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## GIBRALTAR – MILITARY FORTRESS OR CITY OR BOTH?

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### I. INTRODUCTION

Looking at Gibraltar today, its commercial port, tourism, finance centre and its very active political class, one could easily forget just how influential, if not determinative, British military interests are. Therefore, I would like to highlight just how much Gibraltar remains a military base, and how this has historically interfaced with civilian and commercial interests.

So the question today is whether Gibraltar is a Monaco or a Rota, or an unusual combination of both. In times of peace, civilian and commercial interests have prevailed, but, for some years now Anglo-American policy has suggested that defence is coming to the forefront worldwide. In January 2024 the drums of war were banging louder not just in Ukraine and Israel but also in the Red Sea, the Baltic, and the South China Sea.

It is remarkable that less than 10 years ago a Commander of British Forces Gibraltar told the Gibraltar Chronicle that when he was appointed, he did not know whether it was to switch the lights off on the Ministry of Defence in Gibraltar. How things have changed as the strategic position of Gibraltar as a forward mounting base with nuclear capability has come to the fore of United States/United Kingdom military doctrine.

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Consequently, how does this new normal of war affect the civilian community known as the Gibraltarians and our aspirations in terms of legal and commercial certainty?

## **II. THE GIBRALTAR CONSTITUTION OF 2006**

The current Gibraltar Constitution of 2006 gives us strong clues as to Gibraltar's relationship with the United Kingdom and its principal interest here which is Defence.

Until relatively recently, military officers were part of the pre-cursor of the Gibraltar Parliament, the "Legislative Council" and even today, the head of the Gibraltar government is not the Chief Minister but a retired Admiral – a Second Sea Lord - who will be replaced in May of this year by a retired Lieutenant General. Indeed, the Governor appoints the Chief Minister, as outlined in Section 45 of the 2006 Constitution. Additionally, the Governor has certain reserve legislative powers according to Section 34 of the 2006 Constitution.

It is time to say, however, that under the 2006 Constitution, the Governor is nominally the representative of the Crown of the United Kingdom and Northern Ireland and not of the British government, and that the elected civilian Gibraltar Parliament has very wide legislative powers. The Council of Ministers decides on most matters but not on matters relating to defence, external affairs, or internal security. That does not tell the whole story.

Crucially, the United Kingdom does retain powers of local legislation through the Royal Prerogative (paragraph 8 of Annex 2 of the 2006 Constitution) along with the Governor's reserve powers (Section 34). There is then an Emergency Powers Act of 1939, enacted in on the eve of World War II, and which is still a part of Gibraltar's Constitutional arrangement (Section 17(1)).

Interestingly the Crown's powers to make laws under the Royal Prerogative appear in an Annex at the very end of the Constitution. Aside from the Parliament, the Crown can make laws for the peace, order, and good government of Gibraltar.

On 24<sup>th</sup> January 2024, the press in Gibraltar disclosed that in 1993 the United Kingdom Government was thinking of exercising its reserve powers to nullify a law enacted by the former Gibraltar Socialist Labour Party (GSLP)

Government under Mr. Joe Bossano, now Sir Joe Bossano, which law required United Kingdom citizens in Gibraltar to have residence permits. This has recently been disclosed under the 30-year rule relating to United Kingdom Government transactions.

Anecdotally, in February 2017, there was an incident at the airfield in which the military police authorities here tried to assert jurisdiction over a United Kingdom serviceman in Gibraltar which led to the Royal Gibraltar Police closing down the airfield and arresting senior military officers. The matter was amicably resolved but was perhaps the most poignant example of the latent potential for conflict as between the military and the civilian powers.

Those of you who are following the post-Brexit talks will be interested to know that as long ago as 2017, Professor Hakeem Yusuf of the University of Birmingham warned that Post Brexit the United Kingdom Government's retained legislative and executive powers under the 2006 Constitution, leaving Gibraltar in a very weak position with the European Union.

### III. HISTORY

Thus, as we drive on this road of uncertainty it is good to look into the rear-view mirror to see how the interface between United Kingdom military interests and Gibraltarian civil and commercial interests have fared over the last 320 years. As always it is instructive to look at history to try to discern the road ahead.

The history of English interest in Gibraltar predates the conquest of 1704. It is noteworthy that it had been English policy since the time of Cromwell's Protestant Protectorate in the 1650's to get a base at the entrance to the Mediterranean – with Tangier being an option.

Gibraltar was captured in August 1704 by a combined Anglo-Dutch fleet on behalf of the Habsburg pretender to the Spanish throne, the so-called Carlos III. But that for a variety of reasons the English (or since 1707 the British) are still here. Ownership of Gibraltar was ceded to the United Kingdom by the Treaty of Utrecht in 1713. It is that Treaty upon which the United Kingdom asserts sovereignty over Gibraltar.

Gibraltar was always intended by the English (and post 1707 by the British) to be a fortress and naval base. However, shortly after the conquest of 1704 the representative of Carlos III, Prince Hesse of Darmstadt declared Gibraltar

a “Free Port”. That status was confirmed in April 1706 by the English Queen Anne. This tax differential has therefore been at the very genesis of the attractiveness of Gibraltar business as much in 1704 as in 2024. The aim in 1706 was to attract English and other protestant traders to establish themselves here to provide the necessaries for the Garrison and the naval base, and to promote English trade.

Soon, however, Moroccan Jews and Genoese traders began to set up here and through the centuries were joined by others who were not from the British Isles. Until relatively recently, however, it was the English traders who were predominant and soon, strains begun to show as between the small commercial community and the military whose senior officers sometimes enriched themselves with the grant of licenses and allocations of land.

It was in this background that the commercial community demanded from London that a proper system of law to regulate contracts and other obligations should be established to ensure that commercial activity rested on a sound legal basis of the kind that applied in England. Thus, it was that as early as the 4<sup>th</sup> November 1720, Gibraltar obtained the first Charter of Justice from London. This set up a court system and, interestingly, Spanish civil law applied together with the English criminal law. It was only in 1740 that the Second Charter of Justice substituted English Law for Spanish Law.

This partial departure from martial law set the foundations of a civilian community *de jure* as well as *de facto* in juxtaposition to the fortress. Even today the Gibraltar system of law based on the English common law and legislated in large part by the Gibraltar Parliament defines the Gibraltar body politic.

Now, it is important to note that from 1704 to 1830, Gibraltar was not a colony but a military garrison with a civilian population and legal system grafted onto it.

Following the Napoleonic wars in which Gibraltar figured large, the Gibraltarian merchants who had contributed including via a very active privateering fleet which made Gibraltar a prominent Prize Jurisdiction, lobbied London for colonial status. The merchants who had clients and suppliers in London and Manchester established a Commercial Exchange in 1817. The status of Crown Colony was achieved in 1830 and was substantially higher than that of a mere garrison and again marked the territory out radically different from a mere military camp.

The loosening of the grip of Gibraltar's military governors following the grant of Crown Colony status can be seen from the way in which by the second half of the 19<sup>th</sup> century Gibraltarian lawyers, notably Henry Pisani, were able to successfully complain to the Secretary of State for the Colonies in London about the conduct of military governors. Of course, none of this was welcomed by the military authorities in Gibraltar at the time who were suspicious that the pre-eminence of the military base was being diluted.

This was not an unreasonable fear because the now-well established Gibraltarian community comprising people originating from England, Italy, Portugal, Spain and elsewhere had acquired rights which could be in conflict with military interests.

Thus in a stark example in 1799, when Irish regiments had mutinied, some Gibraltarians had joined in the rebellion, although this was quickly quelled by the execution or deportation of the rebels. On the other hand, during the sieges of the 1780s, Gibraltarian civilians who had not left to avoid the violence and privations of years of war were considered by the military authorities to have conducted themselves loyally and participated in the defence of Gibraltar. So, even among the military authorities, the increase in the numbers of civilians was treated with ambivalence.

Meanwhile, the system of law that applied here became more and more well-established and although the power of the military here has never been completely subsumed to civilian interests, there was at least a semblance, if not more, of Gibraltar as a place where the rule of law applied. Throughout the Spanish wars of the 1830s, Gibraltar continued to be a centre of British military and commercial prowess.

This is not to say that the military did not have a substantial amount of power. They certainly did and it was only following the constitutions of 1950 and 1969 that the involvement of military officers in Gibraltarian local affairs was gradually eliminated.

Perhaps the most notable example of the competition of interests as between the military and the civilian was seen in 1941 when the elderly and the women and children of Gibraltar were evacuated to Casablanca and then to Madeira, Jamaica, Northern Ireland and London to make way for the up to 40,000 troops under Gibraltar's American *de facto* Governor, General Eisenhower who led the invasion of North Africa.

As happens in war, of course, civil rights were suspended and had it not been for a very assertive reaction by Gibraltar's incipient political establishment in the form of the Association for the Advancement of Civil Rights (AACR) and the Confederation of Labour, Gibraltar's civilian community might have been completely eliminated in order to make this place a purely military base of the kind that can be found in the British Sovereign bases of Akrotiri and Dhekelia in Cyprus. The bargaining counter that the AACR and the trades unions had was that the large Royal Navy fleet of the late 1940s depended on a large workforce at the naval dockyards and therefore required the local population to be kept relatively happy, and this of course included the return of Gibraltarian families from exile.

I want us to focus not just on the political, but also the legal implications of this balance of power.

The extent to which Gibraltar could be considered a democracy during this period is a matter of debate, although there is no doubt that there was in place throughout a slow but sure democratisation process and a strengthening of legal protections. Which found their high watermarks in the 1969 and 2006 Constitutions which replicate the European Convention of Human Rights and also the almost complete legislative autonomy of what we now call the Gibraltar Parliament, which makes almost all laws for Gibraltar subject. I remind that the United Kingdom retains very substantial legislative powers which it can activate at any time.

Rewinding, somewhat, it is crucial to consider the position of Gibraltar during the Cold War of the 1960s and 1970s because we are now in a similar position given western acrimony with the successor of the Soviet Union, the Russian Federation.

Thus, it is important for academics to give a proper consideration for what happened in Gibraltar between 1969 and 1982 when the frontier was closed. Regardless of the hubris and propaganda of all sides, the fact is that Gibraltar fared very badly during this period. The private sector economy was decimated and, although not a matter of a great deal of attention, large numbers of Gibraltarians emigrated to the United Kingdom, Canada and elsewhere.

Neither did the Campo de Gibraltar do well as a result of the frontier closure. Again, this caused huge economic difficulties in the region, and it is interesting that in the 1950s, when the possibility of closing the frontier was

being mooted by certain sectors of the dictatorship, one of the loudest voices against any interference with access of Spanish workers to Gibraltar came from none other than General Munoz Grandes, the leader of the Spanish Blue Division in the Russian front who had been then military governor of the Campo de Gibraltar. Similarly, Spanish National interests in Gibraltar suffered a huge decline, so that now many, if not most Gibraltarians, are deeply suspicious of Madrid's intentions.

So one has to ask who benefitted from the frontier closure which hermetically sealed the British military base here in a way which was not dissimilar to the position of the Soviet naval base of Sevastopol, another frontier closure to the outside world at more or less the same time.

I am of course not saying that the frontier closure was engineered by the British Ministry of Defence, but they were certainly the only beneficiaries and as I say now that the official records in the United Kingdom and Spain for this period have been released to the public under the Freedom of Information legislation in both countries, it would be interesting to find out more of exactly what was happening behind the scenes.

### **III. CONCLUDING REMARKS: WHERE ARE WE IN 2024?**

The rule of law in Gibraltar is well established in terms of our legislation including the Gibraltar Constitution which contains a Bill of Rights and ostensible supervision by the United Nations Committee of 24 on Decolonisation.

But can it be said in view of recent events in Ukraine and the Middle East that any reliance can be had on the United Nations, the European Union or any other international bodies?

On the other hand, the United Kingdom's full adherence to United States military policy and Spanish refusal to join in -as shown in the current attack on the Houthis of Yemen- has given the British military interests in Gibraltar a great deal of weight to put in the balance of powers between the military and civilian interests.

You will need to consider this situation carefully yourselves if you are interested in it and I would prefer not to jump to any conclusions. One has to wonder whether it is in the United Kingdom's military interest that the airfield at North Front and the port area should be subject to Schengen controls



which might or might not interfere with the unimpeded promotion of those military interests.

I leave it to those of you, academics, who may be interested in this subject to explore it further and draw your own conclusions.



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