

Mr Williams  
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FAULKLAND ISLANDS/INTERNATIONAL COURT OF JUSTICE

1. At the FUS's meeting this morning it was agreed that one possibility to which consideration should be given was that, if the Argentines had invaded and failed to respond to immediate requests to withdraw, we might after an interval of some days wish to prompt a friendly Security Council delegation in New York to propose a draft resolution embodying a package arrangement under which, if the Argentines withdrew, the question of sovereignty over the Islands and Dependencies would be referred to the ICJ for an advisory opinion. Undertakings by ourselves and the Argentines to abide by the conclusions of such an advisory opinion might be made part of the deal.

2. I am writing to the Law Officers' Department to inform them that this option is under consideration. There are various aspects which we should urgently examine here. Two which occur to me at once are:

(a) We need to have material to counter a possible objection that it is inappropriate for the ICJ to be asked to give an advisory opinion on what is essentially a territorial dispute between two states. Two cases which should be looked at from this point of view are the Eastern Carelia case before the Permanent Court of International Justice, and the more recent Western Sahara case before the International Court of Justice itself. I am personally of the view that the International Court would not decline to entertain a request for an advisory opinion in this case.

(b) We also need to consider, in the light of the historical record at the UN, the strength of the argument for saying that a decision by the Security Council to request an advisory opinion of the ICJ is a procedural matter and accordingly not subject to the veto.

3. Another possibility which may be worth considering is that, instead of requesting an advisory opinion, the Security Council should call on the Argentines and ourselves, under Article 36 of the Charter, to refer the sovereignty dispute to the ICJ (in which connection it would be useful to look at what happened in the Security Council over the Corfu Channel case). This course seems less promising, both from the point of view of getting a resolution through

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the Security Council, in the light of well known sensitivities on the part of the USSR, in particular, towards the reference of disputes to the ICJ, and from that of actually engaging the Court, given the likelihood of Argentine unwillingness to joint in a reference on an inter partes basis; but there might be circumstances in which it could usefully be proposed.

4. You may think it would be useful for you to have a short meeting later today with Mr Freeland, Mr Berman and Mrs Morphet to decide how best to carry forward our consideration of those possibilities.

*Ian Sinclair*

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Legal Adviser

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cc PS  
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Mr Freeland  
Mr Ure  
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