



Geneva Convention

Foreign and Commonwealth Office

London SW1A 2AH

27 April 1982

Dear John,

Prisoners captured on South Georgia

Following my letter to you of 26 April, we discussed further the status of the prisoners captured on South Georgia. I now enclose a note by Sir I Sinclair setting out chapter and verse for his view that the prisoners captured on South Georgia are prisoners of war within the meaning of the relevant Geneva Convention of 1949 to which both we and Argentina are parties. The Geneva Convention provides the internationally accepted definition of prisoners of war.

Yours ever

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PRISONERS OF WAR CAPTURED IN SOUTH GEORGIA

Note by the FCO Legal Adviser

1. The Geneva Convention relative to the treatment of prisoners of war (to which both Argentina and the UK are parties) was concluded in August 1949.

2. Article 2 of the Convention provides that:-

"In addition to the provisions which shall be implemented in peace-time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognised by one of them."

Article 2 also provides that the Convention shall:-

"apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance".

3. Article 4 of the same Convention defines prisoners of war, in the sense of the present Convention, as persons belonging to one of the following categories, who have fallen into the power of the enemy. Six categories are listed, of which the most significant is:-

"members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces".

4. There is also a separate defined category of persons to be treated as prisoners of war under the Convention. These are:-

"(1) Persons belonging, or having belonged, to the armed forces of the occupied country, if the occupying Power considers it necessary by reason of such allegiance to intern them, even though it has originally liberated them while hostilities were going on outside the territory it occupies, in particular where such persons have made an unsuccessful attempt to rejoin the armed forces to which they belong and which are engaged in combat, or where they fail to comply with a summons made to them with a view to internment.

(2) The persons belonging to one of the categories enumerated in the present Article, who have been received by neutral or non-belligerent Powers on

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their territory and whom these Powers are required to intern under international law, without prejudice to any more favourable treatment which these Powers may choose to give and with the exception of Articles 8, 10 15, 30, fifth paragraph, 58-67, 92, 126 and, where diplomatic relations exist between the Parties to the conflict and the neutral or non-belligerent Power concerned, those Articles concerning the Protecting Power. Where such diplomatic relations exist, the Parties to a conflict on whom these persons depend shall be allowed to perform towards them the functions of a Protecting Power as provided in the present Convention, without prejudice to the functions which these Parties normally exercise in conformity with diplomatic and consular usage and treaties."

Neither of these two defined categories of persons to be treated as prisoners of war apply to the prisoners captured in South Georgia.

5. In the circumstances, there is, in my view, no doubt whatsoever that the prisoners captured in South Georgia must be regarded as prisoners of war within the meaning of the Geneva Convention of 1949 relative to the treatment of prisoners of war.

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