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From the Private Secretary

27 October 1986

FALKLAND ISLAND FISHERIES

Thank you for your letter of 24 October covering a list of options available to Ministers if an Argentine commercial or coastguard vessel could not be persuaded to leave the Falkland Island interim Conservation and Management Zone (FICZ).

The Prime Minister does not find the options as presented at all satisfactory since they amount to saying that we would not actually be able to do anything in the circumstances envisaged. If that were really the case, we have no business trying to establish a FICZ. She would therefore like the note to be studied further by officials inter-departmentally together with defence experts to try to work out a more credible account of the options which would be available to us. I should be grateful if Mr. Mallaby in the Cabinet Office could coordinate this.

I am copying this letter to Joan MacNaughton (Lord President's Office), Tony Galsworthy (Foreign and Commonwealth Office), Ivor Llewelyn (MAFF), Michael Saunders (Law Officers' Department) and Trevor Woolley (Cabinet Office).

CHARLES POWELL

John Howe, Esq.,
Ministry of Defence.

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ccpc (1)

MINISTRY OF DEFENCE
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MO 5/21V

24th October 1986

Dear Charles,

cc Flap

FALKLAND ISLANDS FISHERIES

In your minute of 15th October to Christopher Mallaby, you conveyed the Prime Minister's wish that the Ministry of Defence should draw up and circulate a list of the options available to Ministers if an Argentine commercial or coastguard vessel could not be persuaded to leave the Falkland Island interim Conservation and Management Zone (FICZ).

The Defence Secretary has asked me to circulate the attached list of options. This addresses the two contingencies in which Ministerial guidance could be requested: failure by a fishing vessel to comply with a request by a civil enforcement vessel to proceed to Port Stanley (having already refused to leave the zone); and failure of a fishing or coastguard vessel to comply with a request from a warship to leave the zone.

(1) (2)

As OD(86)16 recognised, it will be important to reduce, as far as possible, the risk of military confrontation in the South Atlantic arising from the declaration of a fisheries regime. The aim must be to treat Argentine challenges in a low key manner for as long as possible by employing a range of firm but not unnecessarily escalatory measures. A process of deliberate steps has, therefore, been identified leading up to the point at which, in the face of continuing Argentine refusal to comply with their requests, our people on the spot have to report to Ministers for instructions. To place the military options then available for consideration by Ministers in their proper context, these earlier steps are briefly outlined first in the attachment.

It is important that our actions should be seen by international opinion to be lawful. But it is clear from the attached list of options for Ministers to consider that the effective use of military assets is severely constrained by international law which regards the use of force to effect an arrest for suspected fishing violations as unjustifiable. In addition, it is not legitimate to endanger human life without

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proven necessity. Thus even the firing of shots at a vessel without intention to disable her would be highly inadvisable as it would be impossible to be sure that life would not be endangered. Against the Argentine Coastguard (as distinct from fishing vessels), fire could only be used in self-defence (or if the vessel entered the 120 nautical mile central zone around the Falklands in company with a warship); and the legal view is that we would not be justified in firing warning shots in a attempt to persuade a coastguard vessel to leave the FICZ. This underlines the risk, identified in paragraph 14 of OD(86)16, of HMG appearing impotent in certain circumstances, which however are judged likely to occur only rarely.

[Surely they will occur a lot more often if we are shown to be impotent]

The case of incursions by Argentine aircraft is covered by the existing ROE. Limited endurance for aircraft would not in any event make reference to London for decision a relevant option.

Finally, on the detailed changes to the ROE proposed in OD(86)16, the Defence Secretary believes that these should come into effect simultaneously with the announcement of the UK's intention to impose a fisheries regime as the risk of challenge from Argentina will increase then rather than when the regime comes into effect.

I am copying this letter to Joan MacNaughton (Lord President's Office), Tony Galsworthy (FCO), Ivor Llewelyn (MAFF), Mike Saunders (Law Officers Department) and Trevor Woolley (Cabinet Office).

Yours sincerely,

John Howe.

(J F HOWE)
Private Secretary

Measure	Effect on Argentine vessels	Consequences
2. Threat of Force		
Oral threat backed up by actions such as training gun, followed, after warnings, by firing a blank shot and, for fishing vessels only, firing a shotted round across bows.	Effective if it is believed that force will be used.	Risk of bluff being called with total failure of credibility. Risk of Argentine exploitation by further incursions or conceivably escalatory response from armed Argentine vessels.
3. Use of Force		
a. Non-disabling fire eg shot in bows.	Effective in dealing with immediate violation. No certainty that attempt	Escalatory leading to much heightened risk of military conflict. Severe international political consequences. Illegal.
b. Disabling fire.	at a. would not result in b. or c.	
c. Sinking.		

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