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From the Private Secretary

MR. NICHOLLS
CABINET OFFICE

FALKLAND ISLANDS FISHERIES

The Prime Minister has considered the note attached to your minute of 7 November spelling out in greater detail the possible courses of action should it be impossible to persuade an Argentine commercial or coastguard vessel to leave the Falkland Islands Interim Conservation and Management Zone. She believes that it has been a useful exercise and notes in particular the further legal advice about the circumstances in which use of limited force could be justified.

I am sending copies of this minute to the Private Secretaries to the Lord President, the Foreign and Commonwealth and Defence Secretaries and the Minister of Agriculture, Fisheries and Food, to the Legal Secretary to the Law Officers and to Mr. Woolley.

C.D.P.

(Charles Powell)

9 November 1986

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MR POWELL

Falkland Islands Fisheries

In your letter of 27 October, you invited Mr Mallaby to coordinate further work by officials on possible options for consideration by Ministers, should it be impossible to persuade an Argentine commercial or coastguard vessel to leave the Falkland Islands Interim Conservation and Management Zone.

2. Mr Mallaby has asked me to forward the attached note, which reports the outcome of this work. The note assesses in detail the likely reaction of an Argentine vessel to the various measures specified and reflects, in particular, further legal advice on the permissibility of the use of limited force as a last resort.

3. I am sending copies of this minute to the Private Secretaries to the Lord President, the Foreign and Commonwealth and Defence Secretaries and the Minister of Agriculture, Fisheries and Food, to the Legal Secretary to the Law Officers and to Mr Woolley.

N. Nicholls

N H NICHOLLS

7 November 1986
Att.

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Prime Minister

It's in a more professional job, although the warning in the last paragraph must be borne in mind.

Agree that this remit has now

been satisfactorily fulfilled.

*CDP
F/xi*

mt

*Yes
mt*

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Note by Officials
OPTIONS FOR DEALING WITH INCURSIONS INTO THE
FALKLAND ISLANDS INTERIM CONSERVATION AND
MANAGEMENT ZONE (FICZ) BY ARGENTINE COMMERCIAL
VESSELS AND NAVAL AUXILIARIES

Officials have reviewed the list of options set out in the attachment to Mr Howe's letter to Mr Powell of 24 October, and have the following further comments.

2. The possibility of reference to Ministers in the event of failure by an Argentine commercial vessel to comply with an order to leave Falklands waters has existed since hostilities ended in 1982. The rules of engagement for our forces patrolling the Falkland Islands Protection Zone (FIPZ) have until now prescribed that instructions should be sought if a commercial vessel fails to respond after a round has been fired across her bows. In future, warning rounds will not be authorised in advance of reference to Ministers (OD(86)16).

3. On the few occasions when Argentine fishing vessels have entered the FIPZ between 1982 and 1986, they have vacated it once they were aware of having been detected. It is reasonable to expect Argentine (and other) vessels having the purpose of fishing to continue to leave the area without significant difficulty. However, Argentina may choose to regard the declaration of the FICZ as provocative and might

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conceivably seek to challenge our jurisdiction by means of incursions by fishing vessels. The vessels' instructions might well be to leave the FICZ if our enforcement assets make serious efforts to persuade them to do so. It is thus possible that even Argentine fishing vessels engaged in deliberate violation would quit the Zone before the stage was reached when reference to Ministers became necessary.

4. The sequence of actions by our enforcement forces before reference to Ministers would be as follows:-

a. Identification by Patrol Aircraft

The offending vessel would be aware that she had been identified, since she would see our aircraft and, in the case of the civil aircraft, radio contact would normally be established. She would expect the overflight to be followed by the arrival of a fisheries enforcement vessel. Unless she were deliberately testing British jurisdiction, she would probably leave the Zone at that point. This would accord with past experience.

b. Instruction to Quit the Zone by Civil Enforcement Vessel

Unless she had set out deliberately to challenge British jurisdiction, it is most unlikely that the offending vessel would not

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quit the Zone when instructed to do so; and even a vessel making a challenge would see the arrival of the enforcement vessel as confirmation of determination to enforce the FICZ and might well vacate the FICZ at that point.

c. Low Pass by Military Aircraft

The use of military assets would intensify the pressure on the offending vessel and would be construed as an indication of preparedness to use force.

d. Deployment of Warship (if available)

The arrival of a warship would be seen as even clearer indication that in the last resort force might be employed.

5. The chances of an offending vessel staying put in order to carry out a more determined challenge to British jurisdiction are small but cannot be ruled out. OD(86)16 concluded that, while the risk of the enforcement vessel being shown to be impotent could not be discounted, such a situation was likely to occur extremely rarely. It is conceivable that, in such a situation, the Argentine coastguard could be called in, although this would by definition entail breaching the FIPZ, which the coastguard have hitherto observed.

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6. The options for consideration after reference to Ministers should be assessed against this background. They are:-

a. Harassment

i. Manoeuvres by civil enforcement vessels or RN warships designed to cause inconvenience or alarm.

In theory this option is attractive, being designed to intimidate without entailing resort to force. In practice, there is a risk of damaging our vessels, whether civil or naval. And the experience in fisheries enforcement elsewhere is that an offending vessel which had failed to respond to the earlier measures might well be antagonised rather than persuaded to leave.

ii. Action to prevent vessel fishing (eg cutting fishing gear).

Detailed re-examination confirms that there is no effective means of preventing a vessel from fishing which would not endanger our vessel. Cutting of gear or fouling of the fishing vessel's propeller would require a more manoevrable vessel than will be available. In addition, such action would be of doubtful legality, as we argued during the Icelandic dispute.

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b. Threat of Force

Oral threat backed up by action such as training gun, followed, after warnings, by firing a blank shot and, for fishing vessels only, firing a shotted round across bows.

11 The range of actions, up to and including the firing of a shotted round across the bows, would be likely to be perceived by the vessel's skipper as a clear warning that failure to comply would precipitate the use of force. He could be expected to be concerned for the safety of his crew. Experience in UK waters suggests that the firing of a shotted round should persuade a vessel to quit the Zone. There are no legal objections to the use of reasonable force to police infringements of a fisheries regime. This option thus offers a reasonable prospect of success.

It would not be open to warships under international law to fire a round across the bows of an Argentine coastguard vessel, which as a public vessel enjoys sovereign immunity and so cannot be charged with a fishery offence, unless she were to do so first. Any action by way of self defence would have to be proportionate to that taken by the Argentine vessel.

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c. Use of Force

i. Non-disabling fire (ie shot into bows)

Further legal advice shows that, provided that our commanding officer is sure that that it would not cause the offending vessel to sink or lives aboard her to be endangered, use of non-disabling fire against a fishing vessel would be legally defensible:

- a. as an act of last resort;
- b. after a warning;
- c. if ammunition of the smallest available calibre were used.

It is unlikely that a fishing vessel would stay in the FICZ after being harmed by fire from our enforcement assets.

The disadvantages of this measure are that it would be likely to provoke some international criticism, and that Argentina might send a coastguard vessel or even a warship into the FICZ to assist the fishing vessel. Our forces would order an Argentine coastguard or warship to leave the Zone; they would be legally entitled to fire on either type of vessel in self-defence.

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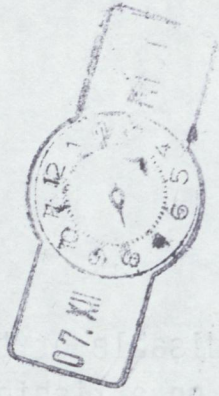
ii. Disabling fire.

iii. Sinking.

Opening fire with intent to disable or to sink a fishing vessel wanted on a fishing charge would be illegal under international law.

CONCLUSION

7. Officials continue to believe that it is improbable that any fishing vessel penetrating the FICZ would choose to stay when challenged by a civil enforcement vessel and/or a warship; and that it is therefore unlikely that Ministers would be required to consider possible military options for persuading her to quit the Zone. If nevertheless that point were reached, the threatened use of force, up to and including firing a shotted round across the bows of the fishing vessel, could be expected to be an effective as well as legal means of persuading the vessel to leave; as a last resort, the use of non-disabling fire into the bow of the vessel should be compelling. If, nevertheless, Argentina was willing to put a vessel at risk in order to mount a determined challenge to British jurisdiction and the vessel ultimately refused to leave, our bluff would be seen to have been called. This would have damaging consequences for the credibility of the enforcement regime and for that of the FIPZ. But the chances of this situation being reached must be judged as extremely low.



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1. Dismantling fire
2. Sinking

Downing the vessel with intent to sink
sinking vessel, wanted to sinking
sinking would be illegal under international
law.

CONCLUSION

Officially continue to believe that this
improbable that any fishing vessel participating
FIC would choose to stay when challenged by a civil
enforcement vessel under a warning, and that this
the state unlikely that this state would be required
to consider possible military action for rescuing
to go to the aid of a vessel in distress
rescued - that concerned users of force, to and
including using a shorted round across the bow of
the fishing vessel, would be expected to permit
effective as well as actual means of rescuing the
vessel to leave, as that vessel, the use of
non-lethal fire from the bow of the vessel should
be compelling. In any event, Argentina was
willing to put a vessel at risk in order to mount a
detained challenge to half as justification and the
vessel ultimately refused to leave, but that would
be seen to have been half of this would have
the same consequences for the credibility of the
enforcement action and for that of the FIC. But
the purpose of the situation being examined, the
found extremely low

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