



M. Weston

PS/PUS

This was in fact discussed in detail with last night.

c.c. Mr Wright
Mr Gillmore

[Signature]
ANTON ACLAND

ODSA : 9AM 20 APRIL

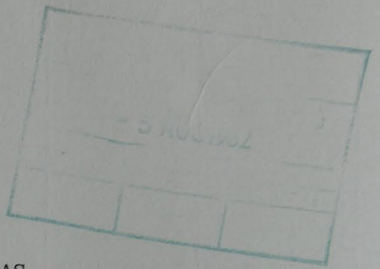
The PUS is to represent the Secretary of State at ODSA tomorrow. I submit a short brief on the lines discussed this afternoon. The minor amendment to the text of the draft announcement, as agreed between Sir Ian Sinclair and the Attorney General, is shown in manuscript and is acceptable to the MOD.

[Signature]

P J Weston
Defence Department

19 April, 1982

AAQ 050/6	
SECRET	



BRIEF FOR ODSA

RULES OF ENGAGEMENT ON THE HIGH SEAS

1. A revised version of the attached paper is to be issued by the Cabinet Office (not yet received at time of drafting). The upgrading of the Rules of Engagement on the basis set out in the explanatory note and as detailed in Annexes A and B is acceptable.
2. The draft announcement annexed to the explanatory note is also acceptable in substance. The minor amendment introduced as a result of advice from the Attorney General is helpful and makes any subsequent action more defensible in relation to the text of the announcement. There is no strong FCO view on the timing of the announcement. There may even be something to be said for getting it out soon, given that intelligence about the precise whereabouts of the Argentine fleet is uncertain.

OPERATION PARAQUET

3. Ministers will be asked to authorise the final phase of Operation Paraquet, which could commence as early as 21 April. This authorisation could be in the form of an 'amber' light tomorrow morning, followed by a final go ahead (or not) tomorrow evening.
4. The timing of this decision in relation to Haig's diplomatic efforts is difficult to judge. The PUS may have a better sense of the Secretary of State's preference following further discussion with him before tomorrow's meeting. On the face of it, there must be a significant risk for our relations both with the Americans and with European partners if the sudden implementation of Operation Paraquet catches our Allies off balance at a point when the Haig mission has not yet been seen to fail. It will be



difficult to judge the state of negotiations before we have a full readout direct from the Americans. This suggests delaying Operation Paraquet by 48 hours in the first instance, which could also be useful operationally in giving time to assess the outcome of the Victor reconnaissance flight. The Navy appear ready to hold off the Task Group for a period if required, providing they get prompt notice of Ministers' wish to do so.

LOOSE MINUTE

D/DS15(L)/632/7/4

PS/PUS

Copy to:
AUS (D Staff)
AUS(PL)
Head of DS5
Head of DS11

copy to:

C. HOUSE FCO DEFENCE DEPT

re Helge

BY HAND

Emergency

Mr to see

Mr to

Mr to
21/4

LAW OF WAR AT SEA

Handwritten:
N/S
7/5/84

Thank you for your minute of 18 April. I have attempted to expand the earlier paper to take into account the points raised by PUS and to provide the matrix you suggested. I should however point out that the four points raised by PUS cover complex aspects of international law where the rules are not clear cut. I have discussed this with FCO Legal Advisers and they agree that the Attorney-General should be consulted and I have arranged with the Law Officers Department for his advice to be obtained as quickly as possible. I think it might be best to await the Attorney-General's opinion before circulating the attached note further.

Handwritten signature: C S Ponting

C S PONTING
Head of DS15(L)

19 April 1982

ALQ 050/6	
20 APR 1982	

Encls

MAIN PRINCIPLES OF THE LAW OF WAR
AT SEA AND THEIR APPLICATION IN THE PRESENT
CIRCUMSTANCES

INTRODUCTION

1. Naval warfare takes place on the High Seas as well as in territorial waters, and neutrals are much more likely to be involved than they are in land warfare. A distinctive set of rules of law therefore exists for war at sea. Whether a state of war exists between two States is a matter of law. In the current circumstances these rules of the law of war can be summarised under four main headings:

- a. Treatment of neutral shipping.
- b. Treatment of Argentinian ships.
- c. Methods of Warfare.
- d. Treatment of individuals.

2. Treatment of Neutral Shipping. Neutral warships may not be attacked in any circumstances. At present we may take no action against neutral merchant ships. In war neutral merchant ships cannot be stopped or searched in neutral territorial waters. On the High Seas, and in our own and Argentinian waters, we may stop them to check their identity and search them for contraband in war. During a war, contraband is liable to seizure, and a neutral ship which knowingly carries it may be condemned as prize, though the issues which arise here would have to be settled by the Prize Court in each case. Similarly in war they may be stopped from breaking a formal blockade of enemy territory (the present Maritime

Exclusion Zone is not a blockade since only a belligerent can proclaim a formal blockade and it must then be continuously enforced). But we may not attack neutral merchant ships unless they are themselves in grave breach of the duties of neutrals, for instance by refusing to submit to visit and search; or by such unneutral acts as would justify us in treating them as virtually enemy ships. Obviously it is highly important that British ships should observe the laws relating to neutral rights scrupulously.

3. Treatment of Argentinian Ships. In the current situation, Argentinian naval ships and submarines may be attacked, sunk or captured in the MEZ. If war breaks out the same would apply in British or Argentinian waters or on the High Seas. (It should however be noted that the United Kingdom and Argentina, as parties to the Antarctic Treaty, are bound to avoid "any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military manoeuvres" in the area south of 60° South Latitude). At present in the MEZ or in time of war on the High Seas and British or Argentinian waters, Argentinian merchant ships may be stopped and searched. They may not be seized (taken as Prize) until a state of war exists. At no time however can they be attacked unless they resist and they may not be attacked or taken as Prize in neutral territorial waters. The sinking of unarmed merchant ships without warning was considered as a War Crimes offence at Nuremberg. If an Argentinian merchant ship is clearly being employed as a Naval auxiliary, rather than on innocent commerce - eg by carrying munitions or military personnel, it may in war be treated as a Naval auxiliary and attacked. We have in the past

insisted that "territorial waters" for these purposes means three miles; we do not recognize, for this as for other purposes, the exaggerated claims (up to 200 miles) of Latin American states.

4. Our MEZ as announced is directed against Argentinian Naval ships and auxiliaries. If action against Argentinian merchant vessels is contemplated it would be necessary to issue a further Notice to Mariners, the text of which would need to be cleared with FCO Legal Advisers. While our declared MEZ is justified as a measure of self-defence under Article 51 of the UN Charter, it is important to make it clear that our action is graduated and proportionate (and duly announced to those who may be affected by it). While we may be said to be in an intermediate state between peace and war at the moment, until a state of war legally exists we are certainly not justified in making unprovoked attacks against any vessels without the announcement of an MEZ or similar measures.

5. Methods of Warfare. Some of the restrictions imposed by the laws of Naval warfare under this heading are not relevant such as the ban on the use of bacteriological or chemical warfare. Mine warfare presents particular problems and it cannot be said that the State of International Law on this topic is entirely clear or satisfactory. As a generalisation prior to examination of particular plans of action it may be suggested that the UK should aim to follow at least Articles 3 and 5 of the Hague Convention VIII of 1907;

Article 3

When anchored automatic contact mines are employed, every possible precaution must be taken for the security of peaceful shipping.

The belligerents undertake to do their utmost to render these mines harmless within a limited time, and, should they cease to be under surveillance, to notify the danger zones as soon as military exigencies permit, by a notice addressed to ship owners, which must also be communicated to the Governments through the diplomatic channel.

Article 5

At the close of the war, the contracting Powers undertake to do their utmost to remove the mines which they have laid, each Power removing its own mines.

As regards anchored automatic contact mines laid by one of the belligerents off the coast of the other, their position must be notified to the other party by the Power which laid them, and each Power must proceed with the least possible delay to remove the mines in its own waters.

6. Treatment of Individuals. This is generally covered by the Geneva Conventions and in particular Geneva Convention II Article 18 para 1:

"After each engagement, Parties to the conflict shall, without delay, take all possible measures to search for and collect the shipwrecked, wounded and sick, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead and prevent their being despoiled".

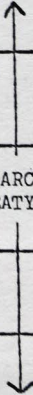
Only genuine operational impossibility (Argentinian ships near, the case of a submarine attack) will excuse from this provision.

LEGALITY OF ATTACKTABLE A - NOW

Type of Ship	AREA			
	Neutral Territorial Waters	Argentinian Territorial Waters	High Seas, Outside MEZ	Within MEZ (High Seas, or Falklands Territorial Waters)
NEUTRAL WARSHIP				
NEUTRAL MERCHANT SHIP				
ARGENTINIAN BONA-FIDE MERCHANT OR OTHER 'CIVILIAN' SHIP				
ARGENTINIAN AUXILIARY SHIP				+
ARGENTINIAN WAR SHIP				+

+ = May be attacked

LEGALITY OF ATTACKTABLE B - WAR

Type of Ship	AREAS			
	(a) Neutral Territorial Waters	(b) Argentinian Territorial Waters	(c) High Seas (and British Waters) But not in Area (d):	(d) Area South of 60°
NEUTRAL WARSHIP				
NEUTRAL MERCHANT SHIP		X	X	
ARGENTINIAN BONA-FIDE MERCHANT OR OTHER 'CIVILIAN' SHIP		X *	X *	
ARGENTINIAN AUXILIARY SHIP		+	+	
ARGENTINIAN WAR SHIP		+	+	

+ = May be attacked

X = May be stopped and searched (attacked only after warning if they refuse to stop and search, etc)

* = May be taken as Prize