

ALQ 050/1 CONFIDENTIAL
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Mr Wilson Yes Brit 7
Absolutely infmt. You will
presumably be taking into
account in consideration of
indefinite opinions.
from

Mr Fearns ✓

CHIEFS OF STAFF MEETING: 4 APRIL

⑥

- I promised to provide a written note on the point raised by Mr Nott on 4 April which is recorded in paragraph 1(a) of Mr Wright's minute of that date.
- Argentina claims that Argentine sovereignty extends over the "..... sea adjacent to its territory for a distance of 200 nautical miles measured from the line of the lowest tide." By virtue of Argentina's claim to the Falkland Islands this purported extension of Argentine sovereignty would also, in the Argentine's view, extend to the sea adjacent to the Falkland Islands.
- It goes entirely without saying that we have never accepted the Argentine claim to a 200 mile territorial sea measured from the Argentine mainland, far less to a 200 mile territorial sea measured from the Falkland Islands.
- In the context of the exercise of our inherent right of self-defence in respect of the Falkland Islands, we would be entirely justified in ignoring the 200 mile territorial sea claimed by Argentina and measured from the Argentine mainland. In other words, any naval operations we may wish to engage in need not be constrained by respect for this claimed 200 mile territorial sea limit.
- We of course still adhere to the 3 mile limit of territorial waters, although it has been publicly announced in Parliament that the UK will shortly extend its limit of territorial waters to 12 miles. The draft Convention on the Law of the Sea incorporates the rule that the limit of the territorial sea may not exceed 12 miles (although it equally envisages the establishment of 200 mile exclusive economic zones). Against this background, and unless there were compelling and overriding operational reasons, it would be wise for us not to engage in operations further inshore than a limit of 12 miles from the Argentine mainland. Apart from the fact that the 12 mile limit is now generally accepted as being the outer limit of the territorial sea, there is the additional consideration that measures taken in exercise of the inherent right of self-defence must be proportionate to the threat of forcible action by another State or to the forcible action which has been taken. This being so, and in the absence of a formal acknowledgement that a state of war exists between the UK and Argentina, it would not, in my view, be within the limits of the proportionality principle for us, for example, to bombard Buenos Aires or other parts of the Argentine mainland. I assume that this is not the intention, but would wish, in any event, to consult the Attorney General if it were the intention to engage in any

/kind

kind of naval or military operations against the Argentine mainland.

Ian Sinclair
Ian Sinclair
Legal Adviser

5 April 1982

cc Private Secretary
PS/LPS
PS/Mr Luce
PS/PUS
Sir A Acland
Mr Wright
Mr Giffard
Mr Ure
Mr Gillmore
News Department
Defence Department
ERD
Mr Steel (Law Officers Department)

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6
See 7

ALQ 05011			
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Mr Fearn

CHIEFS OF STAFF MEETING: 4 April

1. It may be helpful if I record the main points of concern to us which arose at this morning's meeting of the Chiefs of Staff, at which the Secretary of State for Defence was in the Chair. Action is required on several of them.

a) Legal status of our relations with Argentina.

In response to a question from the Committee, I read out extracts from paragraph 5 of Sir Ian Sinclair's minute of 2 April on the legal status of our relations with Argentina, and the implications of Article 51 of the United Nations Charter. Mr Nott said that he would be grateful for a view from us on whether Article 51 would impede our right to enter within Argentine territorial waters or to engage in military action within them. I quoted Sir Ian Sinclair's view that the right to self-defence clearly comprehends any military or naval action which might be necessary to repel or expel any invading force, but it would be helpful to have Sir Ian Sinclair's advice on the point raised.

Spoke to Sir Sinclair
he would consider
advise us
4.30 meeting
today

b) South Africa.

There was some discussion about the possible use of Simonstown. Mr Nott pointed out that any South African involvement could create considerable Parliamentary and political difficulties, but asked for a view from the Chiefs of Staff. The Chief of Naval Staff said that, while fully understanding the political problems, he was bound to say that Simonstown would provide refuelling, dockyard and repair facilities of a sort which were simply not to be found elsewhere. I said that the only request so far put to the FCO was for advice on whether SS Canberra could refuel at Simonstown on return, and that we did not see why this could not be done at Capetown. I said that I was sure the Foreign and Commonwealth Secretary would wish strongly to endorse Mr Nott's view of the political difficulties, both domestic and external, which might be caused by South African involvement.

c) Action by other Departments.

There was some discussion about what action the Department of Trade might be taking against Argentine ships or airliners. Sir Frank Cooper said that he understood the Department of Trade were considering this, but without much urgency. Mr Nott said that his own view was that we should, for the time being, keep the airlines open, but expressed the hope that Departments (and in particular the Home Office) were taking action to control the

for Mr Baynes?

/entry

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entry of Argentine nationals, including press correspondents.
 Have we a view on this?

d) HMS Endurance

The Chief of Naval Staff raised the question of what instructions should now be sent to HMS Endurance and described her options as three-fold:

- i) to stay where she is;
- ii) to sail to Punta Arenas;
- iii) to sail eastwards and get to Ascension.

Dove
 His own advice was to leave her where she is for a bit. I was unaware of Mr Luce's instructions on this point, but have since asked Mr Gillmore to explain our position again to the Ministry of Defence.

e) The use of Gurkhas

The Acting Chief of General Staff said that he would like to use the 1/7th Gurkhas as part of the task force, and would need, for this purpose, to bring them to 7 days notice immediately. Mr Nott expressed considerable caution about using Gurkhas for this operation, and thought that this might have implications e.g. in the United Nations. He gave provisional agreement that they could be brought forward to 7 days notice in a discreet way, but I think we need to give the MOD our view on the use of Gurkhas. Could Mr Weston advise?

Mr. Hulse will do
 f) Gibraltar

Spoke to Asst. C. L. Smith He will handle
 Mr Nott said that the Prime Minister was much concerned about the implications of this crisis for our position in Gibraltar, and that he would like to give her advice as soon as possible. He noted the jubilant reaction in the Spanish press to the Argentine seizure of the Falkland Islands, and was also clearly concerned that the move of the task force might leave us militarily exposed to a similar Spanish attempt against Gibraltar. I have asked Mr Gillmore to discuss this further with the Ministry of Defence, but would be grateful if you would consider what advice we need to give. If you think the JIC should be asked for a quick assessment, I could raise this at the JIC meeting at 1700 today.

g) [REDACTED]

[REDACTED]

[REDACTED]

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EXEMPTION No. 27(i)(a)(d)

*Td
was sent.*

h) Refuelling facilities.

I mentioned that we had been asked not to make any direct approaches on refuelling for the time being, but said that we would like early guidance on whether approaches should be made in Dakar, Freetown, and Cape Verde. H M Ambassador in Dakar was likely to be seeing the Foreign Minister today, and would raise the subject. The Chiefs of Staff confirmed that they would like a direct approach to be made now, and I suggest that draft instructions should be prepared and cleared with the MOD.

*Mr P. A. ...
Mr ...*

i) Action with the Germans.

The Chief of Naval Staff referred to an Argentine corvette which is still under German control, and about to be handed over to Argentina. I have spoken to Mr Gillmore about this and asked him to clarify with the MOD what action by us is required.

j) Requisitioning of shipping.

Mr Nott mentioned that he had obtained the Prime Minister's agreement to lay an order today requisitioning British shipping for naval use. He was particularly anxious that the Foreign and Commonwealth Secretary should be told this before Mr Nott made this public at his World at One broadcast. I later told Mr Nott that I had not yet been able to do this, and hoped that he would be able to tell Lord Carrington, whom he expected to see at Number 10.

k) Tidepool.

There was some discussion about the movement of Tidepool, and I confirmed that we were giving active consideration to the legal problems of the passage of Tidepool through the Panama Canal, particularly in the light of Panama's opposition to the Security Council Resolution. Sir Ian Sinclair may wish to advise further on this. I emphasised to the Chiefs of Staff that it was most important that no publicity should be given to Tidepool meanwhile.

*Mr D
1 - ...
no problem
under ...
11 (i) (k)
of Panama
Canal ...*

l) Antarctic Survey.

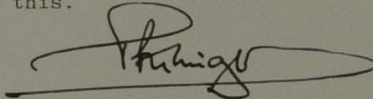
There was some, rather inconclusive, discussion about the remaining members of the Antarctic Survey (and I was called away during the discussion to talk to Mr Nott in preparation for his broadcast). I have asked Mr Gillmore to pursue discussion with the Ministry of Defence about the possible use of Bransfield.

/2.

2. There was no discussion about the idea of sending the Governor and/or a Spanish speaking diplomat to the Ascension Islands, and I did not therefore raise this [it had been agreed that, if it were raised, I should say that we were giving the idea very sympathetic attention].

3. There was also some discussion of press facilities, during which the Chief Public Relations Officer indicated that MOD would find it 'very difficult' to keep the press out of Brize Norton. I later told him and Mr Nott that Number 10 had agreed that there should be no press contact with the Governor or the Marines before the Governor had reported to the Prime Minister, and that a press briefing would be arranged for the Governor (and, if the Ministry of Defence agreed, the Marine Commander) at the Foreign and Commonwealth Office tomorrow afternoon. Neither Mr Nott nor Mr MacDonald demurred. There was also some discussion at the meeting about the arrangements for a pool of journalists to be sent to Ascension. The Chief of Naval Staff expressed the strong view, with which Mr Nott concurred, that journalists should sail with the Navy from this country, and Mr MacDonald was asked to ensure that this happened. This will, I understand, in fact mean that the journalists must be selected in time for them to leave tomorrow.

4. Finally, Mr Nott said that he was very conscious, following yesterday's meeting in Parliament, of the need to brief selected Members of Parliament, particularly from the Conservative Party. He has asked for arrangements to be made for selective briefings to be given in the MOD, particularly of members of the Defence Committee and Foreign Affairs Committee. Mr Fenn may wish to keep in touch with the MOD on this.



• P R H Wright

4 April 1982

cc:

Private Secretary
 PS/LPS use
 PS/Mr Luce
 PS/PUS
 Sir A Acland
 Sir I Sinclair
 Mr Giffard
 Mr Ure
 Mr Gillmore
 Head, News Department
 Head, Defence Department
 Head, Economic Relations Department