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### **InfoGibraltar**

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### **Gibraltar tras el *Brexit***

De Tunku Varadarajan

Ser Gibraltar es una papeleta realmente difícil: con una extensión apenas 2,5 veces superior a la del Central Park de Nueva York, el Peñón ha afrontado durante la gran parte de los últimos tres siglos la hostilidad en su frontera terrestre con España, cedida por ésta a Gran Bretaña en 1713. La cesión se hizo a perpetuidad, lo que no ha impedido a España tratar a Gibraltar como un “territorio en litigio” e intentar de recuperarlo a la fuerza. La frontera se reabrió completamente sólo a partir de 1985, diez años después de la muerte del general Francisco Franco, pero incluso la España democrática ha impuesto cierres de la frontera de vez en cuando desde entonces para enseñar a Gibraltar quién manda.

El pueblo gibraltareño se ha posicionado en favor de Gran Bretaña y en contra de España en el debate soberanista. En el referéndum de 1967 sobre si la soberanía del territorio británico debería entregarse a España, el 99,64 % de los ciudadanos votó “no”, y en el referéndum de 2002 sobre si la soberanía en Gibraltar debería ser compartida por el Reino Unido y España, el “no” llegó al 98,97 %. Incluso el nacionalista español más recalcitrante no interpretará esta última cifra menor como una muestra de progreso de la causa de Madrid.

Sin embargo, los últimos problemas de Gibraltar son de naturaleza británica, no española. La Unión Europea fue una bendición para Gibraltar, ya que obligó a Madrid a tratar su frontera como si se tratase de la de dos Estados miembros, así como a garantizar para Gibraltar la totalidad de los derechos europeos.

Sin embargo, el referéndum del *Brexit* ha arruinado esta feliz situación. A pesar de haber votado a favor de permanecer en la Unión en un 96 % (una cifra muy gibraltareña), el Peñón está ahora condicionado por el voto del Reino Unido de abandonar la Unión Europea. Al asentir de manera inquietante a la presión española, la Unión Europea ha afirmado (en sus directrices para las negociaciones del *Brexit*) que no habrá un nuevo acuerdo con el Reino Unido válido para Gibraltar sin el consentimiento de España.

Este veto concede a España un gran poder para ahogar la economía gibraltareña y acompaña a la última oferta hecha al Reino Unido de soberanía conjunta de Gibraltar, bajo la cual el pueblo gibraltareño mantendría sus instituciones políticas y legales, al tiempo que tendría que reconocer que su territorio es tan español como británico. (Madrid actúa como si los gibraltareños no existiesen. Sólo habla con Londres, impidiendo que el pueblo gibraltareño se exprese. Por su parte, el Reino Unido ha afirmado que no aceptará un cambio en el estatus de soberanía de Gibraltar sin el acuerdo explícito del pueblo gibraltareño).

Para averiguar cómo Gibraltar se prepara para la vida tras el *Brexit* hablé con Fabián Picardo, su Ministro Principal. (Dato: fue mi alumno de Derecho en Oxford, en 1992). Picardo es directo

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en su rechazo a la oferta de cosoberanía con España: “La gente que nace de una manera concreta no cambia sólo porque le hayan ofrecido un acuerdo. Los británicos no se convierten en alemanes si les ofrecen un buen trato, y los gibraltareños no se convierten en españoles porque el acuerdo sobre la mesa sea atractivo en términos comerciales”.

Picardo, cuya abuela era española, afirma que “los términos que se nos han ofrecido respecto de la soberanía conjunta representan, en realidad, la hipocresía total de la posición española”. Explica que muchos de los ataques españoles hacia Gibraltar tienen como objetivo el sector de los servicios financieros. A pesar de que Gibraltar está altamente regulado, y que cuenta con un centro de servicios financieros a la altura de Londres y Frankfurt, España afirma que el territorio permite el blanqueo de dinero. “¿Y cuál es el primer punto de su oferta de soberanía conjunta? Que podemos quedarnos con el sector de servicios financieros; ¡y eso que, para ellos, este sector es algo absolutamente aborrecible al menos que se encuentre bajo una soberanía conjunta!”, afirma Picardo.

Fuentes diplomáticas afirman que España estaba envalentonada para adoptar una línea dura con Gibraltar tras el *Brexit* porque la Primera Ministra británica, Theresa May, no hizo mención al territorio en su carta de salida de la Unión Europea. Pregunté a Picardo si presionaría para incluir un apéndice en la carta, uno que clarificase que Gibraltar debe ser incluido en cualquier acuerdo tras el *Brexit*. “No estamos pidiendo una modificación de la notificación bajo el artículo 50 por parte del Reino Unido”, afirma. Está seguro de que el Reino Unido apoyará a Gibraltar. “David Davis, Ministro británico para la Salida de la Unión Europea, me dijo hace tres semanas que no aceptarían un acuerdo con Europa que excluyese a Gibraltar. No tengo motivos para dudar de sus palabras”.

Picardo habla también de las elecciones generales anticipadas en el Reino Unido, que se celebrarán en junio y que anunció May la semana pasada. “Lo que puedo decirle es que hablaremos todos los partidos políticos del Reino Unido para conseguir compromisos claros para que Gibraltar figure en sus programas electorales, tanto en lo que se refiere a nuestro poder para seguir comerciando en términos de mercado único con el Reino Unido tras el *Brexit* como en la inclusión de Gibraltar en los acuerdos comerciales futuros del Reino Unido, incluidos aquellos que se hagan con la Unión Europea”.

Las negociaciones del *Brexit* prometen ser incluso más complicadas de lo que muchos imaginan. Los valientes gibraltareños se asegurarán de ello, pues su modo de vida está en juego.

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OPINION

REVIEW & OUTLOOK

Testing China on North Korea

President Donald Trump called on the United Nations Security Council Monday to adopt new and stronger sanctions on North Korea. Diplomats are skeptical that such measures would change Pyongyang's behavior because it is already economically isolated, doesn't mind inflicting pain on its people, and will never negotiate away its nuclear weapons. A new sanctions push is nonetheless worth a try—not least as a test of Chinese willingness to confront the threat it has helped to nurture.

It's a myth that Pyongyang already faces tough sanctions, since by several measures North Korea is well down the list of sanctions targets. There's plenty of room to tighten financial and trade restrictions on the Kim Jong Un regime. The main obstacle has been China's efforts to water down sanctions and veto tougher measures.

Beijing also has failed to enforce sanctions that it has agreed to. In recent years a U.N. Panel of Experts has documented how Chinese companies and banks violate U.N. sanctions against North Korea. Last year it determined that Bank of China's Singapore branch allowed 605 payments on behalf of North Korean entities. Beijing blocked the release of that report, though its contents leaked to the press.

Beijing has long viewed the collapse of the Kim regime as a worse threat to China's interests than are the North's nuclear missiles. And previous U.S. administrations chose to tiptoe around China's resistance in the hope of making incremental diplomatic progress.

Mr. Trump has taken a different approach as the North continues to increase its nuclear stockpile and its missile-delivery systems, threatening unilateral action against North Korea while seeking China's help. The Trump Administration is signaling in particular that it won't tolerate a North that can target U.S.

Tougher sanctions would show if Beijing wants to restrain its client.

cities for destruction with long-range missiles that can carry a nuclear warhead. The U.S. has done this with multiple public statements, private talks with Chinese President Xi Jinping, and an invitation this week to the entire U.S. Senate for a briefing on the threat.

"This is a real threat to the world, whether we want to talk about it or not," Mr. Trump said Monday at a White House meeting of Security Council envoys. "North Korea is a big world problem, and it's a problem we have to finally solve. People have put blindfolds on for decades, and now it's time to solve the problem."

As we've recommended, the U.S. has the legal authority to increase pressure on the North by applying "secondary sanctions"—denying access to the U.S. financial system to companies and financial institutions in third countries that conduct illegal business with North Korea. Past administrations were reluctant to do so for fear of upsetting Beijing, since most of the targets of such sanctions would be Chinese. If Beijing refuses to act against the North, such sanctions would be a minimum test of Mr. Trump's seriousness.

The Trump Administration isn't revealing its overall strategy, but the use of military force can't be ruled out. The U.S. and its allies could intercept the next North Korean missile test or launch a pre-emptive strike. No one knows how the North would respond, and another Korean war is possible.

The way to avoid this dire prospect is for China to join the U.S. and its allies in a united effort to change the regime in the North to one that will give up its nuclear weapons. This needn't mean unification with the South, and it could mean a government in Pyongyang that is still allied with China. Toward that end, tougher sanctions are worth pursuing lest war becomes inevitable.

Trump's New Housing Tax

U.S. Commerce Secretary Wilbur Ross announced Monday that the Trump Administration will raise the cost of new single family homes in the U.S. as part of its promise to "make America great again."

Mr. Ross didn't put it quite that way. He said the Administration will impose a 20% tariff on softwood lumber imports from Canada, which total about \$5 billion at year. But that's a lot of lumber and the tariff will add an additional \$1 billion in new costs for U.S. construction. Most of those costs will be added to the price of new American housing, not counting the higher costs that will come as U.S. producers raise their prices to match the competition and pad their bottom lines.

Mr. Trump bills himself as an outsider with fresh ideas. But U.S. politicians have been bowing to demands from American lumber interests for protectionism from Canadian competition since the 1980s. The industry initially accused Canada of subsidizing softwood-lumber exports in 1982. The Commerce Department ruled against it in 1983. But in 1986 Commerce reversed that decision and successfully pressured Canada to begin collecting an export tax on its lumber exports.

Canada dropped that tax in the early 1990s and American lumber interests again clamored for protection. Canada again gave in, despite the lack of findings by dispute-resolution panels of subsidies or injury. In 1996 the U.S. negotiated the Softwood Lumber Agreement that hit U.S. consumers with new tariffs on lumber imports above a duty-free quota.

Over the years North American Free Trade Agreement dispute-resolution panels have repeatedly questioned U.S. findings of subsidies, injury and dumping over lumber and remanded the cases back to U.S. authorities. In 2004 the U.S. International Trade Commission, using the

A tariff on foreign lumber will raise the cost of U.S. homes.

Nafta dispute-panel's instructions, found that Canadian imports don't harm the U.S. industry. But more often the U.S. government simply ignores its obligations under Nafta to protect U.S. lumber interests.

As long as laws exist that invite antidumping and countervailing duty claims, U.S. domestic producers will try to erect barriers to foreign competition. Mr. Trump may also believe that he can use the lumber tariff to open Canada's agricultural markets, which despite Nafta are still gummed up with quotas and tariffs imposed by Ottawa. The trade politics of powdered milk is a particular mess that is hurting U.S. dairy farmers.

Yet while the cross-border haggling drags on, middle America is where the new lumber tariff will hit hardest. According to the National Association of Home Builders, 28% of U.S. softwood-lumber purchases are Canadian imports and these are particularly important in the construction of single-family homes. Roughly 7% of the cost of an American home is the lumber and that cost is already up, on average, by some \$3,000 this year. The Journal reports that "builders say lumber costs are already at the highest in a decade." Labor shortages in construction, thanks in part to restrictions on immigration, are also pushing up costs.

With his announcement last week on steel and this week's lumber action, Mr. Trump's trade policy is coming into focus. He'll use tariffs to restrict imports and appease domestic producers that have the best trade lawyers and lobbyists, while hoping consumers don't notice the higher prices. Mr. Trump made it to the White House with the support of middle-class voters still yearning for the American dream. Making home ownership more expensive is hardly the way to thank them.

Ending Litigation Tourism in America

Plaintiffs lawyers in America have a business model built around litigation tourism, suing in state courts known for friendly verdicts and big jury awards. The U.S. Supreme Court heard a pair of cases Tuesday that could upend this violation of federalism and due process.

In *Bristol Meyers Squibb v. Superior Court of California*, the Justices will consider whether some 600 plaintiffs who live outside California can sue the New York-based company in the Golden State by joining 86 local plaintiffs. The plaintiffs, who allege injuries related to the drug Plavix, sued in California because of its plaintiff-friendly reputation. (The other case, *BNSF Railway v. Tyrell*, concerns a similar 2010 case in Montana.)

The U.S. Supreme Court hears two cases to rein in abusive forum shopping.

quartered or uses as its main place of business. The same year in *Walden v. Fiore*, the Court held unanimously that "[f]or a State to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum State."

Yet the California Supreme Court ruled 4-3 in 2016 that California courts had jurisdiction over the Plavix lawsuits though the alleged injuries didn't occur there, the company isn't incorporated there and Plavix isn't made there. The California judges, in willful disregard of the U.S. Supreme Court, said the state had jurisdiction because the company did a lot of business there. By that standard nearly any business could sue in California.

Gibraltar After Brexit

By Tunku Varadarajan

Being Gibraltar is a mighty tough act: Barely 2½ times the area of New York's Central Park, the Rock has, for much of the past three centuries, faced hostility on its land border with Spain, which ceded it to Britain in 1713. The cession was made in perpetuity—but that has never stopped Spain from treating Gibraltar as a "disputed territory" and trying to wrench it back. The border reopened fully only in 1985, a decade after the death of Gen. Francisco Franco; but even democratic Spain has imposed border closures from time to time as a way to teach Gibraltar who's boss.

The people of Gibraltar have sided with Britain and against Spain in the sovereignty debate. In a 1967 referendum on whether sovereignty in the British territory should pass to Spain, 99.64% of citizens voted "no"; and in a 2002 referendum on whether sovereignty in Gibraltar should be shared by the U.K. and Spain, "no" scored 98.97%. Even the most die-hard Spanish nationalist wouldn't spin the smaller second number as progress for Madrid's cause.

Gibraltar's latest problems, however, have been of British—not Spanish—making. The European Union was a boon to Gibraltar, as Madrid was required to treat its border as one between two EU member states, as well as to accord to Gibraltar the full range of EU rights.

The Brexit referendum has wrecked this happy situation. In spite of voting to remain in the EU by a very Gibraltarian 96%, the Rock is now bound by the U.K.'s vote to leave. Bowing ominously to Spanish pressure, the EU has stated—in its guidelines for Brexit negotiations—that no new deal with the U.K. would apply to Gibraltar without Spain's assent.

This veto gives Spain great power to throttle Gibraltar's economy, and accompanies its latest offer to the U.K. of joint sovereignty over Gibraltar, under which Gibraltarians would keep their political and legal institutions, while having to acknowledge that their territory was as much Spain's as Britain's. (Madrid acts as if the Gibraltarians don't exist. It talks only to London, denying the Rock's people a voice. The U.K., for its part, has affirmed that it will not accept a change in Gibraltar's sovereign status without the explicit agreement of Gibraltar's people.)

To find out how Gibraltar is bracing for life after Brexit, I spoke to Fabian Picardo, its chief minister. (Disclosure: He was my student at Oxford, where I taught him law in 1992.) Mr. Picardo is forthright in his rejection of Spain's co-sovereignty offer: "People born a particular way can't be changed because they're offered a deal. Brits don't be-

come Germans if they're offered a good deal, and Gibraltarians don't become Spaniards because the deal on the table is commercially attractive."

Mr. Picardo, whose grandmother was Spanish, says that "the terms put to us in respect of joint sovereignty actually represent the full hypocrisy of the Spanish position." He explains that many of Spain's attacks against Gibraltar are aimed at its financial-services sector. Even though Gibraltar is highly regulated and a financial services center ranked alongside London and Frankfurt, Spain claims the territory allows money laundering. "And what's the first line of their offer of joint sovereignty? That we can keep the financial-services sector that's so anathema to them when it's not in a joint-sovereign Gibraltar!" says Mr. Picardo.

Diplomats say that Spain was emboldened to take a hard line on a post-

Spain wants joint sovereignty over the Rock, but the people adamantly oppose it.

Brexit Gibraltar because Theresa May didn't mention the territory in her letter of withdrawal from the EU. I ask Mr. Picardo whether he'll push for an addendum to the letter, one that makes clear Gibraltar must be part of any post-Brexit deal. "We're not calling for an amended Article 50 notification from the U.K.," he says. He is certain that the U.K. will stand by Gibraltar: "David Davis"—the U.K.'s Brexit secretary—"said to me three weeks ago, 'We will not do a deal with Europe if it excludes Gibraltar.' I have no reason to doubt him."

Mr. Picardo talks, also, of the snap general election in the U.K. to be held in June, announced by Mrs. May last week: "What I can tell you is that we'll be approaching all political parties in the U.K. for clear commitments to Gibraltar to feature in their manifestos, both in terms of our ability to continue to trade on single-market terms with the U.K. after Brexit, and the inclusion of Gibraltar in the U.K.'s new international trade deals going forward—including the ones with the EU."

The Brexit negotiations promise to be even more knotty than many imagine. The plucky Gibraltarians will make sure of that—their way of life is at stake.

Mr. Varadarajan, a former lecturer in law at Oxford University, is a Research Fellow at Stanford University's Hoover Institution.

LETTERS TO THE EDITOR

A Maritime Policy Consistent With Trump

Despite The Journal's subtle suggestion to the contrary, President Trump's support of a Customs and Border Protection (CBP) proposal to reverse 30 "regulatory precedents" shielding specialized foreign-flagged vessels in the Gulf of Mexico from the domestic shipping law known as the Jones Act ("Offshore Drilling Blowout Preventer," Review & Outlook, April 20) wouldn't align the president politically or ideologically with his predecessor.

This specific Jones Act exemption has been in force for 40 years. President Obama did little or nothing to encourage wider Jones Act jurisdiction in the Gulf. When the U.S. was drawing down crude oil from the Strategic Petroleum Reserve in 2011, the Obama administration issued a series of Jones Act waivers crafted specifically to prevent available U.S.-owned, built, documented and crewed tankers from carrying these cargoes.

From this perspective, CBP's proposal two days before Mr. Obama's departure appears more like the agency's thoughtful anticipation of a constructive change of presidential heart than a bureaucracy "riding herd."

Without question the Jones Act is consistent with Mr. Trump's "Buy American, Hire American" credo. This law stands on conspicuous merit as an economic, defense mobilization and

homeland-security asset sustained by private investment. Broader Jones Act application in the Gulf of Mexico would enhance the law's already substantial value at no cost to the government, and I doubt the "global and mobile" offshore drilling industry you refer to will go hungry as a consequence.

PAUL DOELL  
National President  
American Maritime Officers  
Dania Beach, Fla.

The Offshore Marine Services Association would never support an action that shuts down energy production, and CBP's notice does no such thing. U.S. vessel companies have sufficient Jones Act-compliant ships to transport subsea construction merchandise at issue. The editorial also cites heavy-lift construction vessels as an example where the U.S. fleet doesn't have capacity. The CBP notice doesn't address heavy lift rulings.

Our members depend on healthy energy production and have invested more than \$2 billion since 2009 to build the necessary vessels to ensure that offshore energy exploration and production wouldn't be affected by proper enforcement of the Jones Act.

AARON SMITH  
President  
Offshore Marine Services Association  
New Orleans

Ungreen Consequences of Some Green Projects

I urge prospective investors in wind farms and transmission lines to consider the long-term threats such projects pose to the environment ("Investors Get Juiced Up for Green Power," April 7). President Obama allowed his Bureau of Land Management managers to steamroll opponents of the SunZia project in New Mexico and Arizona, which included conservative ranchers, the Sierra Club and Mr. Obama's own EPA—not your everyday bedfellows.

What were the objections? SunZia's wind farm will be a massive horizon-stretching monster, destructive of pris-

birds and raptor populations. Power lines can be lethal obstacles to migratory birds. Larger raptors are drawn to them as prey-overlook sites, and thousands of protected birds are electrocuted every year.

Some temporary jobs will be created in SunZia's construction but only a handful of permanent jobs. The major beneficiaries will be Southern California electrical utilities. Los Angeles has drunk dry many lakes in neighboring states and is now primed to destroy environments and wildlife in New Mexico, Arizona, Wyoming and Colorado to feed its energy needs and

The U.S. Constitution's Due Process Clause says no person shall "be deprived of life, liberty, or property, without due process of law," which protects defendants from being dragged into courts for improper claims. In Tuesday's cases, the claims filed have no connection to the state court exercising jurisdiction, a practice the High Court has already rejected.

In 2014 the Justices ruled in *Daimler v. Bauman* that for a court to have jurisdiction a lawsuit must be filed where a company is head-

Justice Kathryn Werdegar noted in dissent that allowing a lawsuit with such a tenuous connection to the state "threatens to subject companies to the jurisdiction of California courts to an extent unpredictable from their business activities in California" and extends jurisdiction over liability claims "well beyond our state's legitimate regulatory interest." This violates a basic tenet of federalism. Justice Werdegar offers the High Court a road map to enforce its precedents and rein in the trial bar.

tine high-desert landscapes filled with unique fauna and flora. A planned wind farm in southern New Mexico, close to Carlsbad Caverns, will endanger thousands of bats each year with its turbine blades. The transmission-line route cuts through environmentally sensitive wetlands along the Rio Grande and Arizona's Salt River on its way to link with existing power lines to California. These wetlands are home to a multitude of wildlife, including migratory

"green" power imperative.

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