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FROM J.H. ANDERSON.....

TO EMERGENCY UNIT.....

Dr. John Heap, Polar Regions S, S. Am Dept
Sir I. Sinclair Legal Advisers

WKMS Tel No 584 : following is
to NAM
draft reply and historical memo. on
settlement of F. Is.

M 29/4
f-a.

J. Anderson
27.4

Transmitted at

By

I have the honour, with reference to the letter from the Permanent Representative of Cuba dated 26 April 1982 to which was attached a communique by the Coordinating Bureau of the Movement of Non-Aligned countries, to state the following.

2. The United Kingdom shares the concern of the Coordinating Bureau over developments in the region of the Falkland Islands. As resolution 502(1982) adopted by the Security Council on 3 April 1982 makes clear, the Argentine invasion of the Falkland Islands in defiance of the Security Council's call on 1 April that force should not be used, ^{caused} ~~led~~ to the ^{current} breach of the peace ~~existing~~ in the region. This breach of the peace will not be brought to an end before Argentina can be seen to have complied with operative paragraph 2 of that resolution by withdrawing all its forces from the Falkland Islands. Argentina's use of force was not only contrary to the principles of the Movement of Non-Aligned countries, as the communique notes, but also to paragraphs 3 and 4 of article 2 of the Charter of the United Nations - the fundamental principles of peaceful settlement of disputes and non-use of force.

3 With regard to the ^{question} ~~reference~~ of self-determination, ~~in the Lima Declaration~~, I wish to draw Your Excellency's attention to the following points. Self-determination is usually referred to these days ^{in the United Nations} not as a principle, but rather as an inalienable right: in other words, it is a right which cannot be taken away. ^{This right derives principally from the Charter and the Covenants on Human Rights.} Article 1(2) of the Charter refers to self-determinati:

of peoples and article 73 recognises "that the interests of the (such as the Falkland Islands inhabitants" of territories are paramount. Article 1 of the two International Covenants on Human Rights contains the following provision:

"1. All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development" (*Emphasis added*).

Paragraph 3 of the same article establishes that the duty to promote the realisation of this right is imposed upon all states parties and not only upon those administering territories.

- ← The conditions for the exercise of the right are, therefore
- ← (1) that there exists a 'people' within the meaning of the Article;
 - ← (2) that a determination of their political status is made by that people;
 - ← (3) that this determination is made freely; and
 - ← (4) that the people are free to pursue their economic, social and cultural development.

The Falkland Islanders are a people. The United Kingdom ~~has~~ ratified both the ^{Rights Covenants} Human/ on their behalf. They are a permanent population. Over half of the people can trace back their roots on the Island to 1850. They have no other home. They have made known their wishes regarding their political status in free and fair elections, the last having been held as

recently as October 1981. Their decision was to retain their traditional allegiance and social and cultural life and not to become Argentine. The consistent practice of the United Nations shows that there is no minimum figure for a population to qualify for the right to self-determination: it suffices to cite the case of St. Helena, another South Atlantic island with about 4000 people whose right to self-determination has been consistently upheld. In these circumstances, the United Kingdom fails to see any exception to the right of self-determination under the Charter and the Human Rights Covenants ^{in the case of the Falkland Islanders.} ~~such as may have been suggested in the Lima Declaration.~~

4. Turning to the question of sovereignty, the United Kingdom, whilst fully maintaining its position, acknowledges that its sovereignty has been disputed by Argentina on the basis of certain events in 1833. Attached to this letter is a memorandum setting out the history of settlement of the Falkland Islands. This shows that France has maintained a colony for about 3 years, Spain for ^{at most} about 41 years, the United Kingdom 158 years and Buenos Aires about ^{at most} 6 years. In particular, the present population of the Falkland Islands has been there, generation after generation, for the last 149 years maintaining a viable pastoral economy and distinctive way of life. ~~And whereas the French, Spanish and Buenos Ayrean colonies were very small,~~

(for 100 people), only significant movement has been that from wind - CIA & the present day saying just over 2000 tons.

5. Whilst no doubt much time and energy could be spent in reviewing the history of the Falkland Islands between the first settlement in 1764 and 1833, and whilst the United Kingdom is confident about the strength of its legal case over that period these factors cannot be allowed to override the inalienable right of self-determination. In 1833, the age of the railway was just opening in Europe and it hardly seems appropriate to decide issues involving the welfare of people alive in the latter part of the 20th century on the basis of ^{(disputed) events} ~~things done~~ in the early part of the 19th century or even the 18th century. ^{If} ~~were~~ the international community ^{were} to discount 149 years of history, ~~this would reopen numerous old territorial disputes.~~ ^{there would hardly be an international boundary which did not immediately become subject to dispute}

islands for 70 leagues and saw no evidence of anyone being there

June 1766

A second British expedition, led by Captain Macbride completed the settlement at Port Egmont and erected a block house for the defence of the settlement, having discovered the existence of the Bougainville settlement and given the settlers formal notice to leave British territory.

April 1767

France relinquished its claim to the islands to Spain in return for a financial indemnity. Spain re-named Port Louis as Puerto de la Soledad.

November 1769

The Captain of a British frigate ordered a Spanish ship to move away from Port Egmont. The Governor of the Spanish colony called on the British settlers to leave and the British captain warned the Spaniards to leave within 6 months.

4 June 1770

A Spanish frigate entered Port Egmont and was joined two days later by 4 or more Spanish ships to expel the British settlers.

10 June 1770

The British settlers capitulated and set sail for the United Kingdom. *The United Kingdom protested to the Government of Spain.*

22 ^{January} June 1771

Spain issued a declaration in response to ^{the} British protest, agreeing to restore to the United Kingdom the possession of Port Egmont. The Spanish declaration stated that the restoration of Port Egmont to British possession "cannot nor ought in any wise to affect the question of the prior right of sovereignty to the Malouines Islands, otherwise called Falkland's Islands". The British accepted this declaration, together with full performance of the Spanish undertakings, as satisfaction for the

injury done to the United Kingdom on 10 June 1770.

September 1771

Port. Egmont was formally restored to the United Kingdom.

May 1774

The British establishment at Port Egmont was closed for reasons of economy. The British commanding officer left the British flag flying and a plaque declaring the Falkland Islands "to be the sole right and property" of King George III.

1777

The buildings at Port Egmont were destroyed by the Spanish. 1778 Spanish colony had 82 inhabitants (including 28 convicts).

June 1806

The Spanish settlement at Soledad was abandoned. Islands uninhabited

9 November 1820

Col. Jewett paid a brief visit and took formal possession of the Falkland Islands on behalf of the newly independent government in Buenos Aires, without establishing a settlement. He found many vessels engaged in sealing including several British and US vessels.

1823

An attempt by Don Jorge Pacheco ^{of Buenos Aires} to establish a settlement failed

1826

~~A settlement was established at Soledad by Louis Vernet, a~~

Hamburg merchant of French descent,

5 January 1828

The government in Buenos Aires issued a decree establishing a colony at Soledad. Mr Vernet, was given three years to establish a colony and provision was made in case the population should extend to other islands.

30 August 1829

Mr Vernet established the colony, with only 20 men in whom he had confidence, according to his own account.

June 1829

A decree was issued by the Government of Buenos Aires asserting sovereignty, as successor to Spain, over the Falkland Islands.

19 November 1829

The British Charge d'Affaires at Buenos Aires delivered a formal protest against the above decree on the grounds that "an authority has been assumed, incompatible with His Britannic Majesty's rights of sovereignty over the Falkland Islands. These rights founded upon the original discovery and subsequent occupation of the said islands, acquired an additional sanction from the restoration by (Spain) of the British settlement in the year 1771...."

25 November 1829

The Minister of Foreign Relations of Buenos Aires acknowledged receipt of the protest.

July 1831

Three US sealing vessels were seized by Mr Vernet.

21 November 1831

The US consul in Buenos Aires took up with the Minister for Foreign Affairs in Buenos Aires the arrest of one of the US vessels, the schooner "Harriet".

25 November 1831

The Minister replied that the schooner had been taken as a prize

26 November 1831

The US consul denied that Mr Vernet had any right to capture and detain US vessels engaged in the fisheries at the Falkland Islands and remonstrating against all measures, including the decree of 10 June 1829, asserting a claim to the Falkland Islands. A formal protest was made in respect of the "Harriet" and two other vessels, "The Superior" and the "Breakwater"

3 December 1831

The Minister at Buenos Aires replied that an enquiry was being undertaken, but that the protest could not be admitted because the US consul did not appear to have been specially authorised.

June 1832

The US ship "Lexington" ^{under Captain Silas Duncan} arrived at the Falkland Islands and destroyed the colony set up by Buenos Aires. The colonists fled. Some were captured and taken by the "Lexington" to Montevideo. Duncan declared the islands free of all government.

20 June 1832

The US Charge d'Affaires in Buenos Aires addressed a Note to the Minister responsible for foreign affairs about the seizure of three US vessels. On instructions, the Charge denied

"the existence of any right in this Republic to interrupt, molest, detain or capture any vessels belonging to citizens of the United States ..." The US government demanded restitution of all captured property and an indemnity, pointing out "that the citizens of the United States have enjoyed the rights of free fishery in these regions unmolested ..."

December 1832 - 3 January 1833

Captain Onslow of HMS Clio occupied Port Egmont. On reaching Soledad, Captain Onslow found a detachment of 50 ^{Buenos Aires} ~~Argentinian~~ soldiers and their schooner "Sarandi". A mutiny had previously occurred and the mutineers had killed their commander. The ~~Commander~~ of the Argentine schooner had placed the mutineers in irons aboard a British schooner and they were, at his request taken to Buenos Aires. "Most people"

elected to be repatriated; 18 were persuaded to stay behind.

Not a shot was fired on either side. Captain Onslow re-asserted British sovereignty by raising the flag and reorganising the settlement.

22 January 1833.

The Minister at Buenos Aires protested to the British Charge d'Affaires.

May 1833

The United Kingdom rejected the protest and affirmed that the Falkland Islands belonged to the Crown.

1833

Argentina presented claim to US Government in respect of USS Lexington's action. Diplomatic correspondence continued until least 1886 but the US government rejected the claim for compensation on the grounds that it depended on the question of sovereignty.

1841

British Lieutenant Governor appointed and civil administration organised in Port Louis.

1841-2

Further protests about British settlement rejected.

1844

Capital moved to Stanley.

1845

Governor appointed. Legislative Council and Executive Council set up.

1851

Population estimated at 287 (*See below*)

1884-88

Further Argentine protests made and rejected.

1949

Elections to the Legislative Council instituted on the basis of universal adult suffrage.

1977

Voting age lowered to 18.

September/October 1981

General elections held for the Legislative Council.

Since the first census in 1851, the population has increased substantially, reaching a peak in the mid-1930s of some 2,400 inhabitants. Censuses have been taken every ten years and full details are in the annex to this account. The community thus established has set up its own social, economic and cultural structures within a political framework which evolved in accordance with the wishes of the islanders themselves. They have freedom of expression and all of the basic rights guaranteed to them under the United Nations Charter. The United Kingdom, as administering authority, has submitted comprehensive information on the territory annually under Article 73(e) of the Charter and an up to date account based on this information is readily available in the Committee of 24's most recent working paper on the islands (document A/AC109/670 of 5 August 1981).

ANNEX

The population in the Census years 1851 - 1980

Year	Population
1851	287
1861	541
1871	811
1881	1,510
1891	1,789
1901	2,043
1911	2,272
1921	2,094
1931	2,392
1946	2,238
1953	2,230
1962	2,172
1972	1,957
1980	1,513 ¹

¹ Estimated.