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4 May 1982

CABINET

DEFENCE AND OVERSEA POLICY (OFFICIAL) COMMITTEE

SUB-COMMITTEE ON THE SOUTH ATLANTIC
AND THE FALKLAND ISLANDS

RESPONSE TO AN ARGENTINE DECLARATION OF WAR AND RELATED ACTION

Note by the Secretaries

1. The Sub-Committee will recall that advice on the formal consequences of a state of war between the United Kingdom and Argentina was circulated as a Note by the Foreign and Commonwealth Office Legal Adviser (ODO(SA)(82) 15) and that the Attorney General subsequently commented on this Note (ODO(SA)(82) 17). A Note by the Foreign and Commonwealth Office, which was submitted to Ministers in OD(SA) over the weekend, is attached at Annex A for the information of the Sub-Committee. The Note examines the procedural aspects of a United Kingdom response to a declaration, or presumed declaration of war by the Argentine. The Note also contains at appendix a draft Government statement which would follow a decision to acknowledge that a state of war existed; the terms of any such statement would need to be cleared with the Palace before issue. Ministers have been invited to note both the procedures involved and the formal consequences of a state of war.
2. Draft emergency legislation which would be needed in the event of war was circulated to the Sub-Committee at ODO(SA)(82) 33 and Reference. Ministers have also been advised on the introduction of this legislation and a Note by the Home Office, which was submitted to Ministers in OD over the weekend, is attached at Annex B for the Sub-Committee's information.

Signed C H O'D ALEXANDER
G R G MIDDLETON
S D SPIVEY

Cabinet Office

4 May 1982

RESPONSE TO AN ARGENTINE DECLARATION
OF WAR AND RELATED ACTION

Note by the Foreign and Commonwealth Office

1. The Foreign and Commonwealth Office was invited by the Cabinet Office to prepare a draft Government Statement in response to an Argentine declaration of war, as envisaged in the Answer to Question 3 in the Note by the Foreign and Commonwealth Office Legal Adviser entitled 'Formal Consequences of a State of War between the United Kingdom and Argentina', circulated as ODO(SA)(82) 15. The Attorney-General commented on this in a Note of 14 April ODO(SA)(82) 17 and his comments have been fully taken into account. The Statement envisaged by the Foreign and Commonwealth Legal Adviser is the formal statement legally acknowledging the existence of a state of war. A Parliamentary Statement announcing the existence of a state of war would have to deal with a much wider range of policy issues. The Home Office has already suggested that it should be made clear that Argentine nationals will not be interned and that an Emergency Powers Bill would be needed inter alia, to preserve commercial contracts. A draft of such a Parliamentary Statement can be prepared; but it will require further consultation with other Departments which could not be carried out in the time available.

/Background

Background

2. A state of war between states can be initiated by a declaration of war or by warlike attacks which a State elects to regard as creating a state of war. A state of war exists when war is declared by one party to the conflict; it does not require the agreement of the other party to the conflict. If Argentina initiates the state of war by a declaration of war the appropriate response would be a statement acknowledging that a state of war exists, which would be communicated to Argentina and made public.

3. It seems likely that an Argentine declaration of war would take the form of a communication through the diplomatic channel ie. through the Brazilian or Swiss Governments. In recent practice a state of war can be initiated by a simple communication to the State concerned. The Argentine declaration might also take the form of an ultimatum, stating that, if certain conditions were not met at a stated time, a state of war would exist.

Examination of the Argentine Declaration

4. As pointed out by the Attorney-General in paragraph 2 of his Note, the first step would be to examine the Argentine communication to see whether it represented an unequivocal and clear declaration that a state of war existed.

5. If it was equivocal, a question of policy would arise whether it should be treated as a declaration of war or as a bellicose statement not affecting the nature of the current hostilities. If it was decided not to treat it as a declaration of war we should continue to rely on the inherent right of self defence

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for our warlike activities without incurring the responsibility for a transition to war.

6. In addition the Argentine declaration would have to be examined ^{and revised} in order to bring any draft response prepared in advance into line with its actual terms.

The Content of the Response and Notification

7. The essential content of the response would be a reply through the diplomatic channel acknowledging that the Argentine declaration had initiated a state of war between the United Kingdom and Argentina.

8. At the same time, a public notification would be made for the information of the public. The procedure for its publication are suggested below.

9. A preliminary draft of a possible Notification, which includes the content of the Note to the Argentine Government, is at appendix.

10. The reply to an equivocal Argentine Statement could only be considered in the light of its terms.

Procedure for Consideration and Issue of the Response and Notification

11. Subject to the views of Ministers, a possible procedure would be the following:-

- (1) Officials in ODO(SA) would consider the Argentine Note and prepare revised versions of the response and Notification, and a Statement for use in Parliament. At the same time the Attorney-General

should be consulted, and an approach would be made to the Palace inquiring how Her Majesty would wish to be consulted. The Privy Council would also be warned that a Notification would probably need to be issued shortly.

- (2) Ministers in Cabinet, possibly following a meeting of OD(SA), would consider and take decisions on the drafts proposed by officials, in the light of any comments by the Attorney General.
- (3) The concurrence of Her Majesty in the course proposed would be sought. It might be appropriate to hold a Privy Council.
- (4) The response would be transmitted to the Argentine Government through Swiss and Brazilian channels.
- (5) The Notification would be issued by the Privy Council and posted in Whitehall and communicated to news agencies, television and radio stations.
- (6) The Cabinet Office would inform all Whitehall Departments so that they can take action appropriate on the commencement of a war.
- (7) The Prime Minister would probably wish to make a statement in Parliament as soon as possible. If it were in recess, Ministers would probably wish it to be recalled.
- (8) The Notification would be communicated to British Representatives accredited to Commonwealth and Foreign Governments, as well as to the UN and other appropriate international organisations, with instructions

/to

- (9) to inform those Governments and organisations, the Governors of Dependent Territories would be informed with instructions to announce the state of war.

12. Further guidance would have to be sought from the Privy Council Office as to the procedures which it would find necessary for the issue of the Notification. If Ministers agree, the Foreign and Commonwealth Office will make the necessary enquiries.

13. Meetings of Privy Council were held on a number of occasions in connection with the preparations for war in 1914 and 1939. But it is not known whether the Privy Council considered the Notifications to the public of the state of war. A number of Proclamations were then issued in connection with the call up of the Forces, etc. But the announcement of the state of war does not appear from contemporary press reports or Hansard to be among the formal proclamations. Absolute certainty on the procedure then used could only be ascertained from Privy Council minutes.

14. In 1914 and 1939 there was a public reading of the announcement from the steps of the Royal Exchange Buildings and perhaps elsewhere. This would not appear necessary unless the Privy Council Office considered that the announcement should be treated as a formal Proclamation.

Foreign and Commonwealth Office

1 May 1982

PRELIMINARY DRAFT OF POSSIBLE NOTIFICATION THAT A STATE OF WAR EXISTS

Appendix

Privy Council Office

..... 1982

IT IS NOTIFIED THAT A STATE OF WAR EXISTS BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE REPUBLIC OF ARGENTINA AS FROM O'CLOCK AM TODAY THE ... OF 1982, AS A CONSEQUENCE OF A DECLARATION OF WAR BY ARGENTINA

The Republic of Argentina on 2 April attacked and occupied by force of arms the Falklands Islands, a territory under the sovereignty of the United Kingdom. In response, the United Kingdom sought the assistance of the Security Council, which in Resolution 502 demanded an immediate withdrawal of all Argentine forces from the Falkland Islands.

The United Kingdom has since 2 April exercised its inherent right of self-defence as recognised by Article 51 of the Charter of the United Nations, in order to recover the Falkland Islands. Since that date the Argentine Government has continued to conduct military operations with a view to perpetuating its armed aggression in the South Atlantic. (Further relevant events leading up to the declaration of war might be referred to).

On 1982 at o'clock pm the United Kingdom Government received through the Brazilian Embassy in London (or as the case may be) a communication which, in English, reads as follows:

(here would be set out the Argentine declaration of war).

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The Swiss Embassy has been requested to pass a communication to the Argentine Government in the following terms: as a consequence of the Argentine communication received at o'clock pm on 1982, it is acknowledged that as from that time a state of war exists between the United Kingdom of Great Britain and Northern Ireland and the Republic of Argentina.

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Annex B.

EMERGENCY POWERS (FALKLAND ISLANDS) BILL

Note by the Home Office

1. Ministers will recall that the preparation of draft emergency legislation was set in hand at the outset of the crisis. Since then prints of a possible Falkland Islands Emergency Bill have been circulated to the Cabinet with a revised print being considered on 20 April. In accordance with Cabinet's conclusions a draft Bill, now further revised, is held ready for early introduction by the Home Secretary if required. Draft supporting regulations have been prepared by officials and from these Ministers will be able to select those measures appropriate to the circumstances.
2. In considering the earliest date on which a Bill might need to be introduced, officials have assumed that Ministers will not wish to put a Bill through Parliament before the powers it confers are actually needed. There is no compelling need for a Bill short of armed action in the Falklands leading to a state of war with Argentina. In this event, a Bill would be needed at least to suspend the Trading with the Enemy Act, which would otherwise adversely affect all commercial contracts and dealings with Argentine nationals. But the Bill would enable regulations on this point to have retrospective effect, and so could, if necessary, be passed a few days after any declaration of war. This would give Ministers the opportunity to consider the powers it would be appropriate in the circumstances to take.

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3. Ministers are therefore invited to note that, even if we find ourselves in a state of war with Argentina in the next few days, legislation would not need to be put through Parliament until after the May Day weekend.

Home Office

30 April 1982