HIS MAJESTY'S GOVERNMENT OF GIBRALTAR

LEGAL OPINION ON THE EU-UK AGREEMENT IN RESPECT OF GIBRALTAR

INTRODUCTION

1. His Majesty's Government of Gibraltar (HMGOG) has asked me to advise on whether any provisions of the Draft Agreement in respect of Gibraltar between the EU and UK (the EU-UK Agreement) undermine the UK's sovereignty or jurisdiction over Gibraltar.[1]

2. This opinion is organised as follows:

   - In **Section A**, I explain how I propose to approach the questions of sovereignty and jurisdiction.

   - In **Section B**, I discuss EU membership/participation as a benchmark for framing this advice and for measuring the impact of the EU-UK Agreement on the UK's sovereignty and jurisdiction.

[1] Formally, the 'Draft Agreement in Respect of Gibraltar Between the European Union and the European Atomic Energy Community, of the One Part, and the United Kingdom of Great Britain and Northern Ireland, of the Other Part' (published on 26 February 2026 subject to legal review', and not yet in force): https://assets.publishing.service.gov.uk/media/699f2ed3c497bac082bc76c1/UK-EU-draft-Agreement-in-respect-of-Gibraltar.pdf

- In **Section C,** I set out the principles that apply to the interpretation of the EU-UK Agreement.

- In **Section D**, I consider the impact of the sovereignty and jurisdiction 'firewall' in Article 2 of the EU-UK Agreement.

- In **Section E**, I consider whether the regulatory functions of Spanish officials in Gibraltar under the Agreement undermine the UK's sovereignty or jurisdiction over Gibraltar.

- In **Section F**, I set out a summary of my advice and conclusions.

A. SOVEREIGNTY AND JURISDICTION

3. 'Sovereignty' and 'jurisdiction' are elusive and contested concepts. The terms are not defined in the EU-UK Agreement. However, invocations of 'the respective legal positions of the [UK] and [Spain] with regard to sovereignty and jurisdiction'[2] are best understood by reference to the longstanding and consistent public positions of those two States regarding *territorial* sovereignty and jurisdiction (which I set out in further detail at paragraphs 8 and 9 below).

4. 'Sovereignty' can be broadly described as 'supreme authority within a territory'.[3] The arbitrator in the 1928 *Island of Palmas* Case famously stated that 'Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State'.[4] That award was rendered before the development of the law of decolonisation, pursuant to which the sovereignty of an Administering Power over a Non-Self-Governing

[2] See Articles 2 and 271(d)(fn1).
[3] S Besson 'Sovereignty' MPEPIL, https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1472 (para 1).
[4] *Island of Palmas Case, United States v Netherlands*, Award, (1928) II RIAA 829, p.8.

Territory, designated under Chapter XI of the UN Charter, is tempered by its obligation to administer the territory in a manner consistent with the right of the people of that territory to self-determination.[5]

5. The sovereignty of the 'UK, in respect of Gibraltar'[6] can therefore be broadly understood as the right of the UK to exercise State functions in the territory of Gibraltar (land and sea), to the exclusion of other States, and consistently with the right to self-determination of the people of Gibraltar.

6. 'Jurisdiction' can be broadly defined as 'the right to prescribe and enforce rules against others'.[7] In international law, the concept of jurisdiction is connected to sovereignty via the so-called 'territorial principle', i.e. 'the principle that by virtue of its sovereignty over its territory the State has the right to legislate for all persons within its territory'.[8] On this understanding, jurisdiction can fairly be described as 'an aspect of sovereignty: it refers to a state's competence under international law to regulate the conduct of natural and juridical persons'.[9] I propose to focus on territorial conceptions of sovereignty and jurisdiction when assessing whether any provision of the Agreement undermines the UK's sovereignty or jurisdiction over Gibraltar.

7. The EU-UK Agreement contains references, in the abstract, to 'sovereignty' and 'jurisdiction' (at Article 301) and to 'the sovereignty of the United Kingdom, in respect of Gibraltar' (at Annex 37, Article PCUST.11(1)(a)). However, the most important references to sovereignty and jurisdiction in the Agreement – the 'without prejudice' clauses in Articles 2 and 271(d)(fn1) – are not abstract references to these terms. Article 2 refers to 'the respective legal positions of the [UK] or [Spain] with regard to sovereignty and jurisdiction'. Article 271(d)(fn1) refers to 'the respective legal positions of [Spain] or of the [UK] with regard to sovereignty and jurisdiction over the territory on which the airport is

[5] See e.g. J Crawford *The Creation of States in International Law* (2nd ed OUP 2006) 137.
[6] The main title of the Agreement names 'The United Kingdom of Great Britain and Northern Ireland' as one of the parties, and the title underneath the heading 'Preamble' refers to 'The United Kingdom of Great Britain and Northern Ireland, in Respect of Gibraltar'.
[7] V Lowe *International Law* (OUP 2007) 171.
[8] Ibid 172.
[9] J Crawford *Brownlie's Principles of Public International Law* (8th ed OUP 2012) 456.

located'. These 'respective legal positions' have been well documented over the course of the 300-year Anglo-Spanish dispute over Gibraltar and can therefore be reliably defined.

8. The UK's legal position was summarised by the UK Foreign and Commonwealth Office (as it then was) in a Memorandum provided to the Foreign Affairs Select Committee as follows:

> 'British title to the Rock of Gibraltar is based on Article X of the Treaty of Utrecht of 1713. The UK maintains that this carries with it a belt of territorial sea and claims a limit of three miles to the east and south and up to the median line (less than three miles) in the Bay of Gibraltar to the west. British title to the southern part of the isthmus connecting the Rock to Spain (on which the airport is built) is based on continuous possession over a long period.'[10]

9. Spain's legal position is summarised on the Spanish Ministry of Foreign Affairs website:

> 'Gibraltar was ceded to the UK under the Treaty of Utrecht. However, only "the city and castle of Gibraltar together with its port, defences and fortresses belonging to it" were ceded. The isthmus, like the adjacent waters or the overlying airspace, was not ceded by Spain and has always remained under Spanish sovereignty. The continued de facto British occupation does not meet the requirements of international law for the acquisition of sovereignty. That is why Spain has always stressed that the occupation of the isthmus is illegal and contrary to international law, and has therefore always demanded its unconditional return. Spain does not recognise the occupation of the isthmus or the fence as a border.'[11]

[10] Memorandum submitted by the Foreign Office to the Foreign Affairs Select Committee, March 1999, para 1: https://publications.parliament.uk/pa/cm199899/cmselect/cmfaff/366/9033002.htm The same position is documented consistently in many other sources.
[11] 'Gibraltar', website of the Spanish Ministry of Foreign Affairs: https://www.exteriores.gob.es/en/PoliticaExterior/Paginas/Gibraltar.aspx#:~:text=Gibraltar%20was%20ceded%20to%20the,always%20demanded%20its%20unconditional%20return.

10. These are self-evidently legal positions regarding *territorial* sovereignty, from which territorial jurisdiction flows. For example, assuming the UK is justified in claiming sovereign title over the territory of Gibraltar (including the isthmus), this means it is entitled to exercise exclusive jurisdiction in the territory Gibraltar and its adjacent territorial waters. It therefore seems sensible to adopt a territorial understanding of sovereignty and jurisdiction when considering whether the EU-UK Agreement undermines UK's sovereignty or jurisdiction over Gibraltar. This is surely what the parties (and indeed Spain)[12] contemplated when referring to the 'respective legal positions' of the UK and Spain.

11. I recognise that more expansive definitions of 'sovereignty' and 'jurisdiction' might result in different conclusions to the ones I reach in this advice. In particular, there is a prominent strand of opinion in the UK that views treaty-based constraints on UK parliamentary sovereignty, or a requirement that domestic courts must follow decisions of a supranational court like the CJEU, as inherently offensive to UK sovereignty and jurisdiction.[13] For reasons I set out below, I do not think it would be helpful to take such views into account when addressing the question of whether the EU-UK Agreement undermines UK sovereignty or jurisdiction over Gibraltar.

B. EU MEMBERSHIP AS A BENCHMARK FOR MEASURING THE IMPACT OF THE EU-UK AGREEMENT ON THE UK'S SOVEREIGNTY AND JURISDICTION

12. In international agreements, States frequently accept constraints on their law-making powers in return for the benefits that flow from enhanced international cooperation. EU membership is a classic example of this. The fact that the EU-UK Agreement is a direct consequence of the UK's decision to withdraw from the EU makes it a particularly salient example that is worth considering in the

[12] See discussion of contextual instruments at paras 49-52 below.
[13] For instance, this was the view that animated many of the parliamentary initiatives of Sir Bill Cash MP, such as the United Kingdom Parliament (Sovereignty and Jurisdiction Over Borders) Bill 2014.

present advice. It serves as a useful reference point for framing the parameters of the advice, and as a benchmark against which the impact of the EU-UK Agreement can be measured.

13. Successive UK and Gibraltar governments were willing participants in the EC and latterly the EU. Membership placed significant constitutional constraints on the UK. Most obviously, the UK was required to accept the primacy of EU law,[14] many provisions of which could be invoked directly by individuals before national courts.[15] Domestic UK legislation could be set aside by the courts if it was incompatible with EU legislation.[16] Domestic courts were required to respect the rulings of the supranational Court of Justice of the European Union (CJEU).

14. And yet, it was never the official position of any UK government that EU membership undermined UK parliamentary sovereignty (let alone territorial sovereignty) or jurisdiction. This includes the UK government that oversaw the UK's exit from the EU.[17]

15. The constitutional constraints on Gibraltar, as a 'European territory for whose external relations a Member State [(the UK)] was responsible'[18] were even more imposing. Many of Gibraltar's laws in recent decades, 'covering a myriad of areas' have been derived from EU law.[19] Yet – in contrast with the position of the UK qua Member State – Gibraltar had virtually no formal say, or even informal influence, over how these laws were made. This was especially true in the years before the European Court of Human Rights' *Matthews* decision,

[14] *Costa v ENEL*, Judgment, reference for a preliminary ruling, Case 6/64 [1964] ECR 585.
[15] *Van Gend & Loos v Netherlands Inland Revenue Administration*, Judgment, reference for a preliminary ruling, Case 26/62 [1963] ECR 1.
[16] *R (ex parte Factortame Limited) v Secretary of State for Transport*, Judgment, reference for a preliminary ruling, Case C-213/89 [1990] ECR I-2433.
[17] See e.g. the UK Government's Brexit White Paper, Cm 9417 (Feb 2017), which states at para 2.1 that 'Whilst Parliament has remained sovereign throughout our membership of the EU, it has not always felt like that': https://assets.publishing.service.gov.uk/media/5a80d2ab40f0b62305b8d587/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Print.pdf
[18] A status that applied uniquely to Gibraltar by virtue of article 355(3) TFEU.
[19] Address of His Majesty's Attorney General at the opening of the Gibraltar legal year 2016: http://www.gibraltarlawoffices.gov.gi/uploads/2016.pdf (p.6)

which held that Gibraltarians had the right to vote in elections to the European Parliament.[20] Prior to the legislative changes that the UK was forced to implement as a result of that decision, Gibraltarians were totally disenfranchised from the EU law-making process. The democratic deficit that resulted from Gibraltar's participation in the EU was exacerbated by the fact that, after Spain acceded to the EC in 1986, it was able to 'influence and obstruct measures in respect of Gibraltar on a regular basis', across a range of important areas, '[f]rom air measures to frontier flows, global financial initiatives to international conventions …'.[21]

16. In the lead up to the UK's accession to the EEC in 1973, there were tense debates in the Gibraltar House of Assembly around the consequences of accession for the House's legislative authority. In 1972, when debating questions concerning rights of entry and residence for EEC nationals in Gibraltar, Chief Minister Hassan noted: 'All the legislation that we have prepared in connection with this is legislation to implement the provisions of the Common Market …. [I]t is a natural consequence of the conditions under which we are entering the Community that we should give the people here the same rights that Britain is giving to us to go into Britain and to go into the whole of the Common Market'. Were it not for these Common Market requirements, Hassan assured the House, 'we would have proposed more protecting legislation'.[22]

17. In short, from the time of the UK's accession to the time of its withdrawal, successive UK and Gibraltar governments have participated willingly in the EU, despite the heavy constraints that this imposed on the UK's and Gibraltar's law-making authority and autonomy. While it is often said that the Brexit vote in the UK was necessary to restore the UK's 'sovereignty', this can fairly be described as a political claim rather than a credible legal argument. Moreover, it tends to

[20] Matthews v UK (Application No. 24833/94), Judgment of 18 February 1999, European Court of Human Rights [1999] 28 EHRR 361.
[21] K Azopardi *Sovereignty and the Stateless Nation: Gibraltar in the Modern Legal Context* (Hart: 2009) 379.
[22] Debate on an amendment to the Immigration Control Ordinance, 21 November 1972, Vol II Hansard, p.260: https://www.parliament.gi/uploads/contents/hansard/hansard_1972/hansard_21st%20_november_1972_vol_ii.pdf

relate to UK parliamentary sovereignty (rather than territorial sovereignty), and even in that respect, the UK Government's view at the time of Brexit was that 'Parliament has remained sovereign throughout our membership of the EU'.[23]

18. I also note that, despite the heavy compromises involved, no Gibraltar Government has ever suggested that participation in the EU undermined UK sovereignty or jurisdiction over Gibraltar, and I note furthermore that there was overwhelming popular support in Gibraltar for remaining in the EU, with 95.9% of the electorate voting in the 2016 Brexit referendum to stay.[24]

19. It seems helpful, therefore, to treat membership of the EU as a benchmark for gauging the impact of the EU-UK Agreement. My starting assumption will be that UK membership of (and Gibraltar participation within) the EU did not undermine the UK's sovereignty or jurisdiction over Gibraltar.

20. That assumption reinforces the practical value of focusing in this advice on the territorial dimensions of sovereignty and jurisdiction (rather than on, say, questions of parliamentary sovereignty or the adjudicative jurisdiction of Gibraltar courts). This analytical focus is, in any event, justified by reference to the text of the Agreement itself (and notably the references to the 'respective legal positions' of the UK and Spain with regard to sovereignty and jurisdiction).

21. It is apparent from the legal architecture of the EU-UK Agreement that it is less constitutionally intrusive than Gibraltar's participation in the EU. Under Article 19, the UK must implement and apply 'Union acts' listed in the provisions and Annexes of the Agreement, but subsequent Union acts do not apply automatically. The EU must first 'notify the United Kingdom, in respect of Gibraltar, of the adoption of such act', and there follows a process whereby the UK must decide whether to accept and implement the Union act. It is only upon acceptance by the UK that 'the content of a subsequent Union act shall create rights and obligations between the United Kingdom, in respect of Gibraltar, and

[23] Brexit White Paper, Cm 9417 (Feb 2017), which states at para 2.1.
[24] V Miller, 'Brexit and Gibraltar', House of Commons Research Briefing (2 May 2017) https://commonslibrary.parliament.uk/research-briefings/cbp-7963/

the Union' (Article 19(2)-(3)). The consequence of non-acceptance (or non-notification / non-implementation) by the UK is termination of the Agreement, unless the Cooperation Council decides otherwise. There is therefore no automatic supremacy of subsequent EU law under the Agreement, and the exit process is much less cumbersome than the EU's Article 50 TEU process, should the UK (in respect of Gibraltar) decide in future that the costs of compliance outweigh the benefits.

22. Some of the obligations assumed by the UK under the EU-UK Agreement, while materially different to those assumed in the context of Gibraltar's participation in the EU, are qualitatively similar. Take for example, the Customs Union provisions set out under Part Three, Title II, Chapter 2. Gibraltar did not participate in the EU Customs Union, or in the single market for goods, prior to Brexit. The establishment of a customs union between the EU and the UK in respect of Gibraltar will remove the regulatory autonomy of the Gibraltar authorities when it comes to customs duties, quantitative restrictions, etc. But this does not differ substantially from the position accepted by the UK, prior to Brexit, as a normal consequence of EU membership. It is a classic treaty-based limitation on regulatory autonomy; it does not entail a transfer or diminution of sovereignty or jurisdiction.

23. On the other hand, there are aspects of the EU-UK Agreement that will be more 'operationally' intrusive than EU membership, in the sense that they entail the unprecedented exercise of regulatory functions by Spanish officials in Gibraltar. At their highest, these functions will include the taking of 'coercive action' over persons or objects in the context of border control. I will consider in section E whether this aspect of the EU-UK Agreement could be said to undermine the UK's sovereignty or jurisdiction over Gibraltar.

24. Before turning to the substantive questions, it is necessary to explain the principles that must be applied when interpreting the Agreement.

C. INTERPRETING THE EU-UK AGREEMENT – RELEVANT PRINCIPLES

25. Article 18(1) of the Agreement states:

> 'The provisions of this Agreement and any supplementing agreement shall be interpreted in good faith in accordance with their ordinary meaning in their context and in light of the object and purpose of the agreement in accordance with customary rules of interpretation of public international law, including those codified in the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969.'

26. This provision was presumably included because the Vienna Convention on the Law of Treaties (VCLT)[25] does not strictly apply to agreements between international organisations (like the EU) and States. The provision is largely superfluous, in the sense that the relevant provisions of the VCLT reflect customary international law[26] and are routinely applied by the CJEU when interpreting treaties between the EU and third States.[27] Be that as it may, Article 18(1) leaves no doubt that we should apply the customary rules of interpretation codified in the VCLT when interpreting the EU-UK Agreement.

27. Article 18(1) imports, almost verbatim, the 'general rule of interpretation' set out in Article 31(1) of the VCLT: 'A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.'

28. According to Article 31(2) VCLT, the 'context' for interpretation purposes 'shall comprise, in addition to the text, including its preamble and annexes:

[25] Vienna Convention on the Law of Treaties (23 May 1969) 1155 UNTS 331, entered into force 27 January 1980 ('VCLT').
[26] E.g. the ICJ held in *Case Concerning Kasikili/Sedudu Island (Botswana/Namibia)*, Judgment of 13 December 1999, ICJ Rep [1999] 1045 (at para 18) that 'customary international law found expression in Article 31 of the Vienna Convention'.
[27] See J Odermatt, 'The Use of International Treaty Law by the Court of Justice of the European Union', 17 CYELS (2015) 121-144.

(*a*) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
(*b*) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.'

29. Article 32 VCLT states:

'Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:(*a*) leaves the meaning ambiguous or obscure; or (*b*) leads to a result which is manifestly absurd or unreasonable.'

30. An early advisory opinion of the ICJ described the customary law approach to treaty interpretation (subsequently codified in articles 31-32 VCLT) as follows:

'[T]he first duty of a tribunal which is called upon to interpret and apply the provisions of a treaty, is to endeavour to give effect to them in their natural and ordinary meaning in the context in which they occur. If the relevant words in their natural and ordinary meaning make sense in their context, that is the end of the matter. If, on the other hand, the words in their natural and ordinary meaning are ambiguous or lead to an unreasonable result, then, and then only, must the Court, by resort to other methods of interpretation, seek to ascertain what the parties really did mean when they used these words.'[28]

31. It follows that when assessing whether the EU-UK Agreement undermines the UK's sovereignty or jurisdiction over Gibraltar, we must first look to the elements in Article 31 VCLT, i.e. 'the ordinary meaning' of the terms of the Agreement, 'in

[28] *Competence of the General Assembly for the Admission of a State to the United Nations*, Advisory Opinion of 3 March 1950, ICJ Rep [1950] 8.

their context' and in the light of the Agreement's 'object and purpose'. There is no hierarchy between these elements – 'ordinary meaning', 'context', and 'object and purpose' must be considered together ('in good faith') as part of an integrated process.[29] Only if the terms of the Agreement remain ambiguous or lead to an unreasonable result should we then have recourse to the 'supplementary means of interpretation' described in Article 32 (i.e. the preparatory works and the 'circumstances of [the Agreement's] conclusion').

32. At a basic level, we should keep in mind the consensual character of international agreements, and of public international law in general. As the Permanent Court of International Justice famously put it in the 1927 *Lotus* case, 'Restrictions upon the independence of States cannot … be presumed'.[30] It follows that if, after applying the canons of interpretation in VCLT Articles 31-32, it remains ambiguous whether an international agreement diminishes the sovereignty or jurisdiction of one of the parties, such diminution of sovereignty or jurisdiction should not be inferred.

33. Relatedly, when the parties emphasise unequivocally in the text that their Agreement is *not* intended to impact on sovereignty or jurisdiction, this creates a very strong presumption to that effect. A finding that a provision in such an Agreement did in fact undermine the sovereignty or jurisdiction of one of the parties in that scenario would have to be supported by clear and compelling evidence.

34. Finally, any treaty between the UK and a third party that provided for a diminution of UK territorial sovereignty or jurisdiction over Gibraltar would be null and void *ab initio* under Art 53 of the VCLT, unless the treaty was a means of giving effect to the freely expressed wishes of the Gibraltarian people. Article 53 of the VCLT states:

> 'A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the

[29] See R Gardiner *Treaty Interpretation* (2nd ed OUP 2015) 161.
[30] *The Case of the S.S. "Lotus"*, Judgment of 7 September 1927, Series A – No. 10 PCIJ [1927] 18.

> present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.'

35. It is widely accepted that the right to self-determination of peoples of Non-Self-Governing Territories is a peremptory (*jus cogens*) norm of international law.[31] It is also well established that the right to territorial integrity is an important corollary of a people's right to self-determination.[32] Thus, any treaty between the UK and a third party purporting to make territorial concessions regarding all or part of Gibraltar, without Gibraltarian consent, would be a nullity. It is unnecessary to dwell on this point because, for the reasons I give below, I do not consider that any provisions of the EU-UK Agreement undermine the UK's territorial sovereignty or jurisdiction over Gibraltar.

D. THE SOVEREIGNTY AND JURISDICTION 'FIREWALL' IN ARTICLE 2

36. The *raison d'être*[33] of the EU-UK Agreement is encapsulated in preambular paragraph 6, which states that

> '… all current physical barriers to the circulation of persons between Gibraltar and the Schengen area should be removed, while preserving the integrity of the Schengen area through appropriate controls, measures and safeguards, and taking into account that Gibraltar does not participate in and is not associated to the Schengen acquis.'

[31] International Law Commission, Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), with commentaries (2022) 88-89: https://legal.un.org/ilc/texts/instruments/english/commentaries/1_14_2022.pdf
[32] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, ICJ Rep [2019] 95.
[33] See comments regarding the 'object and purpose' of a treaty by Alain Pellet, Special Rapporteur of the UN ILC Tenth Report on Reservations to Treaties, UN Doc A/CN.4/558, Addendum I, at 14.

37. It is obvious that the object and purpose of the Agreement does not relate to matters of sovereignty and jurisdiction. In this sense the Agreement can be contrasted with, for example, the 2025 UK-Mauritius Agreement in respect of the Chagos Archipelago, the object and purpose of which is to address questions of sovereignty and jurisdiction between the parties.[34]

38. There is a high-level statement of 'purpose' / 'objective' in Article 1 of the EU-UK Agreement:

> 'The objective of this Agreement is to establish a mutually cooperative relationship between the Parties, which also promotes shared prosperity and close and constructive relations in respect of Gibraltar and the adjacent area in the Kingdom of Spain, in particular the territory of the municipalities that make up the Mancomunidad de Municipios del Campo de Gibraltar.'

39. The above provision contains echoes of the statement of purpose in Article 1 of the UK-EU Trade and Cooperation Agreement (TCA):[35]

> 'This Agreement establishes the basis for a broad relationship between the Parties, within an area of prosperity and good neighbourliness characterised by close and peaceful relations based on cooperation, respectful of the Parties' autonomy and sovereignty.'

40. As can be seen, the 'purpose' provision in Article 1 of the TCA ends with a light-touch sovereignty caveat.[36] By contrast, the EU-UK Agreement in respect of Gibraltar contains a separate clause directly below the 'purpose' provision that

[34] UK/Mauritius Agreement concerning the Chagos Archipelago including Diego Garcia [CS Mauritius No.1 / 2025], London and Port Louis, 22 May 2025 (not yet in force): https://assets.publishing.service.gov.uk/media/682f25afc054883884bff42a/CS_Mauritius_1.2025_Agreement_Chagos_Diego_Garcia.pdf

[35] Trade and Cooperation Agreement between the EU and UK, L149/10, OJEU (30 April 2021): https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22021A0430(01)

[36] C.f. the wording of the Gibraltar Protocol to the EU-UK Withdrawal Agreement, the preamble of which 'underlin[es]' the parties' understanding that it is 'without prejudice to the respective legal positions of [Spain] and [the UK] with regard to sovereignty and jurisdiction': https://www.gibraltarlawoffices.gov.gi/uploads/Gibraltar%20Protocol%20WA.pdf

is intended to signal, in emphatic terms, that the Agreement is without prejudice to the respective legal positions of the UK and Spain on sovereignty and jurisdiction. Article 2 states:

> 'This Agreement, any supplementing agreements as referred to in Article 3, any administrative arrangements or other arrangements related to this Agreement, and any measures or instruments or conduct taken in application or as a result thereof, or pursuant thereto, shall be without prejudice to, and shall not otherwise affect the respective legal positions of the United Kingdom of Great Britain and Northern Ireland or of the Kingdom of Spain with regard to sovereignty and jurisdiction, and shall not constitute the basis for any assertion or denial of sovereignty including in legal proceedings or otherwise.'

41. The definition of 'Gibraltar Airport' in Article 271(d) of the Agreement, as 'the airport located in the isthmus of Gibraltar', is accompanied by a footnote stating:

> 'The present Agreement, any supplementing agreements mentioned in Article COMPROV.2, any administrative arrangements or arrangements related to this Agreement, and any measures or instruments or conduct taken in application or as a result thereof or pursuant thereto, shall be without prejudice to, and shall not otherwise affect the respective legal positions of the Kingdom of Spain or of the United Kingdom of Great Britain and Northern Ireland with regard to sovereignty and jurisdiction over the territory on which the airport is located and shall not constitute the basis for any assertion or denial of sovereignty including in legal proceedings or otherwise.'

42. Disputes concerning sovereignty and jurisdiction are excluded from the scope of the dispute resolution provisions in Part Six of the Agreement. Article 301(6) states:

> 'This Part does not apply to any disputes with regard to sovereignty and jurisdiction. If the respondent Party submits a reasoned statement to the arbitration tribunal, to the effect that the request may affect the legal

position of the United Kingdom or of the Kingdom of Spain or with regard to sovereignty and jurisdiction, the arbitration tribunal shall not decide on the dispute with regard to sovereignty and jurisdiction or on any matter that requires or implies a decision on sovereignty or jurisdiction and shall immediately declare its lack of jurisdiction on the matters regarding sovereignty and jurisdiction or having an effect thereon.

Any decision adopted in the framework of this Part, including decisions and rulings by an arbitration tribunal, shall not produce any legal effects direct or indirect, on the legal position of the United Kingdom or of the Kingdom of Spain with regard to sovereignty and jurisdiction.'

43. The dispute resolution provisions of the Agreement are intended to establish an 'effective and efficient mechanism for avoiding and settling disputes between the Parties concerning the interpretation and application of this Agreement and supplementing agreements' (Article 300). The fact that 'disputes with regard to sovereignty and jurisdiction' are excluded from the scope of the mechanism further reinforces the declared intention of the parties that nothing in 'the interpretation and application of this Agreement' should affect the respective legal positions of the UK and Spain on sovereignty or jurisdiction.

44. The drafters evidently decided to adopt a 'belt and braces' approach to ensure that the Agreement was without prejudice to the positions of the UK and Spain on sovereignty and jurisdiction (in relation to Gibraltar as a whole, and the southern part of the isthmus, where the airport is located, in particular). Article 2 (together with its isthmus-specific variant in the footnote to Article 271(d)) serves as an unusually robust interpretive instruction: where provisions are capable of more than one meaning, the Agreement should be read in the manner least likely to affect the positions of the UK or Spain on sovereignty or jurisdiction.

45. It is important not to lose sight of the fact that this interpretive instruction works in two directions. The parties clearly intend that nothing in the Agreement should affect the respective legal positions of the UK (a party) or Spain (a third

State) on sovereignty or jurisdiction. It is a well-established principle of international law that agreements can neither harm *nor benefit* third parties without their consent (*pacta tertiis nec nocent nec prosunt*).[37] The principle finds expression in Article 34 VCLT: 'A treaty does not create either obligations or rights for a third State without its consent.'

46. As a non-party, Spain would presumably reject any suggestion that an Agreement signed by the EU and the UK was capable of undermining its longstanding position with regard to territorial sovereignty or jurisdiction over Gibraltar. Spain would say, justifiably, that the EU-UK Agreement was *res inter alios acta*.

47. Conversely, consider the hypothetical possibility that – notwithstanding Article 2 – there was something in the Agreement that could be said to undermine UK sovereignty or jurisdiction over Gibraltar (which, for the avoidance of doubt, I do not consider to be the case). In whose favour would the concession be? It could not be in favour of the UK's treaty counterparty, the EU, because the EU does not possess or exercise sovereignty or jurisdiction over territory. It would have to be in favour of a third State – most obviously Spain, the only third State which (a) will exercise regulatory functions in Gibraltar under the Agreement; (b) has a territorial claim to Gibraltar; and (c) has, according to the UK, a legal 'right of refusal' under Article X of the Treaty of Utrecht 'should Britain ever renounce sovereignty'.[38] One would need to consider any putative concession of sovereignty or jurisdiction to Spain through the lens of Article 36 VCLT (on 'treaties that provide for rights for third States'), which says that the parties to such a treaty must 'intend the provision to accord that right'. There is nothing in the EU-UK Agreement to suggest the parties intended to accord a right of sovereignty or jurisdiction to Spain. On the contrary, the parties strongly signal their intent in Article 2 that the Agreement should be without prejudice to the

[37] See M Fitzmaurice, 'Third Parties and the Law of Treaties', Max Planck UNYB 6 (2002) 37. She says at [38]: This principle has been recognised in states' practice as fundamental, and its existence has never been questioned'.
[38] Letter from the UK Foreign Secretary to the Governor of Gibraltar dated 14 December 2006, Despatch to the Gibraltar Constitution Order 2006: https://www.gibraltarlaws.gov.gi/papers/despatch-5

respective legal positions of the UK and Spain on sovereignty and jurisdiction. As the PCIJ observed in the *German Interests in Polish Upper Silesia* Case, 'A treaty only creates law as between States which are parties to it; in case of doubt, no rights can be deduced from it in favour of third States'.[39] In the case of the EU-UK Agreement, there is surely no doubt that the parties did not intend for any provision of the Agreement to undermine UK sovereignty or jurisdiction over Gibraltar in favour of Spain.

48. Instruments made in connection with the conclusion of the EU-UK Agreement document that Spain and Gibraltar (as well as the parties) were insistent that the Agreement should be without prejudice to sovereignty and jurisdiction. This is an important aspect of the 'context' in which the ordinary terms of the Agreement should be interpreted in line with Article 31 VCLT.

49. As noted in the previous section, the 'context' of an Agreement includes 'any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty' (VCLT Art 31(2)(b)). Such instruments are designed to have consequences for how the treaty should be interpreted – they are not merely part of the 'preparatory work of the treaty and the circumstances of its conclusion' (and therefore they fall to be considered under Article 31 rather than as 'supplementary means of interpretation' under Article 32 VCLT).

50. In my view, the New Year's Eve 2020 'Proposed Framework' could be described as an 'instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty', within the meaning of article 31(2)(b) VCLT.[40] It was made 'in connection with the conclusion of' the eventual EU-UK Agreement (even

[39] PCIJ Ser. A, No. 7, 28.
[40] 'Proposed Framework for a UK-EU Legal Instrument Setting Out Gibraltar's Future Relationship with the EU', attached to an exchange of letters between the British and Spanish ambassadors to the EU and the Secretary General of the EU Commission (31 December 2020), https://www.elindependiente.com/wp-content/uploads/2021/01/gibraltar.pdf

though it is not contemporaneous),[41] and it was 'accepted by' the parties as well as by Spain and Gibraltar as a framework for the eventual Agreement.

51. The Proposed Framework agreement states at paragraph 1 that 'This proposed framework will be without prejudice to the issue of sovereignty and jurisdiction'. It then anticipates at paragraph 3 that 'The EU/UK(GIB) Agreement will contain recitals to safeguard the respective legal positions of Spain and the United Kingdom on sovereignty and jurisdiction'. Those 'respective legal positions' are also reserved in the UK and Spanish diplomatic letters that accompany the text of the proposed framework. The Spanish Deputy Permanent Representative to the EU states: 'Nada de lo dispuesto en ese documento implica por parte de España niguna modificación en su posición sobre Gibraltar o sobre los limites de ese territorio'. The letter from the UK Ambassador to the EU states: '… the documentation and the negotiation of such an agreement will be without prejudice to the respective legal positions of the United Kingdom and Spain on sovereignty and jurisdiction'.

52. Similarly, when the political agreement between the UK, EU Commission, Gibraltar and Spain was announced in June 2025, the accompanying Joint Statement emphasised that: 'The future Agreement is without prejudice to the respective legal positions of Spain and the United Kingdom with regard to sovereignty and jurisdiction.'[42] This too is no ordinary political statement made during the negotiations – it is understood and accepted by the parties, as well as by Spain and Gibraltar, to relate to the 'future agreement'. It therefore serves as relevant 'context' for interpreting the terms of the Agreement and the implications thereof for UK sovereignty and jurisdiction.

[41] S Ratner observes that the TCA could be considered part of the 'context' of the EU-UK Withdrawal Agreement (and vice versa) under Article 31(2)(b) VCLT, noting that 'the term "in connection" does not have a fixed time-limited meaning'. He also says that the 'Political Declaration' agreed in November 2018 might also be such an instrument (though it might also be part of the negotiating history for purposes of Article 32 of the VCLT)': 'International Law Rules on Treaty Interpretation', in C McCrudden (ed.) *The Law and Practice of the Ireland-Northern Ireland Protocol* (CUP 2022) 7.4: https://www.cambridge.org/core/books/law-and-practice-of-the-irelandnorthern-ireland-protocol/international-law-rules-on-treaty-interpretation/00632EB69596BC0E479978B0505E05F1

[42] 'Joint Statement from the UK, European Commission, Spain and Gibraltar' (11 June 2025), https://www.gov.uk/government/news/uk-eu-agreement-in-respect-of-gibraltar-joint-statement

53. Some provisional concluding observations are warranted in the light of the above analysis of Article 2 and its impact on the interpretation of the Agreement as a whole:

(a) When read in context and in the light of the object and purpose of the Agreement, the 'without prejudice as to sovereignty and jurisdiction' clause in Article 2 (and its isthmus-specific variant in the footnote to Article 271(d)) is surely intended to refer to the respective legal positions of Spain and the UK on *territorial* sovereignty and *territorial* jurisdiction (i.e. their differing views on questions such as title to territory, and territorial jurisdiction over the isthmus and waters around Gibraltar, which have dominated Anglo-Spanish relations in respect of Gibraltar for over 300 years).

(b) Article 2 was intended by the parties to have a controlling influence over the interpretation of the EU-UK Agreement as a whole. The robustness with which the parties have sought to remove sovereignty and jurisdiction from the table is unusual, perhaps reflecting the fact that the entities with the most 'skin in the game' are Gibraltar and Spain, who are not parties to the Agreement, but without whose consent the Agreement could not have been concluded.

(c) Any finding that a provision did, notwithstanding Article 2, undermine UK sovereignty or jurisdiction over Gibraltar would need to be based on clear and compelling evidence that this is what the parties (and Spain, as putative beneficiary of the concession on sovereignty or jurisdiction) intended. Any ambiguity would have to be resolved in favour of finding that the provision in question was without prejudice to the legal position of the UK in respect of sovereignty and jurisdiction.

(d) There is nothing in the Agreement that could be said, even remotely, to undermine the UK's sovereignty over Gibraltar in a legal sense. This

would be true even if the 'without prejudice' clauses had not been inserted into the Agreement.

54. The most sensitive parts of the Agreement nevertheless provide for the exercise by Spanish authorities of regulatory functions, in some instances while physically present in Gibraltar. These provisions could prompt suggestions by critics of the Agreement that the UK's sovereignty, or more plausibly its jurisdiction – in the sense of its exclusive 'competence under international law to regulate the conduct of natural and juridical persons' on its territory (to borrow Crawford's definition) – will be undermined. Such suggestions would be misconceived, for the reasons I explain in the next section.

E. DO THE REGULATORY FUNCTIONS OF SPANISH OFFICIALS IN GIBRALTAR UNDER THE AGREEMENT UNDERMINE THE UK'S SOVEREIGNTY OR JURISDICTION OVER GIBRALTAR?

55. The EU-UK Agreement creates a new international legal regime. As previously noted, the legal architecture of the regime is less constitutionally intrusive than EU membership, and some of the regulatory constraints accepted by the UK/Gibraltar under the Agreement are qualitatively similar to those accepted in the context of EU membership/participation.

56. On the other hand, some aspects of the Agreement can be considered more 'operationally' intrusive than anything Gibraltar had to accept by virtue of its participation in the EU.

57. Rather than address every aspect of the Agreement that requires the Spanish authorities to exercise regulatory functions in Gibraltar on behalf of the EU, it makes sense to focus on the area where those functions will be perceived as most intrusive: border control.

58. Under the border control provisions in Part Two (Circulation of Persons), Spanish authorities will exercise Schengen-facing border checks at Gibraltar's port and airport border crossing points (Article 33(2)) and surveillance within Gibraltar between those points (Article 33(3), although see Article 29(3)), which allows for border checks to 'be carried out at the airport border crossing point, if the volume of traffic flows through the port allows for an efficient, high and uniform level of control at the airport border crossing point'. Such an arrangement, the modalities of which 'shall be set out in an administrative arrangement between the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain', might reduce or eliminate the need for Spanish surveillance between the port and airport).

59. When carrying out first- and second-line checks in accordance with the Schengen Borders Code, Spanish officials may refuse entry to third-country nationals who do not meet Schengen entry conditions (with certain persons, including Gibraltar residents, being exempted) (Article 33(4)(a)(ii)). They may where justified also take various forms of 'coercive action', i.e. they may 'arrest, detain, interview, place under protection a person, or seize or search property', in accordance with Spanish, EU and international law (Article 33(4)(c)(ii)).

60. While acknowledging the practical impact and political sensitivity of these provisions, they are contingent on UK consent. They provide for limited functional delegations, confined to what the parties deem necessary for protecting the integrity of the Schengen area, and thus enabling the removal of physical barriers at the land border. And they are subject to the 'without prejudice' clause in Article 2.

61. The exercise of operational functions by States on the territory of other States is in fact a commonplace feature of cross-border cooperation regimes, although the nature of these arrangements varies significantly from case to case.[43] The

[43] For a well-known example that has stood the test of time, see the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty, London, 19 June 1951, Cmd 9363. This provides for the exercise of jurisdiction in certain matters by the sending State over its military personnel when they are stationed in the receiving State.

example that seems most closely analogous to the border control arrangements in the EU-UK Agreement is the system of juxtaposed controls established between Belgium, France and the UK under a 1993 Agreement concerning the use of the Channel Tunnel.[44]

62. Article 3 of the Protocol to that Agreement provides:

> 'The officers of each State shall, in the exercise of their national powers, be permitted in the control zone situated in the host State to detain or arrest persons in accordance with the laws and regulations relating to frontier controls of their own State or persons sought by the authorities of their own State. These officers shall also be permitted to conduct such persons to the territory of their own State.'

63. Article 4 of the Protocol states:

> 'Breaches of the laws and regulations relating to frontier controls of the other States which are detected in the control zone situated in the host State shall be subject to the laws and regulations of those other States, as if the breaches had occurred in the territory of the latter'.

64. No one could credibly claim that such provisions undermine UK sovereignty or jurisdiction over the control zones in St Pancras International train station, although admittedly the analogy with the EU-UK Agreement is far from perfect. For instance:

(a) The UK, France and Belgium are all parties to the 1993 Agreement (c.f. Spain, which is a third State in the context of the EU-UK Agreement).

(b) There are no (modern) disagreements between the parties to the Channel Tunnel Agreement regarding sovereignty, let alone disagreements as to sovereignty that relate precisely to the area of territory where the foreign regulatory functions are being exercised (c.f.

[44] Agreement between Belgium, France and UK using Channel Fixed Link with Protocol, Brussels, 15 December 1993 (entry into force 1 December 1997), UNTS 2092, pp.513-552.

Spain's territorial claim over the southern part of the Gibraltar isthmus, where the Airport is located).

(c) The juxtaposed controls under the Channel Tunnel Agreement are reciprocal as between the UK and France, and the UK and Belgium.

(d) The physical spaces in which these functions are exercised are also smaller than the areas in Gibraltar where Spanish officials will be empowered to operate (especially when we factor in the area between the port and airport border crossing points under the EU-UK Agreement).

65. However, both regimes are contingent on UK consent, both concern a limited and well-defined set of functional delegations, and neither can be said to undermine UK sovereignty or jurisdiction.

66. While nothing in the EU-UK Agreement undermines UK sovereignty or jurisdiction, there is a risk that the operational reality might over time become prejudicial, depending, for example, on the way the Spanish authorities exercise coercive functions. However, Article 2 is drafted to ensure that 'any measures or instruments or conduct taken in application or as a result [of the Agreement], or pursuant thereto' are without prejudice as to sovereignty or jurisdiction. This makes it extremely difficult for operational practice to crystallise into legal prejudice.

F. SUMMARY OF ADVICE AND CONCLUSIONS

67. My advice and conclusions can be summarised as follows:

(a) **The core question:** I am asked to advise on whether any provisions of the Draft EU-UK Agreement in respect of Gibraltar undermine the UK's sovereignty or jurisdiction over Gibraltar. I assess the concepts of 'sovereignty' and 'jurisdiction' primarily through a territorial lens (i.e. focusing

on sovereign title to territory and the territorial jurisdiction that flows from it), because that is what the Agreement's key 'without prejudice' language is directed towards, with its references to the 'respective legal positions' of the UK and Spain on sovereignty and jurisdiction.[45]

(b) **EU membership as a helpful comparator:** Gibraltar's prior participation in the EU entailed significant constraints on its domestic law-making authority and autonomy, yet it was not the official position of successive UK or Gibraltar Governments that EU membership undermined UK sovereignty or jurisdiction over Gibraltar. Gibraltar's EU participation therefore provides a useful benchmark when evaluating the relative intrusiveness of the new regime.[46]

(c) **Structurally, the EU-UK Agreement is less constitutionally intrusive than EU membership:** Notably, subsequent EU acts do not apply automatically: they require notification and acceptance/implementation by the UK, with termination as the default consequence of non-acceptance.[47]

(d) **Relevant principles of treaty interpretation:** The Agreement expressly adopts standard customary international law rules of interpretation, as codified in the VCLT. These rules require us to consider the ordinary meaning of the terms of the Agreement in context, and in the light of their object and purpose. Only where the result of this exercise is ambiguous or absurd should we have recourse to supplementary means of interpretation.[48]

(e) **The need for caution when assessing whether an Agreement undermines sovereignty or jurisdiction:** The well-established presumption in international law against implying restrictions on state independence, famously articulated in the 1927 *Lotus* Case, demands a

[45] Paras 3-11 above.
[46] Paras 12-23 above.
[47] Paras 21-23 above.
[48] Paras 25-35 above.

cautious approach when interpreting the Agreement. Restrictions on sovereignty or jurisdiction should not be inferred lightly**,** and ambiguity should not be resolved in favour of a diminution of sovereignty or jurisdiction.[49]

(f) **Without Gibraltarian consent, the UK could not validly make treaty concessions on sovereignty or jurisdiction even if it wanted to:** Under Article 53 VCLT, such an agreement would be null and void ab initio, because it would breach the right of the Gibraltarian people to self-determination.[50]

(g) **The 'object and purpose' of the EU-UK Agreement are not related to sovereignty or jurisdiction:** The Agreement's object and purpose centre on practical cross-border cooperation (notably removal of physical barriers to circulation of persons while safeguarding the integrity of the Schengen area), not to reallocating sovereignty or jurisdiction.[51]

(h) **The sovereignty and jurisdiction 'firewall' in Article 2 is unusually robust:** Article 2 (and the isthmus-specific footnote to Article 271(d)) operate as a 'belt and braces' interpretive instruction, with a controlling effect on how the rest of the provisions of the Agreement should be read. They create a very strong presumption that the provisions of the Agreement should have no impact on sovereignty or jurisdiction.[52]

(i) **The dispute settlement provisions reinforce the sovereignty and jurisdiction 'firewall':** Disputes 'with regard to sovereignty and jurisdiction' are outside the scope of the Part Six dispute settlement mechanism, reinforcing the intention of the parties that the Agreement should not impact on sovereignty or jurisdiction.[53]

[49] Para 32 above.
[50] Paras 34-35 above.
[51] Paras 36-38 above.
[52] Paras 40-53 above.
[53] Paras 42-43 above.

(j) **Third-State considerations:** Spain is a third State vis-à-vis the EU-UK Agreement. As a matter of international legal principle (*pacta tertiis*), the Agreement cannot alter Spain's legal position on sovereignty or jurisdiction without its consent, and there is in any event no evidence that the parties intended to accord Spain any right of sovereignty or jurisdiction.[54]

(k) **Contextual instruments confirm that Spain and Gibraltar (as well as the parties) were keen to ensure that the Agreement was to have no impact on sovereignty or jurisdiction.** Instruments connected with the Agreement's conclusion (namely the 2020 Proposed Framework and the June 2025 political Joint Statement) emphasise that the future agreement will be without prejudice to sovereignty or jurisdiction. This strengthens the basis for reading provisions of the Agreement consistently with Article 2.[55]

(l) **The most operationally intrusive provisions in the Agreement relate to border control, but even those provisions do not undermine the UK's sovereignty or jurisdiction over Gibraltar:** In the course of their border control functions under the Agreement, Spanish authorities will conduct checks and surveillance in Gibraltar, and in defined circumstances, they may take forms of 'coercive action' there (e.g. arrest, detention, interview, search, seizure), in accordance with Spanish, EU and international law. These are best characterised as treaty-based, limited functional delegations confined to safeguarding the integrity of the Schengen area. They are contingent on UK consent, and expressly subject to Article 2.[56]

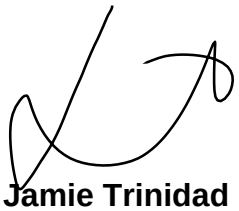
(m) **The analogy with juxtaposed controls supports the conclusion that the border control provisions have no impact on sovereignty or jurisdiction:** Comparable cross-border cooperation regimes exist, such as the system of juxtaposed controls established under the Channel Tunnel Agreement, where foreign officers exercise border-control functions in host territory without undermining the host State's sovereignty or jurisdiction.

[54] Paras 45-47 above.
[55] Paras 48-52 above.
[56] Paras 54-60 above.

While not perfectly analogous, this example supports the proposition that such treaty-based functional arrangements do not, without more, entail a transfer of sovereignty or jurisdiction.[57]

(n) **There is some residual risk, but this is practical/political rather than legal:** There is a practical risk that operational realities, for instance concerning the manner of exercise of coercive powers, could be perceived as prejudicial over time. However, Article 2 is drafted to extend the 'without prejudice' protection to conduct undertaken in application, or as a result of, or pursuant to, the Agreement, making it extremely difficult for operational practice to crystallise into legal prejudice.[58]

(o) **In the final analysis, no provision of the Agreement can be said to undermine the UK's territorial sovereignty or jurisdiction over Gibraltar.** Applying the relevant principles of treaty interpretation, I conclude with a high degree of confidence that there is nothing in the Agreement that undermines the UK's sovereignty or jurisdiction over Gibraltar in a legal sense. This would remain true even absent the 'without prejudice' clauses in Articles 2 and 271(d)(fn1), although those clauses make the conclusion even clearer.



Jamie Trinidad KC

27 February 2026

[57] Paras 61-65 above.
[58] Para 66 above.