



# **Gibraltar Referendum**

  

## **Observers Report**

# Report by the Committee of Observers

November 2002

## Political Context

Gibraltar is an overseas territory of the United Kingdom. Britain's sovereign title originates in the Treaty of Utrecht of 1713 between Britain and Spain. A number of clauses in the Treaty related to Gibraltar. The key clause ceded Gibraltar to Britain in perpetuity but stated that, should Britain ever renounce her claim, sovereignty of Gibraltar would pass to Spain. The Treaty does not allow for the sharing of sovereignty. The border between Spain and Gibraltar was closed in 1969 by General Franco and remained closed after his death in 1975 until 1985 when it was fully re-opened.

Gibraltar is also a member of the EU, which it joined as part of the UK accession. It is part of the EU under Article 227(4) as a European territory for whose external affairs a member state (UK) is responsible. Article 28 of the UK Accession Act provides that there shall be certain exceptions from Community measures with respect to Gibraltar, i.e. the Common Customs Tariff, VAT and the Common Agricultural Policy.

Like all the governments of the overseas territories, the Government of Gibraltar is responsible for internal self-government, including establishing a fiscal regime that meets the revenue needs of government. Britain remains responsible for defence, foreign affairs and internal security. Regulation of the financial services is affected by the Gibraltar Financial Services Commission, which is appointed by the Secretary of State for Foreign and Commonwealth Affairs, in consultation with the Government of Gibraltar.

Successive Spanish governments have imposed economic pressure and physical restrictions on Gibraltar's economic development. They include the following:

- Restrictions placed by Spain on telephone access between Spain and Gibraltar. Since the introduction of International Direct Dialling (IDD), Gibraltar has had its own international area code (350) that is in use for all international telephone traffic to Gibraltar except from Spain. This reflects Spain's refusal to recognise Gibraltar's IDD code.
- Border queues created by Spain causing delays at the border.
- Restrictions on flights landing or taking off from Gibraltar which need to use Spanish airspace. If flights have to divert due to adverse weather conditions, they must first land in Morocco and then seek a re-routing to a Spanish airport where they are allowed to disembark passengers but not cargo.
- Military vessels that have visited Gibraltar must ensure that their next port of call is not in Spain. Military aircraft must not use Spanish airspace to take off and land in Gibraltar. In order to communicate with their Spanish counterparts, British military officers in Gibraltar must communicate through the British Embassy in Madrid.

## **The Brussels Process**

In 1984 the Conservative Government of the UK decided to seek amelioration through bi-lateral talks between Britain and Spain. Spain would not agree to talks unless sovereignty was also on the table, which the UK Government agreed to.

Following meetings in Brussels in 1984 a communiqué was issued which provided for "the establishment of a negotiating process aimed at overcoming all differences between them over Gibraltar". It was stated at the time that the process would include discussion of sovereignty.

Various meetings were held under the terms of the process during the following years with little progress made. In June 2001 during the debate on the Queen's Speech following the 2001 General Election, the UK Labour Foreign Secretary stated that the Brussels Process would be resumed to discuss a number of issues relating to Gibraltar. In July 2001 the Brussels Process was formally re-launched by the Minister for Europe. In November of that year, following the first meeting under the re-launched process, Britain and Spain made a joint statement to the effect that they intended to "reach a comprehensive agreement" by the summer of 2002 which "will cover all outstanding issues, including those of co-operation and sovereignty".

There were a number of meetings between Britain and Spain over the following year. Negotiations proceeded sufficiently for the Foreign Secretary to make a statement to the House of Commons on 12 July 2002 on the principles on which Britain and Spain were in agreement. One of these was that sovereignty of Gibraltar should be shared between Britain and Spain.

There were a number of key areas where there was no agreement. These were:

- Britain wanted to retain sole control of the military base
- Spain wanted joint sovereignty to be a stepping-stone to full sovereignty. Britain wanted joint sovereignty to be the permanent solution.

Britain made it clear that if agreement were finalised with Spain it could not be implemented unless the people of Gibraltar accepted it through referendum. Spain would not accept this as a condition of any agreement.

The United Nations decolonising committee of 24 took note of the decision arrived at in Brussels in 1984.

## **The Referendum**

Since the re-launch of the Brussels Process the British Government has repeated on a number of occasions that there can be no question of any change of sovereignty without the approval of the people of Gibraltar.

The British government intend to reach a declaration of principles including sovereignty concessions to Spain. These concessions would remain on the table even if rejected by the people of Gibraltar in a referendum organised by the British Government.

The Government of Gibraltar stated that, faced with a situation of continuing uncertainty over the timing of any proposed British held referendum, together with the stated intention of the British Government to continue discussing the joint sovereignty of Gibraltar with Spain, it would hold its own referendum on the principle of joint sovereignty.

On 25 July 2002, the Chief Minister announced that a referendum would be held on 7 November 2002.

## **Process of Referendum**

Once this political decision to hold a referendum had been taken, a number of further decisions were considered. These included:

- The constitutional process through which a referendum would be called
- The question which would be put
- Who would qualify to participate in the referendum
- How the referendum would be monitored to ensure that people could vote freely, fairly and without risk of intimidation.

### **1. The constitutional process through which a referendum would be called**

The House of Assembly was established by the United Kingdom Parliament under the Gibraltar Constitutional Order, of 30<sup>th</sup> May 1969.

The Gibraltar Government announced its decision to hold its own referendum, and after a lengthy and wide process of consultation decided on the content and wording of the question.

The Chief Minister moved a motion in the House of Assembly to obtain parliamentary ratification and approval of all issues related to the Referendum. That motion was passed unanimously.

### **2. An agreement on the question which would be put**

The House of Assembly ratified the question that would be put to the people of Gibraltar in the referendum namely that:

*On the 12<sup>th</sup> July 2002 the Foreign Secretary, Jack Straw, in a formal statement in the House of Commons, said that after twelve months of negotiation the British Government and Spain are in broad agreement on many of the principles that should underpin a lasting settlement of Spain's sovereignty claim, which included the principle that Britain and Spain should share sovereignty over Gibraltar.*

Do you approve of the principle that Britain and Spain should share sovereignty over Gibraltar?

YES

NO

### **3. Who would qualify to participate in the referendum?**

The House of Assembly ratified that the following categories of people would be eligible to vote in the Referendum:

1. Resident Gibraltarians registered in the Register of Gibraltarians under the Gibraltar Status Ordinance.
2. Resident British Overseas Territories Citizens by virtue of a connection with Gibraltar.
3. Other nationals who have been ordinarily resident in Gibraltar for not less than ten years immediately preceding Referendum day.

### **4. How the referendum would be monitored**

The House of Assembly ratified the government's invitation to the following people and organisations to act as international observers for the Referendum:

1. Rt Hon Gerald Kaufman MP as Chairman of the Committee of Observers
2. Representing the British Isles and Mediterranean Region of the Commonwealth Parliamentary Association:
  - o Sir Philip Bailhache, Bailiff of Jersey (Jersey Branch)
  - o Hon Noel Quayle Cringle, President of Twynwald (Isle of Man Branch)
  - o Sir de Vic G Carey, Bailiff of Guernsey (Guernsey Branch)
  - o Dr John Marek MWA, Deputy Presiding Officer, National Welsh Assembly (Wales Branch)
  - o Rt Hon Ron Davies AM
  - o Jocelyn Davies AM
3. Representing the House of Commons All Party Gibraltar Group
  - o Hon. Lindsay Hoyle MP (Lab) – Chairman
  - o Eleanor Laing MP (Con)
  - o Jimmy Hood MP (Lab)
  - o David Crausby MP (Lab)
  - o Andrew Rosindell MP (Con)
  - o Colin Breed MP (Lib Dem)
  - o Geraldine Smith MP (Lab)
4. The following members of the House of Commons Foreign Affairs Select Committee, in their personal capacities:
  - o Fabian Hamilton MP (Lab)
  - o Andrew Mackinlay MP (Lab)
  - o David Chidgey MP (Lib Dem)
5. The Electoral Reform Society
  - o Dr Ken Ritchie, Chief Executive
  - o Andy Mytes
  - o Peter Facey, Director
6. Representing the Chartered Institute of Journalists:
  - o Andy Smith (President)
  - o Stuart Notholt (Vice-President)
7. Representing Trades Unions:
  - Monica Taylor Member of the General Executive Council, (Transport & General Workers Union)
  - Paul Noon, (General Secretary, Prospect)
  - Lord Brett (former General Secretary, Prospect)
  - Jerry Bartlett, Assistant General Secretary National Association of School Masters/Union of Women

8. Marlo Galea MP, Malta House of Representatives and member of the Executive Committee of the Commonwealth Parliamentary Association.
9. Mark Seddon, Member of the UK Labour Party National Executive Committee and Editor of the Tribune Group.

The observers decided that, to respect the independent role of the Electoral Reform Society, its observers should have a special, separate categorisation.

## **Role of Observers**

### **1. Pre-Referendum Activity**

The observers held one pre-meeting at the London Office of the Government of Gibraltar on 17 October, where the brief for observers was discussed.

Consideration was given to the question, which was to be put in the referendum. The observers agreed that the question was fair and unbiased. It was further agreed that the Chairman of the Parliamentary Gibraltar Group, Hon. Lindsay Hoyte MP, should table a question in the House of Commons:

**"To ask the Secretary of State for Foreign and Commonwealth Affairs if he will make a statement on his proposals for shared sovereignty with Spain over Gibraltar?"**

The answer was: "I refer my hon. Friend to the statement my right hon. Friend the Foreign Secretary made to the House on 12 July, Official Report 1165 to 1167."

The observers subsequently agreed, accordingly, that it was fair to assume that the people of Gibraltar knew what joint sovereignty meant as much as the House of Commons did.

The Committee, which was attended by representatives of the Electoral Reform Society, agreed that the Society report should form part of the main observers report but would be included as an appendix without debate or changes by the observers.

The Chairman authorised a visit by two observers, Andy Smith and Stuart Notholt, to Gibraltar over the weekend of 26 October 2002. While there they had meetings with the referendum Administrator, the referendum co-ordinators and the Commissioner of Police. They were invited to visit the referendum headquarters and inspect the list of electors. The process of the Referendum was also fully explained. They reported back to the Chairman upon their return.

Mr Smith and Mr Notholt also held discussions with the Gibraltar Government Media Director to ascertain the process for checking and verifying media credentials, and to ensure that a system was in place for last minute media accreditation. They found that substantial press office facilities had been provided, with satellite TV links, free internet access and e-mail, for use by any and all accredited. They met or spoke to all editors and representatives of the local media, both during their pre referendum visit and on voting day itself. They also gave several interviews to Gibraltarian and Spanish newspapers.

It was agreed that for the period of the referendum, the passes issued to the Electoral Reform Society representatives would mark them as Society representatives to distinguish them from the observers.

The main group of observers arrived in Gibraltar on 6 November 2002.

## **2. Observers' Activities in Gibraltar**

### **Observers' Office**

An observers' office was opened at the request of the observers. This was about 300 yards away from the Referendum Office. The office was staffed from 5 November to 9 November. At the request of the observers notices were placed in the media by the Referendum Administrator making the Gibraltar public aware of the existence of the office, its address, phone and fax numbers, web site and e-mail address and inviting people to make representations to the observers on any matter connected with the referendum.

### **Observers' Report – Events**

#### ***Tuesday 5 November***

The Observers' Office was opened on Tuesday 5 November by Geraldine Smith MP and Lindsay Hoyle MP.

At 10am a meeting was held between Dennis Figueras, Albert Poggio, (Liaison Officers), with Lindsay Hoyle and Geraldine Smith. The two observers visited the Mackintosh Hall from where the ballot boxes were to be distributed and where the count would take place in order to look at the system in place for dealing with the referendum and for the count on Thursday evening. These observers then toured the voting stations.

Lindsay Hoyle and Geraldine Smith had a meeting with the Governor in the afternoon and then conducted an interview with Basque TV.

#### ***Wednesday 6 November***

The two observers conducted interviews with GBC television and then the Daily Mail.

The majority of observers arrived in Gibraltar at lunchtime and had a meeting in the afternoon with the Chief Minister. Following this, all the observers had a meeting later in the evening at the Rock Hotel. A timetable for touring around the voting stations on an hourly basis was drawn up as well as 12 observers following the ballot boxes from the Mackintosh Hall to the respective voting stations and observing the opening of polls at 8am.

It was agreed that observers would accompany roving teams, operating during the day and going into the hospital, prison, individual homes and nursing homes. The purpose of these roving teams was to provide full accessibility to vote. Each team consisted of three referendum officials and a police officer, who, we observed, ensured that the formal rules for voting, particularly including the privacy of the voter, were very strictly and formally adhered to.

### **Thursday 7 November**

Before 8.00am 12 observers watched each of the 12 ballot boxes being taken to the appropriate voting station. They supervised the sealing, the opening of the doors and watched the initial voting.

Observers then went on hourly tours of the voting stations throughout the day in conjunction with the roving visits that took place.

The Chairman visited all of the voting stations twice and also accompanied a roving team.

A number of observers conducted interviews with journalists. The polls closed at 10pm and the count took place at the Mackintosh Hall where the observers monitored the counting process.

### **Queries**

The Observers' Office received the following queries: -

Mr Ford – raised the issue to voting entitlement. He was unable to vote given that he had only lived in Gibraltar for 3 years. The observers took this matter up with the Referendum Administrator.

Mr Mike Clark – raised the issue of voting entitlement. Again the observers noted his comments but stated that they were satisfied with the rules put in place.

An anonymous e-mail was sent regarding the use of schools as polling stations and the fact that the voter would come into contact with children. This was passed onto the Referendum Administrator. Mr Desoisa also telephoned with the same query.

Mr O'Gara visited the Observers' Office after he had discovered he was not entitled to vote. His concerns were passed onto the Referendum Administrator while it was made clear that no changes to the referendum rules could be made.

Another telephone call was received by the Observers' Office regarding the secrecy involved with the referendum, in particular whether those voting Yes would be identified. David Crausby raised this matter with the Referendum Administrator and together they examined the voting system. Mr Crausby was pleased to note that the government on advice from the Electoral Reform Society had established a ballot paper system that made it impossible to trace or identify how any voter had voted.

Three e-mails were received from people stating their clear opposition to any joint sovereignty deal. The matter of which option people should choose when they voted was obviously not a matter for the observers and no further action resulted from these e-mails. The observers were satisfied that all enquiries and queries raised with the Observers' Office were properly dealt with by the Referendum Administrator.

## **3. Observations during voting**

### **Supervision of Referendum**

The Government of Gibraltar had prepared well for the referendum. Dennis Reyes, Clerk of the House of Assembly had been appointed as the Referendum Administrator. A Committee consisting of past and present senior civil servants supported him, these being listed below:



1. Ernest Montado, Chief Secretary as Referendum Co-ordinator
2. George Flower, Head of Civil Status and Registration
3. John Descoiza, Head of Information Technology Department
4. Frank Carreras, Deputy Commissioner of Income Tax
5. Richard Armstrong, Assistant Chief Secretary
6. Brian Catania, HEO Personnel Department
7. Dennis Figueras, retired civil servant and former Clerk of the House of Assembly
8. Clive Coom, retired civil servant and former Clerk of the House of Assembly

In addition the Referendum Administrator had issued the following documents, which are attached as appendices to this report, to provide guidance to all those involved with the administration of the Referendum:

The Referendum Rules 2002 (Appendix A)

Directions for the Guidance of Presiding Officers and Clerks (Appendix B)

Instructions to Counting Staff (Appendix C)

Instructions for Counting of Postal Votes (Appendix D)

### **Notices**

It is the judgement of the observers that the referendum was widely publicised both to postal voters and those intending to vote in person. This was done through regular notices in the local press and broadcast media. The notices appearing in print media were frequently half or full-page size and we believe that all those eligible to vote had adequate advance notice. We note that the Referendum Administrator had issued these notices in both English and Spanish to ensure that all eligible electors understood the notices. The high turnout at the polls reflects this.

### **Process of Voting**

The observers were impressed with the impartial way in which guidance was offered and the effort made to ensure that everyone was given the best opportunity to vote.

### **Voting Stations**

The Referendum Administrator appointed 12 voting stations each catering for different residential areas within Gibraltar. He gave sufficient public notice in the media of the location of each voting station, the hours of voting and the question upon which a vote could be cast.

Voting stations were open for voting from 8.00am to 10.00pm and were manned by a Presiding Officer (normally a civil servant of senior rank), a deputy presiding officer and a sufficient number of voting clerks for the job in hand.

At 7.30am, the 12 voting station staffs accompanied by an observer proceeded to the voting stations with a voting box and the necessary equipment and stationery. Prior to the commencement of voting each voting box was shown to the observers to be empty and then locked and sealed in such manner that the box could not be opened without the sealing tapes and the lacquered seal being broken.

A roster was devised so that another observer relieved observers at the voting stations at regular intervals. This ensured that each voting station had an observer's presence throughout the entire time the polling station was open to the public.

It was decided that observers should be present at every voting station at the close of voting to witness the sealing of the slot of the voting box so as to prevent the introduction of any further voting papers. The marked copy of the registers, the counterfoils of used ballot papers and books of unused ballot papers together with other stationery used during voting were made up into separate packets and sealed with the marks of the presiding officer as required by the rules; observers counter-signed all the seals. The presiding officers then escorted the sealed voting boxes in individual vehicles and their staffs, observers and police officers to the place appointed for the count and there delivered them to the Referendum Administrator.

It was noted that voting stations had sufficient numbers of compartments in which voters were able to cast their vote well screened from observation. Every voting paper delivered to a voter was perforated with an official mark at the top and bottom of the paper. Care was taken by the voting clerks to ensure – while not attempting to see the mark placed by a voter – that every voting paper put in the box had the official mark. The voting boxes were so constructed to ensure that a voting paper, once put therein, could not be withdrawn by anyone.

Political parties and referendum campaign organizations were offered the opportunity to nominate voting agents to be present at voting stations. None took up the offer, relying completely on the checks to be carried out by the overseas observers who would be present at all voting stations.

#### (a) Absentee Voters

The Referendum Administrator offered any voter who, on production of a medical certificate, satisfied him that the voter would be unable to leave his place of abode to go to his allotted voting station, to vote at his/her place of abode, which term included hospitals, home or institution where a voter for the time being resided as a patient. Similar facilities were offered to prison inmates.

An absentee list was produced that listed the particulars of voters voting at "home". These voters were deleted from the register of voters to prevent any double voting. Four roving teams were appointed under a presiding officer who accompanied voting boxes together with three voting clerks, an observer and a police officer. The observers were able to witness that exactly the same procedure for voting was in force by roving teams as in a voting station, particularly that every voter was allowed to mark his or her voting paper in secrecy or with such secrecy as circumstances reasonably permitted, as for example in the case of a bed-ridden patient in hospital.

The observers noted a high proportion of elderly voters were Spanish speaking Gibraltarians. It was noted that special efforts were made by referendum officials to explain the procedures, to the voters satisfaction.

#### (b) Postal Voters'

Arrangements were made for voters who, owing to their temporary absence from Gibraltar on Referendum Day were unable to vote at their voting station, to be registered in the list of postal voters and vote by post. Here, again, persons appearing in the list of postal voters were deleted from the register of voters to prevent double voting.

The observers did not witness the issue of postal voting papers because they had been posted well before the observers arrived in Gibraltar they were witnessed by a Justice of the Peace. However from a perusal of the rules the system in place was considered quite adequate with the necessary safeguards to ensure the secrecy of voting. Each voter received a postal voting paper with an official mark different to that on voting papers issued at stations, a declaration of his/her identity, a voting paper envelope and two covering envelopes. One of the covering envelopes bore the address of the Gibraltar Government London Office and the other that of the Referendum Office in Gibraltar.

The postal voter had the choice of sending his or her voting paper to either address. A presiding officer was on duty at the London Office for the receipt of voting papers. The voting box was sealed at midday the day before Referendum Day to allow plenty of time for bringing the box to Gibraltar by the presiding officer assigned to the Gibraltar Government London Office. Sealing was done in the presence of a Commissioner for Oaths. These boxes were brought to Gibraltar by the presiding officer as hand luggage the day the box was sealed. The box was handed to the Referendum Administrator at the tarmac at Gibraltar Airport and escorted to the Referendum Office. The voting box in Gibraltar was sealed at 10.00pm (the same time as those in voting stations) and brought with the UK Box to the place of the count.

The process of opening, verifying and counting the postal votes was carried out under the supervision of observers.

#### ***Missing Voting Paper***

There was a report of one missing voting paper. At the verification stage the Voting Papers were counted by Voting Station Box and the total number of Voting papers in each voting box should have equalled the number of voting papers issues by the Presiding Officers in their respective voting stations.

One of the verification teams was short by one, that is, the number of voting papers in the box they verified had one less voting paper than those issued by the Presiding Officer. When this fact was raised the verification team were instructed to re-count the contents of the voting box. The result; the same, one paper was missing. There was a further re-count with the same result. It was then decided to declare that one voting paper was missing. The consensus of opinion among the committee responsible for administering the Referendum was that one voter had not placed his paper in the box and had walked away with it without any member of staff at the voting station having noticed.

The observers are satisfied with the action undertaken by the referendum administrators and with the explanation for the missing voting paper.

The observers supervised the examination of apparently ambiguous or unclear ballot papers.

#### ***Turnout***

Turnout was extremely high. Of the 20,675 eligible to vote, 18,176 voted. Of these 17,900 voted No with 187 voting Yes. In percentage terms this can be defined as a 87.9% turnout. Of this 98.97% voted No and 1.03% voted Yes. It should be noted that this turnout was considerably higher than that for either the 2001 UK General Election or the recent US mid-term elections.

## Observers' Conclusion

The observers were extremely impressed with the organisation of the referendum and particularly welcome that the role of the observers was integral to the process, as distinct from the more passive role of observers in other elections.

The meticulous way in which votes were counted exceeded requirements and went beyond requirements adopted for UK elections and, although the observers accepted the need to ensure the integrity of the vote, this did create some delays.

The observers noted that the campaign, which preceded the referendum, was very one-sided. This, we accept, was not the result of the Government of Gibraltar or the political parties trying to stifle debate, but a consequence of the lack of support for the 'yes' option in the referendum. We are pleased that Gibraltar Broadcasting Corporation made some efforts to seek contributions from people advocating a 'yes' vote and even invited statements from the British Government. Local papers also offered opportunities to those willing to support 'shared sovereignty'. From our discussion, including discussions with a 'yes' voter, we have no evidence to suggest that the 'yes' vote was artificially decreased through fears of intimidation.

**The observers, with their varied experience of electoral procedures were impressed with the entire process of the referendum in Gibraltar. They concluded that the process was a model of sound democratic process.**