



PM/85/3

PRIME MINISTERFalklands Fisheries

1. We need to reach a view soon on the draft Agreement between the Coalite/Taiyo Joint Venture (CTC) and the Falkland Islands Government, about which Mr Needham wrote to you on 12 December. This raises difficult issues of timing and substance in relation to our policy on an Exclusive Fisheries Limit (EFL) around the Falkland Islands.

2. I recommended to OD a year ago that a multilateral approach to the establishment of an EFL was the least bad of the options available to us. We agreed in OD that my proposal should be considered again in the light of the progress towards the normalisation of bilateral relations with Argentina. Since then the effort to establish discussions with the Argentines in Berne and the annual UN General Assembly debate have intervened. The need for action on fisheries is now urgent. We can pursue this in parallel with the other steps I recommend in my minute of 4 January.

3. We have three options:-

- (a) to declare an EFL unilaterally. This would be prohibitively expensive, and damaging internationally
- (b) continue to do nothing. But there is now growing pressure for action in Parliament and in the Islands themselves.
- (c) try to find a multilateral basis on which to establish an EFL, by approaching the FAO. There is still considerable uncertainty about the economic

/viability

2 pp's.

Agree papers
circulated but are
very sceptical about
the FAO scheme. Are there
any precedents?
Who needs
the FAO?



viability of a multilaterally-based scheme, but I believe an approach through the FAO is worth exploring. I attach at Annex A a draft paper on this subject which, provided you agree, I would like to circulate to OD colleagues.

4. If colleagues agree that we should approach the FAO, the proposed Joint Venture Agreement, in the form in which it has been provisionally agreed between CTC and the FIG, would be a complicating factor. It could be held to imply a legal commitment by the FIG (and therefore HMG) to declare a unilateral EFL at some point. It also provides that, once an EFL is declared, the FIG shall grant CTC a fishing licence on concessionary terms as to fees and with the right to catch up to 50% of the maximum sustainable yield of the fishing area. If an agreement on these lines were to be approved and (inevitably) made public just when we were about to open discussions with the FAO about a multilateral fisheries regime for the South West Atlantic we would have to expect the FAO and all concerned to react unfavourably to our approach. Moreover the terms of the agreement would be likely to be incompatible with whatever licensing or quota arrangements might be negotiated under FAO auspices: these would almost certainly have to be non-discriminatory. We could thus face the prospect either of a breach of our obligations to the other parties in a multilateral regime, or a breach of the Joint Venture Agreement for which compensation would have to be paid - or perhaps both.

5. The Joint Venture Agreement does however have potential advantages. It would provide for two years' exploratory fishing, with FIG observers on board, which would give the Falkland Islands Government and ourselves valuable data about fish species and stocks in the area, at much lower cost than anticipated in the Shackleton Report. Indeed the results of the exploratory phase would be helpful precisely as a base for the licensing regime we wish to establish under an EFL, balancing revenue against conservation.



6. We have consulted the Civil Commissioner about this. Apart from the research point, he agrees that it is hard to argue that the Joint Venture Agreement would have other obvious immediate and tangible economic benefits, eg processing facilities on the Islands. If forced to make a choice Rex Hunt would prefer not to jeopardise the chances of an EFL by pushing ahead with the CTC/FIG Agreement as it now stands. But he is reluctant for us to withdraw support from a promising approach for engaging the Falkland Islands Government directly in non-agricultural economic activity.

7. I see three possible options for dealing with this problem:-

- (a) to tell the Falkland Islands Government, Coalite and Taiyo that we cannot allow the Agreement to go ahead at all.
- (b) to tell them that we are working to establish a multilaterally-agreed regime around the Falklands, and that it would not therefore be appropriate or timely for them to conclude the proposed Agreement, as it might have to be changed very substantially in the light of the terms of the eventual EFL.
- (c) to explain our policy of seeking a multilaterally-based EFL as in (b) above and to indicate changes in the Joint Venture Agreement that would be necessary to safeguard HMG's position in the negotiations, and in the event of the declaration of an EFL. The changes we would propose have been seen by the Solicitor General. To minimise the risks that Coalite and Taiyo could claim to have been misled, we would make it clear to them that the changes could make the commercial prospects considerably less attractive, depending on the terms eventually negotiated for the EFL. But CTC



might make the commercial judgement that it would be worthwhile in the meantime to get ahead with exploratory fishing which they say they need to conduct for two years to determine the commercial viability of subsequent full scale fishing operations in the area.

8. I see clear advantage in course (c). To abandon the Agreement now would be taken in Parliament and in the Islands as gratuitous obstruction of a project that is seen in the Falklands as effective and important. To put the Agreement on ice would also be seen as a retrograde step. Provided that we leave CTC in no doubt as to the implications of the changes we should require to be made to the Joint Venture Agreement, their decision whether to go ahead or to withdrawn would be (as it always has been) a matter for their commercial judgement. I enclose as Annex B a draft reply to Mr Needham. The detailed amendments we wish to make to the Agreement could most appropriately be put to Mr Needham by my officials.

9. I should be grateful to know if this is acceptable to you.

A handwritten signature in dark ink, appearing to read 'G. Howe'.

GEOFFREY HOWE

(Approved by Sir Geoffrey Howe and signed in his absence)

Foreign and Commonwealth Office

10 January, 1985