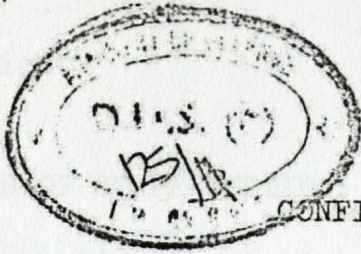


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(5973)



Foreign and Commonwealth Office

London SW1A 2AH

CONFIDENTIAL

6 April, 1982.

R.M. Hastie-Smith, Esq.,
Ministry of Defence.

Dear Richard,

At the Chiefs of Staff meeting on 5 April there was considerable discussion about the likely requirement to declare an Exclusion Zone around the Falkland Islands in connection with Operation Corporate.

2. I enclose a copy of two minutes by the FCO Legal Advisers on some of the implications of this, which you may wish to bring to the attention of the Chiefs of Staff.

3. I was also asked at this morning's Chiefs of Staff meeting whether any further thought had been given to the legal questions involved in any military action against the Argentine mainland. The preliminary view of the FCO Legal Adviser is that if there were any question of military action against the Argentine mainland (whether involving bombardment of Argentine cities or other action) an announcement that a state of war existed between the United Kingdom and Argentina would almost certainly be required. The Legal Adviser has said that he would need to consult the Attorney-General on this point if it appeared to be a likelihood.

4. I am sending a copy of this letter to Robert Wade-Gery.

Yours truly,

(P.R.H. Wright)

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Mr Wright

CHIEFS OF STAFF MEETING: 5 APRIL

1. I refer to paragraph (c) of your minute of 5 April to Mr Fearn concerning the proposed establishment of an "exclusion zone" (this would be preferable to "exclusive zone") around the Falkland Islands. I understand that what is intended by this is in substance measures within a stipulated area under which the Royal Navy would prevent the Argentine forces presently in illegal occupation of the Falkland Islands being supplied. In this connection, we should be careful to avoid the use of the term "blockade" at any rate in public statements since this term is more appropriate to a state of declared or acknowledged war and in any event it is generally understood to mean the blockade of the ports and coast of an enemy and not of the territory of the party imposing the blockade.

2. I assume the establishment of these measures would take the form of a declaration under which we would state that the Royal Navy, in exercise of the inherent right of self-defence following the illegal occupation by Argentina of the Falkland Islands, would take the following measures within a maritime area extending X miles from the Falkland Islands with a view to preventing supplies reaching the Argentine forces on the Falkland Islands. (In this connection it is rather odd that the maritime zone would be measured from Cape Pembroke lighthouse at Port Stanley since maritime areas are normally measured from the base lines from which the territorial sea is measured; but there may be some reason of which I am unaware which would require the area to be measured in the way proposed.) The declaration would be made sufficiently long in advance to enable us to maintain that adequate notice had been given of the proposed measures. These measures would, to take account of our need to establish that no greater force was being applied than was necessary for the purposes of self-defence, be differentiated according to the type of vessel or aircraft involved. Broadly, they might take the following lines:

- (i) all Argentine warships and military aircraft entering or found within the area would be treated as hostile and appropriate force would be used accordingly;
- (ii) other Argentine vessels or aircraft entering or found within the area would be deemed to be there for the purpose of supplying Argentine forces or warships;
- (iii) with regard to the vessels or aircraft of any other State (whether military or civil), the Royal Navy would take all appropriate measures to ensure that they did not supply Argentine forces or warships.

/Particularly

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Particularly in relation to (ii) and (iii) it would be necessary for there to be detailed rules of engagement regulating the nature of the action to be taken by the Royal Navy.

3. So far as the use of force is concerned, the rules of engagement should make it clear that no more force is used than is necessary to achieve the objectives referred to in sub paragraphs (i), (ii) and (iii) above, bearing in mind that the use of force against unarmed merchant vessels or aircraft must be used only as a last resort and when all other means to persuade the vessel not to enter or to leave the area have been exhausted. More detailed legal advice on this aspect will be provided in the context of drawing up the necessary rules of engagement.

4. I assume that, initially at least, the proposed area would be around the Falkland Islands only and that a similar area would not be declared with regard to the Dependencies. We would have to ensure in any event that the "exclusion zone" was so drawn as not to encroach upon the area of application of the Antarctic Treaty (i.e. south of 60° south latitude). In this connection, I enclose a copy of a minute from Mr Watts to me of 5 April.

5. Finally, I would consider it highly desirable that the terms of any declaration and if possible the content of the instructions to the Royal Navy implementing it be cleared in advance with the Law Officers.

Ian Sinclair

Ian Sinclair
Legal Adviser

5 April 1982

cc Private Secretary
PS/Mr Hurd
PS/PUS
Sir A Acland
Mr Giffard
Mr Gillmore
Mr Ure
Mr Weston (Defence Dept)
Mr Fearn
Mr Williams (UND)
Mr Wilson (SED)
Mr Fenn (News Dept)
Mr Hulse
Mr Freeland
Mr Chamberlain
Mr Steel (Law Officers Department)

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H 34034
(A 3178)

Sir Ian Sinclair

THE FALKLANDS CRISES AND ANTARCTICA

1. The Falklands crisis has implications for Antarctica, which you might wish to be aware of in case the matter arises in discussions in which you get involved.
2. There is in prospect the meeting of the "claimant" States in New York in 3 weeks time. It is being convened by Argentina. For reasons set out in the attached minute I do not think it would be right for us to attend that meeting, and I think it would be in our interest if it were called off.
3. The first round of negotiations for an Antarctic Minerals Regime begins in Wellington on 14 June. Argentina will be a participant. At the moment I see no reason for us to consider not participating ourselves in that meeting, but the matter will need to be kept under review as matters develop.
4. More generally, in any planning which takes place in relation to the Falklands, we must bear in mind the relevance of the Antarctic Treaty. It applies to the area south of 60° S latitude. Under Article I Antarctica shall be used for peaceful purposes only. Any measures of a military nature are prohibited. Article IV is the Article protecting rights on, or claims to, territorial sovereignty. From a purely legal point of view these two provisions should do much to protect our position in the Antarctic against Argentinian actions. But it will be important that we for our part do nothing to violate the provisions of the Antarctic Treaty, particularly the reference to measures of a military nature anywhere south of 60° S. The Department believe that is probably in our interests to regard the area south of 60° S as remaining an area subject to its own special rules, unaffected by present developments. The Department will, I think, be submitting on these lines.

A D Watts
Deputy Legal Adviser

5 April, 1982

cc:
Mr Chamberlain, Legal Adviser

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(A 3980)
(A 3906a)
(A 3908a)



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- Sec/CNS
- MA/CGS
- PS/CAS
- COSSEC
- PS/PUS
- AUS(D Staff)
- Head of DS11
- DCPR

FALKLAND ISLANDS: LEGAL QUESTIONS

You will wish to see this letter dated 6 April which I have received from Mr Wright, and the opinions of the FCO legal advisers attached to it.

R. M. H-S

6 April 1982

R M HASTIE-SMITH
DUS(P)

CHIEF OF DEFENCE STAFF

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