

Brexit & Gibraltar



OPEN
BRITAIN


I British
Influence

Brexit and Gibraltar

Joe Carberry (Open Britain) and **Jonathan Lis** (British Influence)

Historical background

Gibraltar is a British Overseas Territory (BOT) situated at the southern tip of the Iberian Peninsula, with a population of just over 32,000. The territory was seized by Anglo-Dutch troops during the War of the Spanish Succession in 1704, and ceded by Spain to Britain 'in perpetuity' by the 1713 Treaty of Utrecht. It is colloquially known as 'the Rock'.

Spanish governments made three unsuccessful attempts to regain Gibraltar by force, in 1704, 1727 and 1779-83. In 1954 the Spanish Government, headed by General Franco, renewed its claim to Gibraltar, which it had not actively pursued for the past 150 years. Also in 1954 the Spanish Government began putting restrictions on freedom of travel between Spain and Gibraltar. Between 1969 and 1982 the border between Spain and Gibraltar was shut by the Spanish Government, with access only allowed in extremely limited circumstances (such as the repatriation of bodies). The border was only fully opened in 1985, as part of Spain's successful bid to join the European Community the following year. The border closure had a significant impact on the Rock's economy, and thousands of Spanish citizens who had been crossing the border each day to work in Gibraltar lost their jobs.

The Spanish claim to Gibraltar is focused on territorial integrity, citing UN Resolution 1514 (XV), which the Government interprets as territorial integrity trumping the right to self-determination. Two referenda have been held in Gibraltar regarding its constitutional status. In 1967 a vote was held on the territory's relationship with the UK, and in 2002 the people voted again on shared UK-Spanish sovereignty. In both referenda around 99 per cent of voters voted against any change in Gibraltar's constitutional status. In 2013, following a dispute about the creation of an artificial reef near the Rock, the Spanish Government began imposing stringent border checks on visitors crossing from Spain to Gibraltar, resulting in long queues. The British Government complained to the European Commission, who investigated and concluded the Spanish Government had not broken EU rules but that it had failed to implement these in a proportionate or reasonable manner.

Gibraltar's governance

Queen Elizabeth II is Gibraltar's head of state, and is represented in Gibraltar by a Governor (currently Lieutenant General Ed Davis). Under the terms of the 2006 Gibraltar Constitution a Governor's powers are limited to those areas which remain with the UK, i.e. foreign affairs, defence and certain internal security issues. Governors set out to act as 'go-betweens' as between the Gibraltar and UK governments. Gibraltar has an 18-member unicameral Parliament, 17 of whose members are elected every four years, with one (the Speaker) appointed by the Parliament. The leader of the majority party (or coalition) is appointed as Gibraltar's Chief Minister. The Gibraltarian

Government is made by 10 of the 17 elected members of Parliament, selected by the Chief Minister and approved by the Governor.

Fabian Picardo, leader of the Gibraltar Socialist Labour Party (GSLP) has been Gibraltar's Chief Minister since 2011. The GSLP-Liberal alliance won the 2015 Gibraltar parliamentary elections by 10 seats to 7.

Gibraltar and the EU

Gibraltar is part of the European Union (EU), joining the EU's predecessor (the European Economic Community or EEC) in 1973 as a dependent territory of the United Kingdom. Gibraltar has a unique relationship with the EU, different from any other territory of a member state. Gibraltar does not participate in the European Union Customs Union (EUCU), and is also exempt from the EU's Common Agricultural Policy (CAP), Common Fisheries Policy and VAT requirements. Essentially this means that Gibraltar has free movement of people, services and capital within the EU, but not of goods. As Gibraltar's economy is largely service-based, it is not significantly affected by its non-membership of the EUCU; its main industries are tourism, insurance, investment funds and online gaming. The territory applies EU law except in those policy areas in which it does not participate (CAP, fishing etc).

Since 2004 Gibraltar has, following a 1999 ruling by the European Court of Human Rights, participated in European Parliament elections as part of the South-West of England region. All three main Gibraltarian parties backed the UK's membership of the EU, and supported the 'Gibraltar Stronger In Europe' campaign. In the June 2016 referendum Gibraltar voted overwhelmingly to remain in the EU, producing 19,322 'Remain' votes and 823 'Leave' votes (or 96 per cent 'Remain'). Turnout was 83.6 per cent, compared with 72.2 per cent for the UK as a whole.

Free movement of people and Gibraltar

Gibraltar's economy is dependent to a significant degree on Spanish and other EU nationals, with around 12,000 (or half of Gibraltar's total workforce) commuting across the border each day. These workers faced significant disruption when the Spanish Government introduced stringent border checks in 2013, and were often delayed for hours crossing the frontier. A commonly expressed fear in the territory is not that the Spanish Government will close the border permanently after Brexit, as occurred after 1969, but that it will arbitrarily do so – thus precluding long-term contingency plans and posing the risk of even greater economic instability and uncertainty. The prosperity of Gibraltar could, in effect, be at Spain's mercy – with the European Commission now probably powerless to intervene.

Notably, the issue of the land border will dramatically affect not just Gibraltar's workforce, but also its tourist sector. According to the Gibraltar Government's 2014 statistics, 94 per cent of visitors (even excluding frontier workers) arrived overland, with just 4 per cent coming by sea, and 2 per cent by air. While Gibraltar is capable of controlling its sea and air access, clearly Spain has key leverage over the physical frontier.

Gibraltar Government position post-referendum

Gibraltar's Chief Minister Fabian Picardo was a vocal 'Remain' supporter during the EU referendum campaign. He wrote a piece for Politico Europe which was published on 3 May 2016, setting out his reasons for supporting continued EU membership. He described the threat of Brexit as 'a political

meteorite heading right for Gibraltar' and claimed that for Gibraltar, 'losing the ability to freely provide services to a single market of 520m people would be an existential threat in economic terms'. Picardo argued that Brexit would pose two primary threats to Gibraltar - loss of single market access and giving Spain the ability to close or interfere with the Gibraltar-Spain border. Specifically, he stated that 'for Gibraltar, the disastrous consequences of economic exclusion from our main trading bloc - in our case mostly in financial services - would be compounded by giving Spain a brand new opportunity to lock us out at the border'. Picardo went on to claim that acting Spanish Foreign Minister Jose Garcia-Margallo had expressed a desire to close the Spain-Gibraltar border, and had only been prevented from doing so due to their shared EU membership.

On 22 June, at the end of a statement posted on the 'Gibraltar Stronger In Europe' Facebook page encouraging a 'Remain' vote, the Chief Minister stated that 'whatever the result announced on Friday morning, Gibraltar will be British Forever'. After the result, the Government of Gibraltar maintained its opposition to any change in the territory's constitutional position, including joint UK/Spanish sovereignty. On 31 August, the Government described Garcia-Margallo's joint sovereignty proposal as 'fantasy', and accused the Minister of having an 'unhealthy personal obsession with Gibraltar'.

The Chief Minister reiterated the Government of Gibraltar's opposition to joint sovereignty in a speech on 10 September, Gibraltar's national day:

If anyone thinks that we are going to sell our homeland for access to Europe, they don't know the Gibraltarians ... If Brexit means Brexit, then British means British. No means no. Never means never. Gibraltar is British forever.

During a visit to New York in October, Picardo remained unequivocal about the privileging of sovereignty over the benefits of EU membership: 'There is absolutely no chance that Gibraltar is going to be bartering its British sovereignty, in exchange for continued access to the European Single Market or any one of the other advantages we enjoy as members of the European Union.'

Picardo's government has expressed a desire for Gibraltar to remain in the EU, or to make an arrangement with the EU that would see it retain free movement and full and unfettered single market access. After the referendum, the governments of Gibraltar and Scotland held talks to develop what Scottish First Minister Nicola Sturgeon described as a 'common cause' to maintain ties with the EU. One possibility reportedly discussed was the so-called 'Greenland option', which would see some parts of the UK remain members of the EU whilst others left. (Greenland, under Danish sovereignty, voted to leave the EEC in 1982, whilst Denmark remained a member.) At the Labour Party conference in late September, the Chief Minister commented that Gibraltar wants 'access to the single market and we fully accept the free movement of people going forwards'. In an interview with the Guardian published on 22 October, he said the Government of Gibraltar was considering 'an associate-style status', using the models of Andorra, Greenland and Liechtenstein.

Spanish Government position post-referendum

In March 2016 Jose Garcia-Margallo, Spain's acting Foreign Minister, told Spain's Radio Nacional that whilst he wanted the UK to remain in the EU, in the event of Brexit the Spanish Government would raise the question of Gibraltar's sovereignty 'the very next day'. On 24 June 2016, the day after the Brexit vote, Garcia-Margallo called for Gibraltar to be returned to Spain, following a period of joint British/Spanish co-sovereignty. He also stated that the dispute over Gibraltar 'is now a bilateral issue that will be negotiated exclusively between the UK and Spain'. In July, a high-level meeting took place in Madrid, chaired by the acting Minister, to discuss Spanish policy concerning Gibraltar post-Brexit.

The meeting was attended by senior figures from the Spanish Ministry for Foreign Affairs, Ministry of Defence, Ministry of the Interior and National Intelligence Centre.

In September, Garcia-Margallo described Brexit negotiations as 'a unique historical opportunity in more than three hundred years to get Gibraltar back'. In the same interview he again suggested joint UK/Spanish sovereignty over Gibraltar, which would continue to generally run its own affairs. In October, Spanish media reported that Spanish Prime Minister Rajoy had told Theresa May that whatever deal the UK negotiated with the EU after Brexit would also apply to the Rock, so if the UK leaves the single market and ends free movement of people, so will Gibraltar. One senior Spanish diplomat informed the authors of this briefing that while Spain wished to be constructive during the negotiations, it 'would not accept any deal which jeopardised its claim to Gibraltar'.

Significantly, according to Article 50 TEU, the Brexit negotiations will be concluded by qualified majority vote in the Council and thus Spain cannot, on its own, veto a 'divorce' deal. Any future trade agreement, however, will have to be unanimously endorsed. Moreover, there is no guarantee that Spain will not use Gibraltar as a bargaining chip when it comes to endorsing the UK's participation in EU instruments, such as Europol, after Brexit. Perhaps the key problem for Gibraltar is that its basic EU settlement was established before Spain joined the bloc; if key elements of its relationship must now be negotiated as a third party, there could be numerous instances when Spain will have the opportunity to vote against or veto, and the UK will be unable to intervene.

British Government position post-referendum

The British Government position regarding the sovereignty of Gibraltar has not been affected by the Brexit vote. The UK position remains that Gibraltar's current constitutional status is protected by a 'double lock', meaning it can only be altered with the consent of the people of Gibraltar. British Prime Minister Theresa May met with representatives from the Government of Gibraltar, including the Chief Minister, in July, and confirmed that the territory would be 'fully involved' in Brexit negotiations. On 10 October, Gibraltar's national day, Foreign Secretary Boris Johnson told the people of Gibraltar that 'we will continue to stand beside Gibraltar and the double lock commitment on its British sovereignty ... I am proud of the long standing role you continue to play in the British family'. Johnson later added that the UK Government would maintain 'an implacable, marmoreal and rock-like resistance' to any change in the territory's sovereignty.

Gibraltar's priorities for UK-EU negotiations

- **Single market.** Given Gibraltar's service-dominated economy, even a non-physical separation from the territory's main trading bloc could be disastrous. It is therefore vital that the UK Government secures maximum freedom for Gibraltar, like Britain, to participate in the single market.
- **Free movement.** There are 12,000 workers crossing the border into Gibraltar on a daily basis, and the Rock also welcomes over 8 million tourists per year. Gibraltar recognises and encourages this free flow of people as fundamental to the proper functioning of its economy. Spain has in the past imposed long delays at the border in an attempt to restrict the free flow of people and impede the Gibraltarian economy. Any stringent border controls would give Spain a brand new opportunity to lock Gibraltarians, and Spanish citizens, out at the border. This must be avoided. Indeed, the UK Government should

commit to ensuring that there will be no new border restrictions for Gibraltar in the same way that it has with Northern Ireland.

- **Funding.** Gibraltar benefits significantly from EU funding: according to the Government, it has received almost €60m since 2000, the bulk of which has come from the European Regional Development Fund and European Social Fund. This investment has created or preserved over 3500 jobs, and helped dramatically improve the Rock's economy and competitiveness. It is unclear how far the UK Government would replace any of this funding stream, but it should guarantee that there will be no reductions in funding over the long term.
- **Workers' rights.** Many of the rights that British and Gibraltarian citizens enjoy in the workplace are underpinned by EU law and have been brought into UK and Gibraltar law thanks to our membership of the EU. These rights are designed to prevent exploitation and discrimination, and must be safeguarded.
- **Minimising the risk of joint sovereignty over Gibraltar.** Only the Gibraltarian people will determine Gibraltar's future, as they did in the 2002 referendum. They also voted overwhelmingly to remain in the EU in 2016. This enormous enthusiasm for both the UK and EU should be respected during the negotiations, and the UK Government should guarantee that it will not agree to trade-offs or quid-pro-quo that harm Gibraltar or treat it as collateral damage. Certainly, the UK Government must not agree to anything which dilutes Gibraltar's sovereignty or makes a change in sovereign status seem more appealing, unless that occurs with the explicit will of the Gibraltarian people.
- **Representation.** Gibraltarian representatives should be included and consulted at every stage of the UK's negotiations with the EU where decisions may affect them, to guarantee the territory's interests and to ensure that its status in the EU can be as protected as possible. Indeed, Gibraltar should be treated in the same way as the Devolved Administrations.

January 2017