The Rt. Hon. Sir Derek Walker-Smith QC., MP.

HOUSE OF COMMONS
LONDON SW1A 0AA

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QC. MP GOW

Prime Minister

A.J.C. 23/4

24th April 1982.

Dear Private Secretary,

I am enclosing for the information of the Prime Minister, a copy of a letter Sir Derek has sent to The Times and which he hopes will be published.

Yours sincerely,

Sheila Kapila (Mrs)
Private Secretary

The Private Secretary to:
The Rt.Hon. Margaret Thatcher, M.P.
The Prime Minister
Downing Street
SW1

The Rt. Hon. Sir Derek Walker-Smith QC, MP.

HOUSE OF COMMONS
LONDON SW1A 0AA

22nd April 1982.

Sir,

In your powerful Leader (21/4) you say: "Perhaps Britain should suggest to Argentina that it (the issue of sovereignty) be now taken to the Hague, where it belongs more than in the operations rooms of opposing navies." I respectfully support that view.

One of the several mysteries in the Falkland Islands imbroglio is the position of the parties regarding a reference to the International Court of the question of sovereignty. On Monday the Foreign Secretary told the Commons that he had no reason to think that the Argentines had changed their objection to allowing the matter to go to the International Court, what time his colleague Lord Belstead, while confirming that the Argentines had never shown any interest in referring the sovereignty question to the International Court, made it clear that the British Government, had not proposed such a reference and has never suggested to any Argentine Government that the Falkland Islands dispute should be referred to the International Court.

Against the background of the Charter this is an odd situation. The position under the Charter is clear. Article 33 of the UN Charter imposes and obligation on parties (i.e. States) in dispute to seek first of all a solution by one or more peaceful means, which specifically includes arbitration. Such arbitration is entrusted to the International Court of Justice, which, by Article 92, is constituted "the principal judicial organ of the United Nations" whose Statute is annexed to the Charter and forms "an integral part" of it. By Article 36 of the Statute "the jurisdiction of the Court comprises all cases which the parties refer to it." Clearly therefore the dispute as to sovereignty, in its essence a matter of law, is appropriate for reference to the Court.

Why then has neither party suggested a reference? There appears to be no logical reason. The Court exists for the resolution of such disputes and has the necessary expertise. We believe we have a good case in law. Why then hesitate? To view the possession of a good case as a disincentive to going to Court is a novel concept to me. Or is each party waiting for the other like the Earl of Chatham, and Sir Richard Strachan at the battle of Walcheren? And is the Junta giving us a reason for its inaction the alleged indifference of the British just as Foreign Office Ministers are ascribing their inaction to the indifference of the Argentines?

There are in effect four methods of resolving an international dispute There is negotation, with or without an honest Broker; there is arbitration; there is what Continental Lawyers call an"amiable compositeur", such as is provided for, if the parties so wish, in commercial disputes by Article 13 of the Rules of the Court of Arbitration of the International Chamber of Commerce; and finally, there is war.

The first emthod has been tried with the help of the praiseworthy and pertinacious efforts of Secretary Haig. But of course his role was confined to that of honest broker, in effect a go between pedalling the propositions of the parties to each other. He was never entrusted with the superior role of "amiable compositeur" with the power to prescribe his own solution. No doubt the parties did not want to give him such a role. Nor was it indeed necessary in view of the machinery of arbitration, readily available under the auspices of the United Nations.

No further time should in my view therefore be lost in putting the suggestion to the Argentines and arranging a reference to the Court, subject only to prior withdrawal of Argentine troops in compliance with UN Resolution 502. This need not involve any interruption of simultaneous negotiation. Indeed it may well hep and expedite it. This pattern, a commonplace in commercial arbitrations, may well be reflected in this arbitration between states. There will thus be two mechanisms operating simultaneously to prevent the evil of the fourth method, resolution by conflict, and to give effect to the principle enunciated by Sir Winston in one of his less grandiloquent but neverthless relevant aphorisms "jaw-jaw is better than war-war" - the formal method of arbitration and the less formal negotiating talks that would accompany it.

These are the advantages of resort to arbitration. There may be countervailing disadvantages; but if so, nobody has yet spelt them out. Unless some hitherto unknown obstacle is identified, I think we should let the prescribed procedures have their chance before perhaps sadly it is too late.

I am, Sir,

Your obedient servant,

Derek Walker-Smith

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