



Foreign and Commonwealth Office

London SW1A 2AH

27 April 1982

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Dear John,

Death of Argentine Prisoner

I understand that ODSA this morning decided that no publicity should be given to the incident yesterday and that we should take no further action for the time being, pending further details from South Georgia. However, I enclose a copy of a note from one of our Legal Advisers about our obligations under the Third Geneva Convention in the event of the death of a prisoner. The important point is that we are obliged to communicate immediately with the protecting power (in this case Brazil). I also enclose the text of the relevant article, No 121.

ODSA may wish to consider in the light of this, the timing of our notification to the Brazilians of this incident. It is clearly important that we should not be vulnerable to accusations that we have fallen down on our legal obligations under the Geneva Convention. In the view of our Legal Advisers, ignorance of the details of the soldier's name and number would not constitute a valid reason for not notifying the protecting power immediately. We should avoid if at all possible a situation in which news of the incident leaks out before we have notified the Brazilians and in a way which will immediately put us on the defensive about it. Against this, we clearly need to consider the implications for Mr Haig's efforts of publicity about this incident which we must assume would follow immediately any notification to the Brazilians.

ODSA may need to meet again to consider this, but it might be helpful if the group of officials meeting under Sir R Armstrong's chairmanship at 3.30 today could consider it first. Meanwhile, it is possible that the news will leak at any moment and the Prime Minister needs a line to take in the House today, which could also serve as a press line for ourselves and the Ministry of Defence. I enclose a suggested line agreed with the Ministry of Defence and our Legal Advisers. This overtakes any previous advice already offered.

I am copying this letter to the Private Secretaries to members of ODSA, to Sir R Armstrong and to Sir M Palliser. In view of the urgency I am sending this before Mr Pym, who is in Luxembourg, has been consulted. He is aware of the incident.

(J E Holmes)
Private Secretary

Yours ever
John Holmes.

A J Coles Esq
10 Downing St

Mr Wright

KILLING OF ARGENTINE PRISONER OF WAR

1. Article 13 of the Third Geneva Convention prohibits any "unlawful" act causing the death of a prisoner of war and treats such an act as a "serious breach" of the Convention. Article 42 provides that:

"The use of weapons against prisoners of war, especially against those who are escaping or attempting to escape, shall constitute an extreme measure which shall always be preceded by warnings appropriate to the circumstances".

2. The authoritative Red Cross commentary on this Article makes it clear that shooting a prisoner of war who is threatening a member of the detaining forces is also covered by this provision and shooting to kill must only be used as a last resort.

3. Without knowing the full details, it is impossible to say whether or not an offence has been committed. But it is quite probable that this has happened.

4. Article 121 provides that when a prisoner of war has been killed this must be immediately followed by an official enquiry and a communication sent immediately to the protecting power. It also provides that statements shall be taken from witnesses, especially those who are prisoners of war, and a report including such statements forwarded to the protecting power. If the enquiry indicates guilt, the detaining power shall take all measures for prosecution of the person or persons responsible.

5. We must therefore inform the Brazilian Embassy of the death giving the name, rank and number of the prisoner of war and tell them that an official enquiry has been instigated and that the further information required by Article 121 will be supplied to them as soon as possible. We should also add that if the enquiry would indicate guilt of one or more persons, the facts will be submitted to the appropriate authorities for the purpose of considering a criminal prosecution.

6. In view of the explicit terms of the Convention and the likelihood that the story will inevitably leak soon, it would seem preferable to pass the initial information without delay. Even if there is no leak it would look extremely bad if we waited, say, a week or more before passing on the information.

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-The Argentines would no doubt make damaging propaganda out of this.

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Emergency Unit

27 April 1982

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- Mr Fearn
- Mr Giffard
- Mr Gillmore
- Sir I Sinclair

The detaining authorities shall ensure that prisoners of war who have died in captivity, are honourably buried, if possible according to the rites of the religion to which they belonged, and that their graves are respected, suitably maintained and marked so as to be found at any time. Wherever possible, deceased prisoners of war who depended on the same Power shall be interred in the same place.

Deceased prisoners of war shall be buried in individual graves unless unavoidable circumstances require the use of collective graves. Bodies may be cremated only for imperative reasons of hygiene, on account of the religion of the deceased or in accordance with his express wish to this effect. In case of cremation, the fact shall be stated and the reasons given in the death certificate of the deceased.

In order that graves may always be found, all particulars of burials and graves shall be recorded with a Graves Registration Service established by the Detaining Power. Lists of graves and particulars of the prisoners of war interred in cemeteries and elsewhere shall be transmitted to the Power on which such prisoners of war depended. Responsibility for the care of these graves and for records of any subsequent moves of the bodies shall rest on the Power controlling the territory, if a Party to the present Convention. These provisions shall also apply to the ashes, which shall be kept by the Graves Registration Service until proper disposal thereof in accordance with the wishes of the home country.

ARTICLE 121

Every death or serious injury of a prisoner of war caused or suspected to have been caused by a sentry, another prisoner of war, or any other person, as well as any death the cause of which is unknown, shall be immediately followed by an official enquiry by the Detaining Power.

A communication on this subject shall be sent immediately to the Protecting Power. Statements shall be taken from witnesses, especially from those who are prisoners of war, and a report including such statements shall be forwarded to the Protecting Power.

If the enquiry indicates the guilt of one or more persons, the Detaining Power shall take all measures for the prosecution of the person or persons responsible.

Part V.—Information Bureaux and Relief Societies for Prisoners of War

ARTICLE 122

Upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall institute an official Information Bureau for prisoners of war who are in its power. Neutral or non-belligerent Powers who may have received within their territory persons belonging to one of the categories referred to in Article 4, shall take the same action with respect to such persons. The Power concerned shall ensure that the Prisoners of War Information Bureau is provided with the necessary accommodation, equipment and staff to ensure its efficient working. It shall be at liberty to employ prisoners of war in such a Bureau under the conditions laid down in the Section of the present Convention dealing with work by prisoners of war.

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We have received reports of [such] an incident, but do not yet have the full details. These are being sought as a matter of urgency. As soon as they are available, we shall take any action required of us under the Third Geneva Convention. We shall keep the House informed.