

REF: Treaty between the United Kingdom of Great Britain and Northern Ireland and the European Union in respect of Gibraltar (hereafter “the Treaty”)

LEGAL OPINION

1. I have been provided with, and this opinion is based on the following documents provided to me by HM Attorney General for Gibraltar, the Hon. Michael Llamas CMG KC:
 - 1.1 By email dated 20 January 2026 (i) a copy of the drafts as they then were of the text of Treaty (ii) its annex relating to Goods and Customs and (iii) Administrative Arrangements with Spain relating to Border controls and Continued Surveillance and Uninterrupted Pursuit.
 - 1.2 By email dated 13 February 2026, a copy of the draft as it then was of the text of Treaty and all its annexes (and Correlation Table).
2. This Opinion is therefore based on and limited to the text of the Treaty at para 1.2 above and the two Administrative Arrangements at para 1.1 above (together the “**Treaty Documents**”).
3. I am asked by the Attorney General, on behalf of HM Government of Gibraltar, for my opinion on whether the Treaty Documents contain any legal concessions on sovereignty of Gibraltar.
4. As the question correctly recognizes, sovereignty is a legal, not a political concept.¹ It implies that its legitimacy and authority can be established exclusively by reference to the legal system itself. It is the legal principle of supreme authority within a territory, free from another State’s intervention in the territory and immunity from the exercise of jurisdiction by another State. This includes the right and power to make laws and the competence to

¹ Kelsen’s Legal Theory 204-05, 251-53

enforce them i.e. the exercise of jurisdiction to the exclusion of another State (hereinafter “**Sovereignty**”). Jurisdiction is therefore one manifestation and dimension of Sovereignty.

5. By virtue of our constitutional arrangement with the UK, while Sovereignty is vested in the Crown, it is exercised in Gibraltar primarily by the HMGOG and the Gibraltar Parliament (save such now very limited powers exercised by HE the Governor) and (in the context of external relations, defence and reserve powers) HM Government in the United Kingdom.

6. The word “sovereignty” is sometimes colloquially used to express purely political sentiments. This does not engage legal Sovereignty. My opinion, as requested, is limited to matters of Sovereignty in its legal sense, and in this Opinion, I express no view whatsoever (one way or the other) about the Treaty from the perspective of political opinion.

7. Every time a government or country enters into an international agreement it is necessarily agreeing to do or omit doing something in the future or to do it in a particular agreed way, thus curtailing (by its own agreement) its freedom of future action in the exercise of its sovereign jurisdiction, powers and rights in that respect. This does not of itself constitute a derogation or “concession” on Sovereignty. Entering into international agreements as a matter of free will is the exercise or an attribute of Sovereignty, not its concession to another State.² This is particularly so when the Treaty relates to participation in a multilateral framework of rights and obligations involving the grant of mutual rights and the assumption of mutual obligations by multiple countries and territories in respect of their collective territories and legal systems, as is the case of the Treaty. In the case of the Treaty, such curtailment and arrangements relating thereto as are contained in the Treaty are further

² Permanent Court of International Justice in *The ‘Wimbledon’ (Government of His Britannic Majesty v German Empire)* PCIJ Series A No. 1 and *The ‘Lotus’ (France v Turkey)* PCIJ Series A No. 10 case.

explicable and justified by the fact that the United Kingdom itself is not a member of or participating in that framework.

8. The Airport

8.1 The Treaty provides for the establishment of a (50/50) joint venture company in the EU (the AG has told me that this will be in Ireland) “*under the shared responsibility*” of Spain and “the UK, in respect of Gibraltar” to “*select, through regular public tender, and supervise the commercial company in charge of the day-to-day management of Gibraltar airport*”. The public tender “*may foresee the contract and labour law applicable to the commercial company and its operations*” (which envisages the possibility that it may not be the laws of Gibraltar). Litigation against the joint venture or the commercial company may take place in the courts of a member state (including Spain).

8.2 The purport and extent of these provisions is not clear. The Attorney General has informed and instructed me that the role of the JV company is limited to ensuring that the tender process is conducted in accordance with EU law and that the appointed commercial company complies with the relevant and specified Treaty requirements (hereafter “**the Limited Role**”).

8.3 So long as, on a proper interpretation of the Treaty, the powers, functions or role of the JC company do not go beyond the Limited Role, for example (only), by

8.3.1 The JV company being the contracting employer of the commercial company); or

8.3.2 by the employment of employees of the commercial company or the commercial company’s contract for the management of the

airport being the laws or the jurisdiction of the courts of a place other than Gibraltar,

the JV company and other provisions of Article 274 do not, in my opinion, constitute a surrender of Sovereignty or jurisdiction over the airport for all the reasons set out in para 10 below.

9. **Arrest.** Provision is made in Article 34.3, 34.4 and 34.5 of the Treaty (and in the proposed Administrative Arrangements relating to Schengen), that in the event of the arrival at or departure from Gibraltar of a person for whom there is an alert only in the Gibraltar databases and information systems, such person cannot be detained by Gibraltar without their consent and, if they do not, must be allowed to exit Gibraltar. Such provisions, while not constituting concessions of Sovereignty to Spain or anyone else, curtail the legal effect and enforceability of Gibraltar's laws by its law enforcement agencies and of arrest warrants issued by Gibraltar's courts. This curtails Gibraltar's exercise of jurisdiction in its own territory in manner which, unlike others provided for in the Treaty would not appear to be required by the exigencies of the common, collective control of access to and egress from the Schengen (plus Gibraltar) common space.

10. I have carefully read and considered the Treaty from the perspective of whether it makes any concession on Sovereignty (including jurisdiction) over Gibraltar to Spain or anyone else. In my opinion, and in accordance with the principles described above, (and subject to what I say in para 8 above) it does not for the following reasons (operating individually and/or cumulatively)-

10.1 The Treaty will be entered into by the UK Government, in respect of Gibraltar in exercise of the UK's Sovereignty rights and competences in accordance with our own legal order (i.e. the Gibraltar Constitution).

10.2 The Treaty will be entered (as described in sub-para 1 above) with the express, freely given agreement and at the request of the Gibraltar Government, which has fully participated in the negotiation of it.

- 10.3 The United Kingdom has agreed that its processes and procedures for the signature and subsequent ratification of the Treaty by it is to be commenced only following a vote in the Gibraltar Parliament requesting the UK to do so.
- 10.4 The necessary legislation to give effect to Gibraltar's obligations under the Treaty will be enacted by the Gibraltar Parliament and other Gibraltar (secondary) legislation.
- 10.5 I am instructed that Gibraltar's obligations under the Treaty will be administered by Gibraltar's own competent constitutional authorities and enforced by its own authorities.
- 10.6 Although Gibraltar has freely agreed not to legislate to certain effects and to take and not to take certain administrative, executive and other actions in the context of the benefits that it is obtaining under the Treaty, no political, administrative, executive, legislative or judicial competences as to what should be Gibraltar's laws, or its enforcement is conceded to Spain or to any other individual State in its own national or sovereign right and on its own behalf. Nor is Spain the arbiter of Gibraltar's compliance with its obligations under the Treaty.
- 10.7 While Spain is granted certain powers functions and competences, this is in the context of its status as the neighbouring EU Member State and on the EU's behalf, given that they relate to the granting of access of goods and people to the entire territory to which the Treaty relates i.e. the entire EU territory and Gibraltar. Spain is exercising those powers in that context and not on behalf of the UK or Gibraltar or its Government.

10.8 Gibraltar's agreement to conduct certain aspects of its affairs in accordance with criteria and processes agreed in the Treaty does not in my opinion constitute a legal concession on its sovereignty.

10.9 Importantly, and reflecting the voluntary nature of the obligations assumed and curtailments accepted, the United Kingdom, in whom legal sovereignty vests, can terminate the Treaty and thus extricate itself and Gibraltar from obligations under it, on giving 12 months' written notice to the counterparty, the European Commission.

10.10 To the extent that Spain is given a role in relation to the affairs of Gibraltar in the context of the Treaty, it does so on behalf of the counterparty, the (whole) EU in the context of and pursuant to the Treaty and not in the context of the exercise by Spain of any rights, powers or competence appertaining to it in its own right. Spain's role ends with the Treaty if it is terminated by the UK.

10.11 Finally, but not least, because the counterparty, the EU (with Spain's agreement and its full participation in the negotiation), and the Treaty itself, so recognizes and acknowledges in the Treaty itself, namely (and generally) in Article 2³ and specifically in relation to the isthmus and

³ "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."

airport in footnote 38 to Article 271⁴. This both in relation to the terms of the Treaty and to conduct (both acts and omissions) pursuant to it.

2 March 2026
Sir Peter Caruana KCMG, KC
6 Irish Town
Gibraltar

⁴ "The present Agreement, any supplementing agreements..... 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."