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17 May

FALKLANDS: NUCLEAR ASPECTS

I attach a copy of the note which PUS mentioned to Secretary of State this morning about the nuclear aspects of our international position over Argentina and the Falkland Islands. Head of DS17 will be providing a line to take on these issues for this afternoon's debate.

Swiss

7 April 1982

S WEBB
PS/PUS

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NUCLEAR ASPECTS OF BRITAIN'S POSITION WITH REGARD TO
ARGENTINA AND THE FALKLAND ISLANDS

1. Treaty of Tlatelolco - Latin American Nuclear Weapon Free
Zone (1967)

The Treaty of Tlatelolco established Latin American and surrounding waters as a nuclear weapon free zone. The intended zone of application (under Article 4.2) includes a large area of the South Atlantic, west of 20° West and north of 60° South, including the Falkland Islands, South Georgia and South Sandwich Islands. However, this sea area only becomes part of the zone of application of the Treaty when all the following conditions have been fulfilled (Article 28.1);

- a. All states of Latin America etc have signed and ratified the Treaty.
- b. All extra-continental states with responsibilities for territories within the intended zone of application have signed and ratified Additional Protocol I.
- c. All nuclear weapon states (NWS) have signed and ratified Additional Protocol II.
- d. All Contracting Parties have accepted IAEA safeguards.

Since these conditions have not been fulfilled, the Treaty is only in force in the territories (including territorial waters and air space) of Latin American states which have signed and ratified the Treaty and in those territories etc which are the responsibility of outside powers which have signed and ratified Protocol I.

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2. Argentina signed the Treaty in 1967 and has publicly announced its intention to ratify - but has not yet done so. The UK signed both Protocols in 1967 and ratified them in 1969. (It did not thereby become a Contracting Party, but accepted lesser obligations under the Treaty). Article 1.1 of the Treaty requires contracting parties to "use exclusively for peaceful purposes the nuclear material and facilities which are under their jurisdiction". Under Article I of Protocol I, the UK undertakes to apply this provision (and certain others) in the territories for which it is responsible.
3. The UK is bound under Protocol I to apply Articles 1, 3, 5 and 13 of the Treaty therefore in respect of the Falkland Islands, their dependencies, territorial waters and air space. This means that the presence of nuclear weapons or warheads or nuclear materials which are not both for peaceful purposes and under IAEA safeguards, within the Falklands, their dependencies, surrounding waters (ie 3 mile limit) and air space is prohibited. The presence of UK nuclear weapons etc elsewhere in the South Atlantic is not prohibited - including in Argentine territorial waters.
4. It might also be argued that the presence of a nuclear-powered warship in Falklands' territorial waters also contravened the Treaty. However, both the full title of the Treaty ("Treaty for the Prohibition of Nuclear Weapons in Latin America") and the definition of nuclear weapons at Article 5 of the Treaty (excluding, for example, delivery vehicles,) offer solid grounds for rejecting such an interpretation.

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5. The Antarctic Treaty

Under the Antarctic Treaty, ratified by the UK in 1960, the area south of 60° South is to be used for peaceful purposes only; this does not prejudice British rights under international law with regard to the high seas.

6. Negative Security Assurance

The UK's Negative Security Assurance (NSA) was given in the House of Commons on 27 June 1978 by the Foreign Secretary, and was repeated at UNSSD I 1978. It applies to non-nuclear weapon states parties to the Non Proliferation Treaty (NPT) or to other internationally binding commitments not to manufacture or acquire nuclear explosive devices (eg. Treaty of Tlatelolco):

"Britain undertakes not to use nuclear weapons against such states except in the case of an attack on the UK, its dependent territories, its armed forces or its allies by such a state in association or alliance with a NWS."

Since Argentina has not ratified either the NPT or Treaty of Tlatelolco, it is not protected by the UK NSA, ie. nuclear weapons could be used (subject to provisions of the law of armed conflict regarding proportionality, discrimination etc) against Argentine vessels or territory etc provided the weapons used were not in the Falklands or territorial waters. (Protocol II of the Treaty of Tlatelolco commits Britain to abide by provisions of the Treaty with respect to territories to which the Treaty applies; since Argentina has not ratified the Treaty, this Protocol does not protect it from nuclear attack. Indeed, Article 3 of Protocol II specifically requires the nuclear weapon states not to use or threaten

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to use nuclear weapons against "Contracting Parties"; it is clearly an intention of the Treaty that it should not protect states not Contracting Parties - in the way that Argentina is not a Contracting Party).

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Period	■	Manufactured Goods	■
Rubbers	▲	Copper	■
Iron Ore	▲	Tin	■
Manganese	▲	Lead	■
Gold	▲	Zinc	■
Silver	▲	Tungsten	■
Chrome	▲	Coal	■
Asphalt	▼	Sulphur	■
Precious Stones	◆	Nitrate	■

Islas Juan Fernandez (CHILE)
 Isla Alejandro Selkirk (Isla Santa Clara)
 Isla Robinson Crusoe (Isla Santa Clara)
 WELLINGTON TO BUENOS AIRES 8100



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PHYSICAL
 MAXIMUM HEIGHTS IN METRES

100	500	1000	5000	10000
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Scale 1:42,000,000

MILES 0 200 400 600 800

KILOMETRES 0 400 800 1200

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