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DEFENCE AND OVERSEA POLICY COMMITTEE

SUB-COMMITTEE ON THE SOUTH ATLANTIC

AND THE FALKLAND ISLANDS

FALKLAND ISLANDS: FUTURE ADMINISTRATION

Memorandum by the Secretary of State for Foreign and
Commonwealth Affairs

1. I attach two notes by FCO officials, one about greater self-government for the Falklands and the other about the question of the Governor's return.

Greater Self-Government

2. In our Falklands policy, we have laid great emphasis on self-determination and democracy. We could demonstrate our seriousness in this by giving the islanders a greater say in their own affairs. There are also international reasons for not returning to the precise status quo before the Argentine invasion. The Americans and our European partners would certainly prefer us to make some changes which would reduce the appearance of a colonial administration. So, I am sure, would the majority of the members of the United Nations.

SECRET

3. The note by officials draws attention to the tiny population of the Falklands and the scarcity of people with the expertise or inclination for administration. The note therefore suggests a type of self-government which takes account of these factors. Basically it is for a single elected Council supported by a Chief Executive and a staff of officials, with a British Special Commissioner having responsibility for defence and external affairs and during a transitional period for some internal matters. The Special Commissioner would have the powers of the present Governor with respect to the Dependencies and the British Antarctic Territory.

4. The ideas in the note are intended to provide a focus for discussion in OD(SA). If proposals on these lines are agreed by us, they would then need to be discussed with the islanders themselves after we have repossessed the islands. We might also wish to tell the Americans of our plans.

The Return of the Governor

5. It will take some time to put new administrative arrangements in place. If the Governor returned to the Falklands shortly after we had repossessed them, this could give the impression that we did not really intend to alter the colonial administration significantly.

6. On the other hand, there are domestic political reasons for the Governor to return. There are also practical considerations which point the same way: his expertise, and his reputation among the islanders, could be very helpful in the early stages of reconstruction, when the islanders will need reassurance.

SECRET

7. My recommendation is that the Governor should return, but that we should place firmly on record at the outset that he is returning for a short stated period of a few weeks, to help with rehabilitation and the immediate analysis of what needs to be done by way of reconstruction and development. Subject to ODSA's views on self-government, we could make clear at the same time not only that we should be consulting the islanders about major moves towards a greater degree of self-government but also that we have in mind the early appointment of a Special Commissioner.

FP

FOREIGN AND COMMONWEALTH OFFICE

10 JUNE 1982

SECRET

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FALKLAND ISLANDS : GREATER SELF-GOVERNMENT

Note by Foreign and Commonwealth Office

1. This paper describes possible steps to increase the degree of self-government of the Falkland Islanders; some aspects of this were examined briefly in the Foreign and Commonwealth Secretary's memorandum OD(SA) (82)56 of 20 May ('The Independence Option'). For purposes of comparison Annex A contains a list of some small territories (including US territories) and their forms of government and relationship with the UK or other states. The population of each of these territories is considerably larger than that of the Falkland Islands and in the case of UK territories self-government was instituted as a step towards independence. However, full internal self-government would be perfectly compatible with continuing British sovereignty. Bermuda has enjoyed virtually full internal self-government since 1968 but shows no sign of wanting independence.

2. Progress towards greater self-government in the Falkland Islands would need to take account of the following considerations:

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a) The constitutional arrangements would need to be not only demonstrably democratic and in accordance with the wishes of the Islanders but also practical and designed to fit the special needs, capabilities and limitations of a very small community.

b) New arrangements should not foreclose further constitutional development by pre-judging such issues as independence or modification of present exclusive UK sovereignty by the involvement of third States.

c) It should be capable of fairly early implementation and be sufficiently distinctive to signal a clear change from the status quo ante the invasion.

3. If the established pattern for constitutional development in dependent territories were followed, the two chambers (Executive Council and Legislative Council) would be expanded with the eventual replacement of nominated or ex-officio members by elected ones. Elected members would gradually take over the responsibilities of government and become Ministers, and the Governor's powers and his right to overrule the elected councils would become increasingly restricted.

4. The difficulties of applying this process to the Falkland Islands lie in the size and characteristics of the population. The total electorate in 1981 numbered some 1034 and, while the hope and intention would be to increase the population in time, there are economic and geographical features which limit

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the extent to which this is likely to be possible. It would therefore be difficult significantly to expand the Legislative Council. There would likewise be a problem in finding sufficient candidates of high calibre to stand for election; of the 1034 electors, 180 permanent Government servants and an unknown number of hourly-paid Government workers would be ineligible to stand unless exceptions could be made. The Islanders are mainly semi-skilled and unskilled workers, who have not in the past shown much inclination for participation in government; and the low population density with poor communications also severely restricts the ability of Islanders to take on administrative tasks. Farm owners and managers are for the most part unable to spare the time away in Stanley and travelling can be difficult.

5. What may therefore be required is a rather simpler arrangement which preserves the principle of democratic control without burdening the Islanders with the need to discharge specific responsibilities for which they lack the necessary qualities and inclination. Such an arrangement might look as follows.

(a) Special UK Commissioner

6. The Governor is replaced by a Special Commissioner with responsibility for external affairs and defence. Responsibility for other matters passes to a single elected Council (see below). However, during a transitional phase the

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Special Commissioner could retain responsibility for other fields, such as internal security, and development matters, and could retain certain discretionary powers to override the decisions of the Council subject to strict conditions.

(b) Falkland Islands' Council

7. This single body replaces the present Legislative and Executive Councils. It becomes a wholly elected body with a Chairman whom it elects from among its members. He is in effect the Chief Minister and the Chief Executive (see below) reports to him when the Council is not in session. The Council is also the Legislature. The Council has to be large enough to be adequately representative but small enough to be reasonably easily convened and serviced and not overtax the human resources of the Islands.

(c) Chief Executive

8. The practical business of administration is delegated to a Chief Executive supported by a small staff of officials. The Chief Executive does not have a vote in Council though he attends and takes part in its discussions. He and his staff can be expatriates or Falkland Islanders, as the Council thinks fit. He receives his instructions, usually in the form of broad policy guidelines, from the Council.

9. Constitutional arrangements along these lines would

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satisfy the criteria in paragraph 2 above. Their introduction would of course require new constitutional instruments. One problem is that similar (but not identical) arrangements with one Council instead of two have been tried in the past for the Solomon Islands and the Seychelles. After a trial period they proved unsatisfactory and were rejected by the inhabitants themselves. (A summary of the arrangements is set out in Annex B.) However, the main reason why they did not work was that, although they gave the appearance of more democratic control, the reality was otherwise. The arrangements were also far too sophisticated and elaborate. The proposals in the present Note are designed to overcome the difficulties which arose in the case of the Solomon Islands and the Seychelles by simplifying the rôle of the Council.

10. In such schemes one problem is to devise a workable division of responsibilities. This is especially important in executive matters; legislation does not usually prove to be such a problem. The system of Committees in the Seychelles (see Annex B) did not work well and was soon abandoned in favour of the traditional system of Governor plus two Councils. A Committee arrangement would be most unlikely to work any better in the Falklands, given the problems of transport and the inhabitants' lack of interest in taking part in government. Under the arrangements proposed the Chief Executive would in practice have to be authorised to carry out the decisions of the Council and act in the name of the Council between meetings in consultation with the Chairman of

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the Council. This could reduce the risk of the Council becoming a rubber stamp for the Chief Executive. Even so there must remain a risk that instead of the new arrangements significantly increasing the Islanders' involvement in government they will either have less effective power than before or the business of government will be slowed down.

11. Care would also be needed in defining the exact relationship between the Council and the Special Commissioner. We should try to avoid getting into the situation which arose in the West Indies Associated States where HMG were left with international responsibility for defence and external affairs but without power over any internal matters (security in particular). Responsibility without power must be avoided at all costs. Thus, not only must the Special Commissioner have in the transitional phase veto powers over legislation which could affect his responsibilities for defence or external affairs but, at least initially, some degree of control over executive decisions as well. This reserved power could be modified in the light of experience.

12. Falklands legislation could either be enacted in the normal way by the Special Commissioner with the advice and consent of the Council or by the Council collectively. There is no precedent for the latter but it would have less of a colonial appearance. In this case the Chairman of the Council could sign Bills and provision would have to be made so that laws which the Special Commissioner considered to affect

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defence or external affairs or any other reserved matter would not come into operation until he had formally consented to them on behalf of Her Majesty.

13. Under the arrangements proposed the Special Commissioner would continue to administer the Dependencies directly and would also be High Commissioner for the British Antarctic Territory. The advantage of the title of Special Commissioner is that it does not have a colonial ring about it. It usefully implies a more flexible system which is able to evolve towards whatever degree of self-government seems most appropriate in the light of experience. This may make it easier for us to secure help from other countries in providing for the security of the Islands in the longer term.

Policy Recommendations

14. There is scope for the Falkland Islands to move fairly swiftly towards virtually full internal self-government. The early steps after repossession of the Islands might be:

- a) to declare our intention, subject to the wishes of the Islanders, to move towards greater internal self-government;
- b) to consult the Islanders as soon as is convenient about the desirability and feasibility of introducing the arrangements described above;

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c) to inform the United States of our plans.

Foreign and Commonwealth Office

9 June 1982

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ANNEX A

SMALL STATES AND FORMS OF GOVERNMENT

1. Small independent states (not members of the UN) closely linked to other countries:

COUNTRY	POPULATION	FORM OF GOVERNMENT
Andorra	34,000	Small co-principality formed by Treaty in 1273. The sovereignty of Andorra is vested in two co-Princes, the French President and the Spanish Bishop of Urgel. Each co-Prince has a permanent delegate who exercises responsibility for administrative law and order. France claims the right to represent Andorra in external affairs although this is occasionally contested by Spain. France applies its Treaties to Andorra.
Liechtenstein	26,000	Constitutional monarchy ruled by hereditary Princes of the House of Liechtenstein. Since 1919 Switzerland has represented the principality abroad. Under the terms of an exchange of letters between Switzerland and Liechtenstein in October 1919

/Switzerland

COUNTRY

POPULATION

FORM OF GOVERNMENT

Switzerland represents the principality diplomatically only at the expressed request of Liechtenstein. Since 1921 Liechtenstein has had Swiss currency and since 1923 has been united with Switzerland in a customs union.

Monaco

26,000

Sovereign principality with intimate treaty links with France. Monaco looks after its own foreign relations except that under the terms of the Treaty of 17 July 1918 it cannot conclude conventions and treaties without the agreement of France. Has been united with France in a customs union since May 1963. The provisions of the Treaty of Rome are extended to Monaco by bilateral conventions with France.

San Marino

21,000

Sovereign state with intimate treaty links with Italy. San Marino has had a customs union with Italy since 1862, the present arrangement dating from 1939. Its independence is guaranteed by a treaty with Italy of April 1953. San Marino looks after its own foreign relations including adherence to treaties. It enjoys de facto benefits under the Treaty of Rome because of its customs union with Italy.

/Brunei

COUNTRY

POPULATION

FORM OF GOVERNMENT

Brunei

213,000

An independent Sultanate in treaty relationship with UK. Under the treaty of friendship and cooperation signed by the governments of the UK and Brunei in January 1979, Brunei will become fully independent at the end of 1983. Under the treaty of 1959, as amended in 1971, HMG is responsible for external affairs and has a consultative commitment over defence. HMG ceased to have consultative role in internal affairs in 1971. Brunei is ruled by Sultan with appointed Chief Minister responsible to him for exercise of Executive authority.

OVERSEAS DEPENDENT TERRITORIES OF THE UNITED KINGDOM

COUNTRY	POPULATION	FORM OF GOVERNMENT
Hong Kong	5,068,000	<p>Hong Kong is administered under the Letters Patent and the Royal Instructions by a Governor, an Executive Council and a Legislative Council. A Governor, who represents the Crown has the power to make laws called 'ordinances' for the 'peace and order of good government of Hong Kong'. The Crown reserves the power to disallow ordinances enacted in Hong Kong and to legislate for the territory by Order of Council: in practice no post-war British Government has exercised this power.</p>
Gibraltar	30,000	<p>The 1969 constitution established a House of Assembly consisting of a Speaker, 15 elected and 2 ex-officio members, and formalised devolution, local ministers with responsibility for certain domestic matters. The Governor retains direct responsibility for all matters not specifically allocated to Ministers, especially defence, external affairs and internal security. He may intervene in the conduct of domestic affairs in support of this responsibility or in the interest of maintaining financial stability. On domestic matters delegated to ministers he must normally act on the advice of the Council of Ministers.</p>

COUNTRY

POPULATION

FORM OF GOVERNMENT

St Kitts-Nevis

44,000

In 1967, colonial status replaced by 'association' with Britain giving the Islands full internal self-government while Britain remain responsible for defence and foreign affairs. There is an elected House of Assembly and a Cabinet system of government.

In other dependent territories, the Governor retains responsibility for external affairs, defence, internal security and certain other matters. In domestic matters he acts on the advice of an Executive Council which normally consists of ex-officio members and ministers appointed from the elected members of the Legislative Council. There is a Legislative Council consisting partly of elected and partly of nominated members. This system applies in the following dependent territories: Anguilla, 7,500; Bermuda, 68,000; British Virgin Islands, 12,000; St Helena and Dependencies, 6,000; Turks and Caicos Islands, 7,000.

DEPENDENT TERRITORIES OF THE UNITED STATES

1. None of the American territories have a protecting power other than the US.

The Commonwealth of Puerto Rico

2. Following a referendum in 1952 Puerto Rico became a 'Commonwealth in free association' with the US. Puerto Rico, with a population of 3.2 million, enjoys full self-government including the election of its Governor and other officials, but the US retains responsibility for the conduct of foreign relations. In 1953 the UN General Assembly recognised that the Puerto Ricans had effectively exercised their right to self-determination when choosing their new constitutional and international status but since 1960 this has been frequently challenged in the UN Special Committee on decolonisation by Cuba and others.

Trust Territory of the Pacific Islands

3. The United States has administered the Trust territory of the Pacific Islands since 1947 on behalf of the United Nations Trusteeship Council. The Trust territory, with a population of 140,000, consists of four entities - the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Marshall Islands and the Federated States of Micronesia. In 1972 the Northern Mariana Islands negotiated a compact of free association with the US, which was approved by a referendum in 1975 although they remain de jure part of the Trust territory until the Trusteeship arrangement is terminated. The Reagan Administration, which has been reviewing its policy towards the Trust territory, has reaffirmed that it will terminate the UN Trusteeship arrangement as quickly as possible after negotiating compacts of free association with the territory's other three entities. It plans to allow the Micronesian governments full internal self-government, substantial authority in foreign affairs and a guarantee of American financial assistance for at least 15 years. Responsibility for defence would remain vested in the United States for at least this period. The US has undertaken to submit the compacts of free association to a referendum in each of the territories before requesting termination of the UN Trusteeship arrangement. The approval of the UN Security Council will also be required. The main US objective is the continued exclusive use of the military facilities on the Islands and strategic denial of the region to hostile forces.

Unincorporated Territories

4. Guam, with a population of 102,000 and the largest of the Mariana Islands, is not part of the Trust territory of the Pacific Islands, but is an unincorporated territory of the United States, ie. one to which the US constitution has not been fully extended. Executive powers are vested in an elected Governor, an office for which elections were first held in 1970. There is a unicameral legislature with powers to pass measures dealing with local matters including taxation and fiscal appropriations. The US Virgin Islands with a population of 95,000 and American Samoa, with a population of 32,000 are also unincorporated territories of the United States administered under the Department of Interior. Both have elected Governors and elected legislatures with limited powers. Guam and the Virgin Islands, like Puerto Rico, return one non-voting delegate each to the US House of Representatives. The inhabitants of Guam and the US Virgin Islands (but not of American Samoa) are full US citizens.

ANNEX B

SOLOMONS AND SEYCHELLES PRECEDENTS

The nearest precedents in British Colonial experience are the Seychelles Order 1967 (S.I. 1967 p. 5423) and the British Solomon Islands Order 1970 (S.I. 1970 p. 1607). The Solomon Islands Order (which was modelled on the other one) provided for a single 'Governing Council' composed of the High Commissioner (ie. Governor), 3 ex-officio members, up to 6 public service members and 17 elected members. Legislation was made by the High Commissioner with the advice and consent of the Council. Executive power was vested in the High Commissioner who did not have to consult the Council on defence, external affairs, internal security, the police or public service matters. Where he was obliged to consult them he was not obliged to act on their advice. However, the Order provided for there to be a Finance Committee of the Council and such other Committees as the High Commissioner might decide. Each Committee had an elected majority. The High Commissioner could give a Committee responsibility for the conduct of certain executive matters or the exercise of certain statutory functions. The Committees were responsible to the Council. The Finance Secretary presided in the Finance Committee and the High Commissioner in the Council.

SECRET

FALKLAND ISLANDS : RETURN OF THE GOVERNOR

Note by Foreign and Commonwealth Office

1. At the OD(SA) Meeting on 2 June the Foreign and Commonwealth Secretary was invited to put forward proposals on the form which a restored British administration of the Falkland Islands might take.

Interim Arrangements

2. It has already been agreed that the Financial Secretary, Mr Rowlands, should be sworn in as officer administering the government on a temporary basis. This will be done by the Task Force Commander as soon as we have repossessed the Islands. This arrangement will serve for the immediate future. But we need to decide what the subsequent provisions should be; and Ministers will come under early pressure to make clear their intentions.

The Short Term

3. There are three options in the short term. We could constitute a 'military government', perhaps by appointing the Commander Land Forces as interim Governor. Since the task of clearing up after the battle will fall primarily on the armed

SECRET

forces, this course could have practical advantages in the immediate re-construction period. The main - and probably decisive - argument against is that Island and British public opinion would be critical of the replacement of Menendez by a British military Governor. Second, we could arrange for Mr Rowlands to be succeeded by a senior public figure. This would have presentational advantages; it would demonstrate that we were not committed to a full return to the status quo ante and that we were taking very seriously the post-hostilities situation. A senior public figure would be seen as enjoying direct access to Ministers and as symbolising their continuing concern with the Islands.

4. But public opinion here and in the Islands expects the present Governor, Mr Hunt, to return and could interpret a decision not to send him back either as demonstrating lack of confidence in his abilities or as a sign that we had already made up our minds on a different system of government for the Falklands.

The Longer Term

5. The return of Mr Hunt would cause a good deal of international criticism, which our European partners and the United States might join. It could be interpreted as evidence of our determination to return absolutely to the status quo ante. It would help to deflect this if, in announcing Mr Hunt's return, we stated that this was only for a short

SECRET

period. We therefore need to consider the idea already discussed at OD(SA) of appointing a more senior figure with a different title and broader responsibilities.

6. There would be three main advantages:

(i) to demonstrate to British public opinion the strength of HMG's commitment to our interests in the South Atlantic;

(ii) to enable our policy towards the area as a whole to be coordinated effectively; and

(iii) to demonstrate to international opinion (and to respond specifically to qualms expressed inter alia by Mr Haig and Sr Perez de Cuellar) that we are prepared to consider different systems of administration.

7. There would be difficulties. In the Islands and the UK there might be suspicions, however unfounded, that we were taking the first step towards moves affecting our sovereignty in the Islands and the Dependencies. Internationally, a change in the title and role of Governor would not by itself be regarded as sufficient evidence of the British Government's intention to move away from colonial traditions.

8. It should be possible to overcome these difficulties by careful presentation and handling. If the Governor's

SECRET

successor were someone of the right stature and experience, we should have little difficulty in demonstrating to public opinion here that the change held no implications for our commitment to the Islands and Dependencies. Internationally there should be a recognition that, by ending the title of Governor, we were lessening the colonial overtones. An announcement of major moves towards greater self-government could greatly reinforce this.

New Title

9. A new title should have the right ring to it but also should preferably avoid colonial associations. There are no exact precedents. The title of High Commissioner (although it has been used in the past in relation to dependent territories) might now be thought inappropriate in view of its connotations in the context of diplomatic representation between independent Commonwealth countries. Titles such as Resident Commissioner, Commissioner-General and Special Representative, which have in the past been used to meet special circumstances (see Annex A), also tend to convey that what is involved is primarily a diplomatic role; and that of Chief Administrator would be too limited. The best choice might be Special Commissioner.

Area of Jurisdiction

10. The present Governor is Governor of the Falkland Islands

and Dependencies and High Commissioner for the British Antarctic Territory (BAT). There would be great advantage in giving a Special Commissioner responsibility for the Dependencies and BAT, in addition to the responsibilities he would assume or be granted in relation to the Falkland Islands themselves. This would enable him to advise on the implications of policy for all our interests in the region. There might be drawbacks in continuing to associate the BAT with the Islands in this way, given that our sovereignty claims to the two areas have very different bases, but these should be outweighed by the ability to take an overview. On this basis, it might be better to avoid a title such as Special Commissioner for (or in) the South Atlantic, since this could be taken to imply a wider British claim than in fact exists. The most precise definition might be Special Commissioner for British Territories in the South Atlantic and Antarctica.

Role in the Falklands

11. The companion Note on greater self-government suggests the role that a Special Commissioner might have in a reformed administration. Until that was fully established, a Special Commissioner would devote much of his effort to the reconstruction and development of the economy. We need to take a view on whether, in fulfilling this role, we should deal with only one or both of the following aspects:

- (i) the encouragement of cooperation and investment from both British and international sources;
- (ii) the personal direction of the necessary development and other work.

It must be doubtful whether (i) would in itself provide sufficient substance. The immediate scope for investment in the Islands will be relatively limited : and private investors are likely to be cautious until they gain greater confidence in the future and security of the Islands. The scope for seeking development cooperation from other countries will also depend on the political background. Depending on the circumstances of our repossession and the subsequent attitude of Argentina, there may well be inhibitions in the countries of Latin America, which should in other circumstances be the natural source of support for the Islands. At the same time it will be essential for a Special Commissioner to have a first-hand knowledge of and to be directly involved in the practicalities of development in the Islands. A Special Commissioner should, therefore, combine both functions. He should also travel as necessary in the area, to Antarctica and Washington and to any other capitals where consultations would seem desirable.

12. The question then arises whether he should be based in London or Port Stanley. It would clearly be asking a lot of the appointee to be based permanently in the isolation of Port

SECRET

Stanley; indeed, he would not be able to fulfil the role we envisage for him if he were to be permanently resident in the Islands. But he would have to spend the first three or four months there in order to get a grip of reconstruction and to form a clear picture of how the economy could be developed. Thereafter, he would need to travel quite extensively, with the administration of the Islands (see paragraph 13 below) in the hands of the Chief Secretary or Chief Executive.

Administrative Functions

13. It will also be necessary to identify the administrative functions we should want a Special Commissioner resident in Port Stanley to perform pending administrative reform. There are two main alternatives: he should either:

(a) be accorded all the present functions and powers of the Governor, including direct responsibility for administration; or

(b) act, in relation to the Falkland Islands, in a supervisory capacity, with the day-to-day work of administration being carried out by an officer administering the government; in relation to the Dependencies, be accorded all the functions and powers of the Governor; and in relation to BAT, have the functions of the present High Commissioner.

SECRET

The latter seems marginally better. It is true that to have both a Special Commissioner and an officer administering the government would complicate the chain of command, particularly in relation to who should preside over the Executive Council pending administrative reform. It would also complicate arrangements for the administration of the Dependencies. But a separation of functions between a Special Commissioner and an officer administering the government would imply greater change and thus be preferable in the context of paragraph 6(iii) above. It might also make the job of Special Commissioner more attractive to a senior public figure. If this option were chosen, it would be possible, by suitable arrangements, to overcome the difficulties over the Executive Council. It would of course also require the closest liaison between the Special Commissioner and the officer administering the government. Whichever option were followed, the constitutional instruments relating to the Islands would have to be modified accordingly.

14. The Governor is of course simultaneously Commander in Chief of the Falkland Islands and Dependencies. There will be a continuing and substantial British military presence on the Islands during the period of reconstruction. It will be vital to avoid friction between the civilian administration and the military during this period. It is for consideration whether, in the circumstances, the senior military officer on the Islands should, during the period of reconstruction, be appointed Commander-in-Chief in place of the Governor or

SECRET

Special Commissioner. But it would seem preferable to avoid unnecessary constitutional change in the immediate aftermath of our repossession of the Islands. In practice, it should be possible to work out suitable arrangements for the division of powers and responsibilities between the civilian administration and the military.

15. If it is decided to make this appointment, Ministers will wish to discuss candidates. Lord Shackleton would be an obvious choice if he were prepared to take it on.

Foreign and Commonwealth Office

9 June 1982

SECRET