
Gibraltar – Spanish Myths and Agreements

1. The Treaty of Utrecht – Paragraph One

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

Without Any Territorial Jurisdiction - Paragraph two 'the above named property be yielded without any territorial jurisdiction...'The first paragraph of the Treaty grants Britain a "propriety...without any exception or impediment" These words would be meaningless, according to the British if the Treaty did not grant full sovereignty to the British Crown. (*Levie. Howard S., The Status of Gibraltar (1983) Supra note 18, at 31*).

Return Clause – Para 7 – 'And in case the Crown of Great Britain to grant, sell or by other means alienate Gibraltar, it is hereby agreed that the preference of having the sale shall always be given to the Crown of Spain...' **Law -v- Treaty** – Any claim Spain could have by virtue of the this clause is overruled and annulled under article 103 of the UN Charter – *"In the event of conflict between members of the UN under the present charter and their obligations under any other international agreement their obligations under the charter shall prevail"* There is no principle in international law or UN doctrine that can displace the inalienable right to self-determination.

2. Self-Determination

ICJ Opinions - The International Court of Justice has confirmed in a judgment and four advisory opinions that *'the right to self-determination is applicable to all the non-self-governing territories.*(*Legal Consequences for States of the Continued Presence of South Africa in Namibia 1971, P31-32; Western Sahara Advisory Opinion 1975, p68, para 162; East Timor Judgment 1995, P102, para 29; Legal Consequences of Wall in Occupied Palestinian Territory 2004, p171-172 para 88 and the Kosovo Advisory Opinion of 2010, p37, para 79*). There are no exceptions. **Compelling Law** - In the light of the ICJ 1995 East Timor Judgment, the United Nations International Law Commission and the UN Human Rights Commission regard the right to self-determination as 'jus cogens' (compelling law). (*ILC Report Fifty-Third Session, General Assembly Official Records, Fifty-Sixth Session, Supp NO 10 A/56/10, 23 April – 10 Aug 2001, pp, 208, 284.& UN Commission on Human Rights Report, Fifty-Eighth Session, 18 March-26 April 2002, Official Records 2002, Supplement 3, p41*).

Territorial Integrity- UNGA 1514 - While UN Resolution 1514, Declaration on the Granting of Independence of Colonial Countries and Peoples of 1960, upholds the commitment to an 'inalienable' right to freedom and decolonization and states in paragraph 2 *'All people have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'*, it also prompts the Spanish viewpoint that paragraph 6 of UN Resolution 1514 states, *'any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the Charter of the United Nations.'* (UNGA 1514 (XV) Declaration on Granting of Independence to Colonial Countries and Peoples, 14 December 1960). Application by ICJ - The above view was confirmed by the 2010 Kosovo ICJ Advisory Opinion where the ruling explained that, *'the Helsinki Conference on Security and Cooperation in Europe of 1st August 1975 stipulated that, "participating states will respect the territorial integrity of the participating states." Thus the scope of the principle of territorial integrity is confined to the sphere of relations between States.'* (ICJ Kosovo Advisory Opinion, 22 July 2010, p38, para 80). Thereby indicating, that the principle of territorial integrity does not impinge on the international law of self-determination and independence.

3. Other Relevant Agreements

1907 Pact of Cartagena - Wording of the Pact: - English copy of simultaneous agreements made between France and Spain and Great Britain and Spain, May 16, 1907, **for the maintenance of the territorial status quo of these three countries in the Mediterranean and in that part of the Atlantic ocean which washes the shores of Europe and Africa.** *Foreign Office, May 16, 1907. **Some Relevant Law** - Estoppel may arise either by means of a prior recognition or acquiescence, but the nature of the consenting state's interest is vital. Where, for example, two states put forward conflicting claims to territory, any acceptance by one of the other's position will serve as a bar to a renewal of contradictory assertions. This was illustrated in the Eastern Greenland case, where the Court regarded the Norwegian acceptance of treaties with Denmark, which incorporated Danish claims to all of Greenland, as preventing Norway from contesting Danish sovereignty over the area. (International Law, Sixth Addition, Shaw M, p518, Cambridge University Press, 2008, Quoting PCIJ, Series A/B, No. 53, 1933, pp. 46, 68; 6 AD, pp. 95, 102).*

1975 Helsinki Accord - Part IV. Territorial integrity of States -The participating States will respect the territorial integrity of each of the participating States. **Opinion** In the 1975 Helsinki final act the fixity of existing borders as drawn after the Second World War was positively reinforced. Spain is bound by this agreement despite the expressed status quo on Gibraltar. (*Good Neighbourliness in the European Legal Context, Kochenov D. & Basheska E., International Law, Brill 2015, page 181, footnote 13*