

ADVANCE COPIES: FALKLAND ISLANDS

(29)

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RESIDENT CLERK

(Copies passed to Emergency Staff, MOD Sitcen and CinC Fleet)

SECRET

FROM U K MISSION NEW YORK 212049Z APRIL 82
 TO IMMEDIATE FCO
 TELEGRAM NUMBER 512 OF 21 APRIL
 INFO IMMEDIATE WASHINGTON.

WASHINGTON TELNO 1378: FALKLANDS IN THE OAS.

1. YESTERDAY'S VOTE IN THE OAS IS SEEN HERE AS A DIPLOMATIC SETBACK FOR US, THE FIRST SERIOUS ONE WE HAVE ENCOUNTERED SINCE THE CRISIS BEGAN. IF THE ARGENTINES SUCCEED ON 26 APRIL IN GETTING A TWO-THIRDS MAJORITY IN FAVOUR OF ECONOMIC OR OTHER MEASURES AGAINST THE UK, THIS WILL BE A MAJOR DEFEAT FOR US IN UN TERMS. SUCH A DISPLAY OF UNITED LATIN AMERICAN SUPPORT FOR ARGENTINA, IN SPITE OF HER RECKLESS USE OF FORCE, WILL GIVE PAUSE TO THIRD WORLD COUNTRIES WHO ARE AT PRESENT DISPOSED TO FAVOUR OUR SIDE OF THE ARGUMENT BUT WILL HESITATE ABOUT TAKING ON THE WHOLE OF LATIN AMERICA.

2. I HOPE THEREFORE THAT WE CAN GIVE EVERY ENCOURAGEMENT TO THE AMERICANS NOT TO TREAT THE ISSUE AS "A BIT OF A NUISANCE" BUT TO EXERT EVERY EFFORT IN LATIN AMERICA TO DENY THE ARGENTINES THE MAJORITY THEY NEED.

3. I HAVE CONSIDERED WHETHER THERE IS ANYTHING WE CAN DO HERE TO HELP. I RATHER DOUBT IT. ONE POSSIBILITY WOULD BE FOR US TO SEND

3. I HAVE CONSIDERED WHETHER THERE IS ANYTHING WE CAN DO HERE TO HELP. I RATHER DOUBT IT. ONE POSSIBILITY WOULD BE FOR US TO SEND A LETTER TO THE PRESIDENT OF THE SECURITY COUNCIL DRAWING HIS ATTENTION TO PRESS REPORTS OF THE OAS MEETING ON 26 APRIL AND SETTING OUT THE LEGAL ARGUMENTS IN PARAGRAPH 5 BELOW, OUR LETTER TO BE CIRCULATED AS A DOCUMENT OF THE SECURITY COUNCIL. MY INITIAL REACTION IS THAT SUCH ACTION MIGHT DO US MORE HARM THAN GOOD WITH ANY WAVERERS IN THE OAS: WOULD NOT "INTERFERENCE" BY THE UK (A NON-MEMBER) IN THE AFFAIRS OF THE OAS HAVE THE EFFECT OF CLOSING RANKS? THERE IS THE OTHER RISK THAT HOWEVER INVALID THE LEGAL JUSTIFICATION, THE ARGENTINES WOULD RIPOSTE BY ACCUSING US OF BEING OFFSIDE IN INSTIGATING ECONOMIC MEASURES BY THE EC AND OTHERS.

4. HOWEVER THE ARGUMENTS BASED ON THE UN CHARTER ARE GOOD AND THE AMERICANS ARE PROBABLY BEST PLACED TO DEPLOY THEM TO DISCOURAGE RIO TREATY STATES FROM VOTING IN FAVOUR OF THE ARGENTINE PROPOSALS. THESE ARGUMENTS SHOW THAT SUCH ACTION WOULD BE CONTRARY TO THE CHARTER AND THEY MIGHT THEREFORE CARRY WEIGHT WITH LEGALISTIC LATINs.

5. THE ARGUMENTS ARE AS FOLLOWS: FIRST, THE SECURITY COUNCIL IS SEIZED OF THE ISSUE AND HAS ADOPTED RESOLUTION 502 WHICH BY VIRTUE OF ARTICLES 40 AND 25 IS BINDING ON ALL MEMBER STATES. THE SECURITY COUNCIL HAS PRIMARY RESPONSIBILITY FOR THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY BY VIRTUE OF ARTICLE 24 OF THE CHARTER. WHILST THE SECURITY COUNCIL IS EXERCISING THIS RESPONSIBILITY A REGIONAL ARRANGEMENT OR AGENCY SUCH AS THE RIO TREATY OR THE OAS, SHOULD NOT INTERFERE. SECONDLY, ARTICLE 53(1) OF THE CHARTER PROVIDES THAT "NO ENFORCEMENT ACTION SHALL BE TAKEN UNDER REGIONAL ARRANGEMENTS OR BY REGIONAL AGENCIES WITHOUT THE AUTHORISATION OF THE SECURITY COUNCIL." WHAT ARGENTINA IS APPARENTLY PLANNING TO PROPOSE ON 26 APRIL IS THE TYPE OF MEASURE THE SECURITY COUNCIL IS AUTHORISED TO IMPOSE UNDER ARTICLE 41 OF THE CHARTER IE ENFORCEMENT. ACCORDINGLY, ADOPTION OF ARGENTINE PROPOSALS UNDER THE RIO TREATY WOULD AMOUNT TO A VIOLATION OF ARTICLE 53 OF THE CHARTER. ARTICLE 103 OF THE CHARTER PROVIDES THAT IN THE EVENT OF A CONFLICT BETWEEN CHARTER OBLIGATIONS AND THOSE UNDER OTHER TREATIES, THE OBLIGATIONS UNDER THE CHARTER "SHALL PREVAIL". FINALLY, WHILST ARTICLES 52 AND 53 OF THE CHARTER ALLOW FOR THE EXISTENCE OF REGIONAL ARRANGEMENTS AND AGENCIES FOR DEALING WITH MATTERS TO DO WITH THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY, ARTICLE 52 DOES SO ONLY TO THE EXTENT THAT THEY "ARE APPROPRIATE FOR REGIONAL ACTION". BECAUSE THE UK IS NEITHER A MEMBER OF THE OAS NOR A PARTY TO THE RIO TREATY, THE PRESENT MATTER IS MANIFESTLY INAPPROPRIATE FOR THE REGIONAL ACTION.