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Gibraltar
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FM GOVERNOR GIBRALTAR 231435Z APR 83 TEL NO PERSONAL 55
TO IMMEDIATE FCO
IMMEDIATE MADRID DESKBY 250800Z APR 83
IMMEDIATE MODUK FOR DS5

MY TELNO 58 (NOT TO MODUK): INCURSIONS IN THE GIBRALTAR HARBOUR

1. FOGIB SIGNAL 221720Z TO MODUK NAVY CONTAINS DETAILS OF INCURSIONS FROM 7 FEBRUARY TO 22 APRIL.
2. THESE VESSELS ARE CLEARLY INFRINGING INTERNATIONAL AND DOMESTIC GIBRALTAR LAW TO THE EXTENT THAT:
 - A. FISHING IS NOT REPEAT NOT A PREROGATIVE OF INNOCENT PASSAGE. IN ANY CASE, WE UNDERSTAND THE WATERS WITHIN THE MOLES ARE INLAND WATERS, NOT INTERNATIONAL SEA.
 - B. IT IS AN OFFENCE UNDER THE GIBRALTAR PORT ORDINANCE TO COME INTO GIBRALTAR WITHOUT PRODUCING TO THE CAPTAIN OF THE PORT SHIP'S PAPERS (PENALTY £500). THERE IS A FURTHER SPECIFIC DUTY UNDER THE PORT RULES TO REPORT TO THE CAPTAIN OF THE PORT (PENALTY £250).
 - C. IT IS AN OFFENCE NOT TO PROVIDE DETAILS TO A POLICE OFFICER OF THE SHIP AND ITS CREW (PENALTY £200).
 - D. IT IS AN OFFENCE AGAINST THE PORT RULES TO FISH IN ANY FAIRWAY OR APPROACH TO A BERTH (PENALTY £250).
3. IN ADMIRALTY WATERS WHICH FORM THE GREAT BULK OF THE HARBOUR ALL MOVEMENTS ARE SUBJECT TO THE CONTROL OF THE FLAG OFFICER WHO HAS POWERS TO PHYSICALLY MOVE BOATS NOT COMPLYING WITH HIS DIRECTIONS. VESSELS REQUIRE THE PERMISSION OF THE QUEEN'S HARBOUR MASTER. FISHING BY NET OR TRAWLING IN ADMIRALTY WATERS IS PROHIBITED WITHOUT THE PERMISSION OF THE QUEEN'S HARBOUR MASTER.
4. CHARTS OF THE GIBRALTAR HARBOUR AREA ARE MARKED WITH THE NOTE "MERCHANT VESSELS MUST NOT PASS EASTWARDS OF THE DETACHED OR SOUTH MOLES INTO THE HARBOUR WITHOUT THE PERMISSION OF THE QUEEN'S HARBOUR MASTER" (SEE CHART NO 144).
5. PORT WATERS ARE INCLUDED WITHIN ADMIRALTY WATERS. SUBJECT TO THE OVERALL CONTROL OF THE QUEEN'S HARBOUR MASTER, CAPTAIN OF THE PORT EXERCISES CONTROL OVER PRIVATE VESSELS PASSING THROUGH ADMIRALTY WATERS INTO PORT WATERS AND RULES AT (B) TO (D) APPLY TO PRIVATE VESSELS WITHIN ADMIRALTY WATERS.
6. ALL OF THE ABOVE OFFENCES ARE NOT IMMEDIATELY ARRESTABLE OFFENCES. THEY ARE SUBJECT TO THE SERVING OF SUMMONSES. THUS SUBJECT TO YOUR INSTRUCTIONS I WOULD PROPOSE THAT WE SHOULD PROCEED AS FOLLOWS:

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A. DELIVER WRITTEN WARNING IN SPANISH STATING 'YOU HAVE ENTERED (OR HAVE BEEN FISHING) IN BRITISH WATERS FOR WHICH YOU DO NOT HAVE PERMISSION. IF YOU DO THIS AGAIN YOU WILL RECEIVE A SUMMONS TO APPEAR IN THE GIBRALTAR COURT TO ANSWER CHARGES'.

B. ONCE STEP (A) HAS BEEN TAKEN BUT THEN NOT HEEDED SUMMONSES WOULD BE ISSUED AS A PRELIMINARY TO COURT ACTION (WHICH IN THE MAGISTRATES COURT MIGHT TAKE TWO WEEKS).

C. IF A PENALTY IS IMPOSED BY THE COURT AND IS NOT PAID AND AS A RESULT A WARRANT FOR ARREST IS ISSUED IT WOULD BE MADE WHEN THE VESSEL IS NEXT SIGHTED IN OUR WATERS. THE CAPTAIN OF THE PORT WOULD ALSO HAVE POWER TO SEIZE A VESSEL AGAINST PAYMENT OF THE FINE.

7. IF THESE MEASURES PROVE INEFFECTIVE WE WOULD THEN NEED TO CONSIDER PHYSICAL MEANS OF RESTRAINT EG BOOMS AND GRAPNELS BUT I WOULD NOT REPEAT NOT WISH TO MOVE IN THAT DIRECTION FOR THE MOMENT.

8. SPECIAL FURTHER PROVISIONS EXIST FOR THE CONTROL OF ADMIRALTY WATERS IN LINE DRAWN EASTWARDS FROM THE NORTHERN TIP OF THE SOUTH MOLE TO ORDNANCE WHARF. IT IS AN ARRESTABLE OFFENCE TO ENTER OR LOITER IN THE VICINITY OF THIS AREA WITHOUT THE WRITTEN PERMISSION OF

THE GOVERNOR OR ANY OTHER LAWFUL AUTHORITY (EG FOGIB OR HIS DELEGATE) NO WARRANT IS REQUIRED TO ARREST. THE OFFENCE EXTENDS TO LOITERING IN THE VICINITY OF SOUTH MOLE GENERALLY, NO 3 JETTY, AND THE EAST SIDE OF COALING ISLAND. WE WOULD IN THE EVENT OF CONTRAVENTIONS OF THESE PROVISIONS PROPOSE TO PROCEED FIRST AS IN 6(A) AND SUBSEQUENTLY IF NECESSARY BY ARREST. FOR SECURITY REASONS IT MAY BE NECESSARY ALSO, AT ONCE, TO EXERCISE IN EVERY CASE THE POWERS OF PHYSICAL REMOVAL AT 3.

9. I CONSIDER IT IMPORTANT THAT LAW BE UPHELD BUT ENFORCEMENT AUTHORITIES WILL HOLD THEIR HAND UNTIL 1800H TUESDAY 26 APRIL TO GIVE SPANIARDS CHANCE TO ADVISE NATIONALS.

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