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THE TRIPARTITE FORUM OF DIALOGUE: IS THIS THE SOLUTION TO THE ‘PROBLEM’ OF GIBRALTAR?

Summary

Following the abortive attempt by Britain and Spain to negotiate the joint sovereignty of Gibraltar in 2001-02, the incoming Spanish Government in 2004 proposed the establishment of a Forum of Dialogue, in which for the first time Gibraltar would take part as an independent third party. This Forum was designed to achieve co-operation across a number of issues, including the use of the airport, frontier traffic flows, pensions for former Spanish workers in Gibraltar and telecommunications, and by September 2006 proposed solutions were reached on all of them. The paper explores the Forum process and its achievements, but concludes that, given the fundamental differences in the ultimate objectives of the Forum participants and in particular Spain’s sensitivity to Gibraltar’s status, the agreements may only prove to be a means of managing the Gibraltar ‘problem’ rather than resolving it. Finally, the article considers whether the Forum model offers any lessons for other disputes in the region where sovereignty is contested.

Introduction

Since October 2004 Britain, Spain and Gibraltar have been engaged in a discussion process designed to resolve some of the intractable issues that have arisen as a result of the dispute over the sovereignty of Gibraltar which dates back to the beginning of the eighteenth century. This discussion process, called the Tripartite Forum of Dialogue, is marked by two important features: first, although discussions over the future of Gibraltar have been taking place on a formal basis since the 1980s, Gibraltar is for the first time a participant in its own right, with its own separate voice; second, the Forum has an open agenda, in which anything can be discussed relating to Gibraltar.

The establishment of the Forum was seen as a way out of the impasse in which the formal discussion process – known as the Brussels Process, begun in 1984 – had found itself. The Tripartite Forum has produced some tangible results relating to practical issues, including the use of the airport, frontier traffic flows, pensions for former Spanish workers in Gibraltar and telecommunications. However, a more significant and far more intractable issue remains, namely Spain’s long-standing claim to the sovereignty of Gibraltar, the securing of which remains its ultimate objective. This will for the foreseeable future be frustrated by Britain’s commitment through the Gibraltar Constitution to allow the Gibraltarians the right of veto through
a guaranteed referendum on any proposed change to sovereignty – a right which they would undoubtedly exercise since the current evidence is that the vast majority of Gibraltarians do not wish to come under Spanish jurisdiction.

The issue of sovereignty, significant though it is, is not the primary focus of this article. Here the aim is to examine the process that led to the establishment of the Forum, to consider the progress that has been made through the Forum on some of these practical issues and to explore the consequential benefits for Britain, Spain and Gibraltar. It also questions the extent to which the Forum and its achievements have contributed towards a possible solution to ‘the problem’ of Gibraltar, and considers whether it offers any guidance as a means of dealing with other sovereignty disputes in the region.

The context

Ever since Gibraltar was seized by an Anglo-Dutch force in 1704 and confirmed as British by the Treaty of Utrecht in 1713 Spain has not relented on its claim to the return of the territory. Although Spain’s last attempt to regain it by force occurred towards the end of the eighteenth century, the international climate after the Second World War that favoured the universal decolonisation of dependent territories encouraged Spain to push for a change in sovereignty via diplomatic channels, initially through the United Nations in the 1960s. However, when these moves failed to produce results General Franco imposed a blockade from 1969, which was only lifted sixteen years later in the context of Spain’s application to join the European Community and the need to establish freedom of movement between member states (Gibraltar had joined the EC with the UK in 1973).

Britain and Spain agreed to open discussions on Gibraltar, first via the Lisbon Declaration of 1980 and later the Brussels Agreement of 1984. The discussions were strictly bilateral, with Gibraltar’s Chief Minister invited to participate as part of the British delegation. Although the Brussels agreement aimed to overcome all of the differences between the Spanish and British Governments over Gibraltar, including sovereignty, and although meetings regularly occurred when discussions on sovereignty took place, Spain was left feeling highly frustrated by the fact that Britain showed no willingness to negotiate on the sovereignty issue.
The position remained unchanged until 2001 when the two Governments began discussions on the possibility of sharing the sovereignty of Gibraltar, subject to a referendum by the Gibraltarians themselves on any firm proposal. Britain and Spain between them had such major ‘red-line’ issues that the likelihood of any agreement being reached was always remote,¹ but that did not prevent Britain’s Foreign Secretary from announcing the agreed principles to the House of Commons (Hansard, 12 July 2002, Col. 1166). The reaction in Gibraltar was one of anger and dismay, with the British Government being accused by Chief Minister Caruana of ‘betrayal and violation of our rights as a people to self-determination’ (Gibraltar Chronicle, 13 July 2002) and an unofficial referendum was quickly organised for 8 November on the concept of shared sovereignty. The people of Gibraltar voted almost unanimously to reject it, thereby dealing a major blow both to the credibility of the British Foreign Office and the hopes of the Spanish Ministry for Foreign Affairs.

Clearly the respective foreign ministry mandarins had not only underestimated the resolve of the Gibraltarians to defend their right to self-determination and to reject any involvement by Spain in the management of their affairs, but also overestimated the preparedness of Downing Street and the Moncloa Palace to be flexible over their non-negotiable ‘red-line’ issues. Inevitably, as a result of the referendum and with relations between London and Gibraltar at a very low ebb, the Gibraltar issue was placed on the back burner by both British and Spanish governments.² Almost two years passed (during which time there was a change of government in Spain)³ before there was any substantive discussion of the future of Gibraltar at senior government level.

The establishment of the Forum of Dialogue
On 3 August 2004 – the eve of the tercentenary of the capture of Gibraltar by Britain - the Spanish Foreign Minister, Miguel Angel Moratinos, published an article in El País entitled “Gibraltar: Más allá del 4 de agosto” (“Gibraltar: Beyond the 4 August”), indicating the desire of the Partido Socialista Obrero Español (PSOE) Government to improve relations with Britain and Gibraltar following the failure of the co-sovereignty talks.⁴ On 27 October the British Foreign Secretary, Jack Straw, had a meeting with Moratinos in Madrid, following which they issued a joint statement (later reported to
their respective parliaments) indicating that they had “agreed to consider and consult further on how to establish a new ‘forum of dialogue’ on Gibraltar, with an open agenda, in which Gibraltar would have its own voice” (Hansard, 28 October 2004, Col. 54WS). The forum was described as “the most important development on the Gibraltar question in decades” (Gibraltar Chronicle, 28 October 2004), for it finally allowed for the principle of “two flags, three voices” that since 1988 successive leaders in Gibraltar had insisted upon before they would participate in discussions. At the same time Britain and Spain agreed to create a Joint Committee for Cooperation and Collaboration (Comisión Mixta de Cooperación y Colaboración) consisting of the Gibraltar Government and the Association of Local Councils of the Campo de Gibraltar region (the Mancomunidad de Municipios de la Comarca del Campo de Gibraltar) - created after the Brussels Declaration in order to provide an appropriate instrument for cross-border cooperation (Sáenz and Izquierdo, 2004: 749) - with the aim of promoting “the identification and implementation of mutually beneficial local co-operation projects” (idem).

Inevitably the statement ended with the reaffirmation of the respective long-term objectives of each government: for Spain “this local co-operation is within the objectives of the Spanish Government in relation to the sovereignty of Gibraltar”, while Britain “fully maintains its commitment to honour the wishes of the people of Gibraltar as set out in the preamble of the 1969 Constitution” (Gibraltar Chronicle, 28 October 2004). Thus despite the fact that London and Madrid wished to present the agreement as a new start in the negotiation process, there was also an explicit insistence at the outset on protecting established positions. Moratinos made it plain that Spain’s strategy was still to regain sovereignty over Gibraltar and that the agreement was designed to introduce confidence building measures in order to make that possible. Gibraltar’s position was to seek Spain’s recognition of its right to self-determination, while being prepared to buy into the agreement because it was in its interests – political, economic and practical - for cross-border relations to improve, in the knowledge that there remained the guarantee from Britain that nothing could be done without the agreement of the Gibraltarians.

Thus the function of the Forum agreement was very different for the three participants: for the British government, it offered a means of removing the issue of
the future sovereignty of Gibraltar from the forefront of relations with Spain, as well as improving relations with Gibraltar after the damage of the joint sovereignty proposals; for Gibraltar, it provided the opportunity to enhance cross-border cooperation and economic activity and remove the obstructionism created by Spain’s obsession with the issue of sovereignty, while ensuring that nothing could be agreed between Britain and Spain without Gibraltar’s agreement; for Spain (or at least the current Spanish Government) it represented the creation of an opportunity for the much-needed development of the region of the Campo, but more importantly the start of the ‘wooing’ process that, it was hoped, would lead at some unspecified time in the future to Gibraltarians finding no reason to object to a transfer of sovereignty to Spain. Whether each party fully recognised and accepted the perceptions of the agreement by the others was another matter.

The specific issues which the Forum was tasked to resolve were annexed to the joint statement and referred to several practical bones of contention that over many years had undermined good relations between the residents on the two sides of the Gibraltar-Spanish border. These included the use of Gibraltar’s airport; the related issue of the inclusion of Spanish airports as alternatives in the flight plans of aircraft whose final destination is Gibraltar; investigation of the pensions issue of former Spanish workers in Gibraltar; and the removal of restrictions by Spain on pleasure cruise liners, which, if they had called at (or planned to call at) the port of Gibraltar, were not permitted to call at Spanish ports.

In the joint declaration issued on 16 December 2004 by the two Foreign Ministries and the Government of Gibraltar which established the modalities of the Forum, reference was made to the open agenda, to the equal status of the three parties (despite the fact that “Gibraltar is not a sovereign state”), and to the fact that the Forum would be convened at least once every six months at ministerial level (Sáenz and Izquierdo, 2004: 746). However, one of the most significant aspects of the statement was that the Forum was being established “separate from the Brussels Process” (idem); in other words, the Brussels Process was not formally being abandoned or replaced, but still remained – at least in principle - as an alternative environment for future discussion, especially on the question of sovereignty.
Commenting on this later, the Chief Minister, Peter Caruana, said that the British Government had confirmed to him formally that “there will be no parallel or alternative bilateral process of sovereignty negotiations between the UK and Spain” and as a consequence he called for the Brussels Process to be “formally abandoned by [the] UK and Spain at the earliest opportunity”. However, according to Bernardino León, Minister for Europe, Spain still viewed the Brussels Process as “a valuable asset” (ABC, 17 December 2004). The last thing that the Spanish Government would wish to be seen to be doing was to abandon an historic agreement that contained the first explicit commitment by Britain to discuss what for Spain was the key issue of sovereignty. The PSOE Government will also have been concerned at the strong, populist opposition to its new Gibraltar policy by the main opposition party, the Partido Popular (PP), whose leader, Mariano Rajoy, described the Government’s policy on Gibraltar as “an ingenuous gesture” and “humiliating for all Spaniards” (El Mundo, 18 December 2004). In the face of such attacks, at least the Government was able to point to the fact that the commitments made in the Brussels Declaration were still in force.

The first meeting of the Forum took place in Málaga on 12 February 2005. Inevitably the Forum’s achievements represented no more than first steps. It was agreed to establish a technical working group to consider different models of shared airport use and how these might be applied to Gibraltar. Other topics discussed included the improvement of traffic flow at the frontier and telecommunications. Discussion also took place regarding the practice of providing repairs to British nuclear submarines in Gibraltar’s dockyard, prompted by the fact that a week prior to the Málaga meeting a nuclear-powered vessel, HMS Sceptre, had had to call in at Gibraltar for repairs, although not to any nuclear components. Thus the first Forum had provided the opportunity not only to broach long-standing practical issues, but also – although this was not the original intention – to raise concerns of the moment.

The issues
Since these initial steps in the new discussion process, by the end of 2008 the Forum had met on nine further occasions. The most significant of these meetings was the fifth one, held in Córdoba on 18 September 2006, the first at ministerial level and the occasion when the first detailed agreements were announced. The three
parties were finally able to announce progress with regard to the main issues highlighted in the annex to the joint statement of October 2004. The communiqué issued after the meeting on 18 September 2006 focused on five major issues:

a) **The airport**: This was always likely to be the most sensitive issue, not only because it is a military as well as a civilian facility (and to complicate matters further the terminal is owned by the Government of Gibraltar whereas the airfield is the property of the UK Ministry of Defence), but also because the airport had the most serious implications for sovereignty. What was eventually agreed in Córdoba was based on the Geneva model: the construction of a new single air terminal adjoining the south side of the fence/frontier, with access to and from the north side controlled by Spanish officials. This agreement replaced that of 1987 (to which there were very strong objections in Gibraltar and from which it was ultimately excluded). 

What was most important from the Gibraltarians’ perspective about the agreement on the airport reached in Córdoba was that it was aimed at “enhanced” (not “joint”) use and that the airport remained under exclusive British sovereignty and under exclusive British/Gibraltarian jurisdiction and control (*Gibraltar Chronicle*, 20 September 2006). In Spain the PP were critical of the fact that the Government had conceded to Gibraltar the monopoly of the runway, which, they claimed, is built on Spanish territory (*Sur*, 1 February 2007). This provided the Spanish Government with the opportunity to reiterate its commitment to reclaim sovereignty over the isthmus as well as to what it referred to as “the colony” (*Gibraltar Chronicle*, 21 March 2007). Once again, under pressure from the opposition, the Government in Madrid reverted to a more confrontational, less cooperative language.

b) **Pensions**: Spaniards who were resident in Spain but worked in Gibraltar prior to the closure of the frontier in 1969 became entitled to uprated pensions in 1986 when Spain acceded to the EU. In 1988 the pension rates were frozen and in 1996 the British Government assumed indefinite responsibility for the pensions, but did not increase the rate. Under the Forum agreement, these Spanish pensioners (numbering 5,700) were to be offered a lump sum (equivalent to the uprating that they had missed out on since 1989) in exchange for their withdrawal from the
contributory pension scheme (the Gibraltar Social Insurance Fund) and renouncing any claims via the scheme. In the event, 99 per cent of the pensioners accepted the lump sum and the first payments were made in April 2007. The agreement also allowed the Gibraltar Government to unfreeze and uprate pensions to Gibraltarians, which had all remained at the 1988 rate.

c) Telecommunications
Spain had consistently refused to recognise Gibraltar’s International Direct Dialling (IDD) country code of “+350” because a country code was seen to give the territory international recognition. This meant that the number of telephone lines available to Gibraltar was restricted to 30,000 as part of Spain’s own allocation, using the area code for Cádiz (which had to be used when dialing Gibraltar from Spain). In addition Spain prevented roaming arrangements for Gibraltar's GSM mobile phones when used in Spain, so that Gibraltarians had to use a different SIM card or a different phone. The Córdoba Agreement put an end to both of these restrictions and the new regimes were in place by February 2007 (Gibraltar Chronicle, 10 February 2007).

d) Traffic and pedestrian flows at the border
On 2 May 2005 over one million euros were earmarked by the Spanish Treasury for the upgrade and modernisation of police and customs frontier facilities at La Línea. This was followed on 5 May by a decision in Madrid to introduce red and green channels, to establish two-lane traffic into Gibraltar and to increase manpower in order to improve traffic flow. By the time of the Córdoba Agreement, work on the border crossing improvements was well under way and was completed by the end of 2006. The Córdoba Agreement acknowledged that some delays would be inevitable for as long as Gibraltar remained outside the EU Customs Union and outside the Schengen Agreement on free movement across borders. What the Córdoba Agreement did not allow for was the fact that many more drivers decided to take their vehicle into Gibraltar as a result of the improved border arrangements, thereby causing extra delays during busy periods (see Gibraltar Chronicle, 12 April 2007), and the consequences of this were taken up in subsequent Forum meetings.

e) Instituto Cervantes
The Córdoba Agreement included a reference to the fact that a Cervantes Institute, designed to promote Spanish language and culture, would be established in Gibraltar. It was hoped in Spain that this would not only enable more Gibraltarians to use Spanish fluently, but also encourage more young people in Gibraltar to study in Spanish universities instead of going to Britain. For those Gibraltarians opposed to the Córdoba Agreement it was seen as an unwelcome intrusion, but others treated it as a sign that Gibraltar was virtually being given the status of a foreign country. The last time Spain had a formal presence in Gibraltar was in May 1954, when the Spanish consulate on the Rock was closed in anticipation of Queen Elizabeth’s visit later that month and it was never re-opened. It was initially assumed that the establishment of an Institute would mean that Spain would have the option to apply for the Spanish flag to fly in Gibraltar for the first time in over half a century, but this was later reconsidered by Gibraltar “on planning grounds” (Daily Telegraph, 26 September 2006). A decision on the details relating to the Institute was originally due before the end of 2007, but by July 2008 a decision to locate the Institute in a non-Government building had only just been taken (Gibraltar Chronicle, 3 July 2008), and refurbishment meant delaying the opening until the first half of 2009 (Europa Sur, 12 December 2008).

As far as the major elements of the Córdoba Agreement were concerned, the reason for its success was due to the fact that all sides were willing to give some ground on previously held positions. Gibraltar had to make concessions on the airport and on having a Spanish presence in the form of the Cervantes Institute, while the UK Government had to bear the financial responsibility of the pensions. From one perspective Spain’s concessions on telecommunications, air traffic management and frontier fluidity simply meant that it was agreeing to behave in a fashion expected of a mature democracy; from another viewpoint they were a means to an end - a price worth paying for the ultimate prize (as Spain saw it) of the transfer of sovereignty.

**The work of the Forum post-Córdoba**

In Córdoba the participants identified the next set of issues for the future work of the Forum. This has included co-operation on environmental issues, financial services and tax, judicial and law enforcement co-operation, education, maritime communications and Schengen visa issues.
It has to be said that progress has not been rapid. Although by April 2008 the second tranche of the lump sum had been paid to Spanish pensioners, construction work on the new air terminal was only due to begin in October 2008. The future agenda announced at the July 2008 meeting was identical to that identified in Córdoba in 2006, and although the communiqué indicated that solutions would be agreed at the next ministerial meeting “within the next twelve months”, this meant that many important issues would only begin to be resolved three years after they had been formally identified (Gibraltar Chronicle, 3 July 2008). That said, it is clear that the road towards their resolution is complex; as Gibraltar’s Chief Minister put it, compared to the solution of political problems, solving technical issues “is actually a much harder process, where many more departments of state need to be involved in the UK and Spain. Other areas of the Gibraltar Government need to be involved, too, so there is a more cumbersome machinery to drag forward to reach agreements.”

Joint Committee issues (known as the ‘Los Barrios Process’)  
The Joint Committee (Comisión Mixta), announced at the same time as the Forum of Dialogue, was designed to improve cross-border cooperation. It was formally established on 18 November 2004 at a meeting in Los Barrios in the Campo de Gibraltar, with delegations led by Gibraltar’s Chief Minister and the Chairman of the regional Association of Local Councils. The areas of cooperation were to include the environment, civil protection and coordination of emergencies, tourism, sports, education and culture, transport (including the use of airports – although this largely became a Forum issue - and cooperation on port and land transport issues), communications (including telephones, which were also a Forum issue), and the development of commercial relations. It was recognised that in some areas cross-border cooperation was already well-established; what was different – at least in theory - was that the Campo leaders now had the authority to deal with issues that previously could only be handled by authorities in Madrid.

However, the issue of competences was from the outset unclear. The fact that the repair to the nuclear-powered submarine, HMS Sceptre, was discussed at the Forum
meeting on 12 February 2005 immediately raised the issue of where the competence now lay to deal with emergency procedures and protocols. Although it was recognised that it was no longer necessary to refer everything to Madrid, following the second meeting of the Joint Committee on 21 February 2005, it was unclear whether the Government of Andalucía (the Junta) – which was not a participant in the discussions - or the Association of Local Councils (the Mancomunidad) was the appropriate authority to deal with emergencies (Gibraltar Chronicle, 24 February 2005). The question of who should represent the views of the Campo in the new environment for discussions did not appear to have been fully thought through, with the President of the Junta and the Mayor of La Línea (the town closest to the Gibraltar border) both arguing that they should be included in the talks. On 11 May 2005 the Gibraltar Government indicated that it would be happy for the Junta to participate35, although they did not do so until March 2007 (Gibraltar Chronicle, 13 March 2007).

Clearly progress on the activities of the Joint Committee was painfully slow. By October 2006 it was in need of “reactivating” in order to work on cooperation in education, public health, culture and the environment (Gibraltar Chronicle, 24 October 2006). When the Committee met in March 2007 it was agreed to establish five cross-border working groups on transport, health, education, the environment and emergency contingency planning (Gibraltar Chronicle, 13 March 2007) – all (except health) issues that were identified for discussion when the Committee was set up more than two years earlier. Thereafter meetings of the Committee lapsed and by the end of 2008 over a year had passed since its last meeting (Dialogos del Foro, 25 November 2008).

The issues of sovereignty

Foreign Minister Moratinos had indicated in a letter of 28 March 2006 that Spain was eager to resume negotiations on sovereignty issues relating to Gibraltar “without further delay”36. Jack Straw made it clear that this would only happen if Gibraltar was content for the British Government to do so, and in reality this was out of the question for the foreseeable future. But Spain’s expectation that sovereignty negotiations would resume under the Brussels Process (which Gibraltar considered to be defunct), when (at that time) the Forum had not yet announced a single item of
agreement, was a clear indication that Spain primarily saw the Forum discussions as a means to an end and was eager to get back to what they saw as the heart of the matter.

The first agreement emerging from the Forum in September 2006 made explicit the fact that the Forum discussions were nothing to do with sovereignty, but also made plain that none of the issues agreed upon had any bearing on the previously held positions of the participants as far as sovereignty was concerned:

“These agreements show our commitment to the solution of specific problems but have no implications whatsoever regarding sovereignty and jurisdiction, or regarding any issues thereby affected, and any activity or measure undertaken in applying them, or as a consequence of them, is understood to be adopted without prejudice to the respective positions on sovereignty and jurisdiction. The Government of Gibraltar understands and accepts that references to sovereignty in this Communiqué are bilateral to the UK and Spain.”

There was a significant discrepancy regarding the interpretation of the last sentence of this statement. The Gibraltar opposition parties interpreted it to mean that Gibraltar would not expect to be party to discussions about sovereignty, and they therefore rejected what they perceived to be the Government’s position. However, the Chief Minister insisted that “what is bilateral . . . is the references to sovereignty in the texts, not the issue of sovereignty itself” and that Jack Straw had provided written guarantees that no negotiations on sovereignty would be entered into with which Gibraltar was not content. Spanish Foreign Minister Moratinos, under pressure from the PP, argued that “Gibraltar had accepted and understood that references to sovereignty are a matter between [the] UK and Spain bilaterally”, and referred to the Brussels agreement remaining “firmly in place” (Cortes Generales, Diario de sesiones del Congreso de los Diputados, 18 October 2006, No. 209, pp. 10510-11).

Since there was little prospect of a prompt return to a discussion on sovereignty, the real meaning of this aspect of the text would not be put to the test for some time, but
it promised to arouse some heated discussion about Gibraltar’s role in due course. It also illustrated the fact that each of the parties concerned had its own motive for reacting to this statement as it did: the Gibraltar Government rejected any interpretation that suggested that Britain and Spain could discuss sovereignty ‘above the heads’ of the Gibraltarians, because they argued that this was only possible under the Brussels Process and that this process had been superseded by the Forum; the Gibraltar opposition parties, sceptical about the Córdoba Agreement and aware that the Brussels Process had not formally been abandoned, were liable to treat this rather ambiguous wording in a negative way; the Spanish Government, under pressure from accusations of weakness from the opposition PP, needed to defend the concessions it had made on the Gibraltar issue by stressing the fact that it was the two states that retained control over the substantive matter of sovereignty.39

So although the Forum provided a mechanism for the resolution of many of the Gibraltarians’ problems that had arisen out of Spain’s frustration at not being able to resolve the issues of sovereignty, the latter remained the ‘elephant in the corner’ that Spain was committed eventually to bring back to the centre stage. As a means to that end the PSOE Government appeared to have taken the advice in 2004 of those who two years earlier, following the abortive joint sovereignty negotiations, had advocated the need to ‘woo’ the Gibraltarians in order to create a climate of confidence. This new policy marked the implementation of a modern approach that stood in clear contrast to the policies of the previous forty years. As Moratinos put it at the time of the Córdoba Agreement: “In the 21st century governments and states can enter into all kinds of agreements, but if these are not accepted by the citizens it is very difficult to implement them” (El País, 19 September 2006). However, he also made clear when speaking about the Córdoba Agreement in the Spanish Congress that Spain “has not renounced, does not renounce and will not renounce the claim to sovereignty of Gibraltar” (Cortes Generales, Diario de sesiones del Congreso de los Diputados, 27 September 2006, No. 203, p. 10159).

This new approach to the Gibraltar issue did not, as we have seen, receive universal support in Spain or in Gibraltar. Following the announcement of the Córdoba Agreement leaders of the PP issued a scathing denunciation of the concessions that
the Government had made. Mariano Rajoy, the leader of the opposition, accused the Spanish government of “concerning itself a great deal with co-operation but doing nothing on the sovereignty issue” (Gibraltar Chronicle, 21 September 2006). The party president in Andalucía, Javier Arenas, described Moratinos’ failure to demand Spanish sovereignty of Gibraltar as “shameful” (idem), while another spokesman for the party, Gustavo de Arístegui, claimed that the establishment of a Cervantes Institute in Gibraltar was tantamount to treating it as a foreign state (Congreso, 18 October 2006, N. 209, p. 10510).

Such pronouncements only served to add to the concerns of some Gibraltarians (especially within the opposition parties) who did not trust Spanish motives. Even though the Córdoba Agreement was (according to Caruana) “politically and morally binding on the three parties and . . . irreversible in practice” (Gibraltar Chronicle, 20 September 2006), the Gibraltar Socialist Labour Party (GSLP)/Liberal opposition rejected this view together with many of the key elements of the Córdoba Agreement and the “totally undemocratic” way in which they had been imposed on the people of Gibraltar (Gibraltar Chronicle, 26 September 2006). Such views by the Gibraltar opposition parties no doubt led to the PSOE Government sounding rather less certain that the Córdoba Agreement was permanent: on a visit to the Campo on 3 October 2006 Moratinos said: “We are calm and hopeful that whoever governs in Gibraltar will not overturn the Córdoba Agreement” (Gibraltar Chronicle, 4 October 2006). With the narrow victory of Caruana’s Gibraltar Social Democrats (GSD) in the elections a year later, that hope will remain justified at least until 2011, and with the return to power of the PSOE in Spain in 2008 the Forum and the Córdoba Agreement are guaranteed not to be undone from Madrid for a further four years.

However, the position of the Partido Popular is reflected in that of one prominent PP academic and critic of the Córdoba Agreement, José María Areilza Carvajal, who saw no reason why a future PP government should not renegotiate the agreement.40 As González (2005: 28; 2006: 840) and Oda-Ángel (2007: 7) point out, the Córdoba Agreement has the status of a non-binding ‘gentlemen’s agreement’ and from a legal perspective it would therefore be much easier to undo it than it would be to cast aside a formal agreement such as the Brussels Declaration.

Conclusion
Caruana saw Spain’s contribution to the agreement reached in Córdoba as “a down payment” on the PSOE Government’s desire first expressed in 2004 to have a “different sort of relationship” with Gibraltar (Gibraltar Chronicle, 20 September 2006). There can be no doubt that the tripartite Forum of Dialogue has served substantially to improve Gibraltar’s relations with both Madrid and the Campo, even though (as the results of the October 2007 elections indicated) only about half the Gibraltar population were persuaded that it represents more of an opportunity than a threat. A combination of the Forum and the new ‘non-colonial’ Constitution agreed in March 2006 means that Gibraltar’s relations with London have also improved since the low point of 2002 and the abortive joint sovereignty negotiations. Of equal significance, Britain and Spain can have a co-operative relationship that is not defined by the resolution of the issue of the sovereignty of Gibraltar. The agreements in Córdoba on three of the major issues (the airport, telecommunications and ‘frontier fluidity’) are designed to achieve three things: to remove the tactics of frustration by Spain as a means of demonstrating its grievances, to produce tangible improvements to cross-border activities and to open up economic prospects to the region.

However, Spain continues to oppose any changes to the status quo that go beyond improvements to practical cross-border cooperation or to long-standing issues that have disadvantaged ordinary Spaniards (such as pensions to former Spanish workers in Gibraltar). Spain accepts that Gibraltar’s new Constitution has no implications for the issue of sovereignty and can therefore take a relaxed attitude towards it, but Spain’s insistence that the Constitution does not alter Gibraltar’s colonial status and that the referendum of September 2006 on the Constitution does not amount to an act of self-determination is designed to protect the currency – especially within the forum of the United Nations – of Spain’s sovereignty claim.

By the same token – and at times with more serious consequences – Spain vigorously opposes any threat of international recognition of Gibraltar that gives it equal status with nation-states. The contexts of this opposition are varied. One example is Gibraltar’s attempt to become a member of the European football organisation UEFA. In the latest ruling in January 2007, Spain successfully lobbied against Gibraltar’s membership at UEFA’s Congress in Dusseldorf on the grounds that
Gibraltar did not meet the UEFA criteria, despite support for Gibraltar’s application from the Court of Arbitration for Sport in Lausanne which obliged UEFA’s Executive Committee to grant provisional membership in December 2006, just prior to the Congress.\(^4^5\)

Another example of Spain’s continuing sensitivity to the status of Gibraltar in a completely different context was the delay in the implementation of EU sanctions against North Korea that were agreed by the UN in October 2006 as a result of the testing of a nuclear device. The EU Foreign Ministers adopted the sanctions in November but by February 2007 they were still not in force owing to the fact that the agreement, which required the signature of all member states, had not been signed by Spain. Spain objected to the inclusion of Gibraltar as one of the competent authorities responsible for the enforcement of the sanctions, arguing that it “does not recognise Gibraltar’s authority in international policy” and that the only competent authority in this context is the UK (\textit{Financial Times}, 2 February 2007). However the British Government maintained that Gibraltar had to be mentioned in the agreement because the arms sales sanctions applied to the possible freezing of financial assets in Gibraltar bank accounts (\textit{Sunday Telegraph}, 4 February 2007). The issue was eventually resolved by replacing the annexe to the agreement that contained a reference to Gibraltar by a list of websites – one per member state – that gave details on how to access each country’s competent authorities, one of which was the office of the Chief Secretary of the Gibraltar Government (\textit{Gibraltar Chronicle}, 20 February 2007).

The fact that this sensitivity on Spain’s part to Gibraltar’s status interfered with the implementation of EU agreements was nothing new, although arguably none had been quite as serious as the implementation of UN sanctions against North Korea. Spain’s reaction served to underline the fact that nothing had changed regarding the primacy of the sovereignty issue.

The UN Fourth Committee, which has responsibility for decolonization issues, acknowledges the fruits of the Forum but continues to call for Britain and Spain to reach a definitive solution to the question of Gibraltar “in the spirit of the 27 November 1984 statement [the Brussels Agreement].”\(^4^6\) In the eyes of the
international community, therefore, as represented by the UN, the Forum has only deferred the resolution of the fundamental basis of the dispute. This coincides with Spain’s view, despite the contrary messages that come from both British and Gibraltar Governments. Although the Forum agreements have brought about a degree of normality in the way in which Gibraltar and Spain relate to each other on specific operational issues, there is no sign that on a strategic level Spain’s position is any different today from what it was fifty years ago.

This is quite clearly illustrated in a document entitled Informe sobre la cuestión de Gibraltar (Report on the Issue of Gibraltar) published by the Ministry of Foreign Affairs in April 2007 (and issued in book form in October), where the Spanish Government’s claim to the sovereignty of Gibraltar was described as “irrenunciable” (“inalienable”). The document recognised that the Forum will serve the purpose over time of improving communication and cooperation across the border, but “this does not mean that the fundamental question has been resolved or that Spain’s historical claims regarding the Colony have been abandoned”. This issue of sovereignty, it was argued, “is discussed bilaterally with the United Kingdom through the so-called Brussels Process, which is specifically acknowledged as being separate from the Forum of Dialogue. The Brussels Process remains fully in force…” Although this position can to a degree be seen as diplomatic posturing – no meeting under the Brussels Process has taken place since 2002 and there is no likelihood of one occurring in the foreseeable future – it demonstrates Spain’s entrenched view on the central question of sovereignty, which at central government level has not been changed one iota by the Forum process. No doubt the same is true of the positions of Britain and Gibraltar, although as defendants of the status quo they do not feel the same need to be quite so forthright about it. In the light of this, it is small wonder that the population of Gibraltar appears divided (on the basis of the 2007 election result) on the question of whether the Forum is a good thing for them or not. One thing, however, is plain: the Forum of Dialogue is clearly not the answer to the ‘problem of Gibraltar’, and only the passage of time will reveal whether it marked the first step towards the answer.

A model for other disputes?
Finally, it is worth considering whether the Forum model offers any lessons for other disputes where sovereignty is contested. The most obvious (and related) instances in the context of the wider western Mediterranean region are the disputes between Spain and Morocco over Ceuta and Melilla and between Morocco and the Polisario-proclaimed Sahrawi Arab Democratic Republic in Western Sahara - although it has to be said that there are major constitutional, legal and historical differences between the case of Gibraltar and these other two disputes.

The first consideration regarding the feasibility of establishing a Forum for dialogue is that all parties involved need to be willing to participate and prepared to make some concessions relative to the status quo. Currently there are no signs that such preconditions exist with regard to the two North African disputes. That said, it is clear that the Forum model, with all parties having their own voice and with an open agenda for discussion, does provide a mechanism for the management (if not the resolution) of any dispute. It enables bilateral relations to be improved and reduces (even if it does not eliminate) the use of aggravating tactics in order to highlight grievances by the party that is dissatisfied with the status quo. 50 If there is no possibility of the sovereignty claim being abandoned, the Forum structure at least allows for it to be put to one side while providing opportunities for collaboration on matters of mutual benefit, such as cross-border economic growth and environmental protection. It also paves the way for closer ties that over time could reduce the hostility or resentment caused by earlier attitudes and actions.

What is clear from the Gibraltar example is that in any negotiations over practical matters the involvement of representatives of the local residents is a sine qua non, and it is helpful if some decisions reached do not need to be sanctioned by central governments. Such an approach is likely to maintain both broad popular support for the process and also responsible negotiating by the participants. Ultimately the mutual confidence and trust created and the benefits that are produced could result in a change of attitude by the inhabitants of the contested territory towards the fundamental issue of sovereignty, and in turn this could cause the sovereign power to consider alternative future scenarios. However, such a change is likely to take longer (or may not occur at all) if the party seeking a change of sovereignty finds it impossible to put the sovereignty issue aside (due either to pressure from political
opposition parties or to entrenched attitudes from decades, if not centuries, of cultural conditioning) and allows a concern for the fundamental issue to determine its reaction to issues of less significance. As the case of Gibraltar illustrates, a combination of hypersensitivity on the part of one party to the question of the status of the disputed territory and the overriding significance of the long-term goal of regaining sovereignty require a determined commitment to the process of dialogue by the other parties involved which may be difficult to maintain.

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NOTES

1 See Gold, 2004: 375-84.

2 Sáenz and Izquierdo (2004: 743) suggest that Spain had good reason to put the Gibraltar issue to one side in 2002 given other important external events at the time, namely the presidency of the EU, the crisis with Morocco over Parsley Island and (in 2003) the war in Iraq.

3 The Partido Popular, which had come to power in 1996 and was expected to win a third successive four-year term, had unexpectedly lost the election in March 2004 in the wake of the terrorist bombings in Madrid.


5 In fact the idea of changing the context for discussions on Gibraltar was not entirely new within PSOE circles: five years earlier Rafael Estrella, the party’s Foreign Affairs spokesman, had proposed a more cooperative approach to the Gibraltar dispute, including “putting aside the sovereignty factor for a given period” (Gibraltar Chronicle, 29 January 1999).

6 There are differences in the interpretation of the phrase ‘two flags, three voices’. Since 1988 Gibraltarian leaders have argued that the Brussels Process does not afford them their own voice, since it is a bilateral process in which Gibraltar can contribute only as part of the British delegation and on topics considered to be within its competence (ie not sovereignty). However, Spanish commentators, such as Del Valle (2006: 5) and González (2006: 839), saw the Brussels Process as the forum for bilateral negotiations on issues of sovereignty under the ‘two flags, three voices’ formula. González earlier suggested (2005: 25) that the reason why the Spanish Government was now prepared to offer Gibraltar its own voice was because it was a forum for dialogue, not negotiation. Sáenz and Izquierdo (2004: 748) note that in the Brussels process the Spanish Government only ever accepted one interlocutor, that
of the British delegation (of which Gibraltarian representatives were considered to be a part).

7 Luis Romero (2004: 1) was wrong to suggest that Gibraltar had previously been offered the opportunity to participate in talks in its own right, but correctly points out (p. 3) that cooperation had been taking place for some years at a popular level between Gibraltar and the neighbouring Campo.

8 The 1969 Constitution, introduced at the time of the start of the sixteen-year blockade of Gibraltar by the Franco regime, stated in its Preamble that if Britain ever considered a transfer of sovereignty, it would take no action without the freely and democratically expressed wishes of the Rock’s inhabitants.

9 Even Gibraltar’s Chief Minister recognised that this might happen one day; addressing a meeting in Madrid some time after the establishment of the Forum he said that “an efficient political process of dialogue could perhaps change the dynamics of the relationship between Gibraltar and Spain and, in future generations, create a new perspective that might facilitate solutions that are not possible at this time” (Gibraltar Chronicle, 22 April 2006).

10 An attempt had been made in 1987 to open up the use of Gibraltar’s airport, but without the participation in the discussions of the Gibraltarians themselves, who then blocked any agreement (see Gold, 2005: 85-96). Foreign Secretary Jack Straw acknowledged that if Gibraltar had been involved at that time an agreement would have been reached (Gibraltar Chronicle, 28 October 2004).

11 Prior to the sixteen-year closure of the border by General Franco in 1969, several thousand Spanish workers crossed daily to work on ‘the Rock’. When they reached retirement age they were entitled to a pension for the years they had worked in Gibraltar, and the issues of the rate at which the pensions should be paid and who should take long-term responsibility for their payment had never been fully resolved.

12 Sáenz and Izquierdo (2004: 752-3) point out the disadvantage that the inclusion of this statement created for Spain. Not surprisingly, Moratinos later backtracked on the
question of Gibraltar’s equal status in the talks. In September 2006 and under pressure from PP opposition to the Forum agreements he argued that the inclusion of Gibraltar in the talks was not a recognition of it having equal status with the other two parties but of it “having its own separate voice on matters on which it has competence” (quoted in Gibraltar Chronicle 6 October 2006). In a recent UN working paper on Gibraltar published in March 2008 (see http://documents-dds-ny.un.org/doc/UNDOC/GEN/N08/278/86/pdf/N0827886.pdf?OpenElement), Spain insisted on corrections to the Spanish version so that references to the Forum read ‘Forum of Dialogue’ rather than ‘Tripartite Forum of Dialogue’ (see http://documents-dds-ny.un.org/doc/UNDOC/GEN/N08/319/27/pdf/N0831927.pdf?OpenElement), thereby avoiding giving substance to Gibraltar’s status in the title of the negotiating body.


14 Two years later, even after agreements had been reached via the Forum process, Spain’s Foreign Minister Moratinos described the Brussels Process as “alive” (Gibraltar Chronicle, 4 October 2006) and the Spanish Ambassador to the UN stated that “Spain is committed to this process” (Gibraltar Chronicle, 5 October 2006).

15 There was also a difference of opinion as to whether the modalities of the Forum would give Gibraltar the right of veto on any agreement, with Caruana claiming that it would do so (Government of Gibraltar Press Release 306/2004, 16 December 2004), while Bernardino León explicitly stated that it would not (ABC, 17 December 2004).

16 For the views of PP spokespersons and those of other opposition parties at this juncture, see the views expressed in parliament summarised by Sáenz and Izquierdo (2004): 756-61. Not surprisingly there was some sympathy for the Gibraltarians’ right to have a say in their own destiny from the Basque Parliamentary Group (GPV) and the Catalán nationalist party (ERC).
Ever since the full reopening of the border in 1985 after sixteen years of blockade by Spain, delays to the traffic flow between Gibraltar and Spain had frequently been used as a tool by the Spanish authorities to draw attention to the dispute over the Rock.

The concern originated from the repairs to *HMS Tireless* between May 2000 and May 2001 (see Gold, 2005: 228-51). Spain’s understanding from the Málaga meeting that Britain would provide written assurance that repairs to nuclear-powered submarines would not be undertaken in Gibraltar was not shared by Britain, who argued that it may again become necessary to do so for operational reasons (*Gibraltar Chronicle*, 12 April 2005). Later, in a letter dated 27 February 2006, Britain found a form of words satisfactory to Spain, indicating that in the “extremely unlikely circumstances of an accident involving the reactor of a warship making a port visit to Gibraltar”, the British Government would “immediately notify and liaise with all appropriate authorities” (*Gibraltar Chronicle*, 11 March 2006).

Two meetings have been held in Gibraltar itself; the first of these on 26 March 2007 marked the first ever occasion when Spanish ministers went there for intergovernmental talks.


For this reason Britain insisted that, if military necessity dictated, the agreement on the airport contain a clause on possible civil flight restrictions or even the suspension of the agreement (Romero, 2006: 143).

The isthmus on which the airport was built was not covered by the Treaty of Utrecht and sovereignty over it is therefore the subject of a separate challenge by
Spain. For a summary of how the isthmus came to be in British hands, see Oda Ángel, 2007: 5-6.

23 Because of the sovereignty dispute over the isthmus and because Spain does not recognise the ‘fence’ (built by the British in 1908-09) as the international border between the two territories, references to the border in statements concerning the airport had to use the term “fence/frontier”, with “fence” (a translation of “verja”) being the preferred term for Spain and “frontier” for the UK and Gibraltar (see “Ministerial statement on Gibraltar Airport”, 18 September 2006, http://www.gibraltar.gov.gi/latest_news/press_releases/2006/Ministerial_Statement_On_Gibraltar_Airport.pdf) (accessed 12 December 2008).

24 Gibraltar, like the UK itself, is not part of the Schengen Agreement on EU external frontiers, and therefore passengers accessing the airport from the north (Spanish) side would be deemed not to have left the Schengen area.

25 The main objections to the 1987 agreement in Gibraltar were that there would have been co-decision-making and joint control between Gibraltar and Spain; it would have allowed for Spanish air traffic control officers to operate in Gibraltar’s control tower; it envisaged two terminals, one British and one Spanish, with the possibility that the British/Gibraltar one would have “dwindled into insignificance” because of the smaller number of passengers that it would have handled (Gibraltar Chronicle, 21 September 2006). As Sáenz and Izquierdo (2004: 747, n.19) point out, the 1987 agreement “was a good agreement for Spain” compared to that of 2004, which makes no mention of joint use.

26 Oda-Ángel (2007: 8-9) misses the point when he argues that Gibraltar’s objections to the 1987 agreement were falsely based on a concern that joint use of the airport would mean a loss of sovereignty. Whilst it is clear that that would not be the case, the concern of the Gibraltarians was as much about the exclusivity of their jurisdiction over and control of the airport. At that stage they objected to any involvement by Spain in Gibraltarian affairs (and some Gibraltarians – including Joe Bossano, the Chief Minister in 1987 - still do so).
27 The PP objected to this concession precisely because it treated Gibraltar as a separate territorial entity. In response Moratinos pointed out that Hong Kong has its own code, and that the PP when in power had not objected to the “.gi” suffix that gave Gibraltar its own internet domain (Cortes Generales, Diario de sesiones del Congreso de los Diputados, 18 October 2006, No. 209, p. 10513). The PP also criticised the Government for giving a boost to international business in Gibraltar through this agreement (Gibraltar Chronicle, 1 February 2007).

28 Given that delaying the passage of vehicles through the border crossing was used as a tactic by Spain to draw attention to the Gibraltar issue, sceptics argued that Spain was not doing everything that it could to “resolve the situation in a decisive and permanent way” (Gibraltar Chronicle, 26 July 2007). Long delays were still reported even 18 months after the signing of the Córdoba Agreement (Gibraltar Chronicle, 3 April 2008).

29 Such sceptics will not have been encouraged by the view of the mayor of La Línea, who recently argued that the Institute could be “a good Trojan horse” (Europa Sur, 20 February 2008).

30 For an account of how the decision to close the consulate came about, see Oda-Ángel (2007), p. 17.

31 This was brought to the fore by the collision on 12 August 2007 between an oil tanker and MVS New Flame, a cargo ship carrying scrap metal. Spanish vessels were reported to have come to the assistance of the maritime authorities in Gibraltar (http://www.gibfocus.gi/details_headlines.php?id=1685) (accessed 12 December 2008). Cooperation mechanisms to deal with similar incidents in the future were described by the Spanish Foreign Minister after the Forum meeting in London in July 2008 as “perhaps the most positive and effective result coming from the Tripartite meeting today” (http://www.fco.gov.uk/en/newsroom/latest-news/?view=News&id=3948828) (accessed 12 December 2008). On the environmental aspects of cooperation, see Verdú, “Medioambiente en el Campo de

Gibraltar enjoys a highly favourable tax regime: it is not part of the EU Customs Union, it does not contribute to the CAP, it does not levy VAT and it has had a very attractive tax-exempt corporate regime for non-resident controlled companies. Under EU legislation zero corporate tax rates will not be permitted from 2010, but in December 2008 Gibraltar successfully obtained a European Court of Justice ruling allowing it to operate a corporate tax rate for all companies of 15% (Guardian, 19 December 2008). This will still leave Gibraltar with a fiscal advantage compared to the surrounding Campo region.


For full details to the background of cross-border cooperation, see Gónzalez (2005).


The Spanish view that sovereignty was a matter for discussion only between Britain and Spain within the Brussels Process and outside the Forum meant that the
question of sovereignty was highly unlikely to be brought up by Spain in the Forum sessions, while neither Britain nor Gibraltar would do so because they had no wish to discuss it. Technically González (2006: 823) was correct to suggest that “issues affecting sovereignty could be discussed in the Forum, but as it was a Forum for discussion and cooperation it was not possible for it to adopt any agreement concerning the historical controversies over the sovereignty of the Rock or the territory of the isthmus,” but in reality this was not going to arise.


42 It is interesting to note that for Spain’s benefit Britain included a reference in the Despatch accompanying the new Constitution that Gibraltar’s right to self-determination is constrained by Article X of the Treaty of Utrecht and that therefore independence may only be an option with Spain’s consent. Del Valle (2006: 5) calls this a ‘droit de regard’ that would not have happened without the Forum (see González, 2006: 841, who suggests that the same applies to a letter referring to the repair of nuclear submarines – see above, n. 18).

43 Britain and Gibraltar agreed that the new constitutional relationship was non-colonial and that this justified the removal of Gibraltar from the UN list of territories awaiting decolonisation. This did not coincide with the UN criteria for delisting (the former colony has to have achieved either independence, free association and/or integration with the former administering power, and the latter has no reserve powers to legislate), which was precisely the case made by the Spanish ambassador to the UN Decolonization Committee in October 2006 (reported in Gibraltar Chronicle, 6 October 2006).
44 For the history of this issue, and for Spain’s objections to Gibraltar’s membership of other international sporting bodies, see Gold (2002).

45 Spain’s opposition is also partly driven by the fact that if Gibraltar were to be successful it is likely to result in new applications from some of the autonomous regions of Spain, notably Cataluña and the Basque Country (see Gold, 2002: 166-71).


48 *Idem.* Gibraltar is able to insist that discussions on Gibraltar do not take place bilaterally, outside the framework of the Forum. When British Foreign Secretary David Miliband met his counterpart Miguel Angel Moratinos in a bilateral encounter in London on 2 July 2008, the Gibraltar government sought and received assurances that “if Sr Moratinos raises Gibraltar in their bilateral meeting, Mr Miliband will say that Gibraltar is not on their agenda and should be discussed in the later Trilateral Forum Meeting” (*Gibraltar Chronicle*, 2 July 2008).

49 Sáenz and Izquierdo (2004: 748) recognised early in the Forum process that “the only circumstance – which was totally implausible – in which there could be a return to the Brussels Declaration would be if Britain decided to terminate the dispute with Spain over Gibraltar with or without Gibraltar’s consent.”

50 The occupation of Parsley Island by Morocco in 2002 can be seen as an example of the attempt to highlight grievances in the dispute with Spain.