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13 May 1982

CABINET

DEFENCE AND OVERSEA POLICY COMMITTEE

SUB-COMMITTEE ON THE SOUTH ATLANTIC
AND THE FALKLAND ISLANDS

FALKLAND ISLANDS: POSSIBLE REFERENCE TO THE
INTERNATIONAL COURT OF JUSTICE OR TO INTERNATIONAL ARBITRATION

Note by the Secretaries

The attached note by the Foreign and Commonwealth Office is circulated for the
information of the Sub-Committee.

Signed ROBERT ARMSTRONG
R L WADE-GERY
R L L FACER

Cabinet Office

13 May 1982

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FALKLAND ISLANDS : POSSIBLE REFERENCE TO THE INTERNATIONAL
COURT OF JUSTICE OR TO INTERNATIONAL ARBITRATION
Note by Foreign and Commonwealth Office Officials

1. There has been much discussion about the possibility of referring the dispute with Argentina over the Falkland Islands to the International Court of Justice (ICJ) or to international arbitration. No decisions are required immediately. But if the UN Secretary-General's efforts at mediation fail, we shall need to consider other diplomatic initiatives, and proposals for a reference to the ICJ or to international arbitration might be among them.
2. Ministers may therefore wish to see the attached paper by FCO Legal Advisers, which explains the background to this question and examines the ways in which reference to the ICJ or to ad hoc arbitration might be made. The present note considers the policy aspects.
3. Any reference of the dispute to the International Court of Justice or to some other form of international adjudication would be subject to a number of general considerations:-
 - (a) Argentina would be unlikely to agree to refer the question to adjudication.
 - (b) It would be necessary to give the most careful attention to the formulation of the question to be put to the ICJ or an ad hoc tribunal. Any question about the Falkland Islands themselves should not simply relate to historic title, but should encompass the applicability of the principle of self-determination, since we would want to emphasise this principle in presenting an argument to the court on the question of sovereignty. The question to be put need not be drafted in a simple, one-sentence, form, but could be complex and subdivided into various elements if that suited us better.

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- (c) In the formulation of any question we could distinguish between the Falkland Islands themselves and the Falkland Islands Dependencies, and indeed between the two Dependencies. A reference could relate to one of those territories, or to all of them, or to a combination.
- (d) Any reference of the dispute to the ICJ or another tribunal would have an immediate diplomatic/political effect, in that it would show straightaway our readiness to have the matter decided judicially. However, the substantive decision resulting from any reference to a tribunal would be unlikely to be reached for several years, and accordingly any interim arrangements would need to take account of this sort of period.
- (e) Once the dispute had been referred to some form of international adjudication, both sides would be under an obligation not to take any action which would exacerbate the dispute. This would have the effect of 'freezing' the dispute until the tribunal had reached its decision. It should therefore be an essential condition of any offer that we make that Argentina first withdrew her forces and that suitable arrangements be made for the administration of the Islands in the meantime.
- (f) There would be no guarantee that Argentina, particularly in the light of her rejection of the Beagle Channel Award (see paragraph 6 of the attached paper), would abide by an unfavourable decision.
- (g) Any proposal for a reference to the ICJ or to an arbitral tribunal, especially the formulation of the question, would have to be cleared in advance with the Law Officers.
- (h)

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4. The tentative conclusion is that an offer to refer the Falklands to the ICJ (or possibly to another tribunal) could have immediate tactical value. But it would be most unlikely to solve the Falklands problem since Argentina (a) would probably not agree to refer to a tribunal and (b) would probably not accept an adverse ruling.

12 May 1982