Spanish do not see Bossano as the principal problem, since he only reflects opinion in Gibraltar. They feel that Gibraltar will have to cooperate with Spain if Gibraltar is to develop. Thus, eventually, a community of interests will emerge, and political attitudes will evolve as interests change.

Spain's position on Gibraltar may be inhibited by the thought that what is sauce for the goose is sauce for the gander. In other words, Spanish policy and conduct towards Gibraltar is likely to have a bearing upon the question of Ceuta and Melilla, whether Spain wishes this to be so or not. This relationship is not one that is acknowledged by any of the parties to the questions of Gibraltar, but, equally, it is unlikely to be one that has escaped their notice.

Spain feels that Britain could act to facilitate the process of easing Gibraltar towards Spain. Britain could say what it thinks Gibraltar's future will be, and what Britain would like that future to be. Spain is concerned that Britain has not said that Gibraltar should be decolonized, and it would like Britain to admit that one day Gibraltar will return to Spain. Moreover, Spain would like the Governor to take a stronger role in promoting cooperation at the local level. It could be, however, that Spain is taking its wishes for reality. Spain's view is that if Britain took firm action then the Gibraltarians would realise that the game was up, and begin to think constructively about their future relationship in Spain. But the British government is bound by its own word to respect the wishes of the Gibraltarians, which are patently clear. The Spaniards, however, appear to think that it would be easier to change the British than to change the Gibraltarians, hence their concentration on the bilateral level, but ultimately it is the Gibraltarians and the Spaniards that have to live together in harmony, and in the last resort, the Spanish government, too, recognises

that the return of Gibraltar to Spain can only take place in conditions which reflect the wishes of the people of Gibraltar. Spain realises, too, that for reintegration to occur, it must be seen by most Gibraltarian people as being in their interest to do so. This is the underlying motive of Spanish policy. Spain will have an election in June 1993 and if the socialists fail to retain office then the whole climate on Gibraltar could change for the worse. More likely, however, is a socialist government supported by ministers from the regional parties thus putting autonomy in a prominent place on the agenda.

The range of possible options for Gibraltar must reflect not only the interests of Spain but also those of the Gibraltarians themselves and of Britain. It is, therefore, to a brief analysis of this range of options which reflect the differing interests of all three parties that we now turn, and to a process by which those parties may be able to explore the relative merits of the various options.

POSSIBLE OPTIONS

The range of possible options for the future status of Gibraltar is in theory wide, although as we shall see, it is severely circumscribed in law and in practice. The most obvious option is the continuation of the status quo which has the undoubted merit that it is something with which all three parties to the questions can accommodate themselves. For the time being none of the parties is willing to let what they consider to be the best to be the enemy of what they also consider to be a sustainable situation. Perhaps the party which gets most out of the status quo at the present time is the United Kingdom, in the sense that any likely change in the status of Gibraltar will reduce Britain's rights and privileges on the Rock. On the other hand, it will also thereby obviate a possible difficult situation, and remove an actual impediment to a full relationship with Spain. But for the time being, Britain remains sovereign, it has full use of the facilities of the Rock, particularly its military facilities, and there is little pressure on it to alter the present situation. But uncomfortable pressure on Britain could grow from either Spain, Gibraltar or the EC.

In a dispute that has lasted for virtually three centuries, it is not surprising that historical analogies come to mind, such as Andorra, in which the sovereign authorities are French and Spanish, and in which there is a great deal of local autonomy which amounts virtually to full independence. Another example is the Aland Islands. While Spain might be willing to contemplate a period of shared sovereignty, there is no indication that this would prove attractive to the Gibraltarians since it implies eventual full Spanish sovereignty.

A third option would be one of Britain opting out, as in Palestine. Then the issue would be whether the Gibraltarians could assert their independence and the principle of self-determination for colonial territories, or whether Spain would be able to reassert its legal rights under the Treaty of Utrecht as having the first option as sovereign power in Gibraltar after the ending of British sovereignty. Here, an analogy might be made with Hong Kong in that there is an acknowledgement of the principle of reversion rather than independence. However, no indication whatsoever can be found that suggests the present British government, or any likely successor, would simply opt out of its obligations in Gibraltar.

The British government has set its face firmly against any notion of full integration for overseas territories such as has been accepted by France with its overseas departments or the USA with Hawaii and Alaska. These sentiments have been reinforced by experience in the case of Northern Ireland. In the 1960s Bossano was one of those in Gibraltar who expressed an interest in the idea for the colony. However, there appears to be little likelihood that the idea will be revived.

The Spanish government has shown a willingness to explore the idea of a lease-back, that is a situation in which Britain would transfer sovereignty to Spain, but Britain would then continue to administer Gibraltar for a specified period. The beauty of this option is that it satisfies Spanish sensitivities over sovereignty while at the same time it reassures the Gibraltarians that their way of life, traditions and institutions will continue as they had under British sovereignty with due allowance being

made for an appropriate evolution to take account of changes in the environment. However, there seems to be little interest in this for the Gibraltarians, since it is quite clear that sovereignty is to be transferred to Spain by stages. On the other hand, if they became convinced that a transfer of sovereignty was highly likely, then this would be a way of assuring a long period of adjustment. Equally, if the Gibraltarians came to think that their future lay in extensive developments with the Spanish hinterland, then this option might prove appropriate. From the Spanish point of view, it would give Spain the symbol of sovereignty, if not the substance. There would also be a practical advantage in that other autonomous regions in Spain would not be able to use the Gibraltar case as a precedent, since the question of Gibraltar would be treated as *sui generis*.

It is sometimes felt that Gibraltar's evident desire for independence might be met, at least in part, by the granting of greater autonomy to the Gibraltar government. The Gibraltar government already has a great deal of autonomy. Indeed, its ability to impose its will in the airport question and the response to British urgings to be proactive over local cooperation indicate that it already has a great deal of autonomy. So does its vigorous economic and financial policy. However, full 'Dominion' status seems to be a possibility, at least in Bossano's mind.

The Charter of the United Nations contains a provision whereby colonial powers may place their colonies under the control of the Trusteeship Council. No country has yet made any use of this provision, and the Trusteeship Council now has no territories under its protection. However, it is an option that is worth bearing in mind in regard to Gibraltar. From the point of view of the Spanish government, it would mean the ending of full British sovereignty, since Britain would then have to abide by the rules of the Trusteeship Council and, in addition, there is no reason why Spain should not become a member of the United Nations Trusteeship Council of which Britain is already a member. For the Gibraltarians, however, the solution might not be as attractive, since it would entail swapping 'the devil they know' that is Britain, for one that

they do not know, namely the Trusteeship Council which would include Spain. They would be less likely, therefore, to have control over any final outcome if the Trusteeship Council were the framework in which that outcome was decided than if it was dependent upon the Westminster Parliament.

Bossano has made his preferred future status for Gibraltar clear, and in this he is supported by the overwhelming majority of the people of Gibraltar who would wish to have independence. There is no reason, in principle, why Gibraltar should not be independent and there are, of course, examples of other very small states, both in Europe and beyond. Gibraltar might in those circumstances wish to join the Commonwealth, as other micro-states have done, and also to play its role with European micro-states in the Conference on Security and Cooperation in Europe, and, since it is already covered by the European Community and NATO framework, these relations could, presumably, continue. In the management of its external relations, its position might be very analogous to that of Liechtenstein with Switzerland. Already, Gibraltar's future seems to involve offshore banking and the like, as is the case with Liechtenstein, and it could join a monetary union with either Britain, Spain, or, indeed, adopt the ecu as its monetary unit. Its diplomatic relations could be handled by one country as is the case of Liechtenstein, whose relations are handled by Switzerland. However, in this case, that country might be Britain or, possibly, Spain. This suggests that Gibraltar's independence might be the subject of an international treaty, rather like that of Austria or Switzerland, in which the guarantors could include international organisations such as the United Nations, the European Community, the Council of Europe, the Commonwealth and Western European Union, as well as individual countries such as Spain and Britain. The real stumbling block here, however, is Spain, since the Spanish government stands by its existing Treaty rights of first refusal of Gibraltar sovereignty should Britain relinquish that sovereignty. Spain, for the moment, is not willing to contemplate Gibraltar becoming a sort of Monaco, San Marino or Liechtenstein. Spanish ideas of autonomy for

Gibraltar suggest more the model of the Isle of Man or the Channel Islands within a Spanish framework.

Bossano, fully cognisant of Spain's views on the possibility of independence for Gibraltar, has dreamed of a European future for the territory. The precedent of the Saar has been mentioned above. The Europeanisation of Gibraltar might be seen by Spain to have the attraction that at least it dispenses with British sovereignty. Moreover, at a time when Spain is anxious to establish its European credentials, a decision by Spain to agree to Europeanisation of the colony in some form could lead to a situation more palatable than that presently pertaining. Since the Gibraltarians might well agree to this, Britain is hardly likely to refuse, particularly if the Europeanisation process involves the Community, the Council of Europe and WEU, to which Britain belongs, and in which Britain, like Spain, plays a major role. The European option is not the only one which has a potentiality for movement towards resolution of differences over the future of Gibraltar, but it is one that has, if not more promise, then fewer drawbacks than some of the options discussed above.

However, the process of European integration also has its impact upon the evolution of the Gibraltar questions as we have already seen over the dispute concerning the liberalisation and the European External Frontiers Convention. Spain has refused to sign legislation since it believes that the wording of the EC regulation implies that Gibraltar airport is on British territory. Spain will not accept Gibraltar as an 'external frontier' despite Britain's responsibilities for Gibraltar's external relations thus preventing the standardisation of immigration rules and move towards a single EC visa notwithstanding agreement on harmonisation of rights to asylum. The Spanish Foreign Minister was adamant: "If a solution is not found, the Community will not have a frontiers treaty, even if 11 countries sign it"²⁹ European integration can, therefore, envenom as well as ameliorate conflicts. That it may achieve the latter rather than the former is, in part, a function of process and it is to that question that we now turn.

29. *The Independent*, 3 May, 91.

Enlarging the process

The present process of discourse over the question of Gibraltar leaves much to be desired. If the aim is to resolve the question of Gibraltar, then it is necessary to include all those parties who are relevant to that resolution, whatever their present status. By a resolution of the question is meant a situation in which, with full information at their disposal, all those parties who feel that they have an interest in the question are fully satisfied that their interests are protected, and they are not subject to any coercion, either manifest or structural. Thus there is a new set of self-sustaining relationships acceptable to all, according to their own lights. No such resolution can occur unless all those who have the ability to sabotage it are included. Clearly, then, the people of Gibraltar must participate in a full manner in any resolution of the question of Gibraltar. At present they do not so participate because their government feels that the Anglo-Spanish "Brussels" framework of official meetings is one which, for them, is not fully participatory, nor does it respect their sense of identity. It is more this lack of participation and respect for their identity which causes the blockage than the formal question of sovereignty or the issue of the airport. At the local level, the Gibraltarians appear to be dragging their feet because they see any proposal for local cooperation as having a potential for undermining the pristine purity of their present position on sovereignty. Thus the talks between Britain and Spain are rather like watching Hamlet without the Prince of Denmark.

Even if the Gibraltar government was to join the Brussels framework, the process would still lack an element conducive to the resolution of a difficult question, namely that of a facilitating third party. Otherwise the propensity to pettiness endemic in such situations could get out of control.³⁰ The present structure is largely satisfactory in terms of procuring and sustaining a settlement of the question, but it is a settlement which

30. For examples of such pettiness see Mr. Bossano's treatment of Mr. Gonzalez as a "colonist" with "echoes of Franco" (*The Observer*, 12 May, 91) and Spain's engineering of Gibraltar's exclusion from the Olympic Movement and other international sporting bodies (*The Mail*, 16 May, 91).

differs from a resolution since at least two of the parties, namely Gibraltar and Spain, are not satisfied fully with the existing arrangements. In order to move from the present situation of settlement to one of resolution, new procedures are necessary. They can be both formal and informal involving politicians, officials, academics and individuals with ties in many aspects of the community.

The purpose of such a process would not be to impose values upon the parties, nor to make a judgement about the moral or political worth of the position of any of the parties. Still less would it be to impose a detailed plan. Rather it is to create a framework in which the existing parties to the question could examine all aspects of the question in a framework of mutual exploration starting from an examination of what they have in common rather than from a position of what appears to divide them. It is, therefore, a joint examination of individual difficulties, hopes and fears. Thus, the assuaging of the fears of the Gibraltarians or the fulfilment of the hopes of the Spaniards are the subject for joint investigation, since unless the fears of the Gibraltarians can be assuaged, there is little possibility that the hopes of the Spaniards will be realised. In this process the role of a supportive panel of facilitators can be crucial.

In a situation as long-standing and, on occasion, as bitter as has been that surrounding the question of Gibraltar, the question of historical claims, rights and justifications is important, but it is equally important not to let the past determine the future, for if it does, the future will be no better than the past. But the past must be acknowledged and, in a sense, the parties to the question released from the past. This can best be done when each party acknowledges the fears and the aspirations of the other. It does not have to say that they are reasonable, but merely to acknowledge that they are real and not artificially contrived. Thus the sense of hurt or of hope can itself be a subject for exploration and this exploration often serves to release the parties from being encapsulated in their past positions. Such a process can also enable them to escape from entrapment in their current policies. For example, Bossano is clearly entrapped in his position over the airport, and

in the long run this is likely to prove dysfunctional for the people of Gibraltar. It is difficult for any democratic leader to admit errors for the cost of this may be great in electoral terms, and thus leaders find it difficult to change policy.

The present framework is not one which is likely to encourage such a process. It is, therefore, relevant to ask whether, in addition to the track of formal diplomacy, a second track approach might be contemplated whereby individuals who speak, perhaps for themselves, but with a full understanding of and, indeed, the 'blessing' of their respective parties, join with a group of facilitators to explore the question of Gibraltar with the aim not merely of ameliorating the present settlement of the question, but of arriving at its resolution. The international community of scholars might well consider being more proactive in such a way, for Gibraltar is a conflict waiting for resolution.

A FINAL REFLECTION

In the introduction to this article a warning was sounded that the conflict in Gibraltar remains a potential hot spot. On the other hand, there is evidence that a major crisis over Gibraltar is not very probable. Yet, anyone writing about the Falklands in the late 1970s might have made a similar comment. It behooves us, therefore, to bear in mind that the Gibraltarians are obdurate and Spain is determined. Both are subject to the pressures of uncertainty about their long term viability. There is a conflict that is stalemated rather than resolved. A colony in Europe, unless possibly it is a 'European' that is Community colony or territory, is an anachronism not to be venerated, but to be changed. Until Gibraltar's situation is deemed acceptable to both the Gibraltarians and Spain its long term future is not viable. But Spain also has to bear in mind its long term viability. It is not just a question of the future of the North African enclaves but of the Basque country although a *modus vivendi* has been found in Catalonia. While what happens over Gibraltar may not set a precedent elsewhere in Spain, it is likely to affect aspirations and policies in various parts of the country. Moreover, the British are sneaking away.

In such a situation the parties are not talking to one another: the exchanges that do take place are about sovereignty and only between Britain and Spain with Gibraltar being absent. The reason for Gibraltar's absence, whether acknowledged or not, is precisely because the problem is not, in essence, about sovereignty, it is about identity. The identity of the people of Gibraltar is being denied and their realisation that this is so only strengthens their sense of identity. The denial of the identity of the Gibraltarian people is direct by the Spaniards, but Gibraltar's identity is not really accepted by the British either. Although sovereignty is related to identity, sovereignty is not the real issue. If the identity of the people of Gibraltar is recognised as being Gibraltarian - by themselves, by Spain and by Britain - then the question of the future of Gibraltar will look very different. It would be relatively easy to devise a wide range of frameworks in which the identity of the people of Gibraltar could be recognised, whether within Spain, whether through independence or whether in the context of Europe. To deny the identity of a people is to deny their very humanity and those whose humanity is denied have no reason to act in a manner which other would deem to be reasonable.

Identity politics is alive and well in contemporary Europe and is giving rise to organised violence in Spain, in Britain as well as in eastern Europe. The Gibraltar problem is, therefore, not an isolated one, it is part of a general challenge to our conventional wisdom and perceived ideas on the nature of the state, sovereignty and independence. Perhaps the case of Gibraltar, precisely because it is not envenomed at the moment, even if it is protracted, may be one in which the parties can begin to feel their way towards a new conception of appropriate frameworks for a Europe where identity groups are one of the basic and most potent political units. It is a challenge to the fecund minds of Spaniard and Gibraltarian alike, and to those who also have a political responsibility in the situation. It is also a challenge to the academic to analyse and to third parties to facilitate. If the conflict in Gibraltar can be resolved to the satisfaction of all the parties it may begin a learning curve towards the resolution of other, more violent, but no less protracted conflicts elsewhere in Europe and beyond.