

Ref: A08344

* now plus minutes from the Lord Chancellor and the Defence Secretary which arrived today.

JWJ
10x.

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Prime Minister

Did you discuss this with Lord Carrington on Saturday?
If so, how do you wish to proceed now?
The previous papers are JWJ in the attached folder. 10.V.P.L.

MR. WHITMORE

I sent you a minute (A08122) on 15th April about the form, composition and terms of reference of an inquiry on the way in which Government Departments discharged their responsibilities in the period leading up to the Argentine invasion of the Falkland Islands.

2. Since then the Prime Minister has received minutes on the same subject from the Attorney General (30th April) and the Foreign and Commonwealth Secretary (PM/82/33 of 5th May).

3. There seems to be general agreement on the form of the inquiry: that it should be a Committee of Privy Counsellors, of whom two would be senior former Ministers, one Conservative and one Labour. The Conservative possibilities mentioned are Lord Carr and Lord Jellicoe; the Labour possibilities mentioned are Lord Cledwyn of Penrhos (a.k.a. Cledwyn Hughes), Lord Shackleton and Lord Shepherd (I assume that Mr. Heath and Mr. Callaghan are not starters). I wondered about Sir Derek Walker-Smith and Mr. Sam Silkin; but neither was ever close to intelligence affairs, and, if the Chairman was a judge, they would give the Committee a strong legal bias. The Foreign and Commonwealth Secretary and I suggest a Committee of three members (two members in addition to the Chairman); the Attorney General suggests that it should have five members (four in addition to the Chairman), to include a senior retired civil servant with no FCO connection and a politically independent Privy Counsellor. So far as I am aware the only senior retired civil servant with no FCO connection who is a Privy Counsellor is Lord Trend.^{*} Would some people criticise the choice of the man who conducted the review of the Hollis investigation? There are not a great many politically independent Privy Counsellors other than Lords of Appeal in ordinary and Lords Justices of Appeal; names that occur to me are Lord Charteris of Amisfield, Lord O'Brien of Lothbury and Mr. Gordon Richardson.

4. I still favour a chairman plus two members.

except for Lord Franks;
but he is 77 years old. -1-

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5. As to the chairman, I do not think that it could be Lord Trend, so that we seem to come back to a judge - the Attorney General suggests Lord Justice Griffiths, the latest appointment to the Security Commission - or an academic: I suggested a number of names in my earlier minute. If it is to be a judge, the Lord Chancellor will need to be consulted.

6. The Attorney General suggests (paragraph 2) detailed and inquisitorial terms of reference, of a kind which would be suitable for a Tribunal of Inquiry, and a procedure which would resemble that of a Tribunal and involve the employment of Counsel and legal representation. With respect I wonder whether this is necessary or right. The Foreign and Commonwealth Secretary suggests that the inquiry will need to be "quick and thorough": it will certainly not be quick if the Attorney General's procedure is adopted. That procedure, and the terms of reference proposed by the Attorney General, would be appropriate if the inquiry was investigating possible failures or lapses of individuals. This one will surely be primarily concerned with failures of institutions and systems. It seems to me that it would be more appropriate to have brief terms of reference, sufficiently general to cover the detailed matters specified by the Attorney General but not to limit the Inquiry as those might be held to do. I would suggest that it should have a civil servant, from one of the Departments not involved, as its Secretary; and I believe that it could be usefully assisted by Mr. D.R. Nicoll, who has already completed a thorough investigation of the role of the intelligence community, including the Joint Intelligence Committee, into the affair (I shall be submitting this to you shortly). I suggest that witnesses should not have the option of being legally represented.

7. The evidence, both written and oral, will need to be taken in private. With respect, I question whether the Attorney General is right in thinking that the report should not be published. I doubt whether it will carry conviction to publish the conclusions only. I believe that the Committee will have to be asked to prepare a report in a form which can be published. They will have also to be asked not to disclose information whose publication would be detrimental to security or to international relations. This implies that, if the Inquiry leads to any conclusions or recommendations which could not be sensibly published without

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that disclosure, those conclusions and recommendations will have to be submitted in a confidential and unpublished annex.

8. The Foreign and Commonwealth Secretary suggests that this subject should be considered with one or two colleagues. The colleagues concerned could well be the members of OD(SA) and the Attorney General, and this could be the subject of a memorandum for OD(SA). If the Prime Minister would like me to do so, I should be ready to prepare and circulate a memorandum as a basis for discussion; in this way she need not be committed by the suggestions I make, though I should welcome some indication whether she thought that I was thinking on the right lines.

RTA

Robert Armstrong

* I think that you would need to have President
and the Chief Ship too.
JRA.

7th May 1982

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