The Status of Gibraltar's Territorial Waters

The Dedalo incident

On the night of 20 March 1986, it was reported that the aircraft carrier Dedalo, flagship of the Spanish Navy, provoked an incident in Algeciras Bay, south of Spain, west of Gibraltar, by entering what were termed the "territorial waters of Gibraltar".1

According to a statement made in the House of Commons by the Secretary of State for Foreign and Commonwealth Affairs on 10 April 1986,2 the 16,000 tonne Dedalo "entered Gibraltarian waters at 2344 hours on the night of 20–21 March and departed 15 minutes later at 2359 hours. During that time two helicopters were launched from the vessel".

On the 2 April after the Easter holiday, the British Embassy in Madrid protested to the Spanish Foreign Affairs Ministry. However, following instructions from London, the protest was made only at senior official level and not by the British Ambassador. In Madrid, the Spanish Government immediately rejected Britain’s protest.3

Back in Westminster, the Government’s representative was "satisfied that the United Kingdom’s position has been properly safeguarded"4, while the Secretary of State for Defence stated in a written answer that "it would not be in the public interest” to provide operational information about the action taken by the British Forces in response to such an incident.5

When questioned in the House of Commons about the “United Kingdom territorial waters off the Dependant territory of Gibraltar” and “Gibraltar’s territorial waters”, the Secretary of State for Foreign and Commonwealth Affairs cautiously spoke of “Gibraltarian waters”.6

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1 The Times, 3 April 1986.
3 The Times, 3 April 1986.
4 See n. 2.
6 Ibid. Written answer 172.
The consequences of what happened in Algeciras Bay were minimized in governmental circles, for political reasons—notably the ensuing visit of King Juan Carlos to UK.

Nonetheless, from a legal point of view, an examination of the concept of “Gibraltarian waters” may explain the attitude adopted by both countries.

The Treaty of Utrecht 1713

Spain ceded Gibraltar to the Crown of Great Britain by means of Article X of the Treaty of Utrecht, dated 13 July 1713, which brought to an end the War of Succession to the Spanish throne.

Article X of the Treaty reads as follows:

“...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 the port, fortifications 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.

But that abuses and frauds may be avoided by importing any kind of goods the Catholic King wills, and takes it to be understood, that the above named propriety be yielded to Great Britain without any territorial jurisdiction, and without any open communication by land with the country round about”.  

In 1713 Great Britain claimed possession of Gibraltar by right of conquest. Nowadays, however, Britain does not maintain that claim; since 1966 “Her Majesty’s Government are on common ground with the Spanish Government in regarding Article X of the Treaty of Utrecht as vesting in Great Britain title to the Town and Castle of Gibraltar, together with its port, fortifications and forts, whether or not Great Britain had acquired a prior title in right of conquest”.

Although both parties agree on the legal basis for Britain’s ownership of Gibraltar itself, it is still unclear, however, whether Article X of the Treaty grants any rights to the United Kingdom to claim a territorial sea off Gibraltar.

Spain has always argued that she “only ceded to the British Crown the port of Gibraltar, without any territorial waters”. On the other hand, in the words of the British Government: “it has long been the position that a cession of territory auto-

9 See G. Hills op. cit. n. 7, p. 224.