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GIBRALTAR Y ESPAÑA; RELACIONES BILATERALES DESPUÉS DEL
TORMENTOSO Y PROBLEMÁTICO BREXIT

GIBRALTAR & SPAIN; BILATERAL RELATIONS AFTER THE STORMY AND
TROUBLESOME BREXIT

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1. RESUMEN

Abordar una cuestión como la del Peñón de Gibraltar nunca resulta una tarea sencilla, mucho menos si además le añadimos un factor de inestabilidad e incertidumbre de dimensiones tales como son las del Brexit. Para empezar, debemos de remontarnos a la firma del tratado de Utrecht en 1713 y que desde entonces no ha sido más que un rompecabezas para los gobiernos españoles, británicos y para entes superiores como son la ONU o la Unión Europea. Para comprender el actual status quo de la colonia, su identidad, su economía y sus condiciones que la hacen ser un enclave estratégico con condiciones privilegiadas, hemos llevado a lo largo de este trabajo un análisis minucioso de los hechos más relevantes acontecidos en los poco más de tres siglos de breve historia de Gibraltar. Además, nuestro trabajo no debe quedarse ahí, sino que en el se lleva a cabo un estudio de las relaciones políticas y comerciales entre España y la Roca y del nuevo escenario que abre el Brexit como factor amenazante pero que abre nuevas oportunidades en las relaciones España-Reino Unido-Gibraltar. Finalmente, se propone una cosoberanía como solución a una disputa internacional de características tan imprevisibles en el marco del Brexit.

Palabras clave: Brexit, Gibraltar, tratado de Utrecht, colonia, cosoberanía.

1. ABSTRACT

Addressing an issue such as the one of the Rock of Gibraltar is never a simple task, much less if we also add a factor of instability and uncertainty of dimensions such as those of Brexit. To begin with, we must go back to the signing of the Treaty of Utrecht in 1713, which since then has been nothing more than a jigsaw puzzle for the Spanish and British governments and for higher bodies such as the UN and the European Union. In order to understand the current status quo of the colony, its identity, its economy and the conditions that make it a strategic enclave with privileged conditions, throughout this work we have carried out a thorough analysis of the most relevant events that took place in the little more than three centuries of the brief history of Gibraltar. In addition, our work should not stop there, but a study of the political and commercial relations between Spain and the Rock and of the new scenario opened up by Brexit as a threatening factor which opens up new opportunities in Spain-UK-Gibraltar relations is carried out. Finally, a cosovereignty is proposed as a solution to an international dispute of such unpredictable characteristics within the framework of Brexit.

Key words: Brexit, Gibraltar, Treaty of Utrecht, colony, cosoberanía.

2. INTRODUCTION

Miguel de Unamuno said: “the present is the past for being made to come, and what tomorrow does not tend, in the oblivion of yesterday must remain”. Addressing the consequences of Brexit in a colonial enclave in Europe, as Gibraltar is, results an interesting issue, but at the same time difficult to approach. Fundamentally, because the origin of this colony takes back in time to the treaty of Utrecht, back in the 18th century. During its more than three centuries of history, Gibraltar has turn out to be a strategic location for the British navy; and more recently, it has become an enclave similar to a tax haven, inhabited by a small number of people, who insist on remain linked to the London metropolis. Apart from the legend that surrounds Gibraltar, (gambling place, tobacco smuggling, money laundering), Gibraltar has always been a strategic location for the United Kingdom: refreshment port, shipping repair, military presence of the Royal Navy, etc. Since the aforementioned treaty of Utrecht, no more than four events have attracted the attention of the world politics: the first one was the declaration of the United Nations (UN), which recognised Gibraltar as a British colony located in Spain and invited to both nations to come to an agreement. A second important aspect was when General Franco's regime, more to obtain gas for his survival than for strictly political motivation closed the border in the 1960s. Meanwhile the citizens on both sides of the fence have known how to live together and the colony has been a good place for the inhabitants of El Campo de Gibraltar to find a job. Finally, the Brexit referendum was gaining momentum, given that Gibraltarians overwhelmingly voted in favour of permanence. The result is not surprising. As far as the field of international law is concerned, things are still where they always were: Gibraltar is still a colony and from time to time there are skirmishes such as those that constantly surround its airport. Gibraltar says it is in its right of expansion and Spain considers it an intrusion into its territory.

Subsequently, we will return to the situation of uncertainty that the Brexit, Gibraltar, the exit, the permanence or a possible second referendum may agglomerate in the face of the situation of the United Kingdom.

But let us take as a starting point the recent history of the United Kingdom and above all its decomposition as an empire, its acclimation to the European enclave, its entry into the then European economic community (EEC) and the holding of a referendum that, against all odds, the supporters of the exit won.

In 1946 Winston Churchill lost the elections held after the end of the Second World War. By less than a 1% difference in popular vote, the Labour Party seized power until 1951. These were moments of important reforms in housing, health, education, heavy industry, etc. In 1947, the so-called crown jewel, India, was lost. Two years later, in 1949, the independence of the Republic of Ireland was declared and recognised. From that moment on, the island of Ireland was divided into two: the aforementioned Republic and the 13 counties of the North. From that date until 1998, Ireland wrote the bloodiest pages of its history: the IRA on the one hand and the Protestant guerrillas of the north on the other.

In 1951 the old Churchill returned to power. His assertion that he was unwilling to relinquish the empire was nothing more than a mirage. Like playing cards, the colonies of Africa began to request their independence; in 1956 the Suez Canal War took place, the only war, by the way, that the British lost. The territories close to the canal: Egypt, territories of today's Israel, Iraq, became detached from the United Kingdom. Everything seems to indicate that the empire was crumbling. In 1964, after 13 years in power, the Conservatives handed over 10 Downing Street to the labourites. It was this government that had to remove the police from the streets of Northern Ireland, send in the army and recognise that that part of the UK was simply living in a state of war. Parallel to the events we are telling, the African colonies were disassociating from the London metropolis. At the beginning of the 1970s the United Kingdom had only the so-called white colonies: Canada, Australia and New Zealand. However, in a gradual process these three countries still retain the English monarch as head of state, but in everything else they are totally independent countries. With the beginning of the 1970s, the Conservatives returned to power. And in 1973, the United Kingdom applied and was granted with the membership of the EEC. On the same date, and not surprisingly, the United Kingdom and the Republic of Ireland became members. This step was forced more by pure necessity than by a European conviction and vocation. The empire had been lost; the colonies looked for other markets for their needs, which generated an acute crisis of heavy industry (construction of railways and ships) at the same time that, like other countries, the United Kingdom, was walking towards the oil crisis. The conservative government understood that Europe could be a cure for all its ills. But the relationship, from the first moment with Europe, gave rise to a cascade of events which we are going to present below, even if only in telegraphic form:

By referendum, the British people approved the incorporation of the United Kingdom into the EEC. This was a major victory of 67%. And what promised to be a good future was immediately filled with clouds. Despite joining Europe, the Conservatives lost the elections in favour of the Labour Party. That loss led Margaret Thatcher to seize the party's power immediately afterwards. In 1978 the Labour government which had won with a parliamentary minority suffered a vote of no confidence and general elections were called which, as we know, won Thatcher by a large majority.

The 1980s were already marked by confrontations with the European Union. It is the moment, just to give an example, of the incorporation of Spain; and it was also the moment in which the Community leaders began to think of a European commission that would become the government of Europe, a European parliament and a superior court of justice of Europe. Thatcher interpreted the project as nothing more than a loss of British sovereignty that she was unwilling to accept. Already at that time, the United Kingdom was said to be giving more budget than it was receiving and that led to a confrontation, in which, the United Kingdom was in danger of being isolated in the middle of nowhere.

Thatcher was succeeded by John Major. As a good pupil he followed Thatcher's guidelines. In 1996, he handed over power to Tony Blair, who represented the so-called "new Labour".

In 1998 a glimmer of hope emerged: The Good Friday agreements. By virtue of these agreements, the IRA gave up its weapons and so did the Protestant guerrillas. It opened a period of peace until our days in which the more than 4000 murders that had been committed in previous times ceased. The following year, the London government " gave back " the autonomous power to Scotland with a parliament and to Wales with an assembly. In spite of those successes achieved in the 90's, a group of sceptics had been created, Eurosceptics as we now call them, who openly began to demand the exit of the United Kingdom from the European Union. Let us remember, briefly, that the United Kingdom does not form part of the countries of the Schengen zone; let us also remember that the new Labour members rejected the offer to join the euro zone and the adoption of the common currency. The prime minister himself promised to muddle through, that in a few years "they would hold a referendum in which they would vote on the adoption of the euro and the entry of the United Kingdom into the euro zone. It was the first and last time that such a referendum was mentioned.

The long period of the Labour Party in power, which ended with the term of the Prime Minister Gordon Brown, opened the doors of Downing Street to the young conservative leader David Cameron (possibly the dullest politician in UK history). His victory was insufficient, and, for the first time, the UK had a coalition government made up of Conservatives and Liberal Democrats with 57 seats in the Westminster Parliament. The Scottish Chief Minister wrenched the holding of a consensual referendum on Scotland's independence from Cameron. This referendum took place on 19 September 2014. The Scottish electorate opposed to the independence and Cameron learned the wrong lesson: he was convinced that he was the architect of the victory. The reality was very different: it was due to all the opposition governments, including on it, its government partners in London; and it was also due to the lack of foresight of the Edinburgh government. The chief minister was never able to answer what currency would be used, how the permanence in the European Union would be achieved and who would pay the pensions of those who had been workers for the London government.

In the same year, 2014, the British, granted the victory in the European elections to the Eurosceptics of the United Kingdom Independence Party (UKIP). The conservative party got a very discreet 4th place and Cameron, in order to avoid the bleeding of the conservatives who left the party to join the UKIP, promised that, in case of winning the 2015 general elections, he would commit to the holding of a referendum, which today we know as the Brexit. With this promise Cameron wanted to guarantee the survival of the conservative party and its own permanence in Downing Street. What the Premier Cameron did not say, but he did think, it was that he was sure to win the elections in the way he had done in 2010: an insufficient conservative majority in coalition with the Liberal Democrats. The latter, of known pro-European tendency, would oppose the referendum and Cameron would come out unscathed from the promise made. This move did not work either. the conservative party got the absolute majority with the magical number of 333 parliamentarians. Cameron was forced to call the Referendum. The UKIP members and the Eurosceptics of the conservative party seized the victory by selling what later has proved to be a set of inaccuracies if not lies. By way of example, the withdrawal from the European Union would provide enough funds for the restoration of the decrepit national health service. Besides, the exit would stop the immigration of workers from Eastern Europe. The truth is that the rural territories, the elderly, the unemployed and the

less educated citizens bought the product and the Brexit supporters won the victory on 23 June 2016.

According to British tradition, the Prime Minister resigned the next day. He was succeeded by T. May, until then Minister of the Interior. It should be remembered that Gibraltar, which voted overwhelmingly in the referendum, did so in favour of permanence. Most probably to avoid certain dangers that we will mention later. It is also necessary to remember that May had defended permanence and that as Prime Minister she went on to defend Brexit. As an apology for the first thing, she said that she had defended permanence out of loyalty to her prime minister.

A good instrument for measuring things is time. From the referendum in June 2016 until February 2017 the London government did absolutely nothing. On March 29, 2017 the British ambassador to the European Union, in a short text of 137 words, invoked section 50 of the Lisbon Treaty. The road towards the disconnection that was to end on March 29, 2019, was beginning. The following month, April 2017, by surprise, May convenes early general elections. She argues that Cameron had the majority of 333 parliamentarians and that her intention was to achieve an overwhelming majority of nearly 400 parliamentarians in order to negotiate, from a strong position, the exit from the European Union. Once again, the prime minister on duty was wrong again. Far from those 400 parliamentarians, the conservative group obtained 319, far from the absolute majority. She obtained it by reaching an agreement with the DUP, the Northern Irish party of 10 parliamentarians, with an ultraconservative tone, with opposition to abortion, divorce, same-sex couples, etc. Once the new government was constituted, negotiations began with the community authorities, although no agreement was ever reached. It was not until November 2018 that, after the resignation of three ministers for Brexit, the negotiations were conducted by the prime minister, who signed an agreement with Brussels. The agreement was to be ratified by the British parliament, but for three consecutive times it has been rejected throughout 2019. When the deadline for reaching an agreement was reached, May requested an extension that has finally been moved to October 31, 2019, with total disconnection expected sometime in 2021.

In the interests of our work, it is worth remembering that, in the agreement rejected by the British Parliament, Gibraltar is granted a colonial status and stipulates that any relationship between the Rock and the European Union must necessarily pass through the hands of Spain. The chief minister of Gibraltar expressed his disagreement, although it is

true that the colonial character is the one that appears in the aforementioned London-Brussels agreement.

At the end of May 2019, the prime minister, after admitting 37 resignations in her government, announced her resignation on 7 June, the date on which the election of a new conservative leader will begin among and by her parliamentarians. The process will conclude with two candidates and the winner will be chosen by the conservative militancy. The calculations handled by the party leaders is that the first figure of the conservatives will only be known at the end of July. Bearing in mind that during the month of August there is a certain halt in British and European politics, everything seems to indicate that it is almost impossible for the British to have enough time to have a new prime minister, a new government, a new agreement with Brussels and its approval by the British parliament.

The lines that follow and that have been modelled and remodelled in the light of daily events and until the date of presentation of our work, as can only be expected, belong to the world of speculation. It is impossible to foresee what the intentions of the new prime minister will be: It could be that he intended a way out without an agreement and whose consequences are impossible to predict. The non-agreement would entail the intervention of international tribunals to clarify the terms on which the United Kingdom is disconnected, the commercial relations with the European Union and the total amount of the bill they must pay. The status of Gibraltar would be in the middle of nowhere, the European Union would consider it a British colonial enclave on European territory and the British would understand that it is one more extension of the United Kingdom. The famous fence would have to be closed once again and the relations between Gibraltar and Spain would remain in a limbo of difficult solution.

Despite the bleak picture we have just painted, the new prime minister may be remotely tempted to call general elections. In our opinion we do not believe that this is the case, at least, in the short term. And this is for a reason, which is not futurable but real since 27 May 2019. The extension of the deadline for reaching an agreement forced the holding of European elections that nobody wanted. The result does not help to clear the future or the UK's Brexit. The winning party was the recently created Brexit party with 29 MPs; secondly, the Liberal Democrat party with strong European conviction. Third place went to Labour, fourth to Greens and a humiliating fifth to Conservatives. It does not seem that

with 8.5% of the votes the new prime minister is going to take the risk of calling a new general election that he would clearly lose.

A hypothetical and new elections would lead several parties to have a second referendum on their programme. In any case, above and beyond the political instability of the United Kingdom, one thing is clear: the deadline for negotiations will end in October 2019.

2.1 INTRODUCTION TO THE CAUSTICS OF BREXIT

The Brexit is an opinion that was put forward in 2016 and that throughout three years of uncertainty has been manifested differently in each of the four nations that form the United Kingdom and, much more, in the colonial enclave of Gibraltar. In advance, the results of that referendum received a majority vote in favour of remaining in Northern Ireland (in the only agreement reached, the so-called backstop is one of the major drawbacks), in Scotland, where the mixture of the referenda Independence-Brexit increases future expectations, Wales and England unequally voted (rural area in favour of exit, urban area in favour of permanence) and finally a reference should be made to the more educated segments that expressed a preference for permanence and to the less educated segments, which relied on propaganda in favour of leaving the European Union. Many are those who would analyse this relationship without even making a slight reference to the results obtained in Gibraltar. The circumstances of being an enclave considered by the UN as an existing colony in Europe; its reduced population and the threat that it represented for Gibraltar, and still does, were facts ignored by the experts of the already famous referendum.

It is obvious that when it comes to analysing Brexit from Spain, a neighbouring country, in addition to other points that we will analyse in the course of our work, the subject at the time of the election was presented to us as attractive and interesting from many points that we now only point out with regard to the departure from the United Kingdom, and the concept that the British colony may henceforth deserve. These last words are the ones that define the rock in the agreement reached in November 2018. This agreement, rejected on three occasions by the British parliament, has also failed to satisfy the interests and aspirations of the authorities of the Rock. In the first place, because it receives the definition of colony and, therefore, apart from a customary negotiation (the existence of a colony entails an opening of negotiations of the parties involved: Spain, United Kingdom and the population of the colony itself). In this respect, the agreement not

endorsed by parliament sets out how this negotiation should be carried out: the Community authorities would not intervene and it would be a bilateral agreement between the United Kingdom and Spain. Thus, it is not surprising that participation in the Brexit referendum was absolutely majority in Gibraltar and that the result reflected the desire of the voters to remain within the European Union. In other words: the previous situation to Brexit was satisfactory for the Rock. As far as colonial territory is concerned, it would continue satisfying the needs of the British fleet; with regard to the workers it receives from Spain, free movement leaves aside any negotiation with an uncertain outcome; and why not say the Gibraltar associated with the concept of a tax haven, with a soft legislation relating to tobacco and drug trafficking, in addition to the business that can be generated as a strategic point between North Africa and southern Europe (it should taken into consideration that Morocco in its relationship with the European Union has deserved the attention of both France and Spain).

If in the United Kingdom, the final resolution of Brexit generates uncertainty, it is redoubled in Gibraltar and it is an element of concern for the Spanish diplomatic authorities. And if, on the one hand, the solution to Brexit in general, as regards Gibraltar and Spain, is presented to us as an uncertain problem, it becomes an important element due to a doubly complicated ending given its colonial definition. In view of the foregoing, our work pays attention to a concept of international law that can be observed in other parts of the world that were former colonies: cosovereignty. An approach of this nature must focus its attention on several areas necessary for the enhancement of a new Gibraltar with different relations with Spain, with a new perspective when considering Spanish workers and as an entry point for imports and exports that make this small territory an obligatory point of interest for Spain and Europe. Throughout our study, we will identify points that may deserve an opinion based on commercial and financial issues as well as the workplace of a considerable number of Spanish people. It would be of no use for patriotic considerations from both sides: if the analysis would be carried out in this way, the possible solutions, ways of agreement and

the dynamization of the international market could not take place in any case. The opinion of the Spanish side is well known in our country; the British opinion requires a greater clarification: a large part of the population does not see in Gibraltar a serious problem for the achievement of an agreement; only some representatives of the conservative party have used the issue of Gibraltar as an aspect to contradict the

agreement reached by the United Kingdom and the European Union and rejected by the Westminster parliament.

3. OBJECTIVES

Among the objectives that all degree work must set, we must not forget an adjective very fashionable in recent studies: transversality and, in a closer scope to international trade studies, crossculturality.

It is a fact that the history of Gibraltar is marked by the entry into force of the Treaty of Utrecht. Our work must necessarily refer to it. But if its history offers us a reasoning of the current situation of Gibraltar, its relationship with the United Kingdom, with Spain and its unique position within the European Union, it is appropriate to analyse other areas of its own identity. Throughout our study we will see how popular culture defines Gibraltar as a very special enclave in terms of smuggling; it is also considered a kind of hidden tax haven in which capitals from other nearby countries benefit from its special situation with Europe and the United Kingdom.

It cannot be denied, more here than politically correct, that for the British government Gibraltar simply means a strategic enclave in southern Europe; a strategic point also for British troops and a place where business can be conducted rather concealed than transparent (remember that the British also have in the Channel tax havens that have nothing to envy of Switzerland, famous for its banking secrets). The adhesion of Gibraltar to the British crown would not go beyond a sentimental approach for the sake of its inhabitants and for the protection of the London governments used to the imperialist protectionism. From the Spanish perspective, the importance that Gibraltar has for the worker in the enclave of EL Campo de Gibraltar should not be ignored. At some point in our work, we will see that, in addition to that important core of jobs, Gibraltar must be alert to the events that may result from the departure of the United Kingdom, if it finally takes place, from the European Union.

We currently ignore what kind of Brexit will be produced under the new British Prime Minister governing; The options range from a Brexit without an agreement to a possible negotiated Brexit that would take into account the agreement reached between May and the European authorities. As it is known, the colonial category of Gibraltar is included in this document; the United Nations resolution on a negotiated solution between the United

Kingdom and Spain is accepted. The agreement reached in November 2018 insists that this United Nations providence must be complied with.

What we have just pointed out does not alter Gibraltar's potential, its history, its commercial volume and a possible bilateral understanding with Spain. In the light of international law, there is no shortage of voices defending a cosovereignty project that would bear some resemblance to the one that was once reached in Andorra by France and Spain. Cosovereignty, which some like to call rather the creation of a "free associated" state for the United Kingdom and Spain, offers a potential that must essentially count not on high international agreements, but on the achievement of a territory pending delimitation in which Gibraltar and the nearby territory of Spain could move in a situation that would recognise the historical exceptionality, a shared cosovereignty, a disappearance of the VAT tax to be replaced by a model similar to the Canary Islands.

Faced with this new period that may open up for Gibraltar and Spain, certain specialists in international law recognise that there should be a period of transition between the current and future situation, while at the same time a new status quo will be offered, in which more than the exclusion of Spanish-British powers, the inclusion of rights acquired for historical reasons will be considered. In particular, we are referring to the British navy, in terms of its use of Gibraltar as a refreshment port and training ground for its armies. The now hotly debated Gibraltar airport (for some, it invaded Spanish territory) should be a destination for the nearly 18 million British tourists who visited Spain in 2018. Their joint administration would be a source of wealth for the local population and the surrounding area of southern Spain. In this sense, the first steps have been taken, but the balance tips more towards the use and enjoyment of the British and Gibraltarian population (despite the fact that the vast majority of airport workers are of Spanish origin).

There is one aspect that the vast majority of the consulted works accredit. The academic literature of all kinds states that it would be a mistake if the Brexit were put into operation, and finally, the disconnection would take place. Our work also follows this line, but it is not unrelated to the possibility of considering the advantages that could be derived for Gibraltar and Spain. The mere change of status of the colony and its location in Spain could lead it, in exchange for its permanence in the European Union, to the acceptance of new relations with both the United Kingdom and Spain.

3.Methodology

A work such as the one we aim to develop necessarily has to be transversal, historical, critical and exegetical. Transversal because legal, political and economic elements converge; some of them specific to public international law (after all, what we are talking about is a negotiation between the United Kingdom and the European Union, and private international law (one of the hot subjects for the referendum and now for the negotiation is the emigration policy of the European Union).

We cannot forget the historical elements (the United Kingdom went from being an empire to a discreet nation in Europe, eager to come out of a crisis, the reason why it joined the EEC in 1973). The very subject of Gibraltar, and of its commercial relations with Spain, speaks in this sense. For decades, the United Nations have defined this small territory as a colony. Due to its colonial character and the fact that its metropolis belongs to the European Union, it has enjoyed a status which, under strict international law, should not correspond to it.

Equally, our work must be of a critical nature: not all historical facts; nor all British aspirations; nor all Community desires for the permanence of the United Kingdom; nor all the Gibraltarian pretensions not to be considered as what it is and to continue with a privileged status, from which it has even rejected a possible cosovereignty... Nothing is either totally right or wrong. Claiming that the European Union's strict way of negotiating; saying that Spain has full rights over the rock or supporting the British Government's position when it says that its membership of Europe is more a loss than a gain, would be gratuitous assertions that should not be made in such work.

The exegesis is obligatory. The very transversality of the degree in international trade requires us to dissect what may or may not interest each of the parties involved: firstly the United Kingdom, secondly the European Union, then Spain and finally Gibraltar. It should not be hidden from anyone that once the history of Brexit is over, the territoriality of Spain can be modified. In the same way, the Northern Irish situation could be tempted to unify Ireland; if not, Scotland could see its salvation in a second independence referendum; and in the last European elections the most voted party in Wales was the nationalists (PC).

Above all this, there are two aspects of our absolute and total interest: the society made up of the peoples of Europe and the trade relations within the Community or bilaterally which may occur in the future.

After all, nothing is clearly excellent or perverse, Churchill was wrong when he defined the United Kingdom as a country surrounded by water. He forgot that the United Kingdom has two land borders: one with southern Ireland and one with Spain. The British negotiators made the same mistake and that is why the study we are presenting includes all the strengths and weaknesses of the European and of those who do not want to be European.

5. GIBRALTAR: FROM THE BEGINNING OF THE DISPUTE TO ITS CURRENT SITUATION.

Through this chapter the main facts of Gibraltar's history which took place at the beginning of the 18th century and their resulting consequences are going to be both studied and analyzed. These facts meant a historical milestone and are essential to understand the current situation of the colony and the existing conflict between Spain and the United Kingdom regarding its sovereignty.

If considering all the history of the current colony of Gibraltar, the treaty of Utrecht, which was celebrated in 1713, was more than probably the most decisive historical event because its consequences, despite all the controversy around them, decided the development and the historical path that the rock has followed and which still remain and prevail more than 300 years later. However, the treaty was the result of a series of events that I consider crucial to mention in order to understand what the treaty meant for each of the involved countries: Spain, The United Kingdom and the rock of Gibraltar.

5.1 THE SPANISH SUCCESSION WAR AND THE LOSS OF GIBRALTAR (1701-1713)

To start with, we must go back to the very beginning of the 18th century, when Spain was involved in the Succession War in which all the most powerful European countries took part to defend their different interests. At that time Carlos II was the King of Spain who ruled a country which was far from being the vast empire of Carlos V. In fact, under the reign of his family the house of Austria, Spain experimented a period of decadence in which some of the great conquerors and colonies that formed the Spanish empire were lost

while others suffered internal rebellions which put them at risk of division or independence, furthermore, the country experimented several internal crisis caused by the bad management of their kings. Therefore, Spain was no longer the biggest power of Europe but was France which played that role under the reign of Louis XIV. Carlos II a few years before his death and under the circumstances of not having any direct descendant to his throne took the decision of leaving the throne to Felipe V, the duke of Anjou who was indeed the grandson of Louis XIV. This decision was made in order to find an alliance with France which could guarantee the stability and power of Spain because Carlos II was conscious of the disastrous reigns of his family and the difficult situation that the country was going through. Besides, Carlos II was pressured by influential powers such as the Pope Inocencio XII and although Aragón, Cataluña and Valencia rather the house of Austria most of the Spanish population were in favor of this alliance as Martin Garcia (2007) and Casamayor (2017) wrote in their studies.. The only condition set by Carlos II was that under no circumstances France and Spain could be one country and both must maintain their independence.

In 1700 Carlos II died and Felipe V was recognized as the legitimate King of Spain with the approval of all the European countries except Austria which obviously claimed the right of the house of Austria to the throne of the country. As mentioned before the population received him joyfully and it was when the king uttered the memorable exclamation "Henceforward, there will be no more Pyrenees" (Gerard, 1885).

It was a great beginning for the new king but everything that glitters is not gold and in 1701, just a year after the announcement of Carlos' II testament which seemed to have quelled the dispute of the throne, England, Holland and Prussia reached an agreement and created what was called the Great Alliance in the Treaty of Alliance celebrated in the Hague. The countries which signed the treaty claimed that the alliance was created to avoid that the new relationship of France and Spain could increase their power and they claimed that they will battle a common danger for Europe. There was huge concern about the possibility that one power could control Europe and the East Indies, and England and the other countries were terrified of the idea of Louis XIV expanding its empire. As Jover Zamora (1999) shows in his work the Spanish War of Succession turned to be a wide European conflict in which the forces of the Great Alliance with England as the biggest power pretended not only to stop France but also to establish a new distribution of territories in order to get a balance of power. Besides, other countries such as Portugal

joined the cause later. In fact, this war which was officially declared in 1702 is considered to have been the first great conflict in Europe with a lot of countries involved in it. The consequences of this war were determinant in Treaty of Utrecht.

5.2 THE CONQUER OF GIBRALTAR (1704).

In 1704 an expedition led by the English admiral George Rooke and the German nobleman Georg von Hessen-Darmstadt, who was the representative of Carlos de Austria, sailed to the rock of Gibraltar after their unsuccessful attack to Cadiz in 1702 and the failure to provoke a revolt in Barcelona, although 350 soldiers from Cataluña joined the offensive against Gibraltar. However, this time they gathered a huge fleet that only had to defeat a short army which counted on just a hundred soldiers and three hundred civilians who were willing to defend the rock from the twenty thousand soldiers of the Anglo-Dutch army. Previously the city had showed its support to Felipe V. The city was strongly fortified and that allowed the Spanish forces to resist an initial offensive but after almost 2 days of siege and a definitive bombing Diego de Salinas, the governor of the rock, accepted the defeat and the Spanish soldiers surrendered (Sáez Rodríguez, 2015). Although the governor was forced to reach an agreement with Hessen-Darmstadt to recognize Carlos de Austria as the King giving him the power over the rock, George Rooke replaced his flag to raise the English one and took the city in the name of the Queen of England a few days after the victory (Algarbani Rodríguez, 2007) This move was considered as disloyal to Carlos de Austria, but England got the sovereignty and possession of the rock which was later officially signed in the Treaty of Utrecht. Meanwhile, the civilians living in the rock were offered to stay in Gibraltar but almost the totality refused and left what has been their home (Gerard, 1885).

This battle let England to have the control over the rock which was and still is a privileged strategic location because it is the key to have power over the Strait of Gibraltar which is the natural barrier between Africa and Europe. What is more, it is the channel which connects The Mediterranean Sea and the Atlantic Ocean (Acosta Sánchez, 2016). This means that every ship which would like to cross to Asia from America or Europe and vice versa without surrounding the immense African continent had to traverse the strait. This fact allowed England to control every single boat trying to benefit from the strait and that was a significative advantage for a country which aimed at being the first navy power, a role historically played by the Spanish navy and recently threatened by Holland as well.

5.3 THE TREATY OF UTRECHT (1713)

On one hand, in 1711, two years before the treaty was celebrated the emperor Jose I de Austria died and was succeeded by Carlos VI de Austria as the new emperor of the Holy Roman Germanic Empire. This fact meant open a new scenario, the possibility of the house Austria to claim and obtain the Spanish throne to create a union between Spain and Austria became real again. Immediately, England and Holland reacted to this emerging threat to their interests, those which they had mainly got during the Spanish succession war and the European conflict that it triggered, and they started to consider the fact of settling peace with their main enemy, France. On the other hand, the long-lasting war obviously had consequences even for the first power of Europe. France, which had faced the Great Alliance with the only support of Spain, was both economically and military exhausted and was willing to accept an agreement to reach a reconciliation. (Jover Zamora, 1999).

Meanwhile, England had increased their power during the war and the initial purpose of the alliance to stop Louis XIV to establish an unstoppable supremacy with Spain seemed to be far away. In fact, the position in which England was let them to have bigger aspirations mainly because its supremacy over the seas but also because it had conquered some territories in America, breaking as a result the ancient monopoly that Spain had established in the “New World”. The hegemony of France was at high risk and the objective of the Great alliance to equilibrate powers had been reached and the treaty of Utrecht was simply the written agreement of the real scenario in Europe. However, this agreement was bilaterally negotiated between England and France regardless the interests of the other European countries. England was aware of being in a favorable condition to demand a series of terms and conditions in exchange of the Peace. However, the victory of France in the battle of Denain strengthened and allowed them to be in a better position in the negotiations (Albareda i Salvadó, 2014). Besides the recognition of Felipe V as king of Spain and the controversy around the throne and its legitimate owner was never a matter of discussion in the negotiations; the idea of removing him of the throne was abandoned. Felipe V opted to renounce to the French throne after the death of his father Louis Dauphin and his brother the duke of Borgoña in order to facilitate the negotiations because the other countries would have never accepted that he could reign and control both countries. England was now more willing than ever to reach an agreement to settle peace and which could ensure its new position in Europe. Among the requests of the

British country to France were the imposition that enable Spain and France become a single crown, the cession of the territories of Gibraltar, Mahon, the British right to trade with slaves and the same commercial privileges that France had with Spain. (Gerard, 1885)

In 1712 France and England set the differences aside for their general interests and signed what were called the preliminaries of London (where they were signed). It was in that moment when the other countries were informed of the existence of a French-English deal. This news was received with discomfort and indignation between the rest of the countries, especially those allied with England: Holland and Germany. Besides, Austria was absolutely offended and protested against the Peace that would recognize Felipe V as the Spanish king leaving behind the succession dispute with the final victory of the house Borbon over the House Austria. France tried to convince Spain who was not in the position to put up resistance to the terms of the preliminaries which would mean not only the loss of the rock of Gibraltar and Menorca whose possession would be transferred to England but also of the territories of Naples, Sardinia and the Duchy of Milan which were given to Carlos VI of Germany and the Spanish territories of the Netherlands. They were the high cost that Felipe V had to pay to ensure his reign in Spain. The past hegemony of Spain came to its end. The preliminaries also included the incorporation of advantageous commercial regulations for Holland and England in Spain, the Indies, and the Mediterranean ports and the destruction of Dunkirk.

In January 1712 the respective countries sent their plenipotentiaries to meet in the Dutch city of Utrecht in order to finish the negotiations and to bring the endless war to an end. The main European powers attended to the meeting and there were representants of France, Great Britain, Holland, Austria, Spain, Hannover, Portugal, Prussia, The Romish state, Switzerland, Sweden and other less powerful countries from Europe. In the initial conferences every country tried to look for its interests. However, the preliminaries were the base of the treaty in which the main discussion topics were the Spanish succession and the disposition of its territories, the limitation of the barrier between France and Holland, the recognition of the protestant succession in England, and the compensation to the Duke of Savoy for the consequences of the war . On May 11th 1713 an agreement was reached and France, Great Britain, Prussia, Portugal and Savoy and the Netherlands signed the treaty which would establish Peace in Europe (Gerard, 1885). After that moment Spain with the plenipotentiaries on behalf of the Spanish king who was not

allowed to attend to the treaty joined the other countries and finally and knowingly that they had no other option they accepted their fate in what was the “Great Congress of Peace”(Albareda i Salvadó, 2014).

5.4 THE SOVEREIGNTY OF GIBRALTAR AFTER THE TREATY OF UTRECHT AND THE CONTROVERSY OVER THE LEGAL TERMS OF THE CESSION; THE SPANISH CLAIM.

It is commonly said that time heals all wounds but more than 300 hundred years later the debate about the property of Gibraltar is more than alive, and during these last three centuries both countries, and despite the intervention of the United Nations (UN), have not been able to reach a definitive agreement to finish with this never-ending dispute and the future only brings uncertainty over the future of the United Kingdom and specially over the rock.

As it has been mentioned before Spain signed the Treaty of Utrecht in July 1713 which implied the loss of some relevant Spanish territories and the concession of commercial privileges for Great Britain and other countries. It was in this moment when Spain lost Gibraltar through a contract of cession. However, it was obviously a forced cession because it was the result of a military conflict in which the territory was taken from the defeated country: Spain. With this cession Great Britain pretended that Spain signed over their rights of Gibraltar so they would have the control over the sovereignty and the territory. Nevertheless, the contract gives raise up to controversy because the conditions that it implies seem to be fairly different from the current situation, particularly, in the section X of the treaty. We will focus on certain declarations of the original section which have created controversy such us:

“The Catholic King does hereby, for himself, his heirs and successors, yield to the Crown of Great Britain the full and entire propriety of the town and castle of Gibraltar, together with the port, fortifications, and forts thereunto belonging; and he gives up the said propriety to be held and enjoyed absolutely with all manner of right for ever, without any exception or impediment whatsoever”.

This is the main point of the treaty, which established that Spain had no longer any right over the rock, but it can be abstracted that Spain limited the yielded territory to the town, the castle, the port and the fortifications. It can be clearly appreciated the intention of Spain to highlight that the British must limit their rights just to the aforementioned

possessions. Besides, the statement is quite ambiguous about whether it implies the sovereignty or just the possession of the territory. This ambiguity has always been an asset for the Spanish claim because according to the text, the cession does not mean a totally transfer of the sovereignty. As a matter of fact, the UK despite the fact of having the property of the rock has certain limitations for its use. The NU has never taken a stance according to the sovereignty and has always invited to both counties to negotiate and reach an agreement for the good of the Gibraltarian community. Furthermore, Spain also claims that Great Britain uses the isthmus without any legal right breaking the limitation rule of the territories included in the treaty and has always demanded its return without any condition.

The second term established in the section X of the treaty was:

“But that abuses and frauds may be avoided by importing any kind of goods, the Catholic King wills, and takes it to be understood, that the above-named propriety be yielded to Great Britain without any territorial jurisdiction and without any open communication by land with the country round about”.

An obvious conclusion can be drawn from the text, the cession of Gibraltar would mean the cessation of the communication putting and end to any commercial relationship. There is an evident intention of avoiding any contact between the Spanish territory and the new British possessions. Already In 1713, we can observe the first precedent to prevent contraband to become a habit and consequently a problem for Spain. Besides, again the section emphasizes on the limitation of the territory to the mentioned enclaves of the rock. Communication would only be established in case of emergency in order to offer basic supplies. Furthermore, the section does include a permission to trade with moors and other territories from Africa.

And finally, another essential part of the section X determines that Spain would have a preferential position to recover the territory in case that the United Kingdom would decide to transfer its possession over it.

“And in case it shall hereafter seem meet to the Crown of Great Britain to grant , sell or by any means to alienate therefrom the propriety of the said town of Gibraltar, it is hereby agreed and concluded that the preference of having the sale shall always be given to the Crown of Spain before any others”.

As a conclusion it can be appreciated that most of the terms established in the treaty of Utrecht are not currently effective which intensifies the Spanish claim, indeed, many authors such as Ortega Carcelín (2013) defend that the cession has no longer legal validity, and therefore, the cession would have finished. However, the real situation is that although Gibraltar was declared a self-governed colony by the United Kingdom and the United Nations, it has no legal power of self-determination and both countries are bound to reach an understanding.

5.5 THE DECOLONIZATION PROCESS AND THE UNITED NATIONS' DECLARATION

Before a wounded pride Spain left his pretension to take Gibraltar by force there were three attempts to reconquer the lost territory. The town was attacked in three occasions, all of them during the 18th century. The initial two first attempts in 1704 and 1727 were a complete failure and Gibraltar continued in the hands of the British crown. In 1779 Spain prepared a definitive offensive in which 13000 Spanish and French soldiers besieged the city for 3 years but the British troops resisted frustrating the Spanish plan. Four treaties (Seville, 1729; Aquisgrán, 1748; París, 1763; Versailles, 1783) were needed to reestablish Peace between the two countries (Brotóns, 2004). What is more, they were the ratification that confirmed all the terms in relation to Gibraltar. Nevertheless, Minorca, some American islands and certain commercial rights were given back to Spain.

During the 18th century, Great Britain took advantage of the crisis that Spain was going through and strengthen his position over the rock. It was an exceptional opportunity to expand the territory given in the treaty of Utrecht and the British did not hesitate for a moment. The Algeciras bay and the isthmus that connected the castle with the Spanish peninsula were added to the British territory and jurisdiction. Furthermore, in 1908, a fence to delimit and to consolidate the acquired territory, as well as to control the human traffic was built in Gibraltar. Besides, in 1938, during the Spanish Civil War an aerodrome was constructed invading half a kilometer of the Spanish territory (Brotóns, 2004). This fact created a problem about the property and use of the aerodrome that it is still unresolved. Whereas, in the political field, the situation of Gibraltar undergone a major shift when it was declared as Crown Colony in 1830. This change of its status laid the foundations of the colonial status of Gibraltar. Benefited by his strategic location, and the expansive character of the British power in the Mediterranean and its military use Gibraltar has always enjoyed a privileged situation within the framework of colony.

However, the consolidation of the status was a long-lasting period and it was reached during the 20th century. We have to take into account that it was at the end of the XIX century when the condition of people incapable to be self-governing came up and the United Nations had the “holly mission of civilization”. In the first place, based on the principles settled by the Covenant of the League of Nations, Gibraltar just like other territories with similar conditions, were governed by people from the Gibraltarian community, who were given the legal guardianship of the town and who took the responsibility close together with the society, which had an indirect responsibility of the good govern of the town (Izquierdo Sans, 1996). This fact was the precedent of the status of Gibraltar and it is included in the section 73 of the UN charter. This same section compelled the United Kingdom to provide annual information about the situation of Gibraltar and was effective from 1947 onwards. This article also led to a transition to a self-govern which was the desire of the Gibraltarian community. In fact, a massive movement of reiterated claims emerged, especially after the World War II. The evolution of the govern in Gibraltar was a real fact, and in 1960 the UN approved the Declaration on the Granting of Independence to Colonial Countries and Peoples adopted by General Assembly resolution 1514 (XV). This resolution meant the reinforcement of the section 73 which had not been as effective as it was executive at the moment of its approval. The declaration in question, included principles such us: the unification of the procedure to treat the colonies all over the world and the confirmation of the illegality of the situation of the colonies which was contrary to the principles settled by the UN. The day after another resolution was published; The resolution 1541 (XV) which decreed what requirements were needed to consider which community was considered as a colony, based on the right of self-determination. Finally, Gibraltar was included in the list of territories that the UN would study and control.

On one hand, Great Britain was conscious not only of the increasing demand of independence in Gibraltar but also of the resurgence of the conflict for the sovereignty of Gibraltar with Spain after the resolution 1514 (XV), so Great Britain gradually conceded certain rights and powers, firstly, in the constitution of 1964 and subsequently in the constitution of 1969.

On the other hand, Spain saw an opportunity in the term 6 of the resolution 1514 (XV) of 1961 which established that: “Any attempt aimed 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”. This means that even though the Gibraltarian desire to be independent, and the UN decided that “all peoples have the right to self-determination”, this right cannot be applicable to every colony because there must exist a real right of ownership over the territory. In this case, the UN would look out for the interests of the people and it could even put them before their own desire. In other words, there was a possibility that Gibraltar was given back to Spain in order to guarantee to preserve both the national unity and the territorial integrity of the country. In fact, some territories which were part of that list of colonies such as Hong Kong , were claimed by its previous owner state and the United Nations General Assembly (UNGA) admitted that there were enough proofs and that the terms were fulfilled, and therefore, the territory was given back to the claimer state.

In 1964, the UNGA concerned of the dispute between the countries and after having study the case of Gibraltar, invited both countries to start a negation process in order to reach an agreement regarding to the declaration of independence. Nevertheless, this attempt did not produce the desired effect. Spain took refuge in the decolonization process, whereas, Great Britain called a referendum in 1967. The negotiations were broken. Given the situation the UNGA reaffirmed the principle 6 of the resolution 1514 (XV) and invited to both governs to restart the negotiations as soon as possible. The resolution was favorable to the Spanish interests and it meant an ultimatum to the United Kingdom. However, The British reaction proved to disagree with the resolution. In 1969, London established a new constitution in Gibraltar. It was the result of the British strategy to give more power and responsibilities to Gibraltar. The rock was recognized as a colony of the British crown able to self-govern while the United Kingdom oversaw the defense, international relationships and the public order. It meant a great concession to the Gibraltarian people who were going to be run by a self-govern for the first time since the rock was conquer by the British in 1704 and who became the most independent overseas territory of the British crown . This play seriously damaged the relationship between Spain and the United Kingdom.

5.6 THE BREAKDOWN OF THE NEGOTIATIONS IN THE 1960’S AND THE CLOSING OF THE FENCE

As it has been mentioned before the UNGA invited both countries to negotiate a to put an end to the dispute started in 1704 during the Spanish succession war. The negotiations started in 1966 but the since the very first moment they were host in a hostile atmosphere

which make that the final understanding would be almost impossible. We have to take into account, that this unfriendly atmosphere was the result of the relationship between the two countries during the last decades. The World War II was still remembered by both sides because Gibraltar was a strategic location which could have tip the balance of the war. General Franco had always a constant ambition to have Gibraltar back and be consider the hero of the reconquest, just like the Catholic Monarchs with the Arabian Reconquest. The participation of Spain in the war could also have mean a totally different ending of the war. United Kingdom according to the British national documents could have think about the possibility of transferring the possession of Gibraltar to Spain, in order to ensure the Spanish neutrality in the military conflict. However, this did not happen, and the rock continued being part of the British crown after the World War II.

General Franco had started a new strategy to recover the Gibraltarian territory; The decolonization process. Fernando Maria Castiella the Spanish foreign minister was in charge of the negotiations. In 1954 the Queen Isabel II visited Gibraltar; this fact was considered an offense by the General Franco (Preston, 1998). Besides, since the negotiations started in 1966, the Spanish claim of the Isthmus and the aerodrome, and the British refusal to accept the UNGA's request to carry out the decolonization process entailed the beginning of the hostilities. Franco decided to close the airspace to the British military aircrafts alleging that they invaded the Spanish territory and the so called "neutral" territory between Spain and Gibraltar. Air defenses were even installed in several locations to avoid British aircrafts to fly over the strait of Gibraltar (Izquierdo Sans, 1996). The relationship was unsustainable and consequently the negotiations did not go in the right direction. The referendum called by The United Kingdom confirmed an almost unanimous desire of the Gibraltarian people to form part of the British crown(95% of the citizens) (Portero, 2019); the past Spanish offensives, the World War, the measures taken by the General Franco, the pressure of the British media, and the predisposition of the United Kingdom to give certain powers to the colony, fomented the British national feeling of the Gibraltarian people. The negotiations became stagnant and both sides were playing a tug-of-war. The UNGA tried again to intercede expressing that both countries must reach an agreement and it should be according to the resolution 1514 (XV). Quite the contrary, as it has been mentioned before the United Kingdom ignored the UNGA's petition and proclaimed a new constitution in Gibraltar in 1969. This fact was the last straw. The Spanish regimen had planned the possible measures to adopt in

the future in case of the failure of the negotiations. According to some recently unpublished texts, the Franco Regime pretended not to take serious decisions which could be prejudicial nor to the Spanish community settled in Gibraltar, "los Llanitos", nor to the Spanish people from the peninsula (González, 2018). However, after the announcement of the new constitution in Gibraltar, Franco opted for the harshest option. On the 9th July 1969, the border fence was closed. This meant a terrible setback not only to Gibraltar but also to all those Spanish workers who crossed the border every day to go to their workplace. Before the negotiations became so tough, around 13000 people crossed the barrier to work in the rock. Nevertheless, after the visit of the British queen the Franco regime restricted the number of workers allowed to develop their job in Gibraltar to about half of that number (Sánchez Mantero, 2010). The closing of the barrier meant the loss of the jobs of 5057 Spanish workers (González, 2018). The closing was total and there was not communication by land, nor sea, and neither by phone. The blockade was absolute. The consequences of this drastic decision were catastrophic for both sides. General Franco promised the Spanish workers to be paid from the state until they would find another job, and also to industrialize the zone of La Linea (the Spanish territory which separates the peninsula from Gibraltar) in order to create enough jobs to offer to all those affected works . However, the expectations did not come into effect and La Linea suffered terrible consequences. Half of its population, around 40.000 people, were bound to move to other parts of Spain or to emigrate to other countries, with the purpose of finding a job and starting a new life whereas the regime tried to hide the consequences of their drastic decision. The region was seriously damaged, and its economy suffered a big decline. There were many protests against the decision of the closure of the frontier and in favor of and immediate reopening. The social unrest hugely increased. Certain measures were carried out to try to make up for the what the closing of the border gate caused but they were insufficient, and the damage was already done.

On the other side of the border, the consequences were not less detrimental. In fact, Gibraltar lost immediately after the closing of the border all its Spanish labor force. It was a terrible blow at the very beginning, but the United Kingdom established a new relationship with Morocco which sent hundreds of workers to take the place of the Spanish workers unable to cross the border. Nevertheless, the Gibraltarian economy was negatively affected by the Spanish measure as Franco pretended to be when it was ordered. The commercial blockade pretended to hinder the supply of basic goods and

products imported from Spain and to obtain benefits from any possible contact with the peninsula.

Apart from the economic damage lots of families were torn apart. Many people who has settled down in Gibraltar when they had a job or those Gibraltarians who moved to Spain, saw how a fence separated them from their loved ones.

During the closure of the Gibraltar Spain tried for the last time and armed conquest of the Rock. On October 1970 the NU recommended that Gibraltar should no longer be a colony; Franco consider it as a signal to recover the territory, whether it was given back peacefully or not. Therefore, the Spanish army was placed in front of the border to take the territory back, but the British forces were numerically superior, so the Spanish forces had to withdraw again.

General Franco died in November 1975 and it was expected that his death would lead to the opening of the border gate, but it took a few years until the Spanish government decided to end up with the thirteen-years-old border closure on the 15th December 1982. The declaration of Lisbon on April 1980 was the prelude of the restart of the negotiations which main aim was the opening of the fence. Since 1982, citizens could cross the border again, but it was not until February 1985 when it was fully opened for traffic.

The result of the closure was more than negative for both countries. On one hand, it slowed progress and economic development of the Rock and of the Spanish territory of La Linea down. Besides, it meant the total breakup of the relationship between Spain and the United Kingdom despite the constant plea of the NU. What is more, citizens of both countries, were seriously damaged because of the war between Spain and the United Kingdom to get the sovereignty of Gibraltar. They were the real victims, and as a result of the blockade, many of them lost their jobs, many others their families, and in the end, they lost the chance to live harmoniously coexisting with their fellows and benefiting from what a good relationship may have offer. On the other hand, the Spanish measure instead of weakening the United Kingdom's dominant position it only created rejection against Spain and therefore, fomented the Gibraltarian desire to be British.

5.7 THE NEGOTIATIONS FROM THE DECLARATION OF LISBON TO THE SITUATION BEFORE BREXIT

The opening of the border gate was the result of a tough process of negotiations established between the declaration of Lisbon in 1980 until 1985, when Spain was accepted to form part of the European Economic Community (EEC). At that moment, Margaret Thatcher was governing the country, while in Spain, the socialist party (PSOE) took office after the elections of 1982.

On one hand, Thatcher pretended to get from the negotiations the opening the border gate, the reestablishment of the rights of the Gibraltarian people, and the cease of the restrictions on the British air traffic.

On the other hand, the Spanish government aimed to restart the conversations about the sovereignty. But in the meanwhile, they pretended that the rights that the Spanish workers had in Gibraltar before the blockade were reestablished. Spain was in negotiations to join both the North Atlantic Treaty Organization (NATO) and the EEC. The United Kingdom was one of the founder countries of the NATO, as well as, one the member of the EEC. This fact meant a handicap for Spain in the negotiations because it was obviously a trump card for the United Kingdom since it could threat Spain with its right to veto the Spanish joining request. The first negotiations in 1982 between Thatcher and Calvo-Sotelo, were a give and take. Spain joined the NATO and recovered the rights of the Spanish workers in Gibraltar while the opening on the border was agreed. They confirmed to follow the principles of the Lisbon declaration. However, there was a general perception that the United Kingdom was more benefited from this first round of conversations (Brotóns, 2004). A few days before the date arranged for a new meeting, an unexpected factor came up. The Argentinian army landed in the Falkland Islands with the intention of tacking back a territory that was in dispute between them and the United Kingdom, which at that moment had the control over it. There were plenty of similitudes between this situation and the one between Spain and Gibraltar. But maybe the Falkland was a more difficult matter in dispute, because it had previously been occupied by French, Spanish, Argentinians and finally British. Thus, Spain was keeping an eye on the development of the events. In fact, Margaret Thatcher was afraid of a possible siege from Spain; the fragile situation that the United Kingdom was going through, in which, they had to counter the attack to the Falkland Islands weakened their position in Gibraltar and Spain may have taken advantage its vulnerable situation. Afterall, it would not have been the first time

that Spain tried to take Gibraltar back by force. Nevertheless, that offensive never took place and the United Kingdom overcome the Argentinian siege in 1982. This fact strengthened the figure of Margaret Thatcher to be re-elected as prime minister. During the Falkland war the conversations between Spain and the United Kingdom were interrupted and after the mentioned conflict the scenario was quite different. At the end of 1982 the negotiations were resumed. However, the refusal of the United Kingdom to include the sovereignty debate in the negotiations, the British interest in right over the airport of Gibraltar and the repercussion of the entrance of Spain in the EEC, made the understanding almost impossible. Nevertheless, in on November 1984 both countries agreed to sign the declaration of Brussels, which meant the interpretation and implementation of the declaration of Lisbon from 1985. The declaration included terms such as: the establishment of a negotiation process to reach an agreement and resolve the differences regarding Gibraltar fomenting the mutual benefit and cooperation in terms of economy, culture, tourism, air traffic and environment. Besides, the reestablishment of mutual rights for both Gibraltar and Spanish people to guarantee their equality. And finally, the establishment of the free movement of people. All this measures were mandatory since the moment that Spain joined the EEC and recognised that Gibraltar had the same rights of free movement of people and goods and services attached to the single market. It has to be remarked that, despite the progress that the declaration meant in terms of people rights, it was also established that future negotiations would be carried out in which air traffic and the sovereignty issues would be dealt with, however, it is clarified that Spain could claim the sovereignty but the United Kingdom would act according to the Gibraltarian desire of being part of the United Kingdom as it is mentioned in the constitution of 1969 (Brotóns, 2004). It was a brilliant play for Spain because, for the first time, the United Kingdom had agreed to have conversations about the sovereignty not only of Gibraltar but also of the isthmus. Moreover, a few weeks before the Declaration of Brussels China and the United Kingdom reached an agreement for the future of Hongkong. Indeed, Margaret Thatcher said that the resolution of the matter was an example of how resolving problems with difficult solution. There were strong reasons to be optimistic. Therefore, the foreign Spanish minister Fernando Moran proposed a joint sovereignty of Gibraltar. He pretended that it would be approved by a new NU's treaty and in which both countries would run the territory together for a 15-to-20 year-old-period that could be extendable before Spain would obtain the total sovereignty of the Rock. In fact there would be annexed agreements to the treaty, which, would set the foundations

of the new statute such as: political and labour rights, statute of the population, possibility of British nationality, language regime, institutions and self-govern (Brotóns, 2004). Nonetheless, the British answer was negative, and it referred to the British commitment to respect the desire of the Gibraltarian people. In the United Kingdom knew that Margaret Thatcher would never renounce to the sovereignty of Gibraltar. The negotiations in the following years were absolutely stuck and they became in regular compulsory meetings between the two nations. There was not understanding even in the sovereignty of the isthmus; agreement that apparently should be more likely to reach but the UK described it as a “neutral British territory”. The following years become a process, in which, The UK misled Spain with the illusion that the agreement may be reached while they prepare a more beneficial statute of the Rock for them that would lean the dispute in their favour, whereas, the Spanish efforts were focused on impeding that the Spanish interests and rights would be ignored and suppressed by a new statute.

5.7.2 The negotiations between Spain and the United Kingdom in the 21st century

Already in the 21st century, there was a change in the Spanish government, the “Partido Popular” (PP) overcome the socialist party (PSOE) and Jose María Aznar was the new president. His efforts were focused on gaining the sovereignty of Gibraltar and he invited the UK to accept a similar proposal of co-sovereignty that the previous Spanish government. Tony Blair had reached the power in 2002 and he was willing to bridge all the differences concerning Gibraltar. Gibraltar had developed a more autonomous position that was increasingly creating more problems to the United Kingdom with the European Union. On one hand, the Spanish pretension was to establish a 50-year-old co-sovereignty regime with a recognition of the British nationality, protection of the language and culture, and what was different from the Moran’s proposal, a autonomy statute within the Spanish constitution framework with self-governed courts and the incorporation of their own fiscal regime. On the other hand, the British government established certain rules required to reach an agreement. First of all, there should be an open-ended cooperative system that may become definitive. Under no circumstances it should be transitory as Spain pretended. Besides, the military base must remain under British control. Finally, Blair determined that the Gibraltarian people must be consulted before reaching an agreement, although, they would not have the right of veto (Brotóns, 2004).

Nonetheless, the scenario was totally different from the past. Gibraltar was not anymore that part of territory in dispute which had no say in the matter, but they would part of the new triologue. the Spanish government had accepted the British request to set the principle of “two flags, three voices” in order to satisfy the Gibraltarian demands. In 2002, another referendum to vote whether the co-sovereignty regime was accepted or not was celebrated in Gibraltar. The result was the absolute rejection to the agreement between Spain and Gibraltar to share the sovereignty. Indeed, 98,48% of the population voted against it. None of the countries validated the referendum (Portero, 2019). However, Blair found a terrible opposition within the British parliament and the Gibraltarian government and the agreement was frustrated again.

Since that moment, the relationship between Spain and Gibraltar has got into a “cold war” situation in which sovereignty over the Rock and the isthmus, the air traffic and the waters are still a matter of issue that creates big confrontation. The only positive understanding among the triologue was the agreement on the joint use of the airport, the border traffic and the telecommunications from both sides of the border (Portero, 2019). Besides, the especial tax regulation which becomes Gibraltar in a tax haven and the smuggling (manly of tobacco) hindered the relationship even more.

5.8 THE NEW SCENARIO WITHIN THE BREXIT FRAMEWORK

As we all know the United Kingdom voted to leave the European Union (EU) on the 23rd of July 2016 by a narrow and controversy margin. Nevertheless, the victory of the Brexit in the United Kingdom contrasts with the overwhelming rejection that the Gibraltarian people showed in the referendum; to be exact 95,91% of the Gibraltarian population who voted made their denial to leave Europe clear. Since the first moment that the result was known the Gibraltarian govern expressed their desire to remain within the framework of the European Union even though the United Kingdom would leave the EU. The govern tried to put pressure on the European Union and urged the European governs and institutions to take part in the issue in order to find a solution. However, the European regulations are clear, and they say that since the moment that the member country would leave the EU Gibraltar would no longer have the right 355.3 TFUE and they would definitely leave the EU exactly as the United Kingdom. This fact has totally changed the situation filling it with deep uncertainty. If we look back, it has to be reminded that the United Kingdom has always express their total commitment to respect and protect the desire of the Gibraltarian people. In fact, it has been one of the main reasons that have

frustrated the negotiations between the United Kingdom and Spain. However, it is inevitable that next question comes up: Would the United Kingdom respect and facilitate a solution to fulfil the Gibraltarian desire?

With only a few months of the deadline for the total disconnection from the EU, the position of the London govern is clear; Gibraltar is part of the United Kingdom and so it will be. Nonetheless, the EU described Gibraltar as a “colony of the British crown” after having approved the text that includes the regulation of the visa on the 4th of April 2019. Besides, the draft law includes a footnote in which can be read: “Gibraltar is a colony of the British Crown. There is controversy between Spain and the United Kingdom concerning the sovereignty over Gibraltar, a territory for which a solution has to be reached in light of the relevant resolutions and decision of the General Assembly of the United Nations” (Tena Nunez & Tidey, 2019). This fact was promoted by Spain, which received the news as a victory; no matter what the solution will be, but it will have to be negotiated with Spain. On the contrary, it created huge indignation in London. A spokesman of Theresa May said that it was inappropriate to describe the Rock as a colony because it forms part of the United Kingdom. Moreover, many members of the European parliament did not doubt about describing the Spanish and European play as “dirty politics”.

Spain and United Kingdom are facing again a situation of dispute but this time the desire of Gibraltar is different. Both countries are bound to reach an understanding if they want to find a solution for Gibraltar. History tells, that it seems impossible that the British government will renounce to the sovereignty, but the situation demands a change in the history. Despite the fact that the cosovereignty project proposed by Spain was turn down twice, it could be accepted by the Gibraltarian governors and citizens to remain in the EU. Furthermore, a hard Brexit could mean the closing of the border, and history also tells us that the consequences of this measure would be terrible for Gibraltar, El campo de Gibraltar and La Linea, and it also would seriously damage the relationship between and Spain. Therefore, it is time of politics to be live up to this extraordinary and tough situation, leaving behind proud and historical differences and finding a solution that would be really focused on people’s interests.

6. NEW RELATIONSHIPS; A NEW ERA OF UNCERTAINTY

In this chapter we will develop an analysis of the main characters that form the identity of Gibraltar now a days; their relationship with Europe, UK and Spain and the consequences of Brexit over them. As we all know, Gibraltar is a small overseas territory with 34.000 inhabitants. Historically, it has always been a strategic location situated in the south of Spain, and therefore, a very valuable asset to control the traffic through the Mediterranean basin. However, its current value goes beyond the geographical location. Gibraltar has become in one of those small territories that congregates an immense economic activity and which characteristics are difficult to explain. It has become not only in a political anomaly but also an economic one, as a result of its special status and regulations. Indeed, the Rock has become in the 3rd richest territory in the world in terms of GDP per capita. But Brexit which especially jeopardize and provoke terrific economic consequences in the border places of the United Kingdom (Norther Ireland and Campo de Gibraltar). Besides, Brexit could lead to a situation in which Gibraltar may lose part of the advantages and privileges intrinsic of its special status, slowing down the economic progress of the last few years and threatening its current attraction for companies and workers.

6.1 THE RELATIONSHIP BETWEEN SPAIN AND GIBRALTAR AFTER THE BREXIT

As it has previously commented, Gibraltar has been considered again a colony by the EU. Moreover, not only the discussion about the sovereignty has been reopened but also this time the EU has given Spain the power to negotiate with Gibraltar and the United Kingdom since this negotiation will be included in the negotiations of the Brexit. The Spanish government is trying to do the most of this opportunity to express their demands and obtain certain collaboration in matters of labour market, fiscal policy and contraband which are the matters which most affect Spain and which determine the relationship between Spain, the United Kingdom and the Rock.

6.2.1 The labour market

The relationship among Spain and the United Kingdom has always been complicated and has always been determined by the struggle for the sovereignty of Gibraltar. Despite that fact, both countries know that the relationship between the bordering Spanish territory El campo de Gibraltar and Gibraltar has always been crucial for its economic development

and public welfare. This relationship may be defined as a situation in which both parties have established professional and personal links which creates synergies that benefit and enrich both Gibraltar and Campo de Gibraltar. If we cast our minds back, already in the middle of the 19th century there were around 14000 workers who crossed the border to develop their jobs in Gibraltar. It has also to be mentioned that, every measure intended to limit or totally impede this flow of workers, goods and services had a negative impact on both economies. Therefore, we are facing two different scenarios within the framework of Brexit: a hard Brexit and a soft Brexit. It is obvious that the consequences of the exit of the United Kingdom from the EEC will lead to economic losses, but these losses could be reduced if an agreement is reached. On the contrary, a hard Brexit would have terrible consequences specially in the short and medium term and for those border territories whose big part of its economy depends on the relationship with the neighbouring country. Thus, an analysis of the economies of Gibraltar and El Campo de Gibraltar and the impact that each one has in the other is going to be carried out.

6.2.1.1 The labour market from the referendum to our days; Is Gibraltar a parasitic economy?

If we focus on the case of Gibraltar, the EU says that the territory is a Non-Self-Governing Territory whose international relations are assumed by the United Kingdom, which still is a member state. The EU establish certain rights for the workers of member countries such as: free movement of workers; which guarantees the entrance and stay in a different country not only in the period in which a person is working but also when the professional activity is over (if the worker meets the requirements). Besides, the European regulation also guarantees the principle of territoriality which establish that the worker will pay contributions in the state in which is working, and it will be that country the one who will ensure the payment of an occupational pension when a worker has reached the end of its professional life.

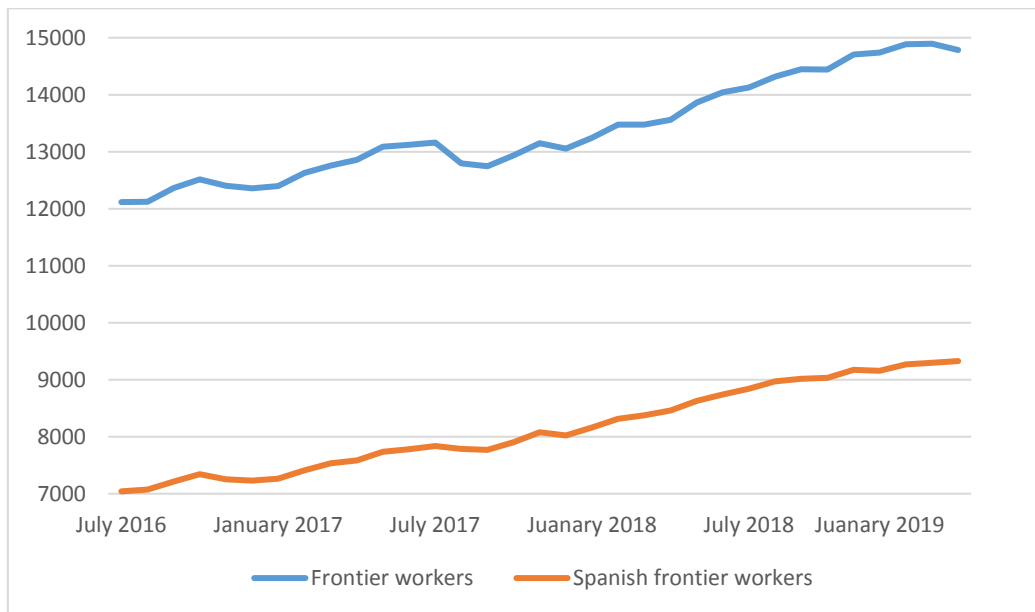
The European regulations establish that the territories whose international relationships depends on a member state, (which is exactly the case of Gibraltar) will have the same rights and obligations than the member states.

We mentioned before that Gibraltar has become an anomaly in Europe and the labour market is one of the clear examples that confirms it. According to the data provided by the Gibraltarian government the total amount of workers in Gibraltar in October of 2018

was 29995 with an almost non-existing unemployment rate (just 44 people; 0.15% of unemployment rate). In fact, Gibraltar has the lowest unemployment rate in Europe and the second one in the world. It has to be highlighted that 14443 of the total amount are frontier workers. In order to get a better understanding, the European economic community describes the term frontier worker as: any person pursuing an activity as an employed or self-employed person in a member state and who resides in another member state to which he returns as a rule daily or at least once a week. Therefore, 48% of the Gibraltarian workforce are people who come from other states (mainly Spain) and come back home after work every day or at least once a day. Nonetheless, there are some differences in the consideration of the term; Spain consider frontier workers to those people who develop their activity and come back to their state every day.

The official employment data also indicates that 9032 jobs were occupied by Spanish workers; although this number varies from one source to another and it is estimated that the real number of workers could reach 10000 people, if considering workers in irregular conditions. Those 9032 Spanish workers who cross the barrier to develop their work represent 30% of the total Gibraltarian labour market. Thus, is undeniable that Spanish workers play an essential role in the Gibraltarian economy, which in turn, provides incomes for all those Spanish workers who live in the Spanish territory. What is more, according to the official data published in June 2019 indicates that both frontier workers and Spanish workers total amount have increased, and they now reach 14875 and 9327 workers, respectively.

Figure 1. Evolution of frontier and Spanish frontier workers in Gibraltar after the Brexit referendum.



Source: Gibraltar government Department of Employment; The chart is my own produced.

As it can be appreciated in the figure 1, the rise in the hiring of frontier workers and Spanish frontier workers has been constant and also confirms our theory that Gibraltar is an anomalous case. Despite of the uncertainty created by the Brexit the number of workers from other member states who develop their professional activity in Gibraltar has increased. This fact highly contrasts with the situation of the labour market in the UK, where net work-related migration of European Union citizens has drop to the lowest levels since 2012 due to a 60% fall compared to the situation before Brexit (Bulman, 2018). The country is going through a situation in which the demand of workers cannot be met and there are currently 850.000 vacant jobs, especially in those fields which need skilled-labour workers. In fact, 3% of the British companies had already expressed their serious difficulties to find capable workers for their jobs, to find a similar rate we must go back to 2001 (G.Jorrín, 2019). The situation is compounded if we take into account that the UK registered the lowest unemployment rate (4,03%) in all his history, practically a full employment situation. The fact that UK cannot meet the working demand with British workforce is an evidence and the diminution of the EU working migration worsens a difficult situation that the UK will have to confront. Nonetheless, migration from countries which do not form part of the European Union has highly increase reaching levels that dated from 2004.

Turning to the collected data from Gibraltar, on one hand, the total number of frontier workers when the referendum was celebrated and the exit of the UK from the EEC was approved, was 12216, while almost three years later, in April 2019, the number has increased up to 14785, creating 2659 new jobs assumed by frontier workers and representing a 21% increase in comparison to in July 2016. On the other hand, 2286 new Spanish workers started their professional activity since the Brexit referendum. This increase meant a 32% increment and it has also to be underscore the predominance of Spanish workers among the total frontier workers; 86% of the frontier workers came from the neighbour country of Gibraltar, Spain.

Nevertheless, there is a common wrongly association of this predominance of Spanish workforce, imports as well as other factors that characterise the relationship between Spain and Gibraltar and define the role of Gibraltar in the relationship as a parasitic economy which highly depends on the Spanish economy and takes benefit from it. However, the economic consequences of this relationship are also positive to Spain.

On the other side of the Gibraltarian frontier, el Campo de Gibraltar is going through a tough situation, especially, La Línea de la Concepción, which is one of the localities of the Campo and which is the one that has a closer relation to Gibraltar. The population census of that locality established that there were 62.000 habitants living in la Linea, which form part of the total population of el Campo de Gibraltar, which came up to 266000 in 2018. The locality has the second highest unemployment rate in the whole Spanish territory if we consider all the territories with more than 40000 inhabitants. To be exact, 32,95% of the working population is unemployed. As it has been mentioned before 9327 Spanish workers develop their professional activity in the Rock and they mean 30% of the total Gibraltarian workforce. Most of these workers come from El Campo de Gibraltar where unemployment is a serious issue. Therefore, the unmet Gibraltarian demand of workers is solved with Spanish labour and the same time, more than 9000 Andalusian inhabitants found a job. Indeed, frontier work represents around 11% of the total employment of El Campo de Gibraltar, and it is essential if we take into account that the region is already one of the most affected by the unemployment in Spain (Galiano Bastarrica, 2019). Thus, more than 9000 workers receive incomes from Gibraltar and have an opportunity that they cannot have in their region. At the same time, part of the salaries that they receive remain in the Rock through the payment of rents, groceries, transport and many other products and services. This led to the creation of an

economic cycle that benefits both parts. The unmet Gibraltarian working demand is satisfied with the unmet Spanish working offer. Besides, the unemployment rate is reduced thanks to the frontier works and Gibraltar has become the second biggest employer of the Andalusian region. In fact, the unemployment rate of El Campo de Gibraltar fell in 2018 to the lowest level in a decade. The impact of the Gibraltarian economy in the Spanish one is evident, and the Gibraltarian authorities have recently stated that 25% of the Campo de Gibraltar's GDP is directly originated from their economy. In the statement, the chief minister also affirmed that Gibraltarian companies spend around 450 million euros in products and services of Spanish companies, while Gibraltarian citizens spend about 80 million euros in goods and services and those citizens who own a second home in Spain spend another 70 million euros a year; at least 52 of them remain in the Spanish territory. The chief minister's intention when he provided this information was to deny the parasitic character of the Rock's economy, as well as to claim the importance of the commercial relationship between Gibraltar and Spain, and especially with the neighbour territory of El Campo de Gibraltar which is strongly tied to Gibraltar, because of the high unemployment rate and the low industrialization in the zone, and vice versa since 30% of the Gibraltarian workforce comes from the Andalusian region.

In order to shed some light on the matter we are going to analyse the direct commercial relationship; the imports and exports between Spain and Gibraltar. According to the data provided by Atlas in 2017. In the case of Gibraltar, the neighbour country, Spain, was the main trade partner. 16% of the total imports came from Spain for a total value of 1360 million euros while Spain is the fifth country which imports more goods and services from Gibraltar, to be exact, 5,5% of the total exports of Gibraltar end up in the Spanish territory and they meant 17,7 million euros to the Rock. The trade balance between them is really favourable for Spain which receive a huge amount of money from their neighbour country. Besides, both countries benefit from the exchange of goods and services.

Therefore, we can conclude that Gibraltar is not a parasitic economy in terms of labour and goods, however, as we will analyse later, contraband and the evasion of taxes in Spain due to the less stringent tax regime in the Rock, strain the relations and reopen the debate. What is more, Brexit had not negatively affected Gibraltar with regard to labour market so far. In fact, the frontier workers rate has raised and there more Spanish workers than

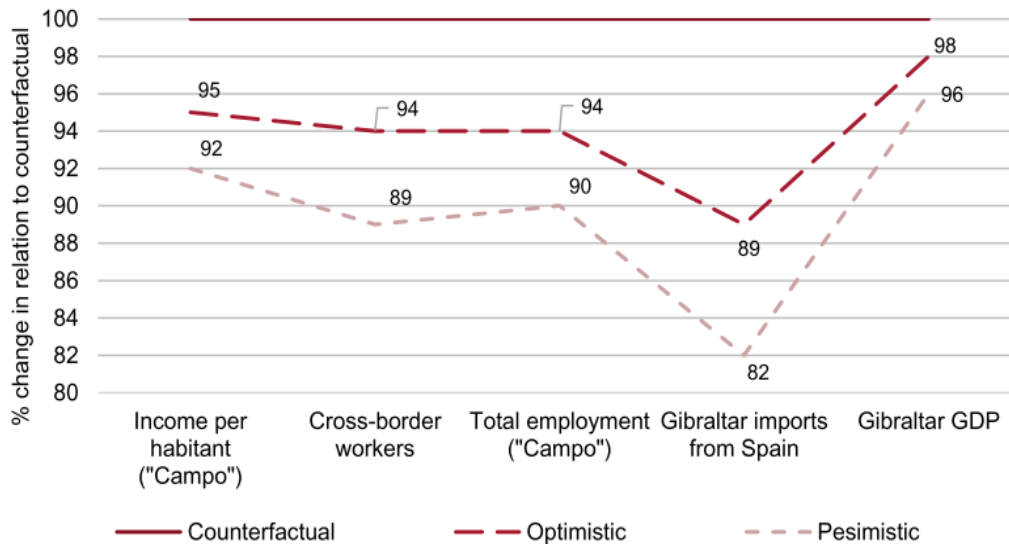
ever. But the future it is uncertain and it unknown whether the UK will finally leave the EU and if it happens whether there will be a London-Brussels deal for the exit or not. The consequences of this decision will determine the future of the United Kingdom, Gibraltar and their relationship with Spain.

6.2.1.2 Consequences in the Gibraltarian labour market of a deal or no-deal Brexit

Brexit is a real fact that has already had negative consequences and that will be much more significant if the United Kingdom finally stop being a member state of the European Union. Automatically Gibraltar will leave the EU as well. We have to remember that neither UK nor Gibraltar form part of Schengen area; agreement whereby 26 European countries decided to remove controls in frontiers in order to facilitate and foster the free movement of people, goods, services and capitals. Although UK was not part of the agreement it was a member state of the EU so the consequences were not so tough, but the EU ordered to intensify the controls to those non-Schengen members and as a consequence, long queues were formed in the Spanish border with Gibraltar in the last few years and which even last up to six hours. Several measures were implemented to make these queues more dynamic, especially for frontier workers. Nonetheless, the exit of the UK without a deal would mean the definite establishment of controls and would mean the removal of free movement of people, goods, services and capitals. In fact, the issue generates deep worries in Gibraltar which fears to end up in a situation similar to the one lived in 1969 when the fence was closed. We have to remember that almost half of the workforce of Gibraltar comes from beyond the Rock. Thus, if new barriers would be established, they would lead to restrictions that would rise in problems to meet the high demand of workers and the economy would suffer a big setback. Besides, 14000 workers could find big difficulties to cross the border every day and get to their workplace, and in case of a hard Brexit with a border closing could lead to the impossibility to develop their professional activity. This fact would mean the terrible job destruction of the frontier workers. Considering that the Spanish region of El Campo de Gibraltar is already highly affected by unemployment this measure would mean represent a terrible threat for the zone whose 25% of its GDP depends on the Rock. Through all the history, Gibraltar and El Campo have established strong ties strengthen a mutually beneficial relationship that through the exchange of labour, goods and services has led the zone to economic development so any consequence of the Brexit that would signified the hindering of free movement of people, goods, services and capital would mean a

terrific setback of both economies; not to mention that it would turn out into a massive loss of rights, especially for the Gibraltarian community that now has the same rights as any other member state of the EU.

Figure 2. Predictions depending a deal or no-deal Brexit



Source: (Galiano Bastarrica, 2019); Real instituto el Cano

As it can be appreciated in the chart and as we mentioned before the definitive exit of the UK of the EU would imply losses, but its dimensions can hugely vary depending on the negotiations for the Brexit. The counterfactual line represents the previous situation to Brexit within a framework of single market and free movement of people, goods, service and capitals while the optimist line represents a future possible situation that will depend on the development of the negotiations and the decisions taken on them, finally, the pessimistic one symbolises a situation in which UK leaves the EU without having come to an agreement and therefore UK has no longer any of the privileges and advantages inherent of the single market. On one hand, no matter what the result of the negotiations may be that Brexit would imply losses which in both cases are more negative when it comes to trade. Imports from Spain to Gibraltar would be reduced up to 11% and 18%, respectively. This fact could have a big impact specially in the Gibraltarian territory which mostly survives from the imports and has the impetative need to resort to trade. In both cases the commercial relationships with Spain would be affected and in the worst scenario could represent a 18% decrease. Obviously, the wealth of the colony would also

suffer a setback, slowing down the astonishing growth experimented in the last few years and that reached £2.18 billion in 2018 (Government of Gibraltar, 2019). To be exact, this decrease would imply a huge loss of £43 thousand million in the optimistic scenario and a £86 thousand million in the pessimistic one. There is no doubt that Brexit would be a challenging situation for the Rock, and the scale of the economic and political repercussion would highly depend on the capability and willingness to reach an understating. On the other hand, the adjacent Spanish territory, El Campo de Gibraltar, would be also adversely affected by Brexit. As it can be observed in the graph, there would be a high drop of cross-border workers due to the restrictions on the free movement regime. This loss would mean a fall that goes from 6% with a soft Brexit up to 11% if there is no deal and the restrictions are harder. Consequently, the total employment of el Campo would also decrease to similar percentages. This fact represents a terrible threat to the Spanish territory because it makes the current situation of unemployment even worse and directly impacts on the second Spanish locality with a higher unemployment rate. At the same time, it is a very negative news to Gibraltar because this drop of cross-border workers would translate into terrible difficulties to meet the demand of workers; we have to remember not only that 48% of the jobs are occupied by cross-border workers but also that the unemployment rate in Gibraltar is almost inexistent and therefore there is not enough own workforce to fill all the future job vacancies. This fact clearly is, therefore, a break on development and progress. Besides, if unemployment increases in el Campo, incomes coming into the region would diminish, exactly as the chart shows. Inhabitants of El Campo de Gibraltar would perceive from 5% to 8% less of incomes and, as a consequence, their economic capacity would be affected. All figures considered, there is clear evidence to prove our theory that the relationship and ties between the adjacent territories of Gibraltar and el Campo de Gibraltar have both political and especially, economic benefits for both of them. The European privilege of free movement of people, goods, services and capitals creates positive synergies in trade and labour and lead to economic growth of both territories. It is also irrefutable that Brexit would have a negative impact in both economies and that a possible positive outcome of the negotiations would reduce the consequences of the exit of the UK from the EU. Concerned of the relevance of protecting this synergies created by the interaction in terms of labour, Spain and UK reached an agreement in November 2018, the first great understanding since the treaty of Utrecht in 1713, and which tries to guarantee the maintenance of the rights of the more than 14000 frontier workers that cross from Spain

to the Rock every day to work. The agreement establish a transition period which starts with the disconnection of UK from the EU and that will extend by 31st December 2020 (Abellán, 2018). It is focused on the fulfilling of the essential rights of every cross-border worker no matter where they develop their professional activity, they are generic. Besides, the reduction of inequality between the Spanish region El Campo de Gibraltar and the Rock is one of the main objectives of this agreement. What is more, technical committees will be created to guarantee a quarterly exchange on information and to oversee the correct fulfilment of the principles agreed in the document which also includes measures in terms of tax evasion, contraband or environment. With this agreement a step forward is taken in the future negotiations between both countries but there is still a long way to go. Indeed, the agreement makes reference to the British sovereignty right and it clarifies that the negotiations are only concerned to the principles signed in the agreement so the still open issue of the sovereignty will not be negotiated, at least until the transition period come to its end.

6.2 FROM A TAX HAVEN TO AN INTERNATIONAL FINANCIAL HUB?

Gibraltar as we mentioned before is undoubtedly an anomalous case. As we already know, Gibraltar is a small overseas territory where around 34000 people live, and another 14000 thousand people cross every day from Spain to work in the Rock. What is more, it is an utterly attractive location for companies and big firms. Now a days, around 55000 companies are registered in the Rock. This means that there are quite more companies in the British territory than people living on it. Therefore, there is something beyond its strategic location to attract so many companies to settle in a 6,8 km² territory. Since 2011 Gibraltar opted to take a different approach to its fiscal regime. Indeed, it became a more flexible and less strict tax system that invited lots of companies to settle their tax address in the Rock by the unbeatable offering of tax advantages, creating a system that could perfectly be considered as tax haven. The system was drawn from the premise that the companies registered in Gibraltar would only have to contribute for the income generated in the Rock. Besides, the corporation tax rate was progressively reduced from 35% in 2007 to 10% in 2011, and it currently remains at the same low percentage. It is in fact, one of the lowest in Europe where the average corporation tax rate in the EU is 21,30% whereas in the Euro zone it is 23,30% , and it was really far from the tax corporation rates in the some of the most powerful countries of Europe in December 2018, such us: France (33,3%), Germany (29,79), United Kingdom (19%) or Spain (25%) (Trading economies,

2019). Besides, there are many other tax advantages and we cannot forget that Gibraltar is tied to United Kingdom which still is a member state and the registration of a company in the rock would let that company to access to the single market. Therefore, lots of companies have decided to settle their tax address in Gibraltar, especially those related to insurance services, finances and online gambling. In fact, Gibraltar has become in one of the world leaderships in terms of online gambling since 35 of the most powerful betting companies were registered in the Rock. Their relevance is so huge that online gambling combined with financial services represent 40% of the Gibraltar's GDP. Besides, online gambling creates more than 3000 jobs, most of them, around 70%, are occupied by cross-border workers (Maiquez, 2019). Nevertheless, as we will study later, the consequences of Brexit and the new agreement between Spain and UK are already affecting the industry which has seen how some of the most important online gambling companies had already left the rock.

Concerned of the creation and growing relevance of Gibraltar as a tax haven, in 2013, Spain denounced illegal activities in relation to the tax system and the tax advantages and announced that they would consider Gibraltar as a tax haven. Consequently, the EU affirmed that a deep analysis of the activities in Gibraltar and the tax system would be carried out. Five years later, in 2019, the EU took a decision and pronounced that the Gibraltarian government had given unlawful aids to certain companies through the exceptions of interests and fees in the corporation tax. Thus, the European commission decreed that the final beneficiaries of the illegal aids must make up for them and pay 100 million euros, the estimated value of the aids considered by the European commission (Pellicer, 2018). Nonetheless, this value seems to be far away from the reality and Spain has already appealed the decision since they consider that the fine should be much bigger. According to the sentence, 165 cases were analysed, and it was in 5 of them in which irregularities were found. Spain has requested a deeper studio of the cases since most of them barely have enough information to proof that those companies were treated under the same conditions as any other firm and there could be much more inconsistencies. However, the European commission have denied the allegation. We will have to wait to know what the European Court of Justice decrees and whether they accept the Spanish demand or not (Alarcón, 2019).

The relationship between Spain and Gibraltar has always been tense when it comes to the tax system of Gibraltar. The Spanish government claims that their country is severely

affected by what they consider an aggressive and dishonest practice, which is characteristic of the tax havens, and estimates that 1000 million euros are lost every year because of this especial fiscal regime and contraband (Montoto, 2018). The tax system facilitates the creation of offshore companies, which are those companies who are registered in a country or location in which they do not develop any economic activity, but which typically benefits the company through tax advantages, asset protection or confidentiality. This kind of companies proliferate in tax havens.

Moreover, Spain and other countries are also affected by those people who establish their tax address in the Rock although they live in another country to avoid the payment of bigger taxes. It is the case of big fortunes. They are called free riders, and although they live in the most luxury residential areas of Spain, they establish their residence in Gibraltar so they avoid to pay not only the personal income tax but also the wealth tax. Their fortunes are hidden through the creation of complex corporate frameworks and they even allow them to reduce the corporation tax. Besides, no trace is left when their properties are sold, so Spain does not perceive taxes. Free riders have a huge negative effect on the Spanish economy and the amount of taxes they avoid paying is immense. Therefore, it is one of the main reasons of the Spanish claim against the Gibraltar tax haven and their condition, as we are going to see later, will be regulated during the transition period. Meanwhile, Spain has tried to find those fictional residents. In fact, last year around 160 great fortunes avoiding taxes were detected, and its total amount amounted to 20 million euros.

Finally, apart from the free riders, the controls have also been intensified to identify tax evasion among the cross-border workers. At the very beginning, when the first controls were made, 93% of the Spanish workers who cross to Gibraltar to carry out a professional activity, did not declare it. Now a days, the situation is different and 75% voluntarily declare their incomes perceived for its professional activity in the Rock (Montoto, 2018).

6.2.1 Characteristics and consequences of the tax treaty

Brexit is undoubtedly one of the most challenging situations in the history of the European Union, and so far, it has created a long reaction chain, whose effects have mostly been negative. Nevertheless, the agreement between Spain and United Kingdom to end up with the tax haven condition of Gibraltar, is definitely a great news.

As it was mentioned before, the first treaty between Spain and the UK concerning Gibraltar was signed in centuries. The Spanish pressure on the EU, the Gibraltarian desire to remain in the EU, and the necessity of UK to lessen the level of tension in the negotiations with Spain to impede that Gibraltar continue being a problem for their withdraw of the EU, led to the signing of the treaty.

Another determinant factor for this rapprochement that we have to take into account, is that Spain and UK have a good relationship and their ties go far beyond than Gibraltar. The economic relations between them are extremely important; Spain receives 20700 million euros through imports to UK while the British exports to Spain amount to 12800 million euros (Atlas,2019). Indeed, 2,7% of the Spanish GDP comes from the exports of goods and services to the UK. Besides, tourism from UK represent 20% of the total income generated by this sector (Benedito, 2018), and 7% if we consider the expenditure of Spanish tourists in the UK (VisitBritain, 2019). What is more, UK is the main country in which the Spain place its foreign investment, whereas Spain is the second destination of the British investment, which has become the biggest European investor of the Spanish country. These inversions accounted to 17,2% and 14,4%, respectively in 2017 (ICEX, 2019). These indicators show the importance of the British economy on the Spanish one and vice versa, therefore, Gibraltar cannot be a threat for this historical relationship. Both nations are bound to get an understanding and protect their economical and political ties.

As a result of all these factors, the agreement formed by four memorandums of understanding was firstly negotiated in November and then signed in March 2019. Spain and UK committed to cooperate and regulate all the cases explained before: companies and people settle in one location but who make revenue in another one and also those big fortunes who establish their tax address in another nation to avoid taxes. In order to end up with these unlawful activities both countries have established some regulations. Regarding to people, it has been decreed that every person meeting any of the following requirements: staying more than 183 nights (six months) during the calendar year, being the spouse or descendant of a person whose habitual residence is in Spain or having two thirds of his or her net assets in Spain, would be compulsory consider as a Spanish tax resident. The aim of this measure is to avoid the existence of the so-called free riders, who evade paying taxes in Spain. Likewise, the agreement establishes that their tax residence will be situated in Spain as long as they have most of the revenues or net assets located in the Spanish territory or in the event that most of the ownerships have their tax

residence in Spain (Peláez Martos, 2019). Besides, all parties agreed on the relevance of cooperating to fight against fiscal fraud, thus, the automatic exchange of information and the possibility of carrying out mutual fiscal controls were also included in the memorandums. Finally, a technical committee will be established to oversee and ensure the fulfilment of the objectives. It has to be remembered that the application of the measures of this agreement will start when the UK leaves the EU, and it will open a transition period that will ensure the rights of the citizens and a soft exit, at least, of Gibraltar from the EU. The transition period will last until the 31st of December 2020, after that Gibraltar is heading an uncertainty period, and negotiations with UK, Spain, and EU will be required. This rapprochement between Spain and UK, has a great importance and although it is a little bit ambiguous both countries and Gibraltar have already expressed their satisfaction with it. Picardo, chef minister of Gibraltar, expressed that the treaty would mean a big step for Gibraltar, whose people and status were recognised for Spain by the signature of the agreement. Besides, he stated that this understanding would lead Gibraltar to adopt a tax system which respects the regulation of the EU, and also, to be remove of the Spanish blacklist of tax havens. However, not everyone is so excited and some people such as the president of the Cross Frontier Group, have stated that this agreement is more political grandstanding than a real declaration to ensure people's rights and fight against tax fraud, even so, the treaty has mostly been welcomed. What is more, the agreement has been signed in accordance with the Gibraltarian constitution of 2006, which means that any aspect inherent of it has been modified. Therefore, although Spain pretends to negotiate a possible shared sovereignty, it seems that it will not be an issue to discuss, at least, during the transition period, but if Gibraltar decides to stay in the single market Spain may offer that co-sovereignty and would be willing to negotiate with the UK. As we mentioned before, the uncertain atmosphere created by Brexit in Gibraltar had already affected some of most relevant sectors such us the financial, insurance or online gambling. Some big companies like Bet 365, which is the online gambling world leader, will translate great part of tits economic activity to Malta. This company created 500 jobs. The gambling sector teetered but it seems that the assumption of the EU regulations may ensure the remaining of the licenses for these multinationals.

According to James Tipping, director of Gibraltar's Finance Centre the Rock has left behind his condition of tax haven and has now become an international financial centre.

Gibraltar faces a new situation that although has plenty of threats it also offers some opportunities. Gibraltar will focus on marketing Gibraltar as a world-class finance centre and also, to face an expansion in the insurance sector. Many internationally renowned finance firms already operate in Gibraltar, for instance: Barclays, Lloyds TSB, SG Hambros, Credit Suisse, KPMG, PwC, and Deloitte (InvestmentEurope, 2019). Certain countries are paying close attention to Gibraltar and British companies could consider the possibility to establish in the Rock. The economic future of Gibraltar will depend on the future negotiations between Spain and UK, but meanwhile the Rock has to redirect its approach that should never adopt similar characteristics to tax havens, if it is its desire to maintain the relations with the EU and Spain.

6.3 THE FIGHT AGAINST CONTRABAND

The illegal traffic of tobacco has become in a terrible issue for Spain, which implies enormous loses for the country and hinders its relationship with Gibraltar. Nevertheless, smuggling is not a recent question. In fact, if we go back in time to 1713, when the treaty of Utrecht was signed, we can find that contraband was already present in the section X of the treaty. Since that moment the illegal traffic of tobacco has been constant, but it has been in the last few years when it has seriously increased. The geographical situation, the high price difference of tobacco between Spain and Gibraltar, the Gibraltarian permissiveness, the high unemployment levels in the Spanish territory of Gibraltar and the proliferation of mafias that control the smuggling of tobacco are the determinant factors of this high increase of contraband.

In 2018, more than 600.000 cartons of cigarettes were seized by the national authorities, this growth represents an unstoppable 158% rise from 2016 (Abellán, 2018). In fact, 41,70% of the total amount of illegal tobacco that gets in Spain came from Gibraltar in 2019, while in 2015, this figure was 20,20%. This means that just in four years the smuggling of tobacco from Gibraltar to Spain has doubled and it gets even worse if we consider the Spanish city of Cadiz where 51,2% of the tobacco comes from the Rock (Romera, 2019). Where is the problem? Why so many cartons of cigarettes enter in Spain from Gibraltar?

Gibraltar was provided with 72 million of cartons of cigarettes in 2017 by the tobacco companies. This 72 million of cartons meant 180 million of euros for the Gibraltarian state coffer in import duties, which represent 26% of the total funds of the rock, that

amounted to 690,8 million euros (Rodríguez, 2018). This immense income allows by itself, to afford the payment of services so relevant for the citizens such as: public health (168M€) or education and pensions and its management (163M€) according to the official data. Therefore, it is undeniable that tobacco is a determinant element in the consecution of funds and the Gibraltarian government is aware of it. The problem lies in the relation cigarettes-citizens. For instance, a big city like Cadiz with 1,2 million of inhabitants receives 38 million of cartons of cigarettes, less than the half of the amount provided to Gibraltar, whose total population is around 34000 inhabitants. Therefore, it is obvious that all the tobacco received by Gibraltar is not smoked in the Rock, and consequently is exported. However, most of the tobacco ends up crossing the Spanish border to be illegally sold. The difference of the prices, which depending on the brand, can be more than 50% higher and the character of the Spanish regulation, which only considers the smuggling of tobacco as a criminal punishment when the value of cigarettes illegally sold is higher than 15000 €, otherwise it only results in an economic fine. Besides, the price of tobacco is mostly determined by taxes (around 80%), thus, for tobacco companies is much more profitable to import their products to those countries with lower taxes such as Gibraltar (Sola, 2019). Besides, smugglers get a high margin superior to a euro per carton and the Gibraltarian government obtains numerous funds for the import duties. All these factors hamper the fight against the illegal export of tobacco.

Contraband was one of the red lines that Spain could have established to the UK for its withdrawal agreement of the EU. Thus, we have to go back in time to March 2019 when the treaty regarding Gibraltar between Spain and UK was signed. One of the four memorandums included on the agreement is focused on the establishment of certain rules and protocols to face the smuggling of tobacco from Gibraltar to Spain. First of all, it takes into account not only of the huge losses that it means for Spain but more importantly, the high risk for the health that illegal tobacco can entail. In order to reduce the final price of the product, some illegal cartons of cigarettes avoid health inspections. Therefore, it has been agreed that the price of the tobacco in Gibraltar will be raised so the difference between the it and the Spanish one will never exceed 32%. The Gibraltarian government has committed to put this measure into practice before June 2020 with exception of the tobacco sold in duty free zones of ports and airports. Minimum retail prices will be set, and they will be quarterly published in the Gibraltar Gazette. Besides, exactly as with the other memorandums, both countries agree to collaborate in the exchange of

information regarding the amounts and origin of the tobacco imported, sold or exported. Besides, both parties will also interchange information about the resources, regulations, measures to combat smuggling and the effectiveness of them.

This understanding means a mayor step forward in the fight against tobacco smuggling, but the success or failure of it will depend on the degree of implantation of the measures agreed on the treaty. Even so, there will always be a battle against the illegal export of tobacco while this activity continues being profitable for the infringers, but if the governments and tobacco companies are no longer benefited by smuggling, this practice could be seriously reduced.

7. PROPOSAL OF COSOVEREIGNTY

7.1 A NEVER-ENDING DISPUTE?

It has been more than 300 years since the treaty of Utrecht was signed and the dispute over the sovereignty is still a matter of issue. As we mentioned before, what for the United Kingdom is an overseas territory of the British crown for the UN it is a territory still pending of decolonization. As we have analysed over all the work, the dispute has gone through different situations, in which the relations have been closer to the severance of the relationship regarding Gibraltar than to a real understanding regarding the sovereignty. But for the strong commercial and working ties between Gibraltar and the Spanish region of el Campo de Gibraltar, the mutually essential relationship between Spain and UK and its membership to the European Union, the situation could have been even worse. Besides, due to its strategic location has always been an important asset for the British crown. Spain has the same reason to claim the sovereignty over the Rock, but also, we have to take into account that it is and adjacent territory whose border is delimited with Spain. There is no doubt that we are facing an anomalous case, and that is the main reason to explain why in the 21st century the dispute is still alive, and which until the Brexit referendum, did not seem to have a definitive solution in the near future.

In this section a proposal of a shared sovereignty (co-sovereignty) it is going to be carried out, considering the political, economic and social circumstances addressed in this work and in accordance with what we consider a possible solution of the dispute within the framework of Brexit.

7.2 REASONS FOR THE FAILURE OF THE PREVIOUS PROPOSALS AND A NEW SCENARIO

As we already know, Spain invited the British government in three different occasions to accept a proposal of cosovereignty. The first attempt took place in 1986, when the Spanish Foreign minister Fernando Morán, who draw the principles for a possible cosovereignty for the first time. A few years later Aznar suggested a new cosovereignty project similar to the previous one, and finally Rajoy in 2016 after the Brexit referendum proposed again a shared sovereignty. Although all the proposals took place in different moments and under different circumstances, they look like very similar and the Spanish government always had the same answer. In my opinion, all of them always came up against a series of factors that the Spanish government was not able to overcome. Firstly, the Gibraltarian inhabitants have always wanted to be part of the British crown and they have deepened their British sense of belonging. This is largely due to the aggressive Spanish actions though these 300 years, in which, Spain sieged the Rock in many occasions, which even closed the fence in the border between them; the answer was obviously a massive social reject of Spain. In fact, the referendum called in 2002 was the confirmation of the Gibraltarian negative to be part of a territory co-governed by Spain. Besides, Gibraltar has always been in a privileged situation in which despite the fact of not forming part of the Schengen zone, its connection to the United Kingdom let the Rock to enjoy the same privileges as any member state: Free movement of goods, services, people and capital, access to the single market... etc. All of them essential to reach its current strong economic situation. Furthermore, all the past proposals were based on the hypothesis of a temporally shared sovereignty that would open the way to a new status, in which the sovereignty of the Rock would be assumed by Spain. This hypothesis, in my opinion was, as it was proved, something really difficult to imagine with an utopic character. It would have implied not only the British renounce to the sovereignty and the acceptance of the Spanish government by the Gibraltarian inhabitants at the end of the temporal cosovereignty, and despite the declaration of the NU, nor UK nor Gibraltar were willing to accept these two initial proposals. Therefore, what Spain proposed was not a real project of cosovereignty that could establish a new status in the Rock which could last in time and that could put an end to the ancient dispute but it was a transitory situation previous to a change in the sovereignty. Thus, since the very first moment, it was bound to fail.

The last cosovereignty proposal took place after the Brexit referendum in 2016 and unlike the previous propositions it did not mean a claim of the sovereignty. Spain invited London to form part of a shared project that broke with the Spanish tendency. This proposal was based in the principles of dual nationality, self-govern under the Spanish constitution, the maintenance of the institutions of self-government within the framework of a broad regime of autonomy into the Spanish constitutional system, an especial tax system and the dismantling of the fence. This proposal was undoubtedly much more realistic, and Spain was willing to accept a real shared project. Indeed, many of its principles will be the foundations of our proposal. However, the proposal is full of structural deficiencies. As we know the proposal was rejected, but it was a great move for Spain, which saw within the context, how Gibraltar was declared a colony by the EU and how it was established that any negotiation will be carried out without the participation and ratification of Spain. As we mentioned in previous sections, Brexit has opened a new scenario because that privileged position that Gibraltar occupies in Europe is seriously threatened and the imaginary border with Spain will become a real frontier not only with the neighbouring country but also with Europe. 98% of the Gibraltarian inhabitants expressed their desire to stay in Europe, but time has passed by and the Rock has not a solution regarding its future status. Spain, which already left his pretensions of sovereignty over the Rock, is currently more interested in maintaining its good relationship with the UK and Europe than in claiming the property of Gibraltar so it is the Rock , which needs an urgent solution, otherwise, they will leave the EU together with the UK in November 2019. The rapprochement to Spain and the EU with the signing of the four memorandums of understanding, will open a temporary period in which, negotiations will be carried out and where a possible sovereignty could be a matter of issue. Although Gibraltar has always repudiated the idea of being politically linked to Spain and still does, the introduction of the Spanish crown in its status would mean the gate of Europe for Gibraltar.

7.3 INTRODUCTION OF THE PROPOSAL

The treaty of Utrecht, in accordance with the times in which it was signed, cannot be a treaty called to survive much longer. There is the United Nations Resolution, which recognizes in the Rock a colonial enclave of another time, established in a European country. The colonizing nation and the country where the colonized land is located, in no case can find a justification in any treaty of international law, much less when both belong

to a supranational entity that is the European Union. The agreement reached between the European Union (EU) and the United Kingdom (UK) and initialled by May and Juncker, understands that an exit for Gibraltar, necessarily, must come from the hand of a document agreed not between UK and EU, but rather between UK and Spain. And this, in our opinion, regardless of whether there is an agreed Brexit (remember that, if an agreement is reached, there will be a subsequent transitional period in which the details leading to total disconnection will be assessed). There can be no doubt that, as far as the Gibraltar issue is concerned, a "radical" negotiation can never be accepted by both parties. There have been attempts in this regard, such as when Spain closed the fence in the 1960s. The decision of General Franco's government was paid for, above all, by the Spanish working masses that were, and continue to be, approaching the Rock on a daily basis to perform a job. In our opinion, the most enviable way out, and one that could give better results, would be a cosovereignty that could be shared from the head of state to the lowest ranks. Neither would work the proclamation of Gibraltar as one more of the Spanish autonomous communities, and much less as another of the autonomous cities, in the style of Ceuta and Melilla. Such a plan would neither work nor be even signed by the two parties. The proposal must consist in the maintenance of a parliamentary monarchy that, in equal parts, will be carried out by the Spanish sovereign and his English counterpart, that would work in alternation, in the style of what the co-princes of Andorra do, although in this case the co-principle is shared by the President of France and the Archbishop of La Seo de Urgell. The border imposed by the fence (a word so feared by Spanish workers in Gibraltar) has never borne fruit. And the alleged isolation sometimes imposed by the government of Madrid has generated the opposite effect: the strengthening of the identity of the Rock and the separation of the civilian population on both sides, with pernicious effects. It is true that the Royal Navy considers Gibraltar to be a strategic point of entry into the Mediterranean or the Atlantic. In that case, the supranational bodies to which both nations belong, such as NATO, could gain a presence on the Rock as coordinators of the Anglo-Spanish forces. A cosovereignty that can also find a comparison with a status similar to the free associated states, could throw solutions to a problem that has more than 300 years of existence. This sovereignty would eliminate the paradisiacal character of drugs, since the security forces would not be prevented from crossing the territory to persecute the mafias involved. Besides, the characterization of the Rock as a tax haven should not be frowned upon, with a system that welcomes in its banking institutions deposits that generate great returns for all.

Tearing down walls, rather than building them, is the only option that should await Gibraltar. Otherwise, nothing will be done but to strengthen an enclave where smuggling, drug marketing and worse business are at large in a colony established in Europe. And without seeing any contradiction with our last suggestion, the path towards permanent cosovereignty, can be given independently of the consolidation of Brexit or the permanence of the United Kingdom in the Union.

7.4 “THE TWO CROWNS CITY”

In this section we will analyse all the advantages that our proposal of cosovereignty would bring for each part. The Rock is bound to be an autonomous territory but that will never have the status of independence, it will always be linked to the UK, Spain or both of them.

As Ignacio Molina (2018), in our opinion, accurately pointed in his studies, Gibraltar could find several precedents of territories with a similar condition or status. The islands of Man, Jersey and Guernsey are an example of territories that do not belong directly to a member state, but its dependency of the British crown allow these islands to form part of the EU. Besides, the functions performed by the United Kingdom in these territories are exclusively related to external relations. Nonetheless, this situation will no longer be possible when UK will leave the EU, because it will lose its condition and privileges of member state. Therefore, Gibraltar needs to find a link with a country or a crown connected to EU, and there it is where Spain would represent the ticket to Europe for the Rock. Based on a cosovereignty similar to the one already established in Andorra, where the co-principle is shared by the President of France and the Archbishop of La Seo de Urgell, Gibraltar could assume the two crowns; the British one represented by Elisabeth II and the Spanish one represented by Felipe VI. The Spanish and British governments would share certain functions within an autonomous regime of the Gibraltarian institutions. The figure of the monarch signifies an alternative for Gibraltar to be linked to Spain without forming part of it and could have a better acceptance for those inhabitants who feel more British and who reject Spain. The system created necessarily would have to be different to any autonomous community in Spain and neither could not have a similar system to the ones established in Ceuta or Melilla. The instauration of a regimen of that characteristics will not be accepted, and therefore, it will not work.

With regard to human rights, double nationality would be offered to all the Gibraltarian inhabitants, which would have the opportunity to be Spanish, and consequently, European

citizens. As European citizens, they have the right to elect their representatives in the European parliament, so together with the Spanish voters they could exercise their rights. So far, Gibraltar has its own jurisdiction and the local authorities are responsible for implementing the measures adopted in Europe. In this case, Spain could oversee the correct implementation of them, and the international relations will be carried out by any of both countries depending on the interests. For instance, with the member states of the EU, Spain can take the lead, always respecting what they have previously agreed with the UK, and on behalf of the Gibraltar authorities as well.

The condition of European citizens would guarantee them free movement among the European continent. This fact is essential to protect the rights of the more than 14000 cross border workers that perform their job in the Rock. Obviously, this is one of the issues that most concerns the Spanish and Gibraltar governments. Indeed, during the transitory period signed in the four memorandums of understanding, the rights of this community will be assured. The conditions of el Campo de Gibraltar would be improved and even, the tax system applied in Gibraltar could be also used in the Spanish region to strengthen its position and foster the equality between these strongly linked territories. The conditions of the cross-border workers will also be more beneficial for them, and during and after the transitory period they would no longer be considered frontier workers that have to cross from one territory to another every day. Due to the links between Spain and Gibraltar, both education and health services would be offered to the Gibraltar inhabitants in the same conditions as any other Spanish and vice versa, which would help to foster the acceptance of Spain within the Rock's citizens. After all, the feeling of belonging to a country or to the European community for instance, does not come from ideological reasons, but from the opportunities, advantages and living conditions that this entity can provide.

A possible hard Brexit after the transitory period would be disastrous for all the parts, but specially for Gibraltar, which would become a non-EU territory located in Europe with a real border. Our possible cosovereignty project would impede this threat to come true, by the dismantling of the fence, which has proved to be. Spain, now a days, means the gate of entrance to Europe for Gibraltar.

Most of the daily issues with regard to the city and its people would be in charge of the Gibraltar government and the local authorities and Spain and UK may interfere and

take the responsibility of mayor aspects that the Gibraltarian authorities cannot face and they would also supervise the Gibraltarian government management.

In terms of economy, Spain plays a key role again. Thanks to the link between Gibraltar and the Spanish crown, all the economic players would have direct access to the single market, with all the advantages that it means (free movement of goods, services and capitals, abolition of VAT, unified regulation, etc). The Gibraltarian economy would be greatly relieved, and it would continue being an attractive location for business thanks to its special fiscal regime and its remaining in the European single market. Both the Euro and the pound would be accepted as local currencies what could benefit, to the citizens, businesses, and to those more than 14000 cross border workers whose salary was paid in pounds but they resided in Spain, where the Euro was the currency in use.

It is noteworthy that the already good commercial relationship between Spain and the Rock, which is the largest importer of the neighbouring country, would be strengthened and encouraged with their new links. So would the relationship between UK and Spain, which is already exceptional, in terms of exports, imports, investment, tourism and migration, because the only big dispute between them would be settled. Gibraltar would grow economically supported by two potential figures such as Spain and the United Kingdom.

In fiscal matters, we must remember that since the constitution signed in 2006, Gibraltar enjoys fiscal autonomy and the United Kingdom, as the representative in external relations, communicates in both directions the measures adopted at the Rock and those that it must take in order to comply with European requirements. Therefore, this autonomy would be granted to the Gibraltarian government as it was before, and in this case, Spain and UK would be responsible to negotiate its tax system with the EU. Its special regime would no longer be a problem but an opportunity which would bring economic benefits to all the parts. The memorandum of understanding signed between UK and Spain, already included the foundations of a cooperation system with Spain and the EU to face all the irregularities committed in the Rock. It was clearly an approach from UK and Gibraltar to the EU. Besides, Gibraltar would never be again in the Spanish list of tax havens. What would be proposed, would be an attractive and special regime for companies, capitals and fortunes but always with the condition of respecting the European legislation and with a special system clearly differentiated from others established in tax havens. The European Community would allow the creation of this tax regime provided

that it would follow the agreed guidelines, and therefore, would give rise to an enclave of great importance in Europe. In this way, its status as a financial centre and a leader in the game could be consolidated. It does not seem probable that the EU would allow Gibraltar to strengthen its tax heaven condition if the Rock leaves the EU together with the UK.

Besides, Gibraltar always had the opportunity to turn to the European institutions when the United Kingdom approved a tax reform that had a direct impact on the Gibraltar tax system. A possible cosovereignty would still offer this right inherent to the member countries or in this case, to a free-associated state linked to a member country of the EU.

Another factor to bear in mind would be the slowdown in smuggling tobacco and drugs between Spain and Gibraltar. In the memorandums of understanding it was already agreed to reduce the difference in price to both sides of the border, in order to prevent its illegal import from being so beneficial to smugglers. Also, as we know, it was established that the UK and Spain would collaborate much more actively. Under the assumption of a possible cosovereignty, the battle against this illegal practice would be much easier since the Spanish security forces would not be prevented from accessing the rock and pursuing the mafias in charge of smuggling. The exchange of information would also be much simpler due to the linking of the territories.

All things considered, there is no doubt that a possible cosovereignty, in which Gibraltar would be linked to the British and Spanish crowns would represent an unique opportunity that may only happen once, since all the factors triggered by Brexit place us in a more favourable situation than ever for Spain and the United Kingdom to settle the dispute once and see waving both the British flag and the Spanish flag on the rock. Without forgetting that this would mean that next to them would also be the flag of the European Union.

However, Spain cannot be the key to access to the EU without obtaining some political and economical revenues. Through the creation of a regime based on a parliamentary monarchy, Spain has to obtain certain competencies from the head of the state to the lowest ranks, together with the United Kingdom. They could therefore, alternate as it happens in Andorra with their co-princes. Besides, the most important issues regarding the Rock would be discussed and negotiated by both governs.

In terms of property, Spain would get access to the airport, which it is also a matter of issue, because its construction took place over Spanish land, UK and Spain would share its right of exploitation. The airport, although it was agreed its mutual use, is mainly

enjoyed by the UK and Gibraltar, regardless than the majority of people working on it come from Spain. A real shared use of this facility would open up a new market: Spain. In fact, now a days, many tourists still fly to the airport of Malaga and then visit the Rock. The airport could become an important destination to travel to the south of Spain and many airlines might consider starting to use the airport as a common destination or those that already do could expand their offer of flights to other parts of Europe and the world. After all, Gibraltar is in a privileged geographical enclave. What is more, the airport should offer a wide range of flights to and from the Rock if the current colony continues on its way to become a city of mayor business.

In addition, the relations of Spain, Gibraltar and UK with certain African countries could be fostered. These could bring a great deal of revenue in the oil sector. The establishment of certain joint refineries would be highly beneficial for all concerned. Likewise, the relations regarding fishing matters would no longer be a problem.

As we have already mentioned several times through this work, the exceptional and strategic character of the Rock as a location point to control the passage through the Atlantic ocean and the Mediterranean sea is one of the main reasons of why the UK has historically considered Gibraltar as an extremely valued asset. The Royal navy is installed in the Rock, which represents an ideal place as a refreshment port and training ground for its armies. In a possible cosovereignty, the royal navy could continue to perform the same functions as it has done up to now on the rock, but the negotiations should lead to an agreement in which the Spanish forces would also have access to the Gibraltarian military base. In order to coordinate the British and Spanish forces in the Rock, the role of a supranational body to which both countries belong, the NATO, could be a matter of great importance. Besides, the use of the military base has precisely, a precedent in Spain. In the Andalusian city territory called Rota, a military base is settled, and it is jointly used by the Spanish and American armies, hence although the conditions and the legal formalities would be different, Spain already knows that sharing the use of a military base is possible. This fact, together with the shared use of the airport would finish with the historical controversy over the Isthmus and its illegal occupation.

In order to conclude this section, I would like to highlight the importance of absolute communication, collaboration and understanding in order to create a solid relationship of trust. Dialogue must be the base of this shared project. These principles are essential in any international relationship, and even more, if we are talking about creating a joint

project, as cosovereignty is. The fruit of this union could be highly beneficial to both countries and would mean a solution to the desperate situation in which Gibraltar finds itself, which, in case of an agreement with similar characteristics to the one we are proposing will not succeed, is doomed to leave the European Union together with the United Kingdom. In addition, the dispute between Spain and the United Kingdom that began more than 300 years ago would be settled and would strengthen a relationship that had managed to be very good despite the burden of the territorial conflict. However, we have to be realistic and although Gibraltar is facing a critical situation, it does not seem to be nor a priority for the Spanish government nor for the British one. In fact, Spain proposed a cosovereignty project to the UK in 2016, but the current situation is different. None of the political parties that ran in the 2019 national elections, included the issue of Gibraltar in their electoral programme. Whereas, in the UK, it seems that situation of Gibraltar has only been used by some member of the parliament to object to the approval of the agreement with Brussels. Therefore, Gibraltar and UK are facing an uncertainty situation which will depend on the decisions taken in the future. The transitory period that will be open in Gibraltar is a great opportunity to solve the situation of a colony eager to remain in Europe and to end up with a historical dispute between Spain and UK that lasts since 1713.

The question necessarily is: Will Spain, UK and Gibraltar be able to put their differences aside and come to an understanding that would lead to a fruitful relationship for all of them?

8.CONCLUSIONS

The issue of Brexit in general and as far as Gibraltar in particular is concerned, as we have had the opportunity to examine during the course of our study, is an international issue which, in 2016, silted the United Kingdom from the top to the bottom, and whose final result we totally unknown, and that as far as Gibraltar is concerned it opens up, if possible, greater uncertainty. Brexit has brought the United Kingdom to a standstill; although, as far as the Rock is concerned, life and business have continued to run smoothly, as if it were a matter that do not really involve them. If we review each part of our study, we can come to the following conclusions:

- ❖ The concession of this strategic location in the south of Spain, as a control point of every access from east (Mediterranean) to west (Atlantic) and from north (Spain) to south (North Africa) was a concrete solution to a specific historical problem that occurred more than 300 years ago. The Treaty of Utrecht may have solved the problems of the 18th century, but not the current ones. This British colonial enclave in the south of Spain requires special attention from international bodies (United Nations and EU) and from the countries involved in the Rock: Spain and UK.
- ❖ The recent history of the relationship between Spain and the United Kingdom is good proof of what we are talking about. At important moments, the monarchies of both countries, following the opinion of the respective governments, have come to unnecessary, useless, but above all sterile confrontations. Throughout the dictatorship of General Franco Gibraltar served as an escape and there were several confrontations. The blockade of the fence is one of the examples, the hard confrontation to which it led had a pernicious effect on the Spanish working class that used to have its jobs in Gibraltar. A later confrontation arose from the dispute resulting from the construction of an airport that was supposed to be shared. The Spanish authorities immediately protested because some of their airstrips penetrated Spanish soil; what was intended to be a shared airport was stillborn. Still today there are numerous tourist flights which land in Malaga and which take, by road, a touristic visit to Gibraltar
- ❖ Gibraltar is an anomalous enclave for which the Spanish and British institutions have not been able to provide a solution; the United Nations, at the time, merely instructed Spain and the United Kingdom to reach an agreement that has never

been reached. Only the United Nations called Gibraltar, in our view quite rightly, in the light of international law, a colony pending a decolonization process.

- ❖ As we have repeatedly pointed out throughout our study, Brexit, whether it is agreed or not, will have very negative repercussions for the United Kingdom, but perhaps as far as Gibraltar is concerned it could be an escape route towards the normalisation of its identity, the economic development of the area and the creation of unique opportunities which have not been available over these 300 years. Nobody can deny that an agreement such as the one signed in November 2018, although rejected by the British Parliament, leaves in the hands of the UK and Spain a solution by virtue of an international agreement which can obtain express recognition from the Community authorities.
- ❖ EL Campo de Gibraltar highly depends on the Gibraltar economy and vice versa. In other words, the lack of agreement on a hard Brexit would mean a second back stop like the one that deeply concerns the border between Northern Ireland and the Republic of Ireland. Except for the angry reactions that might come from the European parliamentarians of a nationalist, populist vision, and of course, from the Brexit party, the rest of the majority parties of the euro chamber would follow the guidelines laid down by Spain or by the person responsible for the international relations of the European Union, which is to talk about the same thing, bearing in mind that it is in the hands of a Spaniard, Mr Borrell.
- ❖ The temptation that the United Kingdom and the authorities of the Rock might have to throw themselves into the arms of the Moroccan authorities, as previous attempts have shown us, is negative for each and every one of the countries involved.
- ❖ It is an evidence that the Gibraltar population would like to maintain the current status quo: remaining linked to the United Kingdom and continuing to belong to the European Union, as it is beneficial to its development and as a meeting point for interests from southern Europe, North Africa and Mediterranean countries. At the time of writing these lines there has been a confrontation between the Gibraltar and Spanish authorities because the Gibraltar authorities have given entry into their port to an oil tanker destined for Syria.
- ❖ The four memorandums of understanding that have so far been outlined reflect a change in the position of Gibraltar towards Spain and envisage a transitional

period in which bilateral negotiations would be opened to determine the future of the colony.

- ❖ Gibraltar is not a major issue for Spanish or British governments. In fact, both are more focused on reaching successful negotiations on trade, tourism, finance, banking and migration.
- ❖ In our study we have studied the proposal of a cosovereignty. Only the agility and willingness of both governments can reach such an agreement. As has been pointed out in previous points, a solution for the decolonisation of Gibraltar turns out to be an issue which does not interest the vast majority of the EU countries. In our proposal, regardless of the final result of Brexit, principles such as the recognition of both monarchies at the head of state; a parliamentary system of self-government different from the rest of the Spanish autonomous communities; the creation of an area open to international finance and well differentiated from the different tax havens that currently operate in the world, could be accepted. In terms of defence, the fact that both countries belong to the NATO could mean a concentration of international military force in which both, the Spanish and British armies would be a kind of *primus inter pares*.
- ❖ The development of the ideas presented in the previous point could put an end to more than 300 years of uncertainty and could mean further development of the area. A satisfactory agreement between the United Kingdom and Spain could lead to the creation of a free trade zone, in which, the expansion of business would satisfy the interests of the Rock, El Campo de Gibraltar and a development relationship with the countries of North Africa. In this sense, both the importation of oil, the establishment of refineries, as well as relations in the field of fishing, health and education would make not only Gibraltar, but also the surrounding Spanish territory a business centre that would mean a reduction in unemployment and an increase in the commercial flow.
- ❖ Gibraltar may not be, as above we have noted an important area in finding a solution for Brexit. But an agreement or no agreement will resolve this outstanding territorial dispute between the United Kingdom and Spain. In our opinion, Brexit, regardless of the many solutions that can be applied, has a solution of superior optimism over all the others: the constitution of a British government of national concentration that would be capable of holding a second call for a referendum to opt for permanence.

9.INCONCLUSIVE CONCLUSION

When, in November 2018, the Prime Minister Theresa May and the president of the European Commission Jean Claude Juncker reached an agreement on the withdrawal of the United Kingdom from the EU by virtue of a consensus between both parties, all that remained was to receive the endorsement of the British Parliament. The attractiveness of studying Brexit with regard to Gibraltar was presented to us as a work based on an agreement of an international nature, with a transversal theme, proper to the degree of international trade and for which we could use the document accepted by the European Union and sanctioned by the British parliamentarians. We were going to have a closed state of the matter on 29 March 2019 and when presenting the work, it would only remain the time also agreed for the total process of disconnection foreseen for December 2020.

These predictions failed due to the rejection of the agreement on three occasions, the end of the deadline established in March 2019 without any kind of agreement, the subsequent request for an extension of the deadline to negotiate and the obligation for the United Kingdom to participate in the elections to the European Parliament in May, given that the extension granted is scheduled for the end of October 2019.

An unexpected element in this puzzle was the resignation of Theresa May as leader of the conservative party, which became effective on 7 June 2019. In addition, the conservative militancy will not decide a new leader until the third week of July. The winner between the two contenders, Boris Johnson and Jeremy Hunt, will not take office as prime minister until the end of July. From that date until the end of October, it seems unlikely that a new agreement can be reached between the new British government and the new EU authorities.

By the time of presenting our study on July 8, 2019, the Brexit and its final result is the closest thing to forecasting that will have to be made by people who, on the British side at least, we do not know. Boris Johnson has been a confessed defender of the Brexit with or without agreement; but it is convenient to remember that Jeremy Hunt supported the permanence of the United Kingdom in the EU in the referendum of 2016. Another very different thing has been his support for the November 2018 agreement, because he understood it as the best option for an outgoing United Kingdom.

Ursula Von der Leyen, the new president of the European Commission turns out to be a former member of the German government presided by Mrs Merkel. She will be responsible together with other members of the acceptance of a possible new agreement between the UK and the EU. Both the new President of the European Parliament and the new President of the European Council are in line with the conservative and liberal parties that until recently occupied their posts. It does not seem that the strategy of the EU authorities will vary substantially from the previous position.

And a final consideration, as well as a historical reflection. Since November 2018, when the chief minister of Gibraltar protested against the colonial denomination that the reached agreement dedicated to the rock, the Gibraltar authorities have been in a state of waiting, in which, no opinions of any kind have been given either on the rejected agreement, the resignation of the prime minister or the taking of the lead by either of the two candidates contending for the conservative leadership. Gibraltar continues to function as if in reality, it were in the moments of tranquillity and bonanza that we have defined in this work. It is much more surprising that none of the Spanish parties that participated in the last general elections in April 2019 will devote to Gibraltar and its uncertain future any line that could converge in an agreement. The conclusions previously presented deserve that the Gibraltarian and Spanish society can reach a beneficial agreement on trade, labour and, if we can say it, cosovereignty.

We must highlight something that economic analysts, politicians and Pro-Europeans have ignored so far: no one must forget that just as in June 2016 a referendum was held to sign the exit of the United Kingdom from the EU, won by a narrow margin of votes, 43 years earlier there had been another referendum in which the British people expressed their support for the incorporation of the United Kingdom into the then EEC.

The Labour Prime Minister, Harold Wilson, was not wrong when he referred to the 1975 referendum saying that Europe was an opportunity for a country that had lost an empire, but which was gaining a continent. Probably, in 2019, it could be said that the uncertainty of Brexit represents an opportunity for Gibraltar, so it can preserve its historical links with the United Kingdom and gain full membership of Europe without the need to hide behind the United Kingdom.

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MEMORIA DEL TRABAJO DE FIN DE GRADO
(Versión en Lengua Española)

GIBRALTAR Y ESPAÑA; RELACIONES BILATERALES DESPUÉS DEL
TORMENTOSO Y PROBLEMÁTICO BREXIT

GIBRALTAR & SPAIN; BILATERAL RELATIONS AFTER THE STORMY AND
TROUBLESOME BREXIT

Realizado por el Alumno Rubén Pérez Gómez

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INTRODUCCIÓN

Gibraltar es un enclave colonial cuya situación geográfica lo ha convertido en un punto estratégico para el Reino Unido. El peñón se encuentra bajo la controvertida soberanía del Reino Unido desde la firma del Tratado de Utrecht en 1713. Desde entonces más allá de la leyenda que rodea a la ciudad entorno a su carácter de paraíso fiscal, contrabando y juego, pocos han sido los acontecimientos que han llamado la atención de la política mundial. El primero es relativo a la declaración de las Naciones Unidas (ONU), en la cual se describe a Gibraltar como una colonia situada en el sur de España, e invitaba a ambos países a llegar a un acuerdo por la soberanía del territorio. Un segundo acontecimiento de gran relevancia tuvo lugar cuando el general Franco, en un intento por conseguir gas y asfixiar la economía Gibraltareña cerró la verja que separa la frontera entre España y el Peñón en 1969. Posteriormente los habitantes de la Roca y de la zona adyacente española denominada El Campo de Gibraltar aprendieron a convivir y a comenzar una relación mutuamente beneficiosa por el intercambio de bienes y sobre todo de mano de obra. Finalmente, tras un largo periodo histórico en el que el Brexit se fue fraguando en el Reino Unido, el 23 de junio de 2016 la celebración de un Referéndum sobre el Brexit dictaminó que tanto el Reino Unido como Gibraltar, cuyo 98% de los habitantes manifestaron en dicho referéndum su deseo de permanecer en Europa, abandonarían la Unión Europea (UE) el 29 de marzo de 2019. Desde la celebración del referéndum hasta prácticamente 2018 el gobierno de Londres no comenzó a negociar una posible salida con acuerdo con Bruselas. Theresa May consiguió esbozar un acuerdo que la Unión Europea suscribió y que fue posteriormente rechazado en múltiples ocasiones el parlamento de Westminster. La primera ministra no tuvo otra opción de solicitar una prórroga que sí le fue concedida y que obligó al Reino Unido a participar las elecciones europeas. La propuesta de May volvió a ser tumbada por los parlamentarios británicos y esta se decidió, ante la imposibilidad de llevar su proyecto hacia delante, presentar su dimisión. El Reino Unido se encuentra frente a una situación de gran incertidumbre que se redobla en Gibraltar. A finales de octubre, puesto que no parece que se vayan a celebrar unas nuevas elecciones que pudiesen dar lugar a un segundo referéndum, la prórroga terminará y el Reino Unido deberá abandonar la UE. Mismo destino correrá Gibraltar salvo que en el periodo transitorio firmado con España una negociación bilateral entre España y el Reino Unido dé lugar a una solución que

permita a la colonia un cambio en sus status quo que asegure su permanencia en la UE.

1. DESDE EL COMIENZO DE LA DISPUTA HASTA SU SITUACIÓN ACTUAL

En este punto retomamos más de 300 años atrás para conocer las causas del conflicto y la serie de acontecimientos durante esos mas de 3 tres siglos que nos han conducido hasta la situación actual del Peñón.

Tras la muerte de Carlos II, a principios del siglo XVIII España se encontraba en una situación lejana a en la que una vez se vio como el imperio que dominaba el mundo. Sin embargo, seguía siendo una potencia y la muerte del rey dio lugar a una guerra de sucesión entre los candidatos de las casas de Borbón, fuertemente ligada al imperio francés, y la casa de Austria. Finalmente, Felipe V de la casa Borbón y nieto de Louis XVI fue coronado como rey de España. Este hecho suponía una gran amenaza para el resto de las potencias europeas si Francia y España conformaban una alianza que permitiese al imperio francés acceder también a las Indias. Como consecuencia en 1701 se creó la Gran Alianza conformada por Inglaterra, Holanda y Prusia, Y Portugal posteriormente, que vieron la oportunidad no sólo de retomar la corona a favor de la casa Austria sino de igualar las fuerzas de las potencias europeas a través de un conflicto bélico que decía defender Europa de un peligro común. Los resultados del mismo son los que llevaron a la firma del Tratado de Utrecht.

En el transcurso de la guerra de sucesión el territorio entonces español de Gibraltar fue atacado por una enorme flota angloholandesa. Tras varios días de asedio la ciudad que se encontraba prácticamente indefensa calló y el almirante inglés Rooke en una jugada que posteriormente se calificó como poco noble tomó la ciudad en nombre de la reina de Inglaterra, arrebatándole ese derecho a la casa de Austria quien inicialmente la había reclamado. Inglaterra se hacia con un enclave geográfico, que controla el paso al Mediterráneo y el Atlántico, de grandísimo valor y más en tiempos de guerra. En 1711, Francia que solo había contado con el reino español como aliado estaba militar y económicamente agotada, mientras que el Reino Unido (UK) ya había conseguido una supremacía naval y las fuerzas estaban mucho mas igualadas en Europa. La guerra había sido agotadora para todos los países. Francia e Inglaterra llevaron a espaldas del resto de potencias europeas unas negociaciones bilaterales que

dieron lugar a los preliminares de Londres que posteriormente establecerían los principios del Tratado de Utrecht. En este se firmó la Paz en Europa pese a las protestas de Austria, puesto que el tratado consolidó la posición de Felipe V como rey de España, quien renunció al trono francés pues una condición necesaria fue la promesa de que las coronas de España y Francia jamás serían una. Por otro lado, España quien no estaba en condiciones de negociar tuvo que renunciar a diversos territorios; entre ellos Gibraltar. Por tanto, el 11 de mayo de 1713 se firmó el tratado de Utrecht en lo que fue el gran congreso de paz, y la ciudad de Gibraltar fue transferida a la corona británica.

Más de 300 años después la controversia que rodea el tratado de Utrecht sigue muy viva, puesto que las condiciones entonces firmadas no parecen ser totalmente acordes con las actualmente establecidas en el Peñón, y por tanto, dan lugar a la reivindicación española. El artículo X del tratado recoge que la corona británica pasaba a tener todos los derechos sobre la ciudad, el castillo, el puerto y las murallas de Gibraltar, sin embargo, no se incluyó en ningún momento el istmo, en el cual, siglos después se construyó un aeropuerto. Este punto es uno de los más polémicos, pues no se clarifica si la renuncia es a la propiedad o también incluye la soberanía del territorio. Además, se decretó que no habría comunicación alguna con el país vecino y que el contrabando de mercancías tendría repercusiones. Obviamente es una medida que se cumplió posteriormente y que hoy en día está totalmente anticuada. Finalmente hace una referencia a la posición preferente de España si el Reino Unido decidiese vender la propiedad del Peñón.

Durante el siglo XVIII, España cuyo orgullo estaba herido por la pérdida de la Roca pasó a la ofensiva y realizó hasta tres intentos armados (1704, 1727, 1779) que fueron contrarrestados por las fuerzas británicas y que a través de la firma de cuatro diferentes tratados se ratificasen los términos del tratado de Utrecht. Además, sumado a la crisis que atravesaba España, el Reino Unido se sirvió para hacerse con parte del Istmo español y la bahía de Algeciras. Ya en el siglo XX, se construyó una valla que delimitaba la frontera entre España y Gibraltar en 1908, y en 1938, en plena Guerra Civil, el Reino Unido aprovechó para construir un aeropuerto sobre el Istmo español, que como sabemos dio lugar a un conflicto aun sin resolver. La posición dominante del Reino Unido cada vez era mayor sobre un enclave estratégico como Gibraltar. Sin embargo, a finales del siglo XX surgió la condición pueblos sin capacidad para

governarse y, la ONU como ente mediador tenía la sagrada misión de garantizar su civilización. Gibraltar fue incluido junto a otros territorios dentro de una lista de pueblos con esa condición. La tutela del Peñón le fue concedida a los ciudadanos de Gibraltar que como sociedad en conjunto adquirirían la responsabilidad del buen gobierno de la ciudad. Este fue el primer paso para el status de autogobierno actual del que goza Gibraltar. En 1960 la Asamblea de Naciones Unidas dotó a Gibraltar de su carácter colonial en la resolución 1541(XV) y a través de la resolución 1514(XV) aceptó la declaración sobre la concesión de la independencia a los países y pueblos coloniales, pero estableció que a pesar de cuales fueran los deseos de los habitantes de Gibraltar, en este caso de independizarse, cualquier ruptura de la integridad nacional era contraria a la carta de principios de las Naciones Unidas (ONU). España avistó una oportunidad en dicha declaración, pero Reino Unido consciente de lo que esto significaba y de la mayor independencia que Gibraltar le demandaba, le concedió gradualmente más poderes a través una primera constitución firmada en 1964, y posteriormente en otra ratificada en 1969. Esta última, supuso una ruptura total en las negociaciones entre España y el Reino Unido, que habían comenzado en 1964 cuando las Naciones Unidas invitaron a ambos países a alcanzar un acuerdo sobre la soberanía de Gibraltar. Esta constitución dotó a Gibraltar del derecho de autogobierno, aunque las relaciones internacionales seguirían en manos del Reino Unido, y la consideró en este documento una colonia de la corona británica, a diferencia de la ONU, quien todavía, a día de hoy, establece que es una colonia pendiente de descolonización.

A partir de la llegada al poder del general Franco en España las relaciones entre España y Gibraltar adquirieron un carácter más hostil y la visita de la reina inglesa al peñón en 1954 y la posterior constitución instaurada en la roca en 1969, fueron los factores detonantes que desembocaron en el cierre de la verja y la consecuente desconexión total entre España y el Peñón. Esta medida que pretendía forzar la asfixia de la economía gibraltareña dejó a más de 5000 españoles sin sus respectivos puestos de empleo que desempeñaban en el territorio adyacente y alrededor de la mitad de los habitantes de La Línea de la Concepción se vieron forzados a cambiar de lugar de residencia debido a la fuerte recesión que se produjo en la región. Efectivamente, la economía en Gibraltar sufrió y sus habitantes a consecuencia de ello, pero el Reino Unido supo poner remedio a tal nociva situación y la medida tomada por el general Franco, tuvo un efecto pernicioso sobre la población del Peñón, cuyo rechazo al país

español se vio acrecentado tras el periodo de bloqueo. Varios años después de la muerte del dictador español las autoridades españolas decidieron volver a abrir la verja en 1982, y el tráfico normal se restableció en 1985. Este periodo, dio lugar a una mayor disposición de ambos gobiernos a negociar. Muchos fueron los años en los que la primera ministra Margaret Thatcher y el gobierno español, por aquel entonces del partido socialista, iniciaron conversaciones estériles que más allá de confirmar la apertura de la verja y garantizar los derechos de los trabajadores españoles en Gibraltar, no desbloquearon la situación especial de Gibraltar y toda conversación derivaba en una lucha por la soberanía del Peñón. Al final del siglo XX, España trató de dar fin a la disputa y cumplir con el cometido encargado por la ONU, de alcanzar un acuerdo, e invitó al Reino Unido a aceptar una proposición de cosoberanía que tras un periodo de gobierno conjunto que durase de 15 a 20 años devolviese la soberanía del Peñón a España. Reino Unido rechazó dicha propuesta en base al cumplimiento de su compromiso con la defensa de los deseos del pueblo de Gibraltar. Mismo resultado obtuvo una cosoberanía de características similares, pero con un periodo transitorio de mayor duración, propuesta por el gobierno popular de Aznar. De hecho, el 98,48% de la población de la Roca se manifestó en contra de dicho proyecto y el Reino Unido se sirvió de dicha votación para rechazar este sistema de gobierno conjunto a pesar de la predisposición mostrada por el entonces primer ministro Tony Blair.

Parecía entonces, imposible un posible acuerdo de cosoberanía por el gran rechazo que este encontraba en la Roca y porque UK no estaba dispuesto a renunciar a un enclave de tan valiosa situación geográfica. Sin embargo, el Brexit abre un nuevo escenario en el que negociaciones bilaterales entre Reino Unido y España se deben llevar a cabo, y, por tanto, un proyecto de la naturaleza de la cosoberanía podría ser analizado para su posterior implementación, si es cierto, que Reino Unido como históricamente ha defendido defendería siempre el deseo de Gibraltar.

2. NUEVAS RELACIONES; UNA NUEVA ERA DE INCERTIDUMBRE

El valor de Gibraltar va mucho más allá de su privilegiada localización geográfica. Se ha convertido, en una anomalía tanto política como económica; la Roca es uno del reducido grupo de territorios de muy tamaño pequeño que concentran una gran

actividad económica entre sus fronteras, de hecho, el Peñón es el país con el tercer mayor PIB per cápita del mundo. Su actividad económica concierne en gran medida a España, sobre todo en materia de trabajo, paraíso fiscal y contrabando y los gobiernos trabajan para definir y establecer medidas sobre estas materias.

En lo relativo al trabajo, la historia nos recuerda que toda medida que limite la libre circulación de trabajadores de un lado al otro de la frontera tendrá consecuencias altamente negativas tanto para España como para Gibraltar. A fecha de junio de 2019, 14443 trabajadores cruzan desde España a Gibraltar para trabajar. Este es un número muy alto si tenemos en cuenta que el total de personas desempeñando un puesto de trabajo en Gibraltar asciende a 29995, lo que significa que el 48% de la mano de obra total en Gibraltar proviene de España y ayuda a satisfacer la demanda de trabajo en un territorio cuya tasa de desempleo es la más baja del mundo (0,15%). Además, el número de trabajadores españoles asciende a 9032 y su presencia en el mercado laboral gibraltareño representa el 30% del total. Estos trabajadores mayoritariamente residen en El Campo de Gibraltar y más concretamente, En la Línea de la Concepción, localidad con una de las tasas de desempleo más altas de España (32.95%). La relación crea un ciclo económico perfecto, la demanda insatisfecha en Gibraltar se cubre con la oferta insatisfecha de mano de obra española. Los puestos de empleo de Gibraltar significan un 11% total de trabajo en La Línea. El gobierno español, en uno de sus tira y afloja de su relación con el Peñón, dejó entrever que consideraba que la economía Gibraltareña tenía un carácter parasitario, a lo que las autoridades del Peñón respondieron afirmando que el 25% del PIB del Campo de Gibraltar se generaba por la interacción con la Roca y que la relación comercial entre España y Gibraltar le aportaba grandes beneficios puesto que es su mayor socio comercial. Desde el anuncio de la retirada de UK de la UE la contratación de trabajadores españoles o provenientes de España se ha multiplicado muy considerablemente, situación que contrasta con la de UK, donde esta se ha desplomado y a pesar de encontrarse en una situación prácticamente de pleno empleo, hay 850000 vacantes, especialmente para aquellos puestos de trabajo más cualificado. Como el estudio hecho en nuestro trabajo muestra, la salida del Reino Unido sin acuerdo pondría trabas a la libre circulación de personas, bienes, servicios y capitales y esto supondría una recesión de la economía Gibraltareña. 14000 trabajadores podrían perder su trabajo y ello supondría graves consecuencias tanto en el Campo de Gibraltar, cuya situación

de paro y desigualdad con el resto de los territorios españoles y con la propia Gibraltar ya es más que evidente, como en Gibraltar, cuyo mercado laboral sería fuertemente azotado al no poder satisfacer la demanda de trabajadores. La salida de UK de la UE sea de la forma que sea implicará pérdidas para todas las partes: UK, Gibraltar, UE y España, pero un acuerdo podría suavizarlas de forma considerable. En Marzo de 2019 España y el Reino Unido, firmaron 4 memorándums de entendimiento, que supusieron el primer tratado concerniente a Gibraltar, firmado entre España y UK desde el tratado de Utrecht en 1713. El tratado establece un periodo transitorio desde la salida de UK de la UE hasta el 31 de Diciembre de 2020, y con el se firman medidas relativas a la cooperación, intercambio de información y regulaciones etc., en relación con materias de trabajo, régimen fiscal, contrabando y medio ambiente. En cuanto al trabajo, el acuerdo garantizará los derechos de los trabajadores fronterizos y perseguirá la igualdad entre el Campo de Gibraltar y el Peñón. Para ello, se creará un comité que vigile la correcta aplicación y el cumplimiento de los principios acordados en dicho tratado.

Al enfrentarnos a la situación fiscal de Gibraltar, podemos ver que nos encontramos ante ejemplo que nos confirma el carácter anómalo de la colonia. Actualmente, 55000 empresas están registradas en una zona de poco más de 6 km en la que viven 34000 personas. Evidentemente, que un número tan desorbitado e incluso superior a la población de la colonia no es casualidad. Gibraltar ofrece un régimen fiscal laso y mucho menos exigente tanto para personas como para personas. En 2011 se estableció el actual impuesto de sociedades que se encuentra en el 10% y que en 2007 era del 37%, y que actualmente dista mucho del establecido en países como España, Reino Unido, y de la propia media de los países comunitarios, donde las empresas deben contribuir el 25%, 19% y 21,23% respectivamente. Esta junto a otras ventajas y ayudas fiscales han dado lugar a la creación de una cuna de servicios financiero y de juego. Su relevancia es tal que entre los dos suponen el 40% del PIB de la colonia. El régimen fiscal propio de Gibraltar facilita la creación de empresas offshore, que son aquellas que están registradas y, por ende, tiene su sede fiscal en un país con condiciones fiscales ventajosas, aunque no desarrolle su actividad económica en él. También favorece la creación de free-riders, que son aquellas personas que establecen su domicilio en el Peñón, aunque residan en otro País, en este caso España. La evasión de impuestos junto al contrabando de tabaco, le suponen unas pérdidas estimadas de

1000 millones de Euros a las arcas españolas. El memorándum de entendimiento firmado con relación al régimen fiscal de Gibraltar establece los requisitos que tanto empresas como personas deberán cumplir para poder registrarse en el Peñón y evitar, por tanto, la evasión de impuestos. Al igual que en materia de trabajo, España y UK se comprometen a colaborar juntos contra esta práctica ilegal y para ello procederán también a la creación de un comité, intercambiarán información de forma constante y podrán realizar controles de forma conjunta. El tratado supone una rebaja de la tensión entre España y el Peñón en cuanto a materia de evasión de impuestos, que eliminará a Gibraltar de la lista, en la que le había añadido, de paraísos fiscales. Además, supone un acercamiento a la normativa europea que previamente y a petición de España había estudiado y decretado que varias empresas habían recibido ayudas ficales ilegales y le imponía la devolución de las mismas. Sin embargo, la UE no considera el régimen fiscal especial de Gibraltar como un paraíso fiscal.

El contrabando se había convertido en un escollo casi insalvable entre España y la colonia, en los últimos años esta práctica ilegal se ha disparado hasta el punto de que, entre 2016 y 2019, el crecimiento fue del 156%. 600000 cajas de tabaco fueron requisadas por la policía en 2018, que, como consecuencia, tuvo que intensificar los controles en la frontera. Los derechos de exportación de tabaco le suponen a Gibraltar 180 millones de euros, un 26% total de la financiación, y las tabacaleras suministraron en 2018, 72 millones de cajas a Gibraltar, para una población de tan solo 34000 habitantes. Por tanto, muchas, en parte por la gran diferencia de precio entre las vendidas en el Peñón y las que lo son en España, acaban siendo introducidas y vendidas de forma ilegal en la península. El alto paro en el Campo de Gibraltar hace que mucha gente encuentre en el contrabando una forma de obtener dinero y las mafias en Gibraltar proliferan en los últimos años. Por tanto, uno de los memorándums esta totalmente enfocado a la cooperación para la luchar contra el contrabando. En el se decretó, que la diferencia del precio a un lado y otro de la frontera no será en ningún caso mayor del 32% y también acuerda un intercambio de información del tabaco comprado y vendido, de las medidas tomadas y de su efectividad.

La correcta aplicación de las medidas acordadas en los memorándums de entendimiento hasta que acabe el periodo transitorio determinará la efectividad de las

mismas. En cualquier caso, ya supone un paso importante en las relaciones entre España y el Reino Unido con respecto a Gibraltar.

3. PROPUESTA DE COSOBERANIA; LA CIUDAD DE LAS DOS CORONAS

El tratado de Utrecht, en concordancia con los tiempos en los que se firmó, no puede ser un tratado llamado a sobrevivir durante mucho tiempo más. Ahí está la Resolución de Naciones Unidas, que reconoce en el Peñón un enclave colonial propio de otros tiempos y establecido en un país europeo. La nación colonizadora y el país en donde se encuentra el terreno colonizado, en ningún caso puede encontrar una justificación en cualquier tratado de derecho internacional, y mucho menos cuando ambas pertenecen a un ente supranacional que es la Unión Europea.

El acuerdo alcanzado entre la Unión Europea (UE) y el Reino Unido (UK) y rubricado por May y Juncker, entiende que una salida para Gibraltar, forzosamente, debe venir de la mano de un documento acordado no ya entre UK y UE, sino, más bien entre UK y España. Y esto, a nuestro criterio, con independencia de que se produzca un Brexit acordado (recuérdese que, en caso de lograrse un acuerdo, habrá un período transitorio posterior en el que se aquilatarán los detalles conducentes a la total desconexión).

No puede ponerse en duda que, en lo que hace al tema gibraltareño, una negociación “radical” no podrá ser aceptada nunca por ambas partes. Al respecto ha habido pretensiones en ese sentido como cuando España cerró la verja en la década de 1960. La decisión del gobierno del General Franco la pagó, sobre todo, la masa trabajadora española que a diario se acercaba, y sigue acercándose, a la Roca para desempeñar un puesto de trabajo. Además las medidas represivas por parte de España, en las que incluso se llegó a cerrar la verja han llevado a la sociedad Gibraltareña a expresar un masivo rechazo a los gobiernos españoles.

A nuestro modo de ver, la salida más envidiable, y que podría dar mejor resultado, sería una cosoberanía que pudiera ser compartida desde la jefatura del estado hasta los rangos más inferiores. Esta cosoberanía podría negociarse con el periodo transitorio que como sabemos se abrirá gracias a la firma del tratado de Marzo de 2019, y que está previsto que finalice el 31 de Diciembre de 2020. Tampoco serviría la proclamación de Gibraltar como una más de las comunidades autónomas españolas, y mucho menos como otra más de las ciudades autónomas, al estilo de Ceuta y Melilla. Un plan de esa índole ni funcionaría ni llegaría siquiera a ser signado por las dos partes.

Previamente España invitó al Reino Unido a aceptar una cosoberanía pero esta fue rechazada bajo la premisa de cumplir con el deseo Gibraltareño. Además, dichas propuestas no iban de la mano de un buen planteamiento y factores como la limitación del proyecto a un periodo provisional para una posterior recuperación de la soberanía por parte de España fueron determinantes para que los ciudadanos de la Roca votaran casi unánimemente en contra de la cosoberanía.

La propuesta debe consistir en el mantenimiento de una monarquía parlamentaria que, a partes iguales, desempeñaran el soberano español y su par inglés que funcionarían en alternancia, al estilo de lo que hacen los copríncipes de Andorra.

España representa una oportunidad única para Gibraltar puesto que esta a través de una cosoberanía le abriría la vuelta a Europa y cumpliría así, el deseo de más del 95% de los Gibraltareños. Además, la colonia crecería económicamente y sus ciudadanos además de no perder los derechos inherentes por estar ligados a un país miembro, sumarian ciertos que España podría cederles como: la doble nacionalidad, la posibilidad de acceder tanto al sistema educativo como sanitario en España. Una cosoberanía que igualmente puede encontrar parangón con una categoría al modo de los estados libres asociados, podría arrojar soluciones a un problema que cuenta con más de 300 años de existencia.

Fundamental es que este sistema garantizaría los derechos de los más de 14000 trabajadores que cruzar de España a Gibraltar todos los días. Así mismo, eliminaría el carácter paradisíaco de la droga, pues las fuerzas de seguridad no tendrían impedimento de traspasar el territorio para la persecución de las mafias involucradas. Ciertamente es que la Royal Navy considera Gibraltar como un punto estratégico con entrada al Mediterráneo o al Atlántico, en ese caso, los organismos supranacionales a los que ambas naciones pertenecen, tal es el caso de la OTAN, podrían ganar una presencia en el Peñón como coordinadores de las fuerzas angloespañolas. No debería contemplarse con malos ojos la caracterización del Peñón como paraíso fiscal, con un sistema que acogiera en sus instituciones bancarias unos depósitos generadores de grandes réditos para todos siempre que cumpliera con la normativa europea. Este sería muy atractivo para las empresas que seguirían teniendo acceso al mercado único. Además, España tendría acceso al uso y explotación del aeropuerto de Gibraltar cuyo uso conjunto ya se aprobó, pero que no se llevó a la práctica. Finalizaría así también con el eterno debate de si el aeropuerto se construyó de forma ilegal puesto que invadía suelo español.

Derribar muros, más que levantarlos, es la única opción que debe aguardar a Gibraltar. De lo contrario, no se estará haciendo otra cosa más que fortalecer un enclave donde el contrabando, el mercadeo de droga y peores negocios campen a sus anchas en una colonia nada más que establecida en Europa. La total y absoluta colaboración con el diálogo como base de todo el sistema, son requisitos de obligado cumplimiento para que sistema como el que proponemos pueda llevarse a cabo, y que sin ninguna duda podría ser muy beneficioso para todos los implicados en el: Gibraltar, Reino Unido y España. Y sin ver contradicción con nuestra última sugerencia, el camino hacia una cosoberanía permanente puede venir dado con independencia de la consolidación del Brexit o de la permanencia del Reino Unido en la Unión.