

**GOVERNMENT OF GIBRALTAR**



**Ministerial Statement  
by the Chief Minister  
The Hon Peter Caruana MP, QC**

**In relation to Gibraltar Territorial Waters**

**Thursday 14<sup>th</sup> October 2010**

You will all be aware that on the 28<sup>th</sup> September an incident occurred at sea, well within Gibraltar territorial waters, involving the Royal Gibraltar Police and the Spanish Guardia Civil, the implications and seriousness of which cannot be minimised or ignored.

For many decades now, we in Gibraltar have learnt to live with incursions by official Spanish vessels into our territorial waters. Incursions are incidents in which such vessels simply enter and pass through our waters. These have historically been tolerated, albeit reluctantly, on the grounds that they are capable of being explained away as the exercise of the right of innocent passage which would have no adverse implications for the Sovereignty of our territorial waters.

In May of last year we had the first incident of a different and more serious kind. That was when a Spanish fisheries protection vessel entered our waters and inspected a vessel's papers. This was therefore not just a case of incursion, but also of exercising executive competence and policing powers in our territorial waters. During the last 18 months we have been making it clear to both London and Madrid that this new Spanish behaviour was not consistent with, and was bound to impact on the viability of co operation in matters relating to waters.

The incident of 28<sup>th</sup> September was the first of an even more serious kind, in which the Guardia Civil, by the threat and use of physical force against RGP officers, prevented them from exercising the RGP's powers and jurisdiction in our own waters. In the process, they enabled, assisted and indeed secured the escape onto the Guardia Civil launch of a person who was already under the lawful arrest and physical custody of the RGP. This they achieved by the use of physical force against RGP Officers. They then took away to Spain, in the Guardia Civil launch, the person whose escape from arrest they had themselves achieved, ignoring RGP requests to return him to their custody.

This behaviour is wholly unacceptable by any objective standard or criteria. It is difficult to imagine a more serious incident in the context both of challenge to sovereignty and jurisdiction, and also in the context of the viability of co operation in matters relating to waters.

Quite apart from the political and legal issues that arise, the facts of this incident, involving as they did the threat and use of physical force, even raise the question whether, at a purely professional, law enforcement colleagues

level, the Guardia Civil have that degree of respect for the person of RGP Officers that would be necessary to make such co operation dignified, safe and realistically viable. The Gibraltar Government will not expose RGP Officers to personal and professional indignity and humiliation.

It appears, according to information provided to me by MOD and FCO sources, that there has recently been a further aggravated incursion incident involving a Spanish hydrographical vessel. This also is under urgent discussion with the UK. So, in summary, over the last 18 months or so, Spanish direct action in our waters has passed from the historical, simple incursions, first, to incursions coupled with the exercise of executive powers by them, and now, to an incursion aggravated by interference with, and prevention of the exercise by the RGP of their powers and jurisdiction, aggravated further by the threat and use of physical force against our police officers.

Everyone in Gibraltar knows that I am a committed proponent of the value and importance of dialogue, good relations and co operation with Spain, which I believe to be in everyone's interest, including Gibraltar's. The Trilateral Forum of Dialogue, which similarly is in everyone's interest, is a political achievement of which I am especially proud. I remain committed to, and will continue to work politically for all of these things.

However, as you also all know from the joint sovereignty episode in 2001, more recently, from our European court action in relation to the Habitats Water Site, and from other episodes in recent years, I am still more firmly committed to the robust and resolute defence of our Sovereignty and other international legal rights. This is an absolute priority for my Government, from which I do not and will not shirk whatever the consequences for other policy areas, including dialogue and co operation.

There is no point pretending to co operate. Nor is there any point working to reach political agreements to co operate which would not survive the test of time, indeed which are being undermined even as they are being negotiated. The Sovereignty of our waters cannot and will not be "co operated away". Nor is co operation an alternative to the defence by the UK of Sovereignty and jurisdiction of our waters.

Co - operation should not be thought by anyone to be a smokescreen behind which Spain can be allowed in practice to dismantle British Sovereignty and

with it, our jurisdiction in Gibraltar's territorial waters. We would not allow any such strategy to succeed.

As I told the United Nations last week, we will never agree to or permit co operation that genuflects or makes concessions to Spain's position on Sovereignty, including the sovereignty of our territorial waters.

Therefore, if co operation in matters touching upon our waters is to be viable, it is necessary to return at least to the status quo as it existed before May 2009, and had been for decades before that. It is not acceptable, or indeed reasonable (whatever her own position may be about the sovereignty of our waters), for Spain to toughen her stance, in a way which no previous government of Spain has thought to be necessary before, at the very time that she purports to pursue an agenda of co operation.

I remain committed to exploring the possibility of agreements to co operate on matters which relate to our waters, and, to that end, to engage at an appropriate, political level to try and establish the circumstances and environment in which such co operation would be safe, possible, meaningful and realistic. In this context, technical meetings at law enforcement officer or similar level are pointless and inappropriate.

I have noted the recent restatement by Miguel Angel Moratinos of Spain's well known and longstanding position that Gibraltar has no territorial waters, and that the waters around Gibraltar are Spanish. We and the UK reject that position, which we believe to be wholly misconceived in international law. Nor is it, in any case, the effect of the Treaty of Utrecht – even for those who, unlike us, consider that the Treaty of Utrecht remains in force or relevant to any of our rights. This by itself does not preclude co operation, since we have always known that to be Spain's position.

But it is not acceptable for Spain to try and make good her position, and her unilateral assertion of international law, by new and unprecedented kinds of direct physical action in our waters. If Spain really believes that international legal right is on her side in this matter, then she should be willing to test her view in the International Court, as we are. But such physical action by Spain cannot be an alternative to exposing herself to the possibility of being shown to be legally wrong.

So, if Mr Moratinos is convinced that under international law, the waters around Gibraltar are not British, then he has nothing to lose and everything to gain by testing that issue in the International Court, as we have repeatedly suggested.

In the very recent past, some Gibraltar politicians, press and political commentators have made public statements implying that the RGP and the Gibraltar Government should do something to stop this Spanish behaviour and incursions. I believe this to be a dangerous misconception.

The obligation to defend and uphold Her Majesty's Sovereignty of Gibraltar territorial waters, and thereby the jurisdiction of Her Gibraltar Government and other Authorities, lies, not with the Gibraltar Government or the Royal Gibraltar Police, who lack the Constitutional powers and resources to do it, but with the UK Government, and in particular the Foreign and Commonwealth Office and the Ministry of Defence, whose Constitutional role and obligation it is.

This is not about the Gibraltar Government buying bigger boats for the RGP so that they can fight physical battles at sea with the armed forces and agencies of a foreign country! This is not their role, and we should all be grateful to them for what they do in that respect, often placing themselves in personal harm's way, beyond the scope of their duties and responsibilities as a civilian police force.

Nor, however much we may resent such incursions, is it a sound political judgement that it is in Gibraltar's wider interests, as some local politicians suggest, for us to pit ourselves in a situation of direct physical battle and confrontation at sea with Spain.

This matter is a UK responsibility, and it is vital that through comments of the sort to which I have referred, we do not signal to the UK that Gibraltar thinks that this is for us to sort out ourselves, thereby letting the UK off the hook, and allowing them to believe that we do not expect them to take effective action to uphold British Sovereignty and Gibraltar jurisdiction of our waters.

I have therefore, this week, written to William Hague, the Foreign Secretary, making all of these points directly to him, and asking him to take effective action to uphold Her Majesty's Sovereignty of British Gibraltar Territorial Waters. This should include the systematic deployment and intervention of the

Royal Navy in support and protection of the RGP as they carry out their duties and exercise their civil police jurisdiction to enforce and uphold law and order and the laws of Gibraltar in our waters, exclusively of all others.

I read in the Gibraltar Chronicle the Foreign Office's reaction to the 28 September incident, which was to the effect that it highlighted the need for a policing protocol. Whilst the Gibraltar Government remains committed, within the Trilateral Forum, to seek to co operate with Spain on matters relating to the waters in the whole of this region on terms which are acceptable and safe for us, we will not accept a protocol which advances, consolidates, nurtures or sustains Spain's position on the Sovereignty of our territorial waters, or which would amount to some sort of joint sovereignty arrangement.

This is an issue that unites all Gibraltarians regardless of local party political persuasion or preference. I therefore know that I have and can count on the support of all of you in adopting a stance on this matter, the firmness of which must necessarily reflect the importance to us all of the underlying issue at stake.