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30. IV. 82.

Dear Prime

SECRET
MFI

ROYAL COURTS OF JUSTICE

Prime Minister. LONDON, WC2A 2LL

This is a very helpful paper. You should, however, have in mind that you have just appointed Lord Justice Griffiths to be a member (and alternate chairman) of the Security Commission (although we have not announced this).

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I enclose my paper on 30. IV.

the form of the enquiry. It is longer than I would have liked

but the problems are not simple!

I have discussed it with my two Senior Officials (one for the PO and one for the Home Office) and they consider it the most lively runner.

The major problem which

restrict our options to the probably
high degree of sensitivity of
the material involved. I would
have liked to have been able
to advise a public hearing
for as much as possible but
I suspect unknowns will
have to refer back to
Senior material to justify
their answers and this will
lead to endless speculation
and misinformed comment.

I hope you manage to
have some rest and vacation
time to see "Character of Fire"

Yours etc.
Michael.



PRIME MINISTER

OBJECTIVE

To set up a form of enquiry which will satisfy the public that there is no cover up on mistakes made in the past and that any defects that still exist in communications and access to information by Ministers are identified and eliminated. This will require the terms of reference to permit the review of "treatment" of information about the intentions of the Argentine Government towards the Falkland Islands as far back as may be relevant (the brinkmanship theory).

This objective points to terms of reference on the following lines: "to consider the arrangements that were in operation, in the period leading up to the Argentine invasion of the Falkland Islands, for the collection and evaluation of information concerning Argentine intentions and for communicating that information to those responsible for the relevant decisions of policy; and to consider whether there were any defects in those arrangements or any errors or misconduct in their implementation and whether there were any defects of procedure or errors of judgment or other misconduct in the taking of the relevant policy decisions.

Before considering the appropriate form of enquiry I think it essential to look ahead to the time when the enquiry has reached its conclusion and a report has to be prepared. I cannot see that it would be right for that report, and the evidence on which it is based to be published. Much of the evidence will be classified and



it would not be in the public interest to reveal the extent of the information available to the Government about these events or the way in which such information is obtained. If this is right, the most that can be promised is that the conclusions reached by the Tribunal will be made public. It will not be possible for the enquiry as a whole to be conducted in public and it would provide a distorted picture of events to have public hearings on those occasions - which would, in any event, occupy a relatively small part of the Tribunal's activities - when there was a witness whose evidence was not sensitive. In these circumstances, the Tribunal must be such that its conclusions will command respect even though it is unable to justify them to the public by reference to the evidence.

FORM OF TRIBUNAL

I would therefore suggest a Committee of Privy Councillors presided over by a Judge. I would favour a Lord Justice of Appeal (all of whom are Privy Councillors). I believe there would be an advantage in not choosing a Law Lord - Diplock would be unsuitable because of his special responsibilities and his wish to give up this sort of work. The Law Lords have recently, collectively, been associated with some unpopular decisions and I see presentational advantages in having a chairman who carries the respect of a senior Judge but is virtually unknown to the general public. My choice would be Lord Justice Griffiths. He is 59 years old, won an M.C. in the war and was a Cambridge cricket Blue. He is a strong but courteous Judge and highly intelligent. He has previous experience of presiding

/over



over a Tribunal of Inquiry (Ronan Point). He would be able to control the "Tribunal" without being aggressive or discourteous.

I would advise that the "Tribunal" should consist of four members in addition to the Chairman. One to be nominated by the Prime Minister, one by the Opposition, and the remaining two, selected by agreement, if possible made up of a senior retired civil servant (not of course, having any FCO connection) and a politically independent Privy Councillor or, if suitable, an ex-trade union Privy Councillor. The ex-civil servant would be necessary to deal with the processes of the Civil Service and their responsibilities in keeping Ministers informed.

PROCEDURE

It will be necessary for the "Tribunal" to have its own Counsel who will sift the evidence to exclude irrelevant material and avoid overloading the Tribunal and will examine the witnesses.

There is an argument that the Attorney-General, a Privy Councillor, should undertake this task but I feel that there might be allegations that my links with the Ministers involved would make it difficult for me to present the case impartially. This is nonsense of course, but since, as I have explained, the Tribunal would not sit in public, I should not have the opportunity (contrast the Lynskey Tribunal) to demonstrate publicly the independence of my approach to my duties. Accordingly, you may think that it would be wiser instead to arrange for the Tribunal to have the assistance of a suitable Silk who has been positively vetted.

/POSITION



POSITION OF INDIVIDUALS

There is no question of this Tribunal finding anybody guilty of a criminal offence. Nor, since it will not sit in public and will not disclose the evidence it has received, need we bother about the risk of defamatory statements being published. Given that the witnesses will all be either Ministers (or ex-Ministers) or civil servants, there will therefore be no need for it to have a power to compel witnesses and no need for protection against civil actions arising out of its proceedings. Accordingly, there is no need to invoke the powers of the Tribunals of Inquiry (Evidence) Act 1921. The Tribunal may, however, conclude that a particular Minister or civil servant was guilty of a lack of judgment or of a failure to give or accept proper advice or otherwise failed in his duty and this could be very damaging to the person concerned. I think that we must therefore be prepared to allow any person who seems to the Tribunal to be at risk of such a finding to be legally represented, if he so wishes, at public expense.

ALTERNATIVES

1. 1921 ACT TRIBUNAL

Although I have drawn many of my proposals from this precedent, I have sought to avoid the major drawbacks involved in the full-scale type of Tribunal. ("The blunderbuss enquiry"). Such a Tribunal is also not equipped to deal with how the Civil Service operates and how Ministers rely upon advice. It is also unsuitable to deal with what may be a considerable amount of sensitive evidence.

2. A SELECT COMMITTEE

This must be rejected at once on the ground of the sensitivity of the evidence. The "Tribunal" must have access to all relevant material however sensitive.

/GCHQ



GCHQ and M.I.6 may have to give detailed accounts of the information which they furnished and its reliability or otherwise.

M.H.
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CONQUEROR



LAW OFFICERS' DEPARTMENT

30 April, 1982