

GIBRALTAR – A PARADIGMATIC *PRESQU'ILE*?

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Peter Gold

University of the West of England <peter.gold@uwe.ac.uk>

ABSTRACT: Gibraltar would appear to be a paradigmatic peninsula – a small, elongated territory linked to a substantial mainland by an isthmus, with the many communication advantages that this positioning confers. But because for over three centuries Gibraltar has been a British Overseas Territory (formerly referred to as a colony) attached to Spain, which claims sovereignty of the territory, Gibraltar has had to struggle for survival as a separate entity under the shadow of Spanish antagonism and – at times – outright hostility, especially over the past fifty years. At the heart of the disagreement between Spain and Britain/Gibraltar are the issues of territorial integrity versus self-determination, plus (with regard to the isthmus) the validity of title by prescription. This article examines these issues, as well as the effect of the dispute on the residents on both sides of the border, and considers whether in some respects Gibraltar would have been better off as an island rather than an ‘almost island’. It also considers the comparable but distinct situation of Spain’s North African territories of Ceuta and Melilla.

KEYWORDS: Spain, Britain, Gibraltar, Ceuta, Melilla, Morocco, peninsula, isthmus, enclaves

On an aerial map Gibraltar appears to be an almost perfect illustration of a peninsula. Situated at the southern tip of the Iberian Peninsula, it occupies a total area of 6.8 square kilometres and the main land mass (which includes the Rock that rises to a height of 426 metres) is connected to Spain by a 1.2 kilometre-wide isthmus. As is the case with many *presqu'iles* or ‘almost islands’, the inhabitants have the apparent advantage - compared to those who live on land fully surrounded by water - of direct land communication with their nearest neighbours, thereby obviating the need for alternative forms of connecting transport such as sea or air ferries, enhancing mutual contact in the form of culture and language and facilitating the easy movement of labour, goods and services. Such benefits, however, are most likely to apply to ‘almost islands’ in situations where the inhabitants of the peninsula and of the mainland belong to the same political entity, or where at least there is no antagonism between the two. The apparent advantage to the Gibraltarians of attachment to the rest of the Iberian Peninsula is – at least at the level of national discussion, if not locally – counterbalanced by the disadvantages.

The British took possession of Gibraltar in 1704 during the Spanish Wars of Succession and have held it ever since. Under the Treaty of Utrecht, signed in 1713, the territory was ceded to Britain in perpetuity. Less than a hundred Spaniards remained on ‘the Rock’ after it was seized, but they have since been joined by Britons, Genoese, Maltese, Moroccans, Portuguese, Minorcans, Sephardic Jews from North Africa, and more recently, migrants from the Indian subcontinent. The resident population currently numbers about 29,400, of whom some 24,000 are Gibraltarians, 3,000 are other British subjects (including military personnel and their families), and 2,400 are non-British (Government of Gibraltar Abstract of Statistics 2009, Table 2). Despite their mixed origins, including the fact that less than

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thirty percent of the population appears to have British ancestry,¹ the way of life of the majority is essentially British but with a Mediterranean flavour. In addition to British administrative, judicial and education systems, British-style pubs, British shops, police officers in British 'bobby' uniforms are all typical manifestations of the fundamental Britishness of the colony, although when it comes to that other quintessential cultural identifier – language – most Gibraltarians speak fluent Spanish as well as English, thanks to easy access to Spanish media and to regular personal contact with Spanish speakers.



Figure 1 – Gibraltar from the air. (By kind permission of AAS Architecture - <http://aasarchitecture.com/2013/01/gibraltar-airport-by-3dreid-and-bblur-architecture.html>)

This identification with Britain that has now lasted for over three centuries, together with Gibraltar's internationally recognised status as a British Overseas Territory, have not deterred successive Spanish governments from laying claim to the territory. Although Article X of the 1713 Utrecht Treaty² (which accorded Gibraltar to Britain 'in perpetuity') has sometimes been observed more in the breach than in the letter, it is still recognised as the text that entitles Britain to retain the sovereignty of Gibraltar. The Treaty includes a reversionary clause that states that if Britain decided to 'grant, sell, or by any means to alienate therefrom the propriety' of Gibraltar then 'the preference of having the same shall always be given to the Crown of Spain before any others'. But despite pressure from the United Nations since the 1960s Britain has never entertained a willingness to negotiate on the issue of sovereignty (the discussions around shared sovereignty in 2002 were never

¹ Archer (2006: 36) calculated the origins of the population of Gibraltar in 1995 as British 27%, Spanish 24%, Italian 19%, Portuguese 11 percent, Maltese 8% and others 11%.

² For the text of Article X of the Treaty, see Gold (2005: 338-339).

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likely to succeed because there were too many 'red-lines' on both sides³). Conversely Spain has never indicated a willingness to renounce its claim to sovereignty, not least because no Spanish head of state or government could ever be seen to abandon Spain's 'historic claim' that dates back to the will of Queen Isabella of Castile in 1504.⁴

The basis of Spain's modern claim – and the one that is used regularly in the committees and assemblies of the United Nations – is twofold: first, that the loss of Gibraltar represented the loss of Spain's territorial integrity and this can only be restored by the return of the sovereignty of Gibraltar. This is Spain's counter-argument to the one put by Britain and Gibraltar of the Gibraltarians' right to self-determination. The second is that the Treaty of Utrecht does not include mention of the isthmus, which was a no-man's land at the beginning of the eighteenth century but which has become an important part of the territory of Gibraltar, in particular because it is the site of the airport. Thus Spain can, from its perspective, legitimately argue that Britain has no more right to the territory of the isthmus than Spain because it is not covered by any treaty. With respect to both claims Gibraltar is vulnerable on account of being a peninsula.

The issue of territorial integrity versus self-determination and the question as to which has primacy over the other is one that has exercised not only United Nations representatives but also international lawyers for the past fifty years,⁵ ever since the UN began the process of decolonization through Resolution 1514 (XV) approved by the General Assembly on 14 December 1960.⁶ The spirit adopted by the United Nations was referred to (with great relevance to *presqu'iles*) by Dunnett (1983: 421) as the "Salt Water Fallacy" – "the doctrine that to control territory from which you are separated by salt water is wrong; otherwise it is all right" – although clearly such a doctrine has not been applied rigorously over the past fifty years. Thus the 1960 resolution argued that "all peoples have the right to self-determination" and also referred to the fact that "all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory." Gibraltar has always maintained that the first of these principles should be seen as paramount, even though there might be obstacles that prevent it from seeking full independence, whereas Spain has used the phrase "the integrity of their national territory" to argue its case for the return of the sovereignty of Gibraltar.

³ For an account of the shared sovereignty proposals and their aftermath see Gold (2005: 264-325).

⁴ Through her marriage to King Ferdinand of Aragon, Queen Isabella united Spain's two largest kingdoms and laid the foundations of the modern Spanish state. The Queen "impressed the near sacred importance of the Rock upon Spanish national consciousness" (Jackson, 1987: 66) by including in her will a charge on her successors "that weighs on the conscience of all Spaniards to this day" – "I ask and require of the Kings, my successors, that they may hold and retain the said City [of Gibraltar] for themselves and in their own possession; and that no alienation of it, nor any part of it, nor its jurisdiction, civil or criminal, shall every be made from the Crown of Castile" (ibid: 72).

⁵ For a useful discussion of the "uneasy and complex relationship" between the principle of territorial integrity and the right of peoples to self-determination, see Lalonde (2002: 158-64). For a thorough analysis of the emergence and development of self-determination, see Raic (2002: 171-225). For an examination of the legal right to self-determination (as distinct from the political principle), see Quane (1998: 537-72).

⁶ See the United Nations General Assembly Resolution 1514 (XV)(1960).

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Spain has sought support for its argument from paragraph 6 of Resolution 1514, which states: “Any attempt at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.” A more logical interpretation of this paragraph is that the United Nations would not endorse the break-up of a nation through the secession of individual parts of it unless there was an internationally accepted agreement between the parties concerned. However, even though the paragraph refers to “any *attempt*” [my italics] to disrupt the unity or territorial integrity of a country (implying a future action rather than a past one),⁷ Spain has used the paragraph to argue on a regular basis for the retrospective restoration of its territorial integrity which, according to Spanish representatives at the United Nations, was damaged by the loss of Gibraltar to Britain when it was converted to a military base and the inhabitants were expelled.⁸ By the same token, Spain rejects the notion that the interests of the inhabitants of Gibraltar are paramount because its interpretation of Article 73 of the UN Charter is that the reference to “the inhabitants of these territories” was to “indigenous populations who had their roots in the territory,” and this does not apply to the present inhabitants of Gibraltar. If that were the correct interpretation, many other countries would not have been decolonized, and Britain argued that Gibraltar’s population had been there long enough to establish their own rights to the territory (*Yearbook of the United Nations*, 1968: 747). Such a contention is supported by Lalonde (2002: 164) who argues that to maintain that non-indigenous residents do not constitute “a people” entitled to benefit from the self-determination principle is an approach that “appears to have little merit when the “imported” inhabitants have occupied the territory for centuries. Historical claims vindicated on such an interpretation of the self-determination principle would have a serious destabilizing effect.”⁹

In addition to the territorial integrity of independent countries, Resolution 1514 also refers to respect for the integrity of the territory of dependent peoples. In Gibraltar’s case this could be seen to strengthen the argument for the territory of the town and the isthmus to be considered integrally, given that Britain claims “exclusive British jurisdiction since at least 1838” for the whole of the territory.¹⁰ Indeed, the most obvious claim that Britain and Gibraltar can use in relation to the isthmus is that of title by prescription, “that is, by a continuous and public exercise of exclusive and state authority over it, in which Spain as

⁷ This was the view taken by the British Government and the one that concurs with the “grammatical sense” of paragraph 6 of Resolution 1514 (see Rigo Sureda, 1973: 183-85). Pomerance, argues that while the UN has often embraced the first view—that past territorial claims were not protected—it has also supported reversion to a former sovereignty and “has in practice veered between both without any very marked consistency” (1982: 44).

⁸ See, for example, Javier Pérez-Griffo addressing the UN Fourth Committee, October 1997. Most of the 4,000 inhabitants of the Rock in 1704 fled across the isthmus into the hinterland of the Campo de Gibraltar, and many settled in San Roque, which King Philip V of Spain later dubbed “My city of Gibraltar resident in its Campo” (see Jackson, 1987: 101).

⁹ Gold (2001: 74) found in a survey that one quarter of the respondents claimed to be able to trace back their ancestry in Gibraltar at least two-hundred years and over 50% could trace them back at least one hundred and fifty years.

¹⁰ From British Government White Paper *Gibraltar—Talks with Spain* (1966 - Cmnd 3131: 62), quoted in Fawcett (1967: 240).

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the original territorial sovereign of the area is in all the circumstances to be taken to have acquiesced” (Fawcett, 1967: 240), especially since Spain has declined to take the issue to the International Court of Justice.¹¹



Figure 2 – Map of Gibraltar (source: <https://www.cia.gov/library/publications/the-world-factbook/geos/gi.html> - accessed January 26th 2016)

Britain can certainly claim to have occupied the southern part of the isthmus since 1854, when barracks, guard-posts, sentry boxes and wooden huts were built for sufferers from an outbreak of yellow fever and these were not removed when it was over (Hills, 1974: 379; Harvey, 1996: 119). In Britain’s preparations for an expeditionary force during the build-up to the First World War, it was decided that savings could be made if a steel fence topped with barbed wire were to be installed in place of the sentries. This was completed in 1909, with Britain claiming that the line “has been for many years and unquestionably still is the

¹¹ Levia believed that if Spain had allowed the issue to be considered by the ICJ it might well have decided that Britain had no rights beyond the actual walls of Gibraltar, and “this would undoubtedly have made the overall British position untenable; at the very least, it would have necessitated a softening of the positions of both Great Britain and the Gibraltarians” (1983: 222 n145). However Fawcett took the view that Spain’s refusal to refer the issue to the ICJ shows “a strong indication of acquiescence in a British title to the so-called ‘neutral ground’ of the isthmus (1967: 240-241).

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British frontier” (quoted in Jackson, 1987: 263). Spain argued that the line was actually in neutral territory, but was in no position to do anything except protest (Hills, 1974: 390-391). The isthmus was also developed with a racecourse, public gardens and sports fields in the early part of the twentieth century. Although a landing strip had been established on the racecourse during the First World War and an emergency landing ground was available from 1934, no serious attempt to turn it into an airfield had been made prior to the outbreak of World War Two (Harvey, 1996: 136). All that changed in October 1941, when the decision was taken to realign the runway and extend it by 550 metres into the bay, using thousands of tons of scree from the North Face of the Rock (Jackson, 1987: 286), plus the spoil from the vast amount of tunnelling that was taking place inside the Rock – 30 miles (48 kms) of it by the end of the War (Jackson, 1987: 276; Harvey, 1996: 141). Following the decision in June 1942 to undertake joint British–American landings in North Africa through Operation Torch, Gibraltar played the important role in November that year of providing the aircraft for fighter and anti-submarine cover, with more than 400 planes being accommodated on Gibraltar’s small airfield (Jackson, 1987: 291; Harvey, 1996: 151).

During the Cold War the airfield provided a useful facility for reconnaissance aircraft (Harvey, 1996: 157) and as tourist travel by air developed it doubled up as a civil airport as well as a military air base. In more recent times the airport has been re-developed and is now a major regional airport competing with other substantive airports in central southern Spain, despite the drawback that the main road in and out of Gibraltar crosses the airport runway. However, it is evident that the airport on the isthmus represents a major factor in Gibraltar’s ability to develop a tourist industry. So in addition to helping to give Gibraltar right of possession to the isthmus, the airport has enabled the territory to maintain a modern travel link with Spain, the UK and beyond. It is quite clear that without the isthmus – without being a *presqu’île* - Gibraltar would not have been able to have its own airport and residents and visitors alike would have had to depend on Spanish airports for air communications.

The airport is clearly one of the main benefits that Gibraltar enjoys from its peninsular status. However, Spain has frequently used control of the external frontier with Gibraltar on the isthmus as a weapon with which to press its case for a change of sovereignty – or at the least, for the renewal of discussions between Spain and Britain over the future sovereignty of the territory. The border was first used as a weapon in 1969, when the Spanish dictator General Franco tried to force Britain’s negotiating hand at the UN by removing Spanish workers from Gibraltar, closing the border and cutting off all other direct communications in the hope of irreparably damaging the Gibraltarian economy and bringing Britain to the negotiating table. Britain ensured that Gibraltar survived economically throughout the sixteen-year blockade, which had the effect of stiffening the Gibraltarians’ resolve to remain tied to Britain. The long years of isolation alienated the Rock’s inhabitants from Spaniards, with whom they were able to have little direct contact. The border was reopened in 1985 because Spain was about to become a member of the European Community (Gibraltar had joined at the same time as Britain in 1973) and freedom of movement between member states was a prerequisite for membership. The agreement between Britain and Spain, known as the Brussels Declaration signed in 1984, included a commitment for both parties to discuss all of their differences over Gibraltar, including sovereignty (for the text, see Gold, 2005: 341). Although some progress on practical matters of cross-border cooperation has been made over the past thirty years, nothing has changed with regard to sovereignty since Britain gave Gibraltarians a virtual

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veto in this regard by incorporating in the preamble to the 1969 constitution for the territory the phrase: “Her Majesty’s Government will never enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another state against their freely and democratically expressed wishes” (The Gibraltar Parliament). As for the Gibraltarians, they have almost unanimously indicated a preference to remain a British Overseas Territory since their first referendum in 1967, and their most recent Constitution of 2006 reiterates the British Government’s commitment regarding sovereignty.

Frustrated by this lack of progress on the issue of sovereignty over a period of more than fifty years, the Spanish Government has frequently used delays at the border crossing as a means of highlighting the issue through the world’s media. Long queues of vehicles with angry drivers and passengers have been ignored as customs officials examine cars and luggage at length, claiming the need to prevent the smuggling of drugs, tobacco or money, and as Gibraltar’s frontier (like that of Britain itself) represents an external border to the Schengen zone, there is little that the European Commission can do to prevent these delays, despite protests from Britain and Gibraltar as to their legality.¹² It is difficult to argue that Spain could not have behaved in a similar fashion if Gibraltar were an off-shore island rather than a peninsula, as similar tactics could have been applied to incoming and outgoing ferries, but there is no doubt that the existence of a land border on disputed territory has facilitated the use of delays and the excuse of aiming to seize contraband goods.

There is also the question of territorial waters. The concept did not exist when the Treaty of Utrecht was signed so that offered neither guidance nor impediment. Following the Geneva Convention on the Territorial Seas and Contiguous Zone of 1958 as applied to Gibraltar, Britain opted to claim territorial waters of three miles – the distance that had for some time been recognised as the basis for maritime law. When the UN adopted the Convention on the Law of the Sea in 1982 Article 3 provided that “every state has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles”, but Britain kept to the three mile distance. In ratifying the Convention, Spain argued - and continues to argue - that it does not recognise Gibraltar’s right to territorial waters, since these are not defined in the Treaty of Utrecht and the territory “is undergoing a decolonization process in which only the relevant resolutions adopted by the United Nations General Assembly apply” (1984). Consequently there have been countless incursions – from the British and Gibraltarian perspectives – into Gibraltar’s territorial waters, especially on the western side of the peninsula which extends into the Bay of Gibraltar (or Bay of Algeciras, as it is known in Spain), reaching over five hundred instances during the course of 2013 (Reyes, 2016). This activity represents another opportunity for Spain to highlight its grievances concerning the issue of sovereignty. As with the delays at the border, it is likely that Spain would adopt the same position with regard to territorial waters and incursions into them if Gibraltar were an off-shore island rather than a peninsula, although the situation could well be more fraught as the territorial waters would then extend northwards towards Spain.

Of course Gibraltar is not the only *presqu’île* in which Spain has a close interest, for it has two of its own – Ceuta and Melilla on the North African coast – that are claimed by

¹² For the outcome of the most recent investigation by the EC on border delays, see BBC News (2013).

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another sovereign state, in this instance the Kingdom of Morocco.¹³ Perhaps the common denominator of Spain suggests a certain symmetry between the two cases, so that it becomes easy to say that just as Spain claims the sovereignty of Gibraltar from Britain, so Morocco claims the sovereignty of Ceuta and Melilla from Spain. However, closer examination reveals more differences than similarities.



Figure 3 – Map of Ceuta (<http://www.planetware.com/i/map/MAR/ceuta-map.jpg> - accessed January 26th 2016)

Constitutionally and under international agreements the two towns of Ceuta and Melilla have been Spanish territory since 1668 and 1497 respectively as part of Spain's attempt to prevent Moorish incursions into the peninsula. In 1912 France and Spain, which had both firmly established their presence in North Africa in the middle of the 19th century, agreed to divide Morocco into two protectorates, but Spain retained possession of a number of settlements, including the two northern enclaves¹⁴ plus most of the surrounding Rif and Yebala regions.

In 1956 first France (which was preoccupied with problems in Algeria) and then Spain agreed to grant independence to the Alouite Kingdom of Morocco, but while France relinquished all of its remaining possessions, Spain did not. Although one by one Tarfaya, Ifni and Western Sahara were subsequently handed to Morocco, Ceuta and Melilla have remained firmly in Spanish hands. Like Spain with Gibraltar, Morocco lays claim to the North African enclaves principally on the grounds of wishing to restore its territorial

¹³ Ceuta has more of the character of a *presqu'île* than Melilla, which is situated on the eastern side of a larger promontory, the Cape Tres Forcas.

¹⁴ Spain's North African territories are commonly referred to as 'enclaves' although given their location with respect to the surrounding territory they are strictly speaking 'exclaves'. The term 'enclaves' has been retained here.

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integrity, but Spain has never shown any signs of making any concessions towards a transfer of sovereignty. Morocco's claim that the enclaves are anachronistic colonies is not supported by the United Nations which, despite its promotion of decolonisation, has never included them in its list of territories waiting to be decolonised, on the grounds that Spanish settlers have been living there since long before the establishment of present-day Morocco. In 1986 the enclaves became part of Europe through Spain's accession treaty to the European Community, and they are the only EU territories on mainland Africa.



Figure 4 - Map of Melilla (source: http://commons.wikimedia.org/wiki/File:Melilla_es.png - accessed January 26th 2016)

From a constitutional perspective, what is important is that they are an integral part of Spain. Like the French *Départements d'Outre Mer* or DOM, they take part in national elections and elect representatives to both houses of the national Parliament in Madrid. Since 1995 their status has been enhanced by being designated "autonomous towns" (*ciudades autónomas*), which gives them something less than the autonomous community status - notably the power to introduce their own legislation (which was granted to the rest of Spain between 1979 and 1983 under the provisions of the 1978 Constitution).

As is the case with Gibraltar, the populations of both Spanish territories identify strongly with the motherland and (unlike many peripheral Spanish communities) at all electoral levels the majority of votes (more so in Ceuta than in Melilla) are cast for candidates representing the major parties in Spain. However, there is a growing Muslim population that could one day predominate politically and take a different attitude towards Morocco. Currently a major factor that acts as a strong incentive for the retention of a Spanish identity is the significant disparity between the economies of the two enclaves and that of the surrounding territory, comparable to that between Gibraltar and the Campo. As a

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consequence fortified fences have been built around Ceuta and Melilla in order to prevent the illegal entry not only of Moroccans but also of nationals from sub-Saharan Africa who hope to gain entry into EU territory. In this respect above all, the two Spanish territories would have had fewer difficulties as islands in maintaining strong borders, although the experiences of the Canary Islands to the west and Lampedusa to the east provide strong evidence that perilous sea-crossings are no deterrent to the determined African migrant. On the other hand, having a land border benefits the Spanish territories in terms of the movement of labour and goods to and from Morocco on a daily basis.¹⁵

In conclusion, the attitude of Gibraltarians towards Spain has been significantly influenced by the fact that their territory is a peninsula linked to the rest of Iberia via an isthmus. They rightly blame Madrid rather than the authorities of the neighbouring Campo for the antagonism that manifested itself through a sixteen-year blockade and more recently through lengthy border delays and maritime incursions into territorial waters. It took some time for the inhabitants to put to one side their resentment over the privations they suffered during the blockade, but more recently – and especially during the period from 2004 to 2012 when Gibraltar was allowed to participate as a third party in the Tripartite Forum of Dialogue (Gold, 2009: 79-97) – there has been considerable cooperation across the border with the local councils in the Campo region on such issues as the use of the airport, pensions for former Spanish workers in Gibraltar, telecommunications, the environment, civil protection and coordination of emergencies, tourism, sports, education, culture and the development of commercial relations. Prior to the blockade and since the reopening of the border in 1985 there has been regular day-to-day contact between Gibraltarians and the inhabitants of the town of La Línea on the Spanish side, with some 7,000 Spaniards crossing daily to work in the peninsula and Gibraltarian citizens and businesses purchasing supplies in the Campo, especially food but also other goods and services.¹⁶ This ease of access afforded by the isthmus is clearly beneficial to inhabitants on both sides: unemployment in the Campo region is significantly higher than in Gibraltar, where the standard (and also the cost) of living is higher than in the Campo, due in no small part to the territory's fiscal advantages of exemption from the EU Common external tariff, the Common Agricultural Policy and the requirement to levy VAT. Gibraltar's economy, based on its status as an off-shore finance centre, plus bunkering, ship repairs, tourism and virtual gaming, is one of the many factors in determining that Gibraltarians can see few if any attractions in allowing their territory to become a small part of Spain. On balance, they would settle for remaining a *presqu'île* rather than an island, for all the advantages and conveniences that it brings, but would be happier if the antagonism from Madrid were removed. However, there is no sign of that happening in the foreseeable future.

Despite the differences between Gibraltar on the one hand and Ceuta and Melilla on the other that have been outlined here, they have in common a geopolitical significance, lying as they do on either side of the western extremity of the Mediterranean Sea, that has guaranteed the determination of Britain and Spain respectively to retain sovereignty over them throughout several centuries. Between them lies the Strait of Gibraltar, the strategic gateway between the Mediterranean and the Atlantic Ocean. While the advent of rapid

¹⁵ For a more extensive comparison between the Spanish North African territories and Gibraltar, see Gold (2000: 158-65).

¹⁶ See Gibraltar Chamber of Commerce (2013).

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deployment air defences has to a large extent reduced the significance of maritime control over important access points such as this, the continuing importance of a sovereign presence in such locations as these *presqu'iles* for intelligence-gathering and communications, as well as bases for naval and air force deployment and refuelling, should not be underestimated.

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