

VISIT BY MR RIDLEY TO THE FALKLAND ISLANDS: 22-29 NOVEMBER 1980

Steering Brief

Presentation of the Visit

1. The visit (undertaken at short notice to fit in with the Minister's parliamentary obligations) will be presented to Islanders as a logical step in a series of developments which followed Mr Ridley's first visit in July 1979. After the exploratory exchanges with the Argentines in New York in April (attended by Councillor Monk), the British Government have been considering what might be the next steps towards a solution. Lord Carrington discussed matters generally with Foreign Minister Pastor in New York in September. We have since been looking at the position. Mr Ridley now wishes to inform himself of Islander views. When passing through Buenos Aires, he paid a brief courtesy call at the Argentine Foreign Ministry.

Objectives

2. Our objectives are:
- (i) to persuade Councillors (and through them Islanders) that the prolongation of the dispute is not in their interests or those of HMG: and that we must work towards a negotiated settlement with the Argentines;
  - (ii) therefore to obtain their agreement that we should enter into negotiations with Argentina to explore the scope for a settlement based on leaseback;
  - (iii) to impress upon them our respect for their wishes to remain British, our interest in their welfare and our concern for their future.

/The Islanders' Aims

The Islanders' Aims

3. We can expect these to be:

- (i) to preserve the status quo, with a continuing and, if possible, increased British commitment to the defence and economy of the Islands;
- (ii) to argue that the Islands' offshore resources should be developed without the need for a political solution;
- (iii) to drag their feet on the need to negotiate on sovereignty with the Argentines: and to avoid taking any firm position on the merits of leaseback.

Tactics for Talks

4. Mr Ridley will first have to convince Councillors that it is necessary to talk about sovereignty at all. Islanders have frequently demonstrated that where there is choice between stagnation and increased involvement with Argentina, they prefer the former. They were quick to spot that the 1977 Terms of Reference (which governed the 1977/79 talks and specifically mentioned sovereignty) did not apply to the April 1980 talks in New York. The relative quiet on the Argentine front may have lulled the Islanders into a false belief that nothing need be done and all is well.

5. Councillors must be made to recognise that:

- (i) the Argentine claim has not gone away, nor will it ever do so;
- (ii) the Argentines will soon become impatient at the lack of progress, with potentially difficult consequences for the Islands (e.g. communications, fuel and other harassment);
- (iii) only by working out through negotiation a solution acceptable to all parties can the Islands be assured of a viable and secure economic and political future.

6. It may be necessary to paint a grim picture of the alternatives. The British Government have had to cut aid across the board and it will be increasingly difficult for the Islands to maintain the generous per capita allocation of previous years. Neither Islands nor Dependencies could be defended against Argentine intrusion; at the very least the Argentine stranglehold will tighten to the Islanders' increasing discomfort. It makes sense to work with the Argentines to use their wealth for the Islands' benefit. Otherwise the prospect must be one of continued population drift and economic stagnation. It is also best to look for a negotiated solution now: rather than under duress at the mercy of any future political changes in Argentina.

7. We should highlight the narrow range of negotiating options (Brief no. 2) and the potential benefits of a leaseback solution to the Islands (Brief no. 3). But essentially the ending of the dispute would remove international politics from the future economic development of the Islands, open up the Islands to investment, enable the resources (fish and any oil - Briefs nos. 4 and 5) of the area to be exploited for the benefit of the Islanders, lead to the Islands' internal economy being put on a more substantial footing; and most importantly, remove the shadow of the dispute from Islanders' everyday lives, and ensure continued British administration for a substantial period.

8. Councillors will want to know the likely terms (especially the length) of any leaseback and what it will mean in particular for Argentine involvement in their everyday affairs. We should resist going into details: they would in any case be guesswork as they remain to be negotiated. Our proposal at this stage is simply that we should talk to the Argentines about the concept and implications of leaseback of all the territories, continental shelves and maritime zones. We would look for the longest term possible. The Islanders would throughout remain under British administration, they would still own their land and would be able to run their affairs in the way they do now as they want.

/Meetings with Councillors



Meetings with Councillors

9. Three sessions of talks with the Councillors are planned (Monday 24, Tuesday 25 and Saturday 29 November). Councillors nevertheless may attempt either to delay a response until Mr Ridley has left, when it will be easier for them to say no, or to claim that they cannot speak for their constituents, who must be consulted. It will be important to get them to give the Minister some reply before his departure; any consulting they need to do will have to be done by then. They are the elected representatives of the Islanders and enfranchised to speak on their behalf. We are not asking Councillors to sanction at short notice a fully-fledged proposal for a settlement; we are merely seeking their endorsement for the opening of negotiations based on leaseback. Councillors will be invited to be represented at all talks with the Argentines and if and when a proposal is finally worked out it will have to be put to all the Islanders (and to the British Parliament) before it can be accepted. Councillors should be made to realise quite clearly that they are not being asked to commit themselves to a cession of sovereignty, only to sanction our efforts to find with them a workable solution to the problem.

Other Argentine Matters

10. Mr Ridley will want to speak as reassuringly as possible on other subjects to avoid any red herrings. He will wish to remind Islanders of his hope that contacts with the Argentines on everyday matters can be increased (Brief no. 6) and that minor problems like the house for the LADE representative (Brief no. 7), should not be blown up out of all proportion. Islanders will also want to be reassured that we are opposed to Argentine policing of waters near the Falklands (Brief no. 4), their presence on Southern Thule (Brief no. 8) and that the Argentine-financed oil jetty (Brief no. 9) will not mean an increased level of Argentine involvement in their lives.

Bilateral Questions

11. Islanders may raise the perennial problem of extending the airfield (Brief no. 10) and the more recent one of the school hostel (Brief no. 11) and will certainly wish to vent their feelings about the Falkland Islands Government Air Service (Brief no. 12), which



has had many problems of late. Other possible subjects are UK aid (Brief no. 13) and the Royal Marine Detachment (Brief no. 14). Depending on the climate of his discussions, the Minister may wish to discuss with Councillors their unfulfilled promise to accept some Vietnamese refugees (Brief no. 15), and the difficulties in the way of imported labour from St Helena (Brief no. 16). Islanders are concerned about the effect of the proposed new nationality legislation (Brief no. 17) on their status and will need to be convinced that no material change is involved.

#### Exchanges with Islander General Public

12. Mr Ridley's discussions with Councillors will be in confidence. But Councillors will want to consult their families, friends and constituents and in the narrow Falklands community it is likely that the general context of the exchanges will become fairly widely known before Mr Ridley's departure. He may well therefore begin to receive questions about leaseback and its details. These can best be played by ear at the time depending on the circumstances. But, broadly, Mr Ridley will want to maintain that his exchange of ideas with Councillors was in confidence and general, and that no-one is committed to anything other than further negotiations with the Argentines.

#### Press Line if Leaseback Proposals Leak

13. The fact that negotiations with Argentina on a leaseback arrangement have been put to the Islanders is likely to leak during Mr Ridley's visit, or shortly thereafter. When it does (and we know the nature and extent of the leak) our general line should be that Mr Ridley has been reviewing with the Councillors the way in which progress might be made towards a settlement of the dispute with Argentina, and that one idea that is being considered is a leaseback arrangement which would secure British administration on the Islands for a significant period. We should, of course, reaffirm that HMG would continue to be guided in these matters by the wishes of the Islanders as a whole.

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from Arg Chrg Brp. (Walker 9/80)  
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ANNEX B

BACKGROUND NOTE

FALKLAND ISLANDS: THE DISPUTE

1. The Falkland Islands have been settled by the British since 1833. We have no doubt of our sovereignty over them. They are also claimed by Argentina.
2. We reject this claim. The Islanders wish to remain British and retain their British way of life. But we have to accept the economic and physical implications of the geographical realities. The Islands are over 7,000 miles from the UK but less than 400 from Argentina. It would be difficult to develop them satisfactorily in the absence of some form of agreement with Argentina.
3. The dispute is not only about land but also about maritime zones. As long as no political solution is reached, we can in practice neither control, nor raise revenue from, third country fishing in Falklands waters, nor can we establish a regime for the exploitation of the resources (if any) of the continental shelf. We have refrained from declaring a 200 mile fishery zone to avoid antagonising the Argentines.
4. Successive British Governments have held talks with the Argentines to try to resolve the dispute and obtain for the Islanders the conditions for a secure and prosperous future. But the Argentines have insisted on nothing less than complete transfer of sovereignty and progress has been difficult. We have stated publicly that no agreement will be accepted by HMG unless it is also acceptable to the Islanders. Ministers are committed to keeping Parliament and the

Islanders fully informed of any developments which may affect their future.

#### TALKS IN NEW YORK 28-29 APRIL

5. The Government authorised the Minister of State at the FCO, Mr Ridley, to hold exploratory talks with the Argentines in New York on 28 and 29 April. An Island Councillor attended as a member of the UK Delegation. The talks were cordial and positive and went rather better than we might have expected. But they were purely exploratory and neither side was empowered to reach any decisions. The Argentines, as expected, put forward their formal claim to sovereignty over the Falklands, but they did not allow this to inhibit the exchanges, which were conducted with considerable frankness. We explored the possibilities for co-operation in development and protection of the economic resources in and under the waters around the Falkland Islands. The Argentines appeared to be interested in wooing the Islanders and a proposal for more direct contacts between the Falkland Islanders and the Argentine mainland was agreed. But it is clear that overall progress still depends on progress on the sovereignty issue.

6. Each side now has to report back. While the intention was expressed to have further rounds of talks, the Argentines will want future exchanges to be more formal (i.e. negotiations rather than talks) and they will want to discuss sovereignty.



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# From Pax Britannica to Burnley

Mark Arnold-Forster introduces a fortnightly column on perceptions of British foreign policy

the eighteenth and nineteenth centuries, British foreign policy depended for its success on commercial prowess, the Bank of England, and the Royal Navy. British goods were needed, the British fleet was everywhere. Lord Palmerston could always count on a plentiful supply of gunboats which frightened almost everyone. So could Lord Curzon.

In the end, the navy even started building special gunboats for special rivers. Those who have served on HMS Locust in the English Channel will remember with dismay that she was originally designed for the Yangtze Kiang.

Now that British gunboats are in short supply, the Guardian intends to start a fortnightly series dealing with British foreign policy in the twentieth century's declining years. Can Britain in-

fluence foreign events, and if so, how? Has Britain exercised an influence in favour of good, evil, or chaos? By what means does Britain exercise an influence at all?

And to what extent does the Foreign and Commonwealth Office understand the world in which it lives and works and the country it represents?

I used rudely to ask every British ambassador I met to tell me when he had last visited Burnley. I was confirmed in my belief that none of them had been north of Watford, until, one day, her Britannic Majesty's ambassador in Stockholm said that he had been in Burnley on Thursday. Steeped in shame, I have never asked the same question since, though it is worth asking. The leading members of the F&CO do not, by and large, come from either of the Newcastles.

I have also stopped asking neutrals about the reasons for Soviet shipbuilding, which really go back to the Cuban missile crisis, when the Russians felt humiliated. When I put the same question about Russian ships to Chancellor Kreisky of Austria that I had put to Synnegen, he said that was an "islanders' question" (*Insulanerfrage*), implying, rightly, that I was over-bothered about ships at a time when aeroplanes, missiles, and nuclear weapons mattered more.

Which leaves the Foreign Office playing a straight bat and not much else to the major problems which affect the world—like the revival of hostage-taking—and to four problems which are peculiar to Britain. They are the remaining colonies—Hongkong, Belize, Gibraltar, and the Falkland Islands.

Hongkong is the worst. Hundreds of refugees from China arrive every night seeking admission. The administration of Hongkong costs money. The colony is overcrowded and most of it reverts to China in 1997. What is more, the refugees are fleeing from oppression and seeking liberty; Britain ought to give it to them.

It is true that most of them come for commercial reasons and that many are small businessmen of the kind that Mrs Thatcher used to admire so much. But Britain's moral obligation to allow them into the Commonwealth, if that is the freedom they want, is as strong as Britain's obligation to give asylum to a dissident Russian professor.

The difference, however, is practical. There are more refugees from China than make for comfort. There will

always be room in Oxford for a fugitive Soviet academician. But there is less room for 100 or more Chinese refugees a night.

The problem that Belize, Gibraltar, and the Falkland Islands have in common is that each is being threatened by a menacing or odious neighbour. Anyone who considers the Government of Guatemala to be benevolent needs his head examined. The same could be said in the case of Argentina. The Spanish Government, though not odious, is still imposing the elements of Franco's blockade of Gibraltar.

There are also the accounts of British influence on the UN in New York and on the numerous international committees in Geneva and Vienna. We hope to explain as many of them as we can. Watch this space. Once a fortnight on Thursdays

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# Belgium latest crisis defused

From John Palmer, Editor, in Brussels

The fourth party Belgium in the was defused yesterday announcement of party coalition. But the new made up of Dutch-speaking Christians and Socialists in the winter in Belgium's women problems and public conflicts.

Although the parties agreed on policy they still tackle Belgium's 100,000, a question remained over ability to survive until next when King announced that finally agreed

Grain harvest falls far short

VISIT BY MR RIDLEY TO THE FALKLAND ISLANDS: 22-29 NOVEMBER 1980

### Sovereignty Options

#### Points to make

1. No doubt about British sovereignty. Reject Argentine claim outright.
2. But have to be realistic. Dispute frightens away private investment: economy stagnating and population decreasing. Argentines in position to prevent any exploitation of marine resources not sanctioned by them: potential source of income untapped. Trade with Argentina makes even better commercial sense than trade with UK.
3. Therefore, have to look at possible ways of satisfying Argentine sovereignty claim while preserving British way of life. Details not discussed in New York in April but Councillor Monk will have reported to you Argentines' readiness to explore possibilities.

#### Freeze

4. Since April, we have looked at all the various options that we can think of. Know that you favoured a freeze or moratorium when I was last here. I can see the advantage in that for you. But I can see nothing in it for the Argentines. They have rejected such a proposal in the past and are unlikely to find any more acceptable now.

#### Joint sovereignty

5. Another possibility is some sort of shared sovereignty or condominium. Has its theoretical attractions. But falls between 2 stools. It would be extremely difficult to work (c.f. New Hebrides). Would be faced with undesirable level of Argentine involvement in your daily lives and the Argentines would always be pushing to be given overall sovereignty.

#### Leaseback

6. There are other technical options. But only one seems to me to have even a chance of success: leaseback. We discussed it on my last visit. Under no illusions about difficulty of achieving settlement on this basis. All sides will have to make concessions. But I believe it presents best way of making progress towards solution of problem, while preserving British administration and way of life. (See Brief no. 3: Implications of Leaseback).

Sovereignty optionsEssential facts

1. Possible scenarios for a political solution are set out below. The list is not exhaustive but covers the options most likely to be regarded as feasible.

Sovereignty Freeze

2. This has been put forward by the Islanders in the past. It would require Argentine agreement to leave the sovereignty dispute in abeyance for a fixed period, say 25-50 years, after which both sides would review the sovereignty position. Comment: easy to see why it would appeal to the Islanders but nothing in it for the Argentines who want early progress.

Joint sovereignty or condominium

3. An example is the recently ended Anglo-French condominium of the New Hebrides. Co-sovereignty would inevitably lead to co-administration. It would be extremely complicated. Comment: the Islanders would find it un-acceptable because it would involve Argentine intervention in their way of life. It would probably be unacceptable to the Argentines in that it would involve their admitting the UK to a share of sovereignty which they claim exclusively. They might accept it as an interim measure pending full transfer of sovereignty.

Joint administration

4. Put forward by Argentines in 1977. Short period of joint administration, followed by phasing out of British presence and full Argentine sovereignty. Comment: unacceptable to the Islanders.

Mixed approach

5. Differentiation between territory (in which we judge the Argentines to be primarily interested) and people, which is the burden of our concern. It would involve conceding sovereignty over the uninhabited Dependencies (eg South Sandwich islands; but possibly not South Georgia for Antarctic, fish reasons) and their Maritime Zones to Argentina who would as a quid pro quo abandon her sovereignty claim over the inhabited Falkland Islands. Comment: already discussed at length in previous exchanges; unacceptable to Argentina because it would not involve the concession of sovereignty over the Falkland Islands which they are seeking.



6. A more complicated version would be the cession of all territory to the Argentines, but retention for the UK of full sovereign rights over the people and their way of life. Comment: hard to see how it would work. Argentines will not be satisfied with perpetual technical sovereignty over territory alone.

Leaseback (see brief no. 3)

7. Concession to the Argentines of sovereignty over the Falkland Islands, the Dependencies, their Maritime Zones and Continental Shelves. Argentina would simultaneously lease them back to HMG and agree on cooperation to develop the internal economy of the Islands. A perpetual lease would be ideal (but Argentines are unlikely to agree to this). The term would have to be negotiated: we should try for, say, 99 years but might have to settle for something shorter. Comment: it will not be easy to negotiate an agreement of this kind acceptable to Britain, Argentina and the Islanders. The term of the lease would be vital. It would also require Argentine agreement to leave the administration and way of life of the Islanders unchanged throughout the period of the lease. We would certainly want outside guarantees perhaps from the UN to ensure that the Argentines in years to come did not go back on any arrangement. But it would preserve the Islanders' way of life for the foreseeable future and it might satisfy the Argentine wish for titular sovereignty, in the knowledge that they would gain full control in due course.

8. There are several permutations of the basic concept, eg refusal to include South Georgia, agreement to cede the South Sandwich Islands outright etc etc. Comment: if the idea of leaseback proved acceptable, we should try to secure an agreement which gave as little away as possible. We cannot know now how far we might have to go.

#### Symbolic gestures

9. These would be designed to recognise the existence of a special Argentine interest in the Islands without allowing Argentina to exercise the more substantive attributes of sovereignty, which would remain exclusively with Britain. An example could be the flying of Argentine flags from certain public buildings, or even the presence of a senior Argentine liaison official. Although we would request such developments to be covered by the sovereignty umbrella, it would be difficult to maintain that there was not at least some erosion of our position on sovereignty. Comment: the Argentines would be unlikely to be satisfied unless the gesture was clearly a first step to more substantial concessions on sovereignty. Symbolic gestures would probably be of most use as part of a package of practical measures designed to reduce the Falkland Islands' isolation from the Argentine mainland. They would clearly have a role to play in any final agreement on sovereignty.

Other models

10. Two existing examples of shared sovereignty are:
- a) Spitzbergen where Norway has sovereignty but other powers have the right of "economic access"
  - b) The Aaland Islands where Finland has sovereignty but the Islanders enjoy certain special rights reflecting their relationship with Sweden

Neither would be acceptable to the Islanders, because they would involve considerable Argentine presence and intervention in their way of life.

International arbitration (see also Brief no. 25)

11. An international court or arbitration committee would give a binding ruling on the sovereignty position. Comment: unlikely to produce acceptable result for either side. Argentines do not accept jurisdiction of the International Court of Justice (ICJ) and they have rejected the findings of an arbitration committee on the Beagle Channel which gave the disputed Islands to Chile. For us, there is the usual danger that a court will find against the "colonial power".

"Fortress Falklands"

12. We could firmly refuse to consider now or in the future any concessions to the Argentines. They would either give way or mount direct or indirect attacks on the Islands and their economy. We should then have to defend them. Comment: the Argentines are not going to give up a sovereignty claim they have maintained for decades. There would be substantial economic and military costs in attempting to maintain such a position in the Islands. We could expect no support internationally, certainly not from Uruguay or Brazil, to whom we would have to look for alternative transit facilities. We are in a minority of one in the United Nations on this issue. The fortress concept would effectively prevent all development in the Islands without the continued injection of substantial capital aid; and it would also prevent any exploitation of the Maritime Zones and the sealed off Islands and Dependencies. It is in no-one's interests, least of all the Islanders'.

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## THE ARGENTINE CLAIM

1. Since Britain took possession in 1833, Argentina has protested that she is entitled to sovereignty over the Islands. Her claims are primarily based on the grounds that:
  - a) she has inherited Spain's previous titles to the Islands (Spain in fact appears not to have formally renounced her title or to have explicitly ceded it to Argentina);
  - b) she effectively occupied the Islands from 1820 to 1833 when they reverted to a status of terra nullius (in 1829 an Argentine political and military governor was appointed);
  - c) the Islands belong to Argentina by right of geographical contiguity, since they are on the Argentine continental shelf;
  - d) the Islands' present colonial status is anachronistic;
  - e) the Islands' economy has been neglected and would benefit from close association with Argentina.
2. Argentina also argues that the initial forceful occupation and settlement of the Islands and the expulsion of Argentine nationals in 1833 vitiates the whole period of British possession thereafter, and cannot form a good basis for title.

ANNEX C

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FALKLAND ISLANDS DEPENDENCIES

Legal Position

1. The Dependencies comprise South Georgia (annexed by Captain Cook in 1775), together with some very small archipelagos (notably the Shag Rocks and the Clerke Rocks) and the South Sandwich Islands (discovered by Cook but not annexed until 1908).

There has been a British Government station on South Georgia since 1909; an all year round British presence is now provided by the scientifically important British Antarctic Survey station.

Administration

2. For convenience, the Governor of the Falkland Islands administers the Dependencies. Legally and constitutionally, the Islands and Dependencies could be separated; politically this would be difficult to achieve (see attached minute from Legal Adviser).

Resources

3. The land of the Dependencies is not thought to offer any exploitable minerals, although centuries of occupation by penguins have covered some of the smaller islands in huge quantities of guano. The Continental Shelf around the Dependencies is not thought to contain hydrocarbons; the waters are too deep for present-day technology. There are, however, considerable quantities of fish, particularly round South Georgia, which Japanese, German, Russian and Polish vessels regularly exploit in the absence of any fishing regime (South Georgia was for many years a whaling base). The South Sandwich Islands are particularly inhospitable, virtually inaccessible and uninhabited.

The Argentine Position

4. The Argentines claim both (South Georgia since 1927 and South Sandwich Islands since 1948). They maintain what we regard as

/an illegal

an illegal scientific station on Southern Thule (one of the South Sandwich Islands: see Brief no. 8). They are unhappy about third country fishing around the Dependencies but rejected a scheme put to them by Mr Rowlands in December 1978 for cooperation and co-administration of the Dependencies' maritime zones because it did not involve acceptance of Argentine sovereignty over the land area of the Dependencies.

1. I refer to Mr Tomlin's points of 27 September 1980 concerning an enquiry by Mr Ridley about the constitutional link between the Falkland Islands, their Dependencies and the British Antarctic Territory.

2. As the name implies, the Falkland Island Dependencies, the "Dependencies" of the Falkland Islands, is they are administrated from the Falkland Islands. The Governor of the Falkland Islands is also Governor of the Dependencies and the Executive Council of the Dependencies is composed of the same persons who make up the Executive Council for the Falkland Islands and who has the same power in relation to the Dependencies as it has in the Falkland Islands. The Dependencies are, however, not distinct from the Falkland Islands. Thus, the legislative power for the Falkland Islands has power to enact legislation in respect of the Falkland Islands. The power to legislate in respect of the Dependencies is vested in the Governor. Historically, the Dependencies were never part of the Falkland Islands and our legal claim to sovereignty over the Falkland Islands is different from that of our claim to sovereignty over the Dependencies. The Dependencies were made dependencies of the Falkland Islands only in 1985 by Letters Patent and by Letters Patent in 1985 the territory which comprised the Dependencies was defined as being the territory which comprises the present Dependencies but also the territory which now comprises the British Antarctic Territory.

3. As mentioned, the British Antarctic Territory was originally part of the Falkland Island Dependencies. However, in 1985, the territory which now comprises the BAT was carved off from the Dependencies and the separate colony of the British Antarctic Territory was created. There is no constitutional link between either the Falkland Islands or their Dependencies and the BAT. The High Commissioner for the BAT is at present the Governor of the Falkland Islands. However, this is for convenience and there is no legal reason why this should be so and it could be open to the BAT to appoint another person for this post.

4. If BAT were to decide to separate the Dependencies from the Falkland Islands, the Falkland Islanders would have no legal objection. The Dependencies were never dependencies of the Falkland Islands by the UK Government and it is said by the Government that there is a separate and distinct colony. There is a precedent for this in the context of the BAT, where the UK Government has decided to divide an island which was not a legal objection by the Islanders. It would require, of course, a decision as to whether there were valuable resources



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FALKLAND ISLANDS: ANGLO-ARGENTINE TALKS (NEW YORK, 28-30 APRIL 1960)

## INTERNATIONAL ARBITRATION


Points to Make (Defensive)

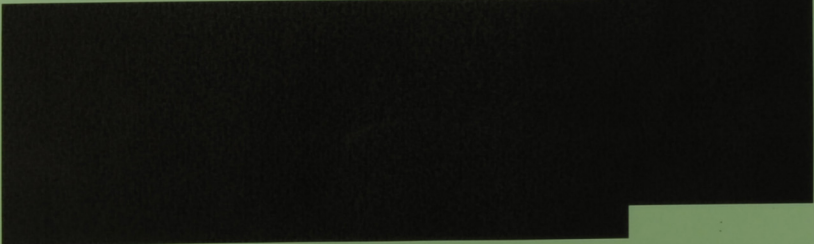
1. [We should not raise this question and it is most unlikely that the Argentines will. If they do ask whether we would consider taking the dispute to an international tribunal, Mr Ridley should say that he will need time to consult his Ministerial colleagues before giving HMG's answer].

Essential Facts

1. The question of British sovereignty over the Falkland Islands and their Dependencies has not been submitted to the International Court of Justice (ICJ) or to any other international arbitration. Since Argentina has not accepted the compulsory jurisdiction of the ICJ, any reference to the Court could only be made with the agreement of the Argentine Government.

2. In 1947 and subsequently HMG offered to submit the dispute over Argentine claims in the Dependencies to the ICJ. In 1955 HMG applied unilaterally to the Court against encroachments on British sovereignty in the Dependencies by Argentina and Chile. However, the matter could not be pursued since both Argentina and Chile declined to submit to the Court's jurisdiction in the matter.

3. In 1966 the question arose as to whether in the course of negotiations with the Argentines the UK should offer to refer the dispute over the Falkland Islands to the ICJ. 



4. The question was not, however, pursued further. This was partly because reference to the Court would have had no attraction for Argentina, but more because the composition of the Court had by then become less favourable for the UK on what is seen by many other members of the UN as a colonial problem.

5. Legal Advisers do not dissent from the views expressed by the Law Officers in 1966, nor do they consider the composition of the ICJ as any more favourable to the UK position than in 1966. If for political reasons it seemed advisable to offer international

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arbitration (either the ICJ or an Ad hoc Arbitration Tribunal) to the Argentines again as a method of resolving the dispute, the Law Officers would need to be consulted before taking such a step. They also advise that reference to an ad hoc arbitration tribunal might be preferable to reference to the ICJ since the composition of the former would have to be agreed between us and the Argentines. But, given the Argentines' repudiation of the British award in the Beagle Channel case (see Brief no 26), the Argentine Government might think we were being offensive if we suggested arbitration again as a means of solving the dispute.



FALKLAND ISLANDS: ANGLO-ARGENTINE TALKS (NEW YORK, 28-30 APRIL 1980)

THE LEGAL POSITION

Points to make (if raised)

1. We have no doubts about British sovereignty over the Falkland Islands and their Dependencies.
2. The UK have exercised sovereignty continuously over the Islands for 147 years. Argentina's claim is without legal foundation.

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## THE ARGENTINE CLAIM

1. Since Britain took possession in 1833, Argentina has protested that she is entitled to sovereignty over the Islands. Her claims are primarily based on the grounds that:

- a) she has inherited Spain's previous titles to the Islands (Spain in fact appears not to have formally renounced her title or to have explicitly ceded it to Argentina);
- b) she effectively occupied the Islands from 1820 to 1833 when they reverted to a status of terra nullius (in 1829 an Argentine political and military governor was appointed);
- c) the Islands belong to Argentina by right of geographical contiguity, since they are on the Argentine continental shelf;
- d) the Islands' present colonial status is anachronistic;
- e) the Islands' economy has been neglected and would benefit from close association with Argentina.

2. Argentina also argues that the initial forceful occupation and settlement of the Islands and the expulsion of Argentine nationals in 1833 vitiates the whole period of British possession thereafter, and cannot form a good basis for title.

The Dependencies

3. Argentina has from time to time put forward claims to the Dependencies and continues to do so. These claims have at different times been based on proximity to Argentina and alleged inheritance of title from Spain. Argentina first claimed South Georgia in 1927 and the South Sandwich Islands in 1948. Her Majesty's Government rejects all these claims, as without legal or historic foundation.



FALKLAND ISLANDS: ANGLO-ARGENTINE TALKS (NEW YORK, 28-30 APRIL 1980)

SOVEREIGNTY OPTIONS

Points to Make (only if raised by Argentines)

1. Ready to listen to Argentine views and to comment where we can (see Essential Facts).
2. But this exploratory round is not the place to undertake any substantive discussion of sovereignty proposals.
3. All these have to be seen in the context of the paramountcy of Islanders' wishes.

Essential Facts

1. We have no wish to raise sovereignty options. But Argentines will want to discuss sovereignty. This paper summarises the range of possible scenarios for a political solution and comments briefly on their feasibility.

Leaseback

2. Concession to the Argentines of sovereignty over the Falkland Islands, the Dependencies and their Maritime Zones. Argentina would simultaneously lease them back to HMG and agree on the co-administration of the economic resources of the maritime zones and seabed. A perpetual lease would be ideal (but the Argentines could not agree to this). The term would have to be negotiated: we should try for, say, 99 years but would inevitably have to settle for something shorter. Comment: it would be a formidable task to negotiate an agreement of this kind acceptable to Britain, Argentina and the Islanders. It would require Argentine agreement to leave the administration and way of life of the Islanders unchanged throughout the period of the lease. It would probably also require outside guarantees.

3. A further extension of a "leaseback" solution, involving more far-reaching concessions to the Argentines, would be to grant effective Argentine sovereignty over the Dependencies and their Maritime Zones, with leaseback operating only for the Falkland Islands and their Maritime Zone. Comment: this might be of more interest to the Argentines. But it could only be carried through against fierce opposition from the Islanders and the lobby.

Mixed Approach

4. Differentiation between territory (in which the Argentines are primarily interested) and people, which is the burden of our concern. It would involve conceding sovereignty over the uninhabited Dependencies (e.g. South Sandwich Islands; but possibly not South Georgia for Antarctic, fish reasons) and their Maritime Zones to

/Argentina

Argentina who would as a quid pro quo abandon her sovereignty claim over the inhabited Falkland Islands. Comment: unacceptable to Argentina because it would not involve the concession of sovereignty over the Falkland Islands which they are seeking.

#### Joint Sovereignty or Condominium

5. An example is the Anglo-French condominium of the New Hebrides. Co-sovereignty would have to lead eventually to co-administration. It would be extremely complicated. Comment: the Islanders would find it unacceptable because it would involve Argentine intervention in their way of life. It would probably be unacceptable to the Argentines in that it would involve their admitting the UK to a share of sovereignty which they claim exclusively.

#### Joint Administration

6. Favoured by the Argentines. Short period of joint administration, followed by phasing out of British presence and full Argentine sovereignty. Comment: unacceptable to the Islanders.

#### Symbolic Gestures

7. These would be designed to recognise the existence of a special Argentine interest in the Islands without allowing Argentina to exercise the more substantive attributes of sovereignty, which would remain exclusively with Britain. An example could be the flying of Argentine flags from certain public buildings. Although we would request such a gesture to be covered by the sovereignty umbrella, it would be difficult to maintain that there was not at least some erosion of our position on sovereignty. Comment: the Argentines would be unlikely to be satisfied unless the gesture was clearly a first step to more substantial concessions on sovereignty. Symbolic gestures would probably be of most use as part of a package of practical measures designed to reduce the Falkland Islands' isolation from the Argentine mainland.

#### Sovereignty "freeze"

8. This would require Argentine agreement to leave the sovereignty dispute in abeyance for a given period, say 30 years, at the end of which we would both review the sovereignty claim. Comment:



nothing in this that would appeal to the Argentines, who want early progress on the sovereignty front.

#### Other Models

9. Two existing examples of shared sovereignty are:

- (a) Spitzbergen where Norway has sovereignty but other powers have the right of "economic access".
- (b) The Aaland Islands where Finland has sovereignty but the Islanders enjoy certain special rights reflecting their relationship with Sweden.

Neither would be acceptable to the Islanders, because they would involve an Argentine presence and intervention in their way of life.

#### Arbitration

10. See Brief no. 6.

#### "Fortress Falklands"

11. We should firmly refuse to consider any concessions to the Argentines. They will either give way or mount direct or indirect attacks on the Islands and their economy. We should then have to defend them. Comment: The Argentines are not going to give up a sovereignty claim they have maintained for decades. There would be substantial economic and military costs in attempting to maintain such a position in the Islands. We could expect no support internationally, certainly not from Uruguay or Brazil, to whom we would have to look for alternative transit facilities. We are in a minority of one in the United Nations on this issue. The fortress concept would effectively prevent all development in the Islands without the continued injection of substantial capital and other aid; and it would also prevent any exploitation of the Maritime Zones generated by the Islands and Dependencies.

BRIEF NO. D 42

## ARGENTINA'S ATTITUDE TO THE FALKLAND ISLANDS

Essential Facts

1. All Argentine regimes, whether civilian or military, subscribe to the sovereignty claim over the Falkland Islands and Dependencies. The claim is based on alleged inheritance of title from Spain and Argentine occupation of the Islands between 1820 and 1832. But it is not just a matter of law, but one of national honour and machismo. It fits in with military and nationalist pre-occupation with "sovereignty", inspired partly by fear (about national security) and partly by ambition (the historical rivalry with Brazil). Every child learns at school that the Islands are Argentine and illegally occupied by Britain. If the Islands ever became Argentine, it is unlikely that many Argentines would wish to settle there; the main significance of the Islands would be their strategic position in the South Atlantic and the resources in and under the sea.
2. The Argentines' ability to focus on the Falkland Islands issue is conditioned by internal and external factors. There are few current distractions. Internal subversion, the military's first target after the March 1976 coup, has been largely contained. The Government's economic policies have steadily reduced inflation and increased the country's wealth. Other foreign policy issues are less pressing. Two years ago, Argentine attention was focused primarily on the dispute with Chile over the Beagle Channel. This came close to open war, prevented at the last minute only by the intervention of the Vatican with its offer of mediation (see Brief no. 26). Differences with Paraguay over the exploitation of the hydro-electric potential of the Parana river, whose waters they share, have been overcome. There are signs of a growing cordiality between Argentina and Brazil, the area's traditional rivals.
3. The present Argentine Junta is relatively moderate, but it has constantly to defend its position against hard-liners in the Armed Forces. If some major internal quarrel arose (on foreign

/or domestic

or domestic e.g. economic policy) the possibility remains of the Junta turning to the Falklands issue to provide a suitable distraction. The closest Argentina has yet come to military action against the Falklands was in the months before the 1976 coup, i.e. at a time when the Government of the day were anxious to divert attention from internal problems.

4. The heat was only taken out of the Falklands dispute in 1976 when HMG showed a willingness to negotiate. The talks which followed between 1977 and 1979 were based on the prospect of some deal on sovereignty being possible. We kept the Argentines in play only with difficulty and there was continuing suspicion among the Argentine officials about the genuineness of our intentions. The Argentines became increasingly impatient about British delaying tactics.

5. The Argentines have been relatively patient since the last round of talks in March 1979. They accepted that the Government needed time to formulate policy and have limited themselves to occasional reminders of their wish to hold talks. In New York, they are likely to insist again on an agreement to transfer sovereignty as a prerequisite for any economic cooperation or joint development of the area's resources. But it is probably true that (despite the effects of inter-Service rivalries) the present military Government in Argentina will wish to avoid raising the temperature on the Falklands dispute. In this respect (and if we decide actively to pursue a political solution), they are likely to be easier to deal with than any civilian Government, more open to domestic pressures.