# Gibraltar at the United Nations: caught between a Treaty, the Charter and the 'fundamentalism' of the Special Committee

## Introduction

Since 1945 when the 'Declaration regarding non-self governing territories' was promulgated as Chapter 11, Articles 73 and 74[1] of the United Nations Charter, over eighty former colonial territories have been decolonized. Of these over seventy have occurred since 1960, when the UN adopted Resolution 1514 (XV), the 'Declaration on the granting of independence to colonial countries and peoples'.[2] Only sixteen non-self-governing territories remain on the UN list of territories awaiting decolonization under the supervision of the UN Special Committee on Decolonization, established in 1962.[3] Of these sixteen territories, fourteen are islands and the remaining two – Gibraltar and Western Sahara - have for different reasons proved to be amongst the most problematic.

Gibraltar's situation relating to decolonization is complicated by three factors. First, although Britain seized Gibraltar in 1704 during the Spanish Wars of Succession and it was awarded in perpetuity to Britain under Article X of the Treaty of Utrecht signed in 1713, Spain has always maintained its claim to the restoration of its sovereignty over the territory; it is therefore a contested territory and the UN has been constrained to take this into account when considering the decolonization process. Second, the Treaty contains a reversionary clause indicating that if Britain should ever decide to relinquish the sovereignty of Gibraltar, Spain would be entitled to reclaim it before any other option were considered; both Britain and Spain accept that this means ruling out independence for Gibraltar for as long as Spain retains its claim (although this view is not universally shared).[4] Third, the isthmus that joins the town and the Rock of Gibraltar to the Iberian Peninsula, and on which the airport has been constructed, is not covered by the Treaty of Utrecht[5] and its sovereignty is therefore the subject of a separate dispute between Britain and Spain. Whatever arguments Britain and Gibraltar might put forward regarding the legitimacy of the Britishness of the Rock, they must adduce different arguments in international law in relation to the isthmus.[6]

Despite these restricting factors, Britain and Gibraltar claim that they have now reached a constitutional relationship that justifies the de-listing of Gibraltar as a colony but without the granting of independence. Neither Spain nor the UN accepts this claim. This article examines the principles of self-determination and territorial integrity adopted by the UN in consideration of the issue of decolonization as they have been applied to Gibraltar and the consequences for the parties concerned. With the fiftieth anniversary of the 1960 resolution on the horizon and the recent adoption by Gibraltar of what it considers to be a non-colonial constitution, the article suggests that it is timely for the UN to consider taking a more flexible approach to Gibraltar's status that would put to one side Spain's long-standing claim to sovereignty but allow Gibraltar to be removed from the UN list of territories awaiting decolonization.

## Resolution 1514 (XV): Self-determination and territorial integrity

The 1945 'Declaration regarding non-self governing territories' provides the basis for the way in which the international community viewed colonial territories after WWII. The emphasis, in addition to the development of self-government, was on the interests (described as 'paramount') and the well-being of the inhabitants. During the 1950s there was a growing sense at the UN, particularly by newly independent states, that the rate of decolonization was too slow and that in some cases the interests of the inhabitants were being ignored. This resulted in Resolution 1514 (XV) approved by the General Assembly on 14 December 1960.

Amongst other things this resolution established two important principles that were to be applied when territories were under consideration for decolonization: self-determination and territorial integrity.[7] In a spirit adopted by the UN that Dunnett refers to as the 'Salt Water Fallacy' ("the doctrine that to control territory from which you are separated by salt water is wrong; otherwise it is all right"),[8] the 1960 resolution argued that "all peoples have the right to self-determination" (in 1945 this had only been a vague principle). It also referred to the fact that "all peoples have an inalienable right to complete freedom, the exercise of their

sovereignty and the integrity of their national territory."[9] Gibraltar has always maintained that the first of these principles should be seen as paramount, even though there might be obstacles that prevent it from seeking full independence, whereas Spain has used the phrase 'the integrity of their national territory' to argue its case for the return of the sovereignty of Gibraltar.

Spain has sought support for its argument from paragraph 6 of Resolution 1514 which states: "Any attempt at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations." A more logical interpretation of this paragraph is that the UN would not endorse the break-up of a nation through the secession of individual parts of it unless there was an internationally accepted agreement between the parties concerned. This interpretation could be helpful to Spain in the sense that separatists in regions like Catalonia and the Basque Country would not receive UN support for any attempt to secede. However, even though the paragraph refers to "any *attempt*" to disrupt the unity or territorial integrity of a country (implying a future action rather than a past one)[10], Spain has used the paragraph to argue on a regular basis for the retrospective restoration of its territorial integrity which, according to Spanish representatives at the UN, was damaged by the loss of Gibraltar to Britain when it was converted to a military base and the inhabitants were expelled.[11] By the same token, Spain rejects the notion that the interests of the inhabitants of Gibraltar are paramount because its interpretation of Article 73 of the UN Charter is that the reference to "the inhabitants of these territories" was to "indigenous populations who had their roots in the territory", and this does not apply to the present inhabitants of Gibraltar.[12] If that were the correct interpretation, many other countries would not have been decolonized, and Britain argued that Gibraltar's population had been there long enough to establish their own rights to the territory.[13] Such a contention is supported by Lalonde[14] who argues that to maintain that non-indigenous residents do not constitute 'a people' entitled to benefit from the self-determination principle is an approach that "appears to have little merit when the 'imported'

inhabitants have occupied the territory for centuries. Historical claims vindicated on such an interpretation of the self-determination principle would have a serious destabilizing effect."[15]

In addition to the territorial integrity of independent countries, Resolution 1514 also refers to respect for the integrity of the territory of dependent peoples. In Gibraltar's case this could be seen to strengthen the argument for the territory of the town and the isthmus to be considered integrally, given that Britain claims "exclusive British jurisdiction since at least 1838" for the whole of the territory[16] and can claim to have occupied the southern part of the isthmus since at least 1854 when barracks, guard-posts, sentry boxes and wooden huts were built for sufferers from an outbreak of yellow fever.[17]

Resolution 1541 (XV)

UN Resolution 1514 was followed a day later by Resolution 1541, 'Principles which should guide members in determining whether or not an obligation exists to transfer the information called for under Article 73e of the Charter'.[18] Its annex contains twelve Principles, the most important of which is Principle VI which sets out the means by which "a Non-Self-Governing Territory can be said to have reached a full measure of self-government" (in other words can be deemed to have been decolonized). The acceptable means are: emergence as a sovereign independent State (seen to be impracticable for Gibraltar given the reversionary clause in the Treaty of Utrecht), free association with an independent State (which could later lead to that territory's independence[19] and could therefore be seen as contravening the Treaty), or integration with an independent State (Gibraltarians would opt to integrate with Britain, but in Gibraltar this is generally viewed as potentially destabilizing economically since Gibraltar's interests would be overshadowed by that of other regions; in any case this option had been ruled out by Britain).

What emerges from the discussions that have taken place at the UN on the question of Gibraltar over the past forty years is that it has been left to Britain and Spain to resolve the differences between them and then find a way of achieving the decolonization of the territory. Not surprisingly Spanish and British (and from 1992 Gibraltarian) representatives at

the UN have always taken conflicting positions whenever the topic has been discussed. With the repetition of the same arguments over time and in a context (since the 1984 Brussels Declaration) of a bilateral framework of formal discussions, the debates have at least become somewhat less hostile than they were in the highly confrontational days of the 1960s.

1963 – 1974: The hostile period

It was clear from the early days of Spain's attempt to resolve the dispute over Gibraltar via the UN route that General Franco expected immediate action and when that did not happen he used UN sympathies for Spain's position to make Britain appear to be responsible in order to justify a blockade. The dispute was first brought to the UN Special Committee by Spain in 1963, although the first Committee discussion on it did not occur until 16 October the following year. At the end of the session the Committee noted that there was "a disagreement or a dispute between the UK and Spain regarding the status and the situation of Gibraltar,"[20] and it called upon the two sides to negotiate.[21] However, Britain's representative objected, arguing that "the Committee had exceeded its terms of reference since it was not competent to consider or discuss any dispute concerning sovereignty or territorial claims nor to make recommendations concerning a dispute."[22] He stated that the British Government would not discuss with Spain the question of sovereignty over Gibraltar. At a plenary meeting of the General Assembly the Spanish representative threatened that unless Britain agreed to negotiate "Spain would find itself compelled to revise, in defence of its interests, its policy in relation to Gibraltar"[23].

In August 1964 the British Government had introduced constitutional changes into Gibraltar that gave the territory a greater degree of internal self-government. Arguably Britain was doing no more than the UN would have asked of any administering colonial power following the 1960 resolution. In response Spain immediately implemented restrictions at the border. The economic effects on the Rock were significant and prompted steps to be taken

during the spring of 1965 to increase Gibraltar's self-sufficiency in case Spain carried out its threat – as it was to do four years later – to close the border completely.

Although exchanges of diplomatic notes took place between November 1964 and March 1965 and four sessions of fractious bilateral talks were held in London between May and October 1966, there was no rapprochement of the views held by the two sides. As an illustration of the distance between them, at the Special Committee in November 1966 Spain accused Britain of "an act of aggression" by claiming to hold sovereign authority over part of the isthmus.[24] Britain made the first of many subsequent proposals to test the validity of the respective claims to sovereignty at the International Court of Justice (ICJ),[25] but Spain gave the first of its refusals on the grounds that consideration of legal titles to the territory was not relevant to decolonization, a point that Britain entirely rejected.[26] In December 1966 the General Assembly passed Resolution 2231 which called upon Britain and Spain to "continue the present negotiations" and on Britain "to expedite, without any hindrance and in consultation with the Government of Spain, the decolonization of Gibraltar."[27] In March 1967, in compliance with the UN resolutions, Britain proposed that talks should start on 18 April. However, these were called off by Britain when, on 12 April, Spain, claiming persistent violations of its airspace, introduced a ban on all flights by foreign aircraft in an area contiguous to Gibraltar. When Britain called for negotiations on the ban, Spain responded by calling for talks on the decolonization question.

Although talks did resume on 5 June, they broke down three days later when Britain, having failed to persuade Spain to discuss the particular technical issue of aerial restrictions, took the dispute to the International Civil Aviation Authority, but they were unable to resolve a problem which was essentially a political one. This was quickly followed by an announcement on 14 June in the House of Commons that a referendum would be held on 10 September inviting Gibraltarians to choose between continued association with Britain and Spanish sovereignty.[28] Not surprisingly, this drew strong objections from Spain, which argued that the referendum violated UN General Assembly resolutions by being held without consultation with Spain, and also that it contravened the Treaty of Utrecht.[29] The UN Special

Committee passed a resolution on 1 September (before the holding of the referendum) in support of Spain's objections and called upon Britain and Spain to negotiate directly.[30] However, Britain and Gibraltar denounced the UN Committee's resolution as a wholly partisan document and went ahead with the referendum on 10 September. The result was about as decisive as it could be without being unanimous: all but 44 of the 95 percent of registered voters who cast their ballot opted for continuing association with Britain.

Before the result was announced, Spain had already requested the resumption of talks on 6 September 1967. However, when Britain agreed and proposed that they be held towards the end of November, Spain replied that Britain would first have to invalidate the referendum, which it refused to do. On 19 December 1967 the UN General Assembly passed Resolution 2353 (XXII),[31] which regretted the interruption of talks on Gibraltar, described the referendum as a contravention of 1966 Assembly Resolution 2231 (XXI) (which required consultation with Spain, who would surely have objected) and of the one passed by the Special Committee on 1 September 1967, and called upon Spain and Britain to resume talks.

The wording of the resolution was the first on Gibraltar to highlight the conflict between the two principles of self-determination and territorial integrity. For the first time in a debate on Gibraltar the General Assembly resolution came out in favour of the principle of territorial integrity over self-determination, by arguing that "any colonial situation which partially or completely destroys the national unity and territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations, and specifically with paragraph 6 of General Assembly Resolution 1514 (XV)." The reasons why this argument held sway are various but not clear-cut. Rigo Sureda suggests that it stems from the background, going back to 1945, to the precedents of this Resolution, together with the drafting of the Resolution itself, when several states were concerned to ensure that in the case of contested territories the principle of self-determination could not (as a Guatemalan amendment proposed) "impair the right of territorial integrity of any state or its right to the recovery of territory."[32] Pomerance suggests that it was due to suspicion over the

'indigenous' credentials of the population of Gibraltar,[33] together with the size of both the territory and the population.[34] However, it may also have been the case that the UN was defending its authority because the holding of the referendum was seen to have flouted earlier resolutions. Dunnett suggests that majority support for Spain might even have been unintentional: "It is not clear that even the majority in the General Assembly who voted in a pro-Spanish sense recommending negotiations intended to endorse this Spanish position."[35] In any event it is interesting to note that in both the debate on the Special Committee resolution in September and the General Assembly resolution in December a number of representatives argued that the reference to Spain's territorial integrity was inappropriate and did not reflect the intentions of Resolution 1514.[36] Fawcett fully agreed with them, arguing that territorial integrity was not relevant to the case: "Paragraph 6 can have no operation in the case of Gibraltar in favour either of Spain or of the United Kingdom."[37]

British and Gibraltarian reaction to Resolution 2353 was predictably strong. The permanent representative, Lord Caradon, described it as "unworthy of the UN and a disgrace to the [Fourth] Committee," while Gibraltar's Chief Minister complained that "abuse of fact, distortion and deliberate lies have won the day."[38] Nevertheless talks were resumed in Madrid on 18 March 1968, although two days later they broke down because Spain insisted that they be based exclusively on UN Resolution 2353 (XXII).[39] On 5 May, as a result of what Spain described as "Britain's refusal to comply with the UN Resolution,"[40] Spain closed the land frontier to all traffic (including pedestrians) except for permanent residents and those Spaniards with permits to work on the Rock. On 7 May an emergency debate was held in the House of Commons, during which the UN Resolution was described as "contemptible" and "disgraceful".[41]

British reaction to Spain's attitude hardened. Constitutional talks that were held in July 1968 between Britain and Gibraltar (and which led to the 1969 Constitution) were condemned by Spain in a statement issued on 24 July 1968 that was sent to the UN Secretary General. It argued that the measures constituted a gratuitously unfriendly act towards Spain, a defiance of the United Nations and a further obstacle to achieving a

solution to Gibraltar's future.[42] When Gibraltar came back on to the UN agenda in December 1968, Britain's delegation pointed out that UN resolutions were recommendations, not binding decisions, and that "however large the majorities for resolutions approved by the Assembly or other bodies, the United Kingdom regarded its obligation under Article 73 as overriding."[43] The Spanish representative, with support from others, gained sympathy for its argument that Spain's interest was in regaining the sovereignty of the territory and that the inhabitants' way of life would be protected. The outcome was the adoption of the most strongly worded resolution thus far proposed. Resolution 2429 (XXIII) declared the colonial situation in Gibraltar to be incompatible with the UN Charter and with previous Assembly resolutions, called upon Britain to terminate the colonial situation in Gibraltar by 1 October 1969, and called upon the British and Spanish Governments to begin negotiations without delay.[44] Lord Caradon, for the British Government, told the Assembly that the resolution will not and cannot be put into effect.[45]

When the new Gibraltar Constitution was promulgated by an Order in Council in May 1969, the Spanish Government described it as an open disregard by Britain of UN resolutions and as a violation of Article X of the Treaty of Utrecht. It was at a meeting of the Spanish Cabinet on 6 June that the decision was taken to carry out the threat made over four years earlier to cut Gibraltar off from the mainland.[46] Two days later, Gibraltar's 16-year period of physical and psychological isolation from Spain began.

Perhaps surprisingly there were no further debates in the UN General Assembly on Gibraltar until 1974. In October 1970 the Spanish Minister for Foreign Affairs made a statement at a plenary session, indicating his government's willingness to negotiate over Gibraltar in order to integrate "with its homeland a territory that no Spaniard could ever renounce."[47] There was also another event of significance at the UN in 1970 which, although it has not changed the status quo as far as Gibraltar is concerned, has more recently been prayed in aid.

As part of the twenty-fifth anniversary commemoration of the United Nations, on 24 October 1970 the General Assembly adopted Resolution 2625 (XXV) which was to approve

the 'Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.'[48] Although the resolution was principally concerned with asserting the kind of behaviour that all states should adopt towards other states, paragraph 4 contains a reference to bringing "a speedy end to colonialism" and the proposal that, as a means of upholding the principle of self-determination, colonial peoples could express their will not only to become an independent state, or join an existing state by free association or integration (the three recognised means of achieving decolonization according to Principle VI of Resolution 1541 of 1960), but now they could also opt for "the emergence into any other political status freely determined by a people."[49] Moreover, the text made it clear that any peoples denied the opportunity to exercise their right to self-determination were entitled to expect support from the UN:

> Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.[50]

It is likely that the drafters of the text had in mind the notion of protecting the will of the colonised people from the administering power, but in the case of Gibraltar it could well have applied to protecting the inhabitants from Spanish objections. Perhaps significantly, the draft resolution did not come from the Fourth Committee (responsible for decolonization), but from the Sixth Committee, which was set up in 1965 as the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States. Paragraph 4 of Resolution 2625 has since been cited as offering a fourth route to decolonized status.

UN sessions in 1971 and 1972 merely postponed consideration of the Gibraltar issue until the following year. In July 1973 the new Foreign Minister Laureano López Rodó

informed the UN Secretary General, Dr Kurt Waldheim, that discussions had been suspended because of "the obstinate attitude of the British Government", which in four-and-a-half years has "not made the slightest effort to comply" with UN resolutions.[51] On 26 November Spain renewed its call to the UN Special Committee for a British withdrawal from Gibraltar[52] and the consensus recommended by this Committee was adopted by the Fourth Committee of the General Assembly.[53]

Britain responded to the UN consensus by proposing exploratory and non-committal talks in Madrid that were held at the end of May 1974, but no decisions were taken and no date was set for a subsequent meeting. At the General Assembly on 3 October, Spain's Foreign Minister accused Britain of being "obstinate, rigid and selfish" in refusing to negotiate.[54] Resolution 3286 (XXIX) passed by the UN General Assembly on 13 December 1974 regretted the fact that the negotiations called for a year earlier "have not yet been effectively started" and called for them to do so without delay.[55] That was the last occasion on which the General Assembly passed a resolution on Gibraltar, although there have been annual Assembly 'decisions' since that time based on the consensus of the Fourth Committee. Having decided that the best solution was for the two member states to seek to resolve their differences through negotiation, the UN General Assembly saw (and sees) no further role for itself until they have done so. It left the Special Committee to monitor progress via annual reports from Britain under Article 73e of the UN Charter and to report these to the UN Fourth Committee.

1974-2006

Bipartite discussions between Spanish and British government representatives on the Gibraltar issue took place sporadically during the rest of the 1970s but without involving the UN. It was a period when, with the transition to democracy in Spain following the death of General Franco in 1975, a different approach to the Gibraltar issue might have been forthcoming. Discussions focused on practical issues such as telecommunications, pensions

for former workers from Spain or restrictions on the use of Spanish airspace. On the central issues of sovereignty, however, the position of democratic Spain remained unchanged.

In November 1980 the UN General Assembly noted that the two governments had signed the Lisbon Agreement the previous April with the intention of resolving the Gibraltar problem,[56] thus putting on a formal footing the negotiations that the UN had been calling for since 1964. The apparent willingness by Britain to discuss the issue was primarily to do with Spain's successful application to join the European Community (as it then was). Following Spain's entry in 1986 this would require free movement across internal EC borders (Gibraltar had joined with Britain in 1973) and therefore some action was needed in order to bring about the opening of the Spanish border with Gibraltar. However, in the ensuing months Spain was more preoccupied with the debate on its possible membership of NATO and then in April 1982 there followed the Argentinian invasion of the Falklands/Malvinas. With Spain abstaining in the UN Security Council vote on Resolution 502 calling for an immediate withdrawal by Argentina,[57] Anglo-Spanish relations inevitably took a turn for the worse and further negotiations on the Lisbon accord were postponed by mutual agreement.

A commitment to formal talks was eventually made in November 1984, with the Lisbon agreement replaced by the Brussels Declaration, which went further by including an explicit commitment to discuss issues of sovereignty.[58] The UN General Assembly welcomed "the fact that both Governments agreed on 27 November 1984 at Brussels, in a joint statement, to apply by not later than 15 February 1985 the Lisbon Declaration in all its parts."[59] UN Decision 42/418 of 1987 expressed the hope that the Brussels statement would provide the "definitive solution to the problem of Gibraltar in the light of relevant resolutions of the General Assembly and in the spirit of the Charter of the United Nations."[60] Thereafter the UN General Assembly Decisions have continued to reiterate the same sentiments.

One further point to note is that since 1992 the Chief Minister of Gibraltar has been invited to address the Special Committee on Decolonization[61] and in 1993 the Chief Minister was allowed to address the Fourth Committee for the first time since 1967.[62] Since 1996 both Gibraltar's Chief Minister and the Leader of the Opposition, as well as the

representative from Spain, have been annual contributors to sessions of the Special Committee and the General Assembly Fourth Committee, but the earlier decisions of the Committees have remained unchanged.

Gibraltar is clearly frustrated by the fact that the UN General Assembly resolutions or decisions on Gibraltar have consistently omitted any reference to the Gibraltarians right to self-determination.[63] That frustration is compounded by the United Nation's regular call upon Britain and Spain to settle the issue of Gibraltar through bilateral negotiation, but without stating the UN position with regard to the Gibraltarians' own views. Even after the establishment in 2004 of the tripartite Forum of Dialogue, in which Gibraltar has its own voice for the first time in discussions with Britain and Spain over its future,[64] UN decisions continue to refer to the Brussels agreement as the main forum for negotiation, although they have acknowledged the establishment and progress of the tripartite Forum of Dialogue "separate from the Brussels Process."[65] This harking back to Brussels means that the UN supports the contentious argument that only Britain and Spain can discuss the question of Gibraltar's sovereignty, even though no bilateral meeting has been held as part of the Brussels Process since 2002 and none is likely to be held for the foreseeable future.[66]

2006 Constitution

Like a number of other former colonies (albeit for different reasons) Gibraltar has not sought independence[67] and argues that it does not seek it, although whether it would do so if the Treaty of Utrecht did not exist or were set aside is unknown. Nevertheless Britain and Gibraltar both consider that since the introduction of Gibraltar's new Constitution in 2006 the relationship between them is no longer colonial and they have requested without success that Gibraltar be removed from the UN list of non-self-governing territories.[68]

It was evident that the Constitution contained nothing that could affect issues of sovereignty and therefore nothing to which Spain could object. The Spanish Minister for Foreign Affairs, Miguel Angel Moratinos, was able to express his satisfaction that the Constitution safeguarded Spain's position; as far as he was concerned, Gibraltar's colonial

status remained intact and the issue of sovereignty under Utrecht remained unchanged.[69] The term ‘colonial’ was, however, one that both Britain and Gibraltar no longer accepted as appropriate for Gibraltar (or for any other remaining British non-self-governing territory). Consequently, following exchanges of letters between London and Madrid on 28 March 2006 about the constitutional settlement,[70] Jack Straw wrote to Moratinos on 31 March to suggest that the term “‘colonial’ is misleading and anachronistic” and that ‘a modern and mature' relationship between the UK and Gibraltar,” which is what the new Constitution is designed to achieve, is not a description “that would apply to any relationship based on colonialism.”[71]

The referendum on the Constitution was held on 30 November 2006. With an explicit link to the all-important concept of self-determination the question put was: “In exercise of your right to self-determination, do you approve and accept the proposed new Constitution for Gibraltar?” The result was that 60 percent voted in favour, 38 percent against, with 2 percent spoilt papers, on a turnout of just over 60 percent. Following the referendum the new Constitution was given effect by an Order-in-Council on 14 December 2006 and came into force on 2 January 2007.

There was no expectation that the new Constitution would result in the UN removing Gibraltar from its list of territories awaiting decolonization (although Chief Minister Caruana did forcefully argue the case in his annual address to the UN Special Committee on 6 June 2006)[72] because the constitutional status of Gibraltar did not meet the standard UN criteria for delisting (either through independence or free association or integration with the former administering power, with the latter having no reserve powers to legislate). The issue of reserve powers was the very case made by the Spanish ambassador to the UN Special Committee in October 2006[73] and repeated by the Spanish representative at a UN seminar in Grenada in May 2007.[74] The Spanish argument was that through the person of the Governor Britain continued to exercise power as an administering authority. Gibraltar countered that Spain misunderstood the role of the Governor, who acted on behalf of the Queen as Queen of Gibraltar, not on her behalf as Queen of the United Kingdom or on

behalf of the UK Government. However, this distinction, perhaps not surprisingly, was not seen as persuasive by the UN Committee.[75]

In any case Britain and Gibraltar claimed that although the UN delisting criteria were now out-of-date, neither Government was exercised any longer about whether the territory was either decolonized or delisted by the UN. The important consideration from their perspective was that in their own eyes their legal relationship would no longer be a colonial one under the new Constitution, and this *de facto* constituted decolonization as far as they were concerned.[76] For its part Spain was content that the international community, as represented by the UN, continued to view Gibraltar as a territory awaiting decolonization on the basis of bilateral negotiations between Britain and Spain.

After some vacillation the British Government agreed that the referendum on the Constitution would represent the exercise of the right of self-determination under the UN Charter and Geoff Hoon, the Minster with responsibility for Europe, made a statement to that effect in the House of Commons on 4 July 2006.[77] For Spanish consumption Britain repeated its acknowledgement in the constitutional 'Despatch' that even with the exercise of Gibraltar's right to self-determination, its right to independence was constrained by the Treaty of Utrecht.[78] This acknowledgement was regularly stated and Gibraltar, with equal regularity, indicated that it did not accept that it was so constrained but that the constraint was irrelevant, since it did not seek independence. Spain dismissed the reference to 'self-determination' as "an internal matter that does not affect the Spanish position or Gibraltar's international position" (*Gibraltar Chronicle*, 2 November 2006). It was clearly important from Spain's point of view to insist on Gibraltar's ongoing colonial status in order to protect the currency – especially within the forum of the UN - of its claim to the sovereignty of the territory.

## Conclusion

It is evident that the drafting of the early UN resolutions on decolonization were not as precise in their wording as subsequent differing interpretations have indicated that they

could or should have been. Studies such as those by Pomerance, Hannum, Cassese, Quane and Buchanan have elaborated upon the consequences of the imprecise definition of the term 'self-determination', including issues not considered here such as the involvement in and the nature of the self-determination consultation exercise and the application of it to secession. In Gibraltar's particular case, it is clear that a failure to specify how the term 'territorial integrity' should be applied and what its precise relationship should be to the principle of self-determination have been largely responsible for countless hours of sterile discussion in the fora of the UN for over forty years.

The crucial UN decision with reference to Gibraltar was the adoption of Resolution 2353 in December 1967 which gave primacy to Spain's claim to the restoration of its territorial integrity over Gibraltar's claim to the right to self-determination. Given the general international mood in the 1960s against continuing colonialism and in favour of 'liberation' it might have been expected that the opposite view would have prevailed. It may be that, in addition to the reasons suggested earlier, cartographically Gibraltar appears to be a colonial enclave that 'belongs' to Spain and its return would indeed restore Spain's 'wholeness'. Rigo Sureda supports this view: the limitations to the right of self-determination in Gibraltar and other similar territories arise from the fact that they are "territorial enclaves" and the claiming states are "territorially contiguous and former sovereigns".[79] This is in spite of the fact that, as the Chief Minister put it to the UN Fourth Committee in 1997:

> Gibraltar is not part of Spain. It has not been part of Spain since Spain alienated it forever to Great Britain by Treaty 284 years ago. Accordingly the established principle that self-determination is not available to the people of a territory that is actually an integral part of a Member State clearly has no application to Gibraltar. In our case the exercise of self-determination cannot disintegrate Spain for the reason that Gibraltar is not integrated in Spain.[80]

Spain has the support of the UN for its position of insisting on dialogue with Britain that goes back not just to 1984 but to 1964. It can rely on the fact that the UN does not wish to move away from its established neutral position; hence earlier resolutions calling for a bilateral

solution are regularly reiterated in New York. The view of Spanish representatives is that the violation of its territorial integrity not only outweighs the right to self-determination but excludes it.[81] The UN continues to accept the Spanish case and the argument that Gibraltar's only options are to remain a colony or be decolonized as part of Spain. This is despite the fact that the International Court of Justice "has consistently ruled in favour of the self-determination principle in situations in which historical claims were also asserted."[82] But it is also the case, elaborated upon by Blay,[83] that the UN makes exceptions to the primacy of self-determination in the colonial context in the cases of 'plantations' (ie territories "predominantly populated by citizens or subjects of the colonial power who settled in the colonial territories"),[84] colonial enclaves, and pre-emptive rights under treaties and leases. Spain would argue that, *mutatis mutandis*, Gibraltar is an exception for all three reasons.

Despite the claim by Britain and Gibraltar that they have not been exercised over the rejection by the UN since 2006 of the notion that Gibraltar is now decolonized, their frustration at what they see as the failure of the UN to modernize its approach to decolonization has become increasingly apparent. Addressing the Fourth Committee in October 2008 Gibraltar's Chief Minister felt that his people had been a "victim" of the Special Committee "as it presided like a 'fundamentalist watchdog' over inflexible and outdated delisting criteria."[85]

If this is an apt description of the UN approach to the delisting of the remaining non-self-governing territories, it is inevitable that the Second International Decade for the Eradication of Colonialism (2001-2010), the end of which is fast approaching, will soon have to be extended into a third decade.[86] Mindful of this, the Secretary-General encouraged the members of the Special Committee at its first meeting of 2009 to continue "their pragmatic and realistic approach, taking into account the specific circumstances of each territory" in order to bring their "collective efforts to a successful conclusion."[87] The Chairman of the Committee warned them that they risked becoming irrelevant if they do not reconsider their methods, innovate and "think outside the box."[88] With the fiftieth anniversary of Resolution 1514 also on the horizon in 2010, it is

timely for the UN to act on the Secretary-General's exhortation. It is clear that some of the remaining 16 non-self-governing territories are not yet in a position to be removed from the UN list, but where a decolonized relationship with the administering power has arguably been achieved and the appropriate steps towards self-determination have been taken, the UN could be seeking flexible ways to reduce the size of the list of remaining territories.

In order to put the concepts of the Secretary General and the Special Committee chairman into practice in relation to Gibraltar, account would necessarily have to be taken of respective positions in relation to the dispute over sovereignty and then put to one side – just as the parties involved succeeded in doing in order to set up the Forum of Dialogue. It is true that the comments of the Spanish representative to the UN Pacific Regional Seminar on Decolonization in May 2008 are not encouraging, when he stated that Spain would "oppose any initiative to see Gibraltar removed from the UN list of Non-Self-Governing Territories on the basis of its constitutional reform and its implementation."[89] However, given that since its promulgation in 2006 Spain has confirmed that the new constitution does not affect the issue of sovereignty,[90] there is scope for the UN Special Committee and Fourth Committee to take the following steps: a) to accept that the issue of decolonization can be detached from the question of sovereignty (which can be entrusted to the existing negotiating frameworks) without threatening current positions; b) to recognize the ambiguities of some of the early general resolutions on decolonization and to review earlier resolutions and decisions taken specifically on Gibraltar; and c) in the light of the criteria for decolonization as allowed for in Resolution 2625 of 1970 and the powers granted to Gibraltar by the administering power through the Gibraltar Constitution of 2006, to review their position regarding Gibraltar's claim to have achieved what is required for the territory and its people to be removed from the list of non-self-governing territories. This would be in close keeping with the objectives that the UN adopted almost fifty years ago regarding non-self-governing territories.

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[1] For the text of these Articles, see http://www.un.org/aboutun/charter/chapter11.shtml (all Internet references accessed 28 August 2009). The Charter also set up an International Trusteeship system in Chapter XII for territories held under mandate, those detached from States following WW2 and territories placed under trusteeship by administering powers.

[2] It is interesting to note that the title of the Resolution assumes that territories will decolonize through independence, despite the fact that other means of achieving decolonization would also be recognized and were in fact preferred by a number of peoples. For the text of the Resolution, see http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/152/88/IMG/NR015288.pdf?OpenElement

[3] The full title of the Decolonization Committee is the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. It is generally known either as the Special Committee (which will generally be the term used here) or as the Committee of 24, reflecting the size of its membership (although since 2004 it has had 27 members). It reports to the Special Political and Decolonization Committee of the General Assembly, known as the Fourth Committee.

[4] See below, note 83.

[5] For the text of Article X of the Treaty, see http://www.gibnet.com/texts/utrecht.htm. Although Spain accepts the general validity of the Treaty, Article X contains a number of ambiguities, constraints that have been ignored, the reversionary clause and the omission of reference to the isthmus – all of which have served to make the Treaty as much of a hindrance as a help in resolving the dispute over sovereignty. G. Hills, *Rock of Contention* (London, 1974), 224, even argued that if Britain did acquire sovereignty of Gibraltar it was through prescription (see note 6 below) rather than by treaty because of the references to 'propriety' rather than 'sovereignty' throughout the relevant Article. H. Levie, *The Status of Gibraltar* (Boulder, 1983), 30-31, claimed that there was never any suggestion at the time of negotiating the Treaty that the cession was to be anything "less than full title and sovereignty." For an examination of some of the Article's legal ambiguities, see J. Fawcett, 'Gibraltar: the legal issues,' *International Affairs,* 43 (1967), 241-44.

[6] The most obvious claim that Britain and Gibraltar can use in relation to the isthmus is that of title by prescription, "that is, by a continuous and public exercise of exclusive and state authority over it, in which Spain as the original territorial sovereign of the area is in all the circumstances to be taken to have acquiesced" (Fawcett, 'Gibraltar: the legal issues,' 240). There is also a dispute over the issue of territorial waters (see Fawcett, 241).

[7] For a useful discussion of the "uneasy and complex relationship" between the principle of territorial integrity and the right of peoples to self-determination, see S. Lalonde, *Determining Boundaries in a Conflicted World: The Role of Uti Possidetis* (McGill, 2002), 158-64. For a thorough analysis of the emergence and development of self-determination, see D. Raiχ, *Statehood and the law of self-determination* (The Hague, *2002),* 171-225. For an examination of the legal right to self-determination (as distinct from the political principle),

see H. Quane, 'The United Nations and the evolving right to self-determination,' *The International and Comparative Law Quarterly*, 47 (1998), 537-72.

[8] D. Dunnett, 'Self-determination and the Falklands', *International Affairs*, 59 (1983), 421.

[9] There has been considerable debate over the definition of the term 'all peoples' and the 'right' to self-determination, particularly in the context of secession. For a useful summary of the debate, see Quane, 'The United Nations and the evolving right to self-determination,' 537- 572.

[10] This was the view taken by the British Government and the one which concurs with the "grammatical sense" of paragraph 6 of Resolution 1514 (see A. Rigo Sureda, *The Evolution of the Right of Self-Determination*: *A Study of United Nations Practice* (Leiden, 1973), 183-85). M. Pomerance, *Self-determination in Law and Practice: The New Doctrine in the United Nations* (The Hague, 1982), 44, argues that while the UN has often embraced the first view - that past territorial claims were not protected – it has also supported reversion to a former sovereignty and "has in practice veered between both without any very marked consistency".

[11] See, for example, Javier Pérez-Griffo addressing the UN Fourth Committee, October 1997 (M2 Presswire, 13 October 1997, accessible via Nexis at http://www.lexisnexis.com/uk/nexis/auth/checkbrowser.do?t=1236116539851&bhcp=1). Most of the 4,000 inhabitants of the Rock in 1704 fled across the isthmus into the hinterland of the Campo de Gibraltar, and many settled in San Roque, which King Philip V of Spain later dubbed "My city of Gibraltar resident in its Campo": see W. Jackson, *The Rock of the Gibraltarians* (Cranbury, 1987), 101.

[12] *Yearbook of the United Nations, 1968*, 747. Similar arguments have been supported at the UN in Argentina's favour with respect to the Falklands/Malvinas (see T. Franck and P. Hoffman, 'The right of self-determination in very small places,' *NYU Journal of International Law and Politics*, 8 (1976), 379-84). S.K.N. Blay, 'Self-Determination Versus Territorial Integrity in Decolonization,' *NYU Journal of International Law and Politics*, 18 (1985-86), 464-65, suggested, given the way in which Gibraltar and the Falklands/Malvinas have been dealt with by the UN, that Article 73 may be making a distinction between 'people' ("the indigenous population of the colonial unit") and inhabitants ("all residents of a territory, including migrant settlers and foreign traders"), and that whereas the former are seen to have the right to self-determination, this does not apply to the latter.

[13] *Yearbook of the United Nations, 1968*, 747. It is also worth noting that the present population has its origins from across Southern Europe. E. Archer, *Gibraltar, Identity and Empire* (Abingdon & New York, 2006), 36, calculated the origins of the population of Gibraltar in 1995 as British 27 percent, Spanish 24 percent, Italian 19 percent, Portuguese 11 percent, Maltese 8 percent, others 11 percent.

[14] Lalonde, *Determining Boundaries in a Conflicted World*, 164.

[15] P. Gold, "Is Gibraltar a Nation?" *International Journal of Iberian Studies*, 14 (2001), 74, found in a survey that one quarter of the respondents claimed to be able to trace back their ancestry in Gibraltar at least two-hundred years and over fifty percent could trace them back at least one hundred and fifty years.

[16] From British Government White Paper *Gibraltar – Talks with Spain* (Cmnd 3131, 1966, 62), quoted in Fawcett, 'Gibraltar: the legal issues,' 240.

[17] Hills, *Rock of Contention*, 379; M. Harvey, *Gibraltar* (Staplehurst, 1996), 119.

[18] For the text of the Resolution, see http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/153/15/IMG/NR015315.pdf?OpenElement

[19] See Resolution 1541 (XV), Principle VII, which states that free association should be a choice that "retains for the peoples of the territory […] the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes."

[20] *Yearbook of the United Nations, 1964*, 424.

[21] This call resulted in Resolution 2070 (XX) of the General Assembly on 16 December 1965, in which Britain and Spain were invited to begin the talks without delay (see http://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/218/33/img/NR021833.pdf?OpenElement).

[22] *Yearbook of the United Nations, 1964*, 424-25.

[23] *Idem*, 425.

[24] *Yearbook of the United Nations, 1966*, 584.

[25] Fawcett, 'Gibraltar: the legal issues,' 251, pointed out that in Article 36 (3) of the UN Charter, which deals with the pacific settlement of disputes, the statement " 'legal disputes

should as a general rule be referred by the parties to the International Court of Justice' is enunciated as a general principle."

[26] *Yearbook of the United Nations, 1966*, 586. Levie, *The Status of Gibraltar*, 222, n. 145, believed that if Spain had allowed the issue to be considered by the ICJ it might well have decided that Britain had no rights beyond the actual walls of Gibraltar, and "this would undoubtedly have made the overall British position untenable; at the very least, it would have necessitated a softening of the positions of both Great Britain and the Gibraltarians." However Fawcett, 'Gibraltar: the legal issues,' 240-41, took the view that Spain's refusal to refer the issue to the ICJ shows "a strong indication of acquiescence in a British title to the so-called 'neutral ground' of the isthmus."

[27] For the text of the resolution, see http://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/005/34/img/NR000534.pdf?OpenElement

[28] *Hansard House of Commons Debates*, 14 June 1967, Cols 564–6 (accessible at (http://www.publications.parliament.uk/pa/cm/cmhansrd.htm).

[29] *Yearbook of the United Nations, 1967*, 669.

[30] *Idem*, 672.

[31] For the text of the resolution, see http://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/236/88/img/NR023688.pdf?OpenElement.

[32] Rigo Sureda, *The Evolution of the Right to Self-Determination*, 185-89. The amendment was withdrawn on the understanding that paragraph 6 of the resolution as already drafted

covered Guatemala's concerns. Resolution 2353 applied that understanding, with the added factor that in the case of Gibraltar the General Assembly maintained that Spain had a right to recover the territory.

[33] Pomerance, *Self-determination in Law and Practice,* 21. Raiχ, *Statehood and the law of self-determination*, 213, n.186, mistakenly stated that "a referendum was not held in Gibraltar" (unless he means one sanctioned by the UN), although he concurred with Pomerance that "its inhabitants were not considered to constitute a people for the purpose of external self-determination" (ie "the determination of the *international* status of a territory and a people," Raiχ, 205).

[34] Pomerance, *Self-determination in Law and Practice*, 22, contrasted this with the General Assembly's support for Belize's claim to self-determination against Guatemala's claim to sovereignty on the grounds not only of the size of the population but also the indigenous origins of the majority of the population.

[35] Dunnett, 'Self-determination and the Falklands,' 425.

[36] *Yearbook of the United Nations, 1967*, 671-75. See, for example the interventions of representatives from Tanzania, Sierra Leone and Australia (671). However, exactly what the intentions of Resolution 1514 were remains unclear. Whelan, who provides a summary of some of the arguments ('Self-Determination and Decolonisation', 32-36), suggested that in discussions of the draft some members took the view that "far from copperfastening existing colonial boundaries, the resolution would facilitate their replacement by more logical arrangements, the recovery of the historic unity of national territories, and the righting of wrongs" (*idem,* 33).

[37] Fawcett, 'Gibraltar: the legal issues,' 249.

[38] Morris and Haigh, *Britain, Spain and Gibraltar* (Abingdon & New York, 1992), 37.

[39] *Yearbook of the United Nations, 1968*, 746.

[40] Morris and Haigh, *Britain, Spain and Gibraltar*, 41.

[41] *Hansard House of Commons Debates*, 7 May 1968, Cols 245, 267, 271, 276–7.

[42] Morris and Haigh, *Britain, Spain and Gibraltar*, 44.

[43] *Yearbook of the United Nations, 1968*, 747. This position is supported by Blay, 'Self-Determination Versus Territorial Integrity in Decolonization,' 471, who maintained that "administering states have specific legal obligations to the non-self-governing territories under Article 73 of the Charter. Where the administering state's Charter obligations to promote self-government in a non-self-governing territory conflict with its rights under a treaty or other international agreement, the Charter resolves the conflict by providing that the Charter obligation takes precedence." This view is based on UN Resolution 2734 (XXV) of 1970 on the Strengthening of International Security, operative paragraph 3 (http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/349/99/IMG/NR034999.pdf?OpenElement).

[44] For the text of the resolution, see http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/243/89/IMG/NR024389.pdf?OpenElement

[45] *The Times*, 19 December 1968.

[46] *Idem*, 7 June 1969.

[47] *Yearbook of the United Nations, 1970*, 719.

[48] For the full text of the resolution, see *Yearbook of the United Nations, 1970*, 789-92.

[49] *Idem*, 791.

[50] *Idem.*

[51] *The Times*, 2 August 1973.

[52] *The Times*, 27 November 1973.

[53] *Yearbook of the United Nations, 1973*, 699-700.

[54] *The Times*, 4 October 1974.

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http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/738/88/IMG/NR073888.pdf?OpenElement

[56] *Yearbook of the United Nations, 1980*, 1082.

[57] *Yearbook of the United Nations, 1982*, 1347.

[58] For the texts of the Lisbon and Brussels Agreements, see House of Commons Select Committee on Foreign Affairs, Fourth Report (1998-99), 8 June 1999 (http://www.publications.parliament.uk/pa/cm199899/cmselect/cmfaff/366/36604.htm#n8)

[59] *Yearbook of the United Nations, 1984*, 1075.

[60] *Yearbook of the United Nations, 1987*, 1039.

[61] See UN Special Committee *Working Paper on Gibraltar* (A/AC.109/1164, 9 July 1993, 4) (http://documents-dds-ny.un.org/doc/UNDOC/GEN/N93/391/51/pdf/N9339151.pdf?OpenElement)

[62] See http://documents-dds-ny.un.org/doc/UNDOC/GEN/N93/815/02/pdf/N9381502.pdf?OpenElement.

[63] The same situation applies to the Falklands/Malvinas. Quane, 'The United Nations and the evolving right to self-determination,' 552-53, suggested that in drafting its General Assembly decisions the UN has drawn parallels between Gibraltar and the Falkland Islands, in the sense that both are subject to territorial claims and the Falklands War was an illustration of the fact that "the failure to resolve territorial claims can lead to the use of force."

[64] On the Forum of Dialogue, see P. Gold, "The tripartite Forum of Dialogue: is this the solution to the 'problem' of Gibraltar?" *Mediterranean Politics*, 14 (2009), 79-97.

[65] Decision 60/525 (see http://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/583/86/pdf/N0558386.pdf?OpenElement). Subsequent

Decisions (61/522 in 2006; 62/523 in 2007) continued to refer to the forum being separate from the Brussels Process.

[66] The current unlikelihood of bilateral discussions being held is illustrated by the fact that Gibraltar is able to insist that discussions do not take place outside the framework of the trilateral Forum. When British Foreign Secretary David Miliband met his counterpart Miguel Ángel Moratinos in a bilateral encounter in London on 2 July 2008, the Gibraltar government sought and received assurances that "if Sr Moratinos raises Gibraltar in their bilateral meeting, Mr Miliband will say that Gibraltar is not on their agenda and should be discussed in the later Trilateral Forum Meeting" (*Gibraltar Chronicle*, 2 July 2008).

[67] Quane, 'The United Nations and the evolving right to self-determination,' 553, noted twelve colonial territories that opted for integration and seven for association.

[68] For the text of the Constitution see Gibraltar Constitution Order 2006 in *Supplement to the Gibraltar Gazette*, No. 3,574, 28 December 2006, http://www.gibraltar.gov.gi/constitution/new_constitution/NewGibraltarConstitution.pdf

[69] Ministerio de Asuntos Exteriores y de Cooperación, *Informe sobre la cuestión de Gibraltar*, 2008, 46 (http://www.maec.es/es/MenuPpal/Actualidad/Publicaciones%20de%20la%20D.G.C.E/Publicaciones%20no%20periodicas/Documents/Informe_Gibraltar20080227.pdf)

[70] For the text of the letters exchanged between Straw and Moratinos on 28 March 2006, see http://www.gibraltarnewsonline.com/2006/03/29/gibraltar-demands-uk-response-to-moratinos-letter/

[71] A copy of the letter is attached to the Government of Gibraltar Press release 90/2006, 3 April 2006, http://www.gibraltar.gov.gi/latest_news/press_releases/2006/straws_letter.pdf

[72] Government of Gibraltar Press Release, 170/2006, 6 June 2006, http://www.gibraltar.gov.gi/latest_news/press_releases/2006/170-2006.pdf

[73] See *Gibraltar Chronicle,* 6 October 2006.

[74] http://www.un.org/News/Press/docs/2007/gacol3155.doc.htm

[75] http://www.un.org/News/Press/docs/2007/galcol3158.doc.htm. The point behind the distinction was that if Gibraltar were to be decolonized but retained the link with the Queen as sovereign of Gibraltar then Gibraltar's sovereignty would remain unchanged.

[76] See Caruana's address to the UN Special Committee, 5 June 2007 - Government of Gibraltar Press Release, 133/207, 5 June 2007 http://www.gibraltar.gov.gi/latest_news/press_releases/2007/133-2007.pdf

[77] *Hansard House of Commons Debates* , 4 July 2006, Col. 932W (http://www.publications.parliament.uk/pa/cm200506/cmhansrd/vo060704/text/60704w0007.htm)

[78] M. Xiberras 'Gibraltar: Swords into Ploughshares?' *The European Journal*, Vol.13, No. 10 (November 2006), 17. However, Fawcett, 'Gibraltar: the legal issues,' 250, argued that "the transfer of territorial title which would take place on a grant of independence to Gibraltar would not be an 'alienation' for the purpose of Article X [of the Treaty of Utrecht]." Rigo

Sureda, *The Evolution of the Right to Self-Determination*, 287-88, also stated that "the right of pre-emption recognised to Spain in the Utrecht Treaty does not prevent the progress of Gibraltar towards independence" on the grounds that when the Treaty was concluded "it was not conceivable that a transfer of territory could be made in favour of an entity such as the one formed now by the people of Gibraltar'."

[79] Rigo Sureda, *The Evolution of the Right to Self-Determination*, 288. Clearly this does not apply to the Falklands/Malvinas.

[80] UN General Assembly Working Paper A/AC.109/2112, 8 (http://documents-dds-ny.un.org/doc/UNDOC/GEN/N98/154/26/pdf/N9815426.pdf?OpenElement)

[81] See, for example, Abel Matutes addressing the General Assembly, 26 September 1997 (M2 Presswire, 29 September 1997). This denial of the right to self-determination was rejected by Gibraltar's Chief Minister, Peter Caruana, who, when addressing the Fourth Committee the following month, called in aid the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights of 1973, which had been extended in 1976 to apply to Gibraltar and under which all peoples had the right to self-determination (M2 Presswire, 13 October 1997).

[82] Lalonde, *Determining Boundaries in a Conflicted World*, 164.

[83] Blay, 'Self-Determination Versus Territorial Integrity in Decolonization,' 463-71.

[84] *Idem,* 464.

[85] States News Service, 7 October 2008 (accessed via Nexis at http://www.lexisnexis.com/uk/nexis/auth/checkbrowser.do?t=1236116539851&bhcp=1)

[86] See Resolution 46/181 of 19 December 1991 and Resolution 55/146 of 8 December 2000. The texts of the resolutions can be found at http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/582/69/IMG/NR058269.pdf?OpenElement and http://daccessdds.un.org/doc/UNDOC/GEN/N00/568/15/PDF/N0056815.pdf?OpenElement.

[87] UN General Assembly,, GA/COL/3183, 27 February 2009 (http://www.un.org/News/Press/docs//2009/gacol3183.doc.htm)

[88] *Idem*.

[89] UN General Assembly, GA/COL/3173, 15 May 2008 (http://www.un.org/News/Press/docs/2008/gacol3173.doc.htm)

[90] Ministerio de Asuntos Exteriores y de Cooperación, *Informe sobre la cuestión de Gibraltar*, 2008, 46 (http://www.maec.es/es/MenuPpal/Actualidad/Publicaciones%20de%20la%20D.G.C.E/Publicaciones%20no%20periodicas/Documents/Informe_Gibraltar20080227.pdf)