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DEFENCE AND OVERSEA POLICY COMMITTEE

SUB-COMMITTEE ON THE SOUTH ATLANTIC AND
THE FALKLAND ISLANDS

SPECIAL COMMISSION: UNITED STATES PROPOSALS

Note by the Secretaries

1. As recorded in the letter of 12 April from the Prime Minister's Private Secretary to the Foreign and Commonwealth Secretary's, enclosing records of Mr Haig's meetings with the Prime Minister that day, the Americans as they left handed to Sir Antony Acland a draft "Agreement Constituting the Special Commission". They have since sent the Foreign and Commonwealth Office a revised version of that draft.
2. The document deals mainly with technicalities. It raises a number of detailed legal and other issues which are being studied by Foreign and Commonwealth Office officials. These are unlikely to require collective Ministerial consideration. But as part of the background to Mr Haig's next visit the Sub-Committee may wish to take note of three points of more general interest:
 - a. The document provides for the Special Commission to take decisions by majority vote where it is unable to do so by consensus.
 - b. In accordance with paragraph 5 of the draft Memorandum agreed with Mr Haig (OD(SA)(82) 10), the document refers to ratification by the Special Commission of "laws and regulation of the local administration". The Foreign and Commonwealth Office Legal Adviser points out that we shall need to treat

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this as applying only to legislation for the Falkland Islands or Dependencies which is enacted locally. It would be unacceptable to treat the requirement of ratification as extending to the power to legislate for the Falkland Islands or Dependencies by United Kingdom Act of Parliament or Order in Council. But this does not mean that that power need be exercised while the proposed interim period lasts, once this has been done to the extent necessary to give effect to the draft Agreed Memorandum and draft Agreement themselves.

c. The latest draft of the document provides that the flags of the United Kingdom, United States and Argentina shall be flown at the Special Commission's headquarters building "in such a fashion that no flag permanently occupies a position of precedence". This follows the normal practice of international bodies.

Signed ROBERT ARMSTRONG
R L WADE-GERY
D H COLVIN

Cabinet Office
16 April 1982

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