



Fourth Report  
from the  
**Foreign Affairs Committee**

Session 1998–99

**Gibraltar**

Response of the Secretary of State for  
Foreign and Commonwealth Affairs

*Presented to Parliament  
by the Secretary of State for Foreign and Commonwealth Affairs  
by Command of Her Majesty  
October 1999*

# FOURTH REPORT FROM THE FOREIGN AFFAIRS COMMITTEE

## SESSION 1998–99

### GIBRALTAR

#### RESPONSE OF THE SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS

##### *Introduction*

1. The Government welcome the interest the Foreign Affairs Committee have taken in the problems faced by Gibraltar and are grateful to the Committee for their thorough and carefully considered report. While the Government do not agree with every recommendation or judgement made by the Committee, the Government believe that the report as a whole is pertinent, and draws usefully on the wide range of views canvassed during the inquiry.

2. The Government will continue to stand by their commitments and carry out their obligations to the people of Gibraltar. The UK is strongly committed to its relationship with Gibraltar and its people. The Government also have a strong interest in developing the UK's, and indeed Gibraltar's, relationship with Spain. We believe Gibraltar stands to benefit from such a process. It is, however, clear that the quality of those relationships will equally be influenced by Spanish policy and action towards Gibraltar.

3. We welcome the reduction in tension over Gibraltar which has been apparent since the inaugural UK/Spain summit in April 1999. We are also working hard with our EU partners to address and resolve Gibraltar-related questions raised by Spain within the EU. Like the Committee, we believe that issues related to Gibraltar should be discussed with Spain calmly and dispassionately. Trust, co-operation and dialogue remain the basis for progress towards improved relations between Spain and Gibraltar. HM Government continue to work hard to play their part in ensuring such progress can be made.

4. The report highlights a number of important issues which will preoccupy UK, Spain and Gibraltar for the remainder of this year. UK participation in part of the Schengen acquis, the question of Gibraltar's competent authorities within the EU, the airport, constitutional reform, and the development of Gibraltar's financial services sector are prominent among them. In all of these areas the Government are keen for constructive dialogue and co-operation. The Committee's report lays a useful foundation for that process.

##### *Recommendations*

5. As is customary, the Government would like to respond to each of the Committee's recommendations.

**(1) We conclude that the present system of border controls is unacceptable and wholly inappropriate between two parts of the EU. The Spanish authorities should immediately normalise the border regime which they impose. In any event, we recommend that the British Government should not hesitate to invoke the procedures allowed under the Treaty of Amsterdam to ensure that the right of free movement of EU citizens, whether Gibraltarians or others, is respected. If the Commission is unwilling to take swift action itself, the British Government should invoke Article 227 against Spain. (Paragraph 32)**

The Government accept the Committee's analysis of the situation at the border between Gibraltar and Spain. We continue to press the Spanish authorities to lift the restrictions they are imposing at the border. We are in regular contact with the European Commission, encouraging it to take effective action under the EC Treaty to ensure that Spain carries out its obligation to enable EU citizens to exercise their right of free movement within the European Union.

We note the Committee's recommendation that the Government take action under Article 227 of the EC Treaty should the Commission itself fail to take swift action. Ministers have already raised the issue of border delays with the incoming Commission, and will keep the situation under review.

**(2) We believe that if Spain were to act in such an unwarranted manner [as to ban civil overflights of Spain by aircraft travelling to or from Gibraltar], proportionate reciprocal measures should be considered against Spanish aviation interests. (Paragraph 39)**

As we have said, the imposition of an overflight ban against an EU partner would be unprecedented and inconsistent with the provisions of international conventions to which both the UK and Spain are party. In the event of such a ban being imposed, the Government would consider all political and legal means available to have it lifted.

**(3) We conclude that there is great potential in the development of the airport in a way which would assist both Spain and Gibraltar. This is an area where real progress can be made. We recommend that the British Government take advantage of its ownership of the airport to facilitate a new agreement for the joint use of Gibraltar airport. (Paragraph 41)**

The Government agree with the Committee on the potential for development of Gibraltar airport. We would welcome a fresh look at the issue and will work to encourage an agreement acceptable to all sides for future joint use of the airport.

**(4) We recommend that the Government give the fullest legal support to any Gibraltar (or other non-Spanish) operator who wishes to re-establish a ferry crossing between Gibraltar and Spain. (Paragraph 42)**

The Government would welcome the re-establishment of ferry links between Gibraltar and Spain and encourage any responsible initiative to do so. Should such an initiative be frustrated in a manner apparently incompatible with EC law, all available legal avenues for redress would be explored.

**(5) We recommend that the two Governments [of the United Kingdom and of Gibraltar] should ensure that funding is made available for at least one fast patrol boat for the Royal Gibraltar Police. (Paragraph 49)**

We are considering the possibility of joint funding for this project and will make a decision when we have assessed the report of an expert team which visited Gibraltar on 20–22 October 1999 to discuss the operational need for, and specification of, such a vessel.

**(6) We recommend that the Foreign and Commonwealth Office continue to press for the early adoption of legislation in Gibraltar to bring into effect the Fourth and Seventh EC Company Law Directives. (Paragraph 55)**

The Government shared the Committee's view of the importance of the early implementation of the Fourth and Seventh Company Law Directives in Gibraltar and made this clear to the Government of Gibraltar. We are pleased to inform the Committee that the necessary primary legislation was adopted by the Gibraltar House of Assembly on 15 October 1999. We have notified the European Commission. The Government of Gibraltar have undertaken to publish corresponding secondary legislation as soon as possible.

**(7) We conclude that the series of allegations which Spain makes against Gibraltar appear almost wholly to be without substance. In many cases, it is not just the Government of Gibraltar but the British Government as well which is traduced. It is deeply regrettable that allegations are made that cannot be sustained by a basis in fact. If concrete evidence of wrongdoing were produced, the British Government should act promptly to deal with the problem. But so long as allegations are unsubstantiated, the British Government should continue to rebut them promptly and decisively. (Paragraph 57)**

The Government are committed to the fight against crime. Together with the Government of Gibraltar, we will take action in response to any concrete evidence of wrongdoing, from whatever source. As the Committee recommends, we will continue to rebut unsubstantiated allegations, as we have repeatedly done both to the Spanish authorities and in the Spanish media.

**(8) We believe that the message that Gibraltar does comply with its EU obligations should be emphasised by the United Kingdom Government to its EU partners. We further recommend that the British Government request that the European Commission, as part of its regular review of levels of compliance in EU Member States, assess the compliance of Gibraltar with relevant EU obligations and publish its findings. (Paragraph 62)**

The Government share the Committee's view on emphasizing to EU partners the extent to which Gibraltar complies with EU obligations. We will continue to work to ensure that EU partners are well informed about Gibraltar issues. We note the Committee's further recommendation that the Government request the European Commission to assess the compliance of Gibraltar with EU obligations and to publish its findings. The Commission already monitors compliance with EC law in Gibraltar as part of its monitoring of the UK as a whole. This is, in our view, sufficient. We do not believe it necessary, nor do we think it would be appropriate, to single out Gibraltar for separate scrutiny.

**(9) We recommend that the British Government should press the European Commission strongly for early action and speedy resolution of the issues involving non-recognition of driving licences, passports and identity cards. (Paragraph 66)**

The European Commission have confirmed to us and, we understand, to the Spanish authorities, that Spain cannot refuse to recognise Gibraltar-issued driving licences. A question has been raised regarding their technical compatibility with EC Directives, and we are in discussion with the Commission about this. On Gibraltar-issued passports, while Spain has in the past queried their status, our position remains that they conform with the provisions of the 1981 Inter-governmental Resolution on Common Format Passports. In the case of Gibraltar-issued identity cards, we have drawn Spain's refusal to recognise these documents to the attention of the European Commission. The relevant Directorate-General of the Commission has accepted the UK's request for recognition of Gibraltar identity cards and called for other Member States to accept their use. However, no infraction proceedings have yet been initiated.

**(10) We recommend that the Government take all steps open to it under the Treaties to ensure that a determination is made by the European Commission with no further delay in the case of telephone operations. (Paragraph 67)**

The Government share the Committee's view that the European Commission should make a determination in the case of telephone operations without further delay. We have urged the Commission to do so and continue to take an active interest in the case.

**(11) We recommend that the British Government take speedy and practical steps to ensure that Gibraltarian financial and other interests are not adversely affected by the non-recognition of Gibraltarian competent authorities. (Paragraph 71)**

We have worked hard to ensure that Gibraltarian financial and other interests are affected as little as possible by the dispute over the role of Gibraltar competent authorities within the EU. We are seeking to resolve the question of Gibraltar competent authorities in new EU instruments. We have also lobbied the Commission and Ministries of Foreign Affairs and financial regulators in EU Member States over financial services issues.

We have also made progress, in co-operation with the Government of Gibraltar, towards agreeing the principles of a post box mechanism to facilitate communication between Gibraltar competent authorities and their opposite numbers elsewhere in the EU. We hope that such a system will lead to the resolution of a range of competent authority problems in the EU, including those affecting the financial services sector.

**(12) We recommend that a clear message be given to Spain that any attempt to block Gibraltarian entry into Schengen runs counter to the letter and spirit of the Declaration made at the time of the Amsterdam Treaty. (Paragraph 83)**

The Government will continue to remind all Schengen states, including Spain, of the Declaration made at the time of Amsterdam, and that we expect them to stand by that commitment. The UK's formal application to participate in parts of the Schengen acquis includes territorial application to Gibraltar where this is appropriate.

The Government would like to take the opportunity of their response to the Committee's report to correct an inaccuracy in the evidence given to Committee by the former Minister of State in answering questions about Schengen and the circumstances under which qualified majority voting (QMV) procedures would apply (page 27 paragraph 114 and page 28 paragraphs 121 and 123 of the Fourth Report HC 366) during the evidence session on 30 March 1999. The Government regret that this inaccuracy was not corrected before the report was published.

While the Minister of State correctly stated that opting in to existing measures of the Schengen acquis would need to be agreed by unanimity, she gave the impression that opting in to future measures building on the acquis would be subject to QMV. In fact the position is more favourable to the UK, since other Member States do not have a right to prevent the UK taking part in future measures.

Under Article 5 of the Protocol integrating the Schengen acquis into the framework of the EU the UK has the right to participate in future measures building on the acquis, by notifying the President of the Council in writing within a reasonable period of time.

It is also useful to point out that new measures brought forward under the new Title IV of the EC Treaty, except those concerning the common visa list or uniform visa format, will be subject to unanimity for the next five years. (This position will be reviewed at the end of the five years and a decision taken on whether to extend the use of QMV in this area.)

Other Member States do have the right to adopt a measure under the new Title IV without the participation of the UK, even where the UK has notified its intention to participate, if, after a reasonable period of time, such a measure cannot be adopted with the UK taking part.

New measures under Title VI of the Treaty on European Union will continue to be subject to unanimity, except for some measures implementing Council decisions.

The only point where QMV will be used on Justice and Home Affairs matters, at least for the next five years, is for Council measures on a common visa list or a uniform visa format and for some measures implementing third pillar Council decisions.

**(13) We recommend that the Government make it clear that they will ensure that all British citizens resident in Gibraltar will be able to vote in the 2004 European Parliament elections. (Paragraph 92)**

The Government have consistently made clear their intention to comply with the judgment of the European Court of Human Rights and ensure that the people of Gibraltar gain the right to vote in European Parliamentary elections. We have alerted EU partners to the Court's judgment and tabled a proposal on 16 March 1999 which is currently under discussion in Brussels. The Government are working hard to ensure that this extension of the franchise to Gibraltar is achieved before the 2004 European elections.

**(14) Our general conclusion is that Gibraltar has a right to be treated in the same way as any part of the United Kingdom so far as the benefits of EU membership are concerned. We recommend that the Government continue to press with determination for the fullest protection of Gibraltarians' rights as citizens of the EU. (Paragraph 93)**

The Government recognise that Gibraltar has rights, as well as responsibilities, within the EU. We are determined to see that these rights are upheld. As our other responses make clear, the Government have pressed the Commission, as guardian of the Treaties, to take action on a number of issues where we believe that the rights of Gibraltarians have been infringed. We will continue to do so.

**(15) We recommend that the Government exert maximum pressure for the removal of all remaining restrictions which apply to Gibraltar in the NATO context. (Paragraph 95)**

The Government continue to believe that the Spanish imposition of restrictions intended to hamper NATO military activity in and around Gibraltar is an inappropriate approach for a NATO ally. The Government intend to continue bilateral discussions with Spain aimed at maintaining progress towards the lifting of all restrictions, particularly in the light of Spain's recent joining of the NATO Military Structure. A move towards normalisation of the relationship between two NATO allies was demonstrated recently when Spain took part for the first time in a NATO Communications exercise in which Gibraltar also participated.

**(16) We recommend that the Royal Navy should be tasked to support the Royal Gibraltar Police in their duties of fisheries protection and the interdiction of smuggling. (Paragraph 97)**

Gibraltar has no commercial fisheries and therefore no requirement for fisheries protection. A primary task of the Gibraltar Squadron is to maintain and assert the security and integrity of British territorial waters around Gibraltar. The Squadron is also tasked to provide military aid, in the appropriate circumstances, to the civil authorities. In practice, this includes regular operational co-operation with the Marine Section of the Royal Gibraltar Police, Gibraltar Services Police and HM Customs and Excise in dealing with, for example, smuggling activity.

**(17) We believe that the Prime Minister should consider meeting Gibraltar's Chief Minister, at least before any bilateral meeting with the Spanish Prime Minister at which Gibraltar is to be discussed. (Paragraph 104)**

The Chief Minister has frequent opportunities to discuss matters of interest to the Government of Gibraltar and the concerns of the people of Gibraltar with Ministers. In the course of this year he met Ministers on several occasions. The Prime Minister would receive full briefing before any discussion of Gibraltar with his Spanish counterpart. The possibility of a meeting between the Chief Minister and the Foreign Secretary or the Prime Minister before such discussions will be kept under review.

**(18) As far as Parliament is concerned, we believe that the Royal Commission at present considering the future of the House of Lords might consider whether Gibraltar should be represented in that House, and we shall draw this view to the attention of the Commission. (Paragraph 104)**

We note that the Committee has drawn the attention of the Royal Commission considering the future of the House of Lords to the question of whether Gibraltar should be represented in that House. We await the result of the Commission's consideration.

**(19) The Committee believes that, while the potential Spanish reaction to any constitutional change compatible with the Treaty of Utrecht is a consideration which British and Gibraltarian Governments will wish to bear in mind, there can be no question of a Spanish veto on constitutional developments in Gibraltar. (Paragraph 106)**

The Government agree.

**(20) We recommend that Señor Matutes's proposals be rejected, and that the Brussels Process be replaced by a new phase in British/Spanish relations over Gibraltar. (Paragraph 119)**

**(21) We recommend a new process of regular dialogue on those many other areas where agreement and co-operation could yield substantial benefits to Gibraltarians and Spanish people alike. (Paragraph 120)**

**(22) We recommend that the new process of dialogue should put issues of sovereignty on hold, and concentrate on exploring areas of co-operation. The full participation, on the United Kingdom side, of the Government of Gibraltar would be essential. (Paragraph 123)**

The Brussels Process was launched by mutual agreement between Spain and the previous administration. Having inherited it, we have honoured that commitment. Any decision to terminate would require discussion with Spain.

There is no realistic prospect of the present Government of Spain agreeing to exclude sovereignty from dialogue on Gibraltar. The Government will reply to Señor Matutes's proposals at the next meeting of the Brussels Process, but when he tabled them the Foreign Secretary reiterated the British Government's commitment to respect the wishes of the people of Gibraltar as enshrined in the preamble to the 1969 Constitution.

The Government agree with the Committee that co-operation could yield substantial benefits to the people of both Gibraltar and Spain and will continue to seek to engage both the Spanish and Gibraltar governments on dialogue on practical co-operation.

**(23) We conclude that there have been occasions in the past when the British defence of Gibraltarian interests has not been as robust as it should have been. Of all our overseas territories, Gibraltar is in the unique position of having to conform to almost all EU regulations and directives. This means that the British Government have a special duty of care towards Gibraltar in the European Union, and places extra responsibilities upon United Kingdom Ministers to uphold the interests of Gibraltar. We urge Her Majesty's Government both to recognise and to act in full accordance with these responsibilities. (Paragraph 125)**

The Committee does not cite any occasions when the defence of Gibraltar's interests has not been robust, and from the reference to the past it is not clear whether they are referring to the present administration. This Government would reject the claim that it has ever been less than robust in its defence of the interests of the people of Gibraltar, and is encouraged that after a full and diligent inquiry the Committee does not produce such an example.



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