

FZ 296A

File No  
30

Mr Giffard

cc: Private Secretary,  
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Miss Franklin, DS11, MOD

FALKLANDS: COMPARISON OF THE DRAFT AGREEMENTS OF 13 AND 19 APRIL

1. I submit, as requested, a note of the differences between the two texts, bringing out the main reasons why the latter is so much worse for us, together with annexes spelling out the main provisions of each text and the detailed differences. I suggest that these should be discussed very early this afternoon.

*C L G Mallaby*

20 April 1982

C L G Mallaby

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SUBJECT: THE FALKLAND ISLANDS

Comparison of the draft agreements of 13 and 19 April

.....In Confidence

CAVEAT.....

1. The provisions of the draft Anglo/Argentine agreement, as it stood when Mr Haig left London on 13 April, are summarised in Annex A. The provisions of the draft which he sent us on 19 April are summarised in Annex B.

2. The differences between the two are indicated in Annex B. The most important of them are:-

a) Withdrawal. In the earlier draft, this ~~is~~ <sup>would be</sup> carried out by both the UK and Argentina within two weeks. In the later draft, Argentina ~~has~~ <sup>would have</sup> two weeks to withdraw but the UK ~~has~~ <sup>would have</sup> only one. Moreover our Task Force, but not our submarines, ~~are~~ <sup>would be</sup> required, to stand off at least 1750 nautical miles away from the ~~7th~~ <sup>day</sup>. The UK ~~is~~ <sup>would be</sup> also required to lift the MEEZ within 24 hours of the agreement.

b) The <sup>late draft provides for the</sup> introduction of two nominees of the Argentine Government into the Legislative and the Executive Councils, in addition to at least one representative <sup>(in Pacific Council)</sup>

on the 19th day, to stand

Administration  
US-aid

*This*  
of the Argentine inhabitants of the Islands, *would give*  
Argentina effective control over 3 out of 9 members of  
the Executive Council and 3 out of 11 members of the  
Legislative Council. (Indeed two members of the Executive  
Council are at present appointed by the Governor; Argentina  
might in the future be able through the Special Interim  
Authority to determine the selection of either of  
these.)

c) Economic Sanctions. The later draft requires that steps  
be taken to lift these as soon as possible. This  
means that they could be lifted before Argentine  
withdrawal was complete, although the provision that  
they ~~shall~~ *show* be lifted simultaneously would give the  
UK control over the actual timing.

d) Relations with the Mainland. The provisions in the  
later draft for economic and other relations with  
Argentina are far broader than before. They would  
enable Argentina to claim that her nationals should  
have equal rights to purchase property, establish  
businesses, live in the islands and so on. The  
purpose of this is underlined by the introduction  
into the agreement *same paragraph of a mention* of the possibility of compensation  
for islanders wishing to leave.

e) Future Negotiations. The subject <sup>for</sup> of future negotiations  
is stated in a way that virtually excludes a return  
to the status quo ante the invasion and is biased in  
favour of a transfer of sovereignty to Argentina.

3. The main reasons why the later draft is far more  
difficult for the UK to consider accepting than the earlier  
one are:-

a) Withdrawal. The proposed arrangements are unequal

and heavily favour the aggressor. For the second week after the signature of the agreement Argentina would have several thousand troops with equipment in the Falkland Islands, while the nearest UK forces, our submarines, would be five hours away. *Freedom of sea*

- X
- b) Administration. The introduction of nominees of the Argentine Government into the Legislative and Executive Councils in the Falklands would be completely undemocratic. Government at the administrative level, as well as in the Special Interim Authority, would in effect be shared between the UK and Argentina. The degree to which British administration would <sup>be</sup> re-established would be far less than <sup>under</sup> the earlier draft agreement.
- c) Economic Sanctions. The prospect of their being lifted before the completion of Argentine withdrawal goes against the position of HMG that withdrawal <sup>is</sup> ~~must be~~ the first requirement.
- d) Relations with the Mainland. The later draft opens the possibility of an influx of Argentine people and businesses and encourages Falkland Islanders to depart in the face of this influx. (Although the UK would have the right to veto proposals in this field from the Special Interim Authority, the later draft does not make clear that this would <sup>e</sup> enable us to block an Argentine influx.)
- e) Future Negotiations. The exclusion of the status quo ante the invasion from the possible outcomes of negotiations does not preserve the freedom of choice of the islanders. Although the UK would be free to refuse agreement to any outcome in the negotiations which was unacceptable to the islanders, *our freedom to negotiate*

for an acceptable outcome would  
be constrained by the bias  
in the relevant paragraphs  
of the later draft agreement.

~~THE FALKLAND ISLANDS~~Annex A~~THE DRAFT ANGLO-ARGENTINE AGREEMENT : COMPARISON OF THE  
MAIN PROVISIONS OF THE VERSIONS OF 13 APRIL AND 10 APRIL.~~

1. When he left London on 13 April, Mr Haig took to Buenos Aires a draft agreement between the UK and Argentina which took account of his 11 hours of talks with the Prime Minister. The essence of the arrangement foreseen in the draft then was:

a) Withdrawal of Argentine and British forces within two weeks from areas of 150 nautical miles radius from the Falkland Islands, South Georgia and <sup>the</sup> South Sandwich Islands. On completion of the withdrawal all forces to return to normal duties.

b) De-militarisation. No forces to be -introduced into the areas pending a definitive settlement of the Falkland Islands problem.

c) A Special Interim Commission consisting of one representative each from the UK, Argentina and the US to verify withdrawal and de-militarisation.

d) Administration. ~~Government~~. 'Traditional local administration' including the executive and legislative Councils to continue <sup>but</sup> to:

i) all decisions, laws and regulations adopted in future by the local administration to be submitted to the Special Interim Commission and expeditiously ratified by it unless deemed /inconsistent

inconsistent with the agreement.

ii) <sup>the</sup> Executive and Legislative Councils to be enlarged to include at least one representative of the Argentine population of the Islands having the normal residence qualification.

iii) the flags of all three participating governments to fly over the Commission's headquarters.

e) Relations with the Mainland. The Special Interim Commission to make recommendations to the British and Argentine governments to facilitate travel, transportation, communications and trade with Argentina.

f) Economic Sanctions. Steps to be taken to terminate them within two weeks.

### Future Negotiations.

g) During the interim period, defined as ending on 31 December 1982, the definitive status of the Islands to be negotiated consistently with the purposes and principles of the UN Charter; <sup>these</sup> ~~is~~ <sup>including</sup> the principle of self-determination and therefore <sup>safe now</sup> (the wishes of the Islanders. (Before Mr Haig left London on 13 April he provided an alternative version of this part of the text which introduced references to decolonisation and to UN documents which, inter alia, stress decolonisation generally and its claimed relevance to the Falklands.

THE VERSION OF 19 APRIL

1. The revised draft agreement between the UK and Argentina sent by Mr Haig to us when he left Buenos Aires on 19 April included the following main provisions: <sup>and changes</sup>

a) Withdrawal.

i) Within 24 hours <sup>was</sup> of the agreement, the UK <sup>is</sup> to rescind the MEZ and Argentina <sup>is</sup> not to conduct military operations in <sup>the</sup> three zones of 150 nautical miles radius from the Falklands, South Georgia and the South Sandwich Islands.

ii) Within 24 hours of the agreement British and Argentine withdrawal to begin <sup>(this also is)</sup> (new).

iii) Argentina to withdraw half its forces in 7 days and all its forces in 15 days (different).

iv) UK to withdraw all its forces from the zones in 7 days (different). The Task Force to stand off at least 1750 nautical miles away (new). Within 15 days units of the UK naval Task Force and submarines' to redeploy to "usual operating bases or areas" <sup>(normal)</sup> 'duties' in the earlier version, which also referred to Argentine forces).

b) De-militarisation.

i) From the day after the agreement is signed, no introduction of British or Argentine forces into the three zones. No forces to be introduced into the zones pending a definitive settlement of the Falklands problem (as (b) in Annex A).

/c)

There is  
a new  
provision  
that



Special Interim Authority. As in the earlier draft but name changed to 'Authority', and task to verify compliance with all the obligations in the agreement, not just withdrawal and de-militarisation.

*Handwritten notes in left margin:*  
a similar  
and  
legitimate  
limits  
a formula  
which  
emphasises  
the  
disappearance  
of the office of  
Jaime

Argentina population of the Falklands for... in the  
earlier draft. There is a new provision about the police  
They are to continue under the administration of the  
two Councils 'with a representative of the resident  
Argentina population' and to be subject to the super-  
vision of the Special Interim Authority.

Movement of persons, and 'residence and ownership and  
disposition of property' are added to travel, trans-  
portation, communications and trade. All these are  
to be facilitated and facilitated on an equal basis.

The Special Interim Authority, as in the earlier draft,  
is to be empowered to make recommendations, but on this wider range  
of subjects also on possible arrangements for  
voluntary departure of Islanders wishing to depart. Two other  
provisions are added to the UK and Argentina undertake to  
respond promptly to such proposals and that the Special  
Interim Authority is to monitor the implementation  
of adopted proposals.

Steps to be taken to be taken  
of the agreement. While in the earlier  
draft the time limit was two weeks, in this draft  
it is to be taken without delay.

d) Administration. As in the previous draft except that

//(ii) the Argentine Government is to appoint two representatives each to the Legislative and Executive Councils, in addition to the representative of the Argentine population of the Falklands foreseen in the earlier draft. // (iii) There is a new provision about the police. They are to continue under the administration of the two Councils 'with a representative<sup>or</sup> of the resident Argentine population' and to be subject to the supervision of the Special Interim Authority.

e) Relations with the Mainland. This is much expanded. Movement of persons, and 'residence and ownership and disposition of property' are added to travel, transportation, communications and trade. All these are now to be promoted and facilitated on an equal basis. The Special Interim Authority, as in the earlier draft, is to make recommendations, but on this wider range of subjects and also on possible arrangements for compensation of Islanders wishing to depart. Two other new points are that the UK and Argentina undertake to respond promptly to such proposals and that the Special Interim Authority is to monitor the implementation of adopted proposals.

f) Economic Sanctions. Steps to end them are to be taken 'from the date' of the agreement, while in the earlier version the time limit was two weeks. Sanctions are to be terminated 'simultaneously, and without delay'.

/g)

The exercise of traditional local administration is to be "through" the Executive and Legislative Councils, a formulation which emphasises the disappearance of the office of Governor.

SECRET

g) Future negotiations. It is made explicit that negotiation shall start within 15 days of the signature of the agreement and be concluded by 31 December. Their subject is stated as 'modalities for the removal of the Islands from the list of non-self-governing territories' established in the UN. The principle of self-determination and therefore the wishes of the Islanders, are still implied by a reference to the purposes and principles of the UN Charter. But there is much other imprecise language about the rights of the inhabitants and the principle of territorial integrity 'applicable to this dispute', which Argentina would interpret as either not excluding or implying a transfer of sovereignty. The US is stated to be prepared to assist in the negotiations.

SECRET

29

DRAFT OF AGREEMENT ON SOUTH ATLANTIC CRISIS  
WORKED OUT IN BUENOS AIRES APRIL 19 1982

COUNTER-PROPOSALS FOR CONSIDERATION

A.

COUNTER-PROPOSALS

The preamble and paragraphs 1 and 2 seem acceptable.

Paragraph 2.1. Delete 'rescind' and substitute 'suspend enforcement of'.

→ Paragraph 2.2.1 (second sentence)  
Delete and substitute the following:-

'Within the same time period the United Kingdom naval task force will stand off at a distance of at least [ ] nautical miles from any of the co-ordinate points.'

↑  
See 2 key MOD points in brief.  
↓

→ Paragraph 2.2.2.

(a) Re-draft first sentence as follows:-

'Within fifteen days from the date of this Agreement, Argentina and the United Kingdom shall have removed all their forces, equipment and armaments from the zones'.

(b) In the same sentence, delete 'shall redeploy to their usual operating bases or areas' and substitute 'shall revert to normal duties'.

After  
15 days

B.

COMMENT

Paragraph 2 is similar in purpose to paragraph 2 of the text provisionally agreed with Mr Haig on 13 April. It would preclude introduction or deployment of UK force into the zones around South Georgia and the South Sandwich Islands after signature of the Agreement.

We take it that 'not conduct operations in the zones' means that Argentina will be precluded from using the forces she has there.

There should, [so far as possible] be parity on timing and distance of withdrawal. The requirement for the UK to withdraw all its forces from the zones has therefore been deleted. The principle of parity on distance of withdrawal might suggest an opening bid of 200 nautical miles, although Argentina is likely to have withdrawn some of her forces at least to the mainland, which is approximately 350 miles from the Falklands.

Consequential upon the amendment to paragraph 2.2.1. (provision has to be made for the withdrawal of UK force).

Redeployment to usual operating areas would presumably involve not only the turning back but also the dispersal of the Task Force.

2038/1

A.

Paragraph 3 seems acceptable

Paragraph 4

Delete 'from the date of this agreement, steps' and substitute 'on completion of the steps specified in paragraphs 2, 2.1, 2.2, 2.2.1 and 2.2.2 above, the two Governments shall take measures to terminate' .....

Second sentence. Delete 'without delay' and insert 'at the same time' after 'shall'.

Paragraph 5

Add 'Each representative may be supported by a staff of not more than [10] persons'.

Paragraph 6(A) 2-2

Delete ~~third~~ sentence and substitute:-

'The traditional local administration shall be re-established, including the Executive and Legislative Councils, which shall be enlarged to include, on the nomination of the Special Interim Authority, representatives of the Argentine population whose period of residence on the Islands is equal to that of others entitled to representation, such representatives to be in proportion to that population, subject to there being at least one such representative in each Council'.

Paragraph 6(A)

Delete ~~fourth~~ sentence

It is d.

B.

Only if given US guarantee.

It is highly desirable that the removal of sanctions should follow completion of withdrawal and not precede it. As a fall-back we might be able to accept 'Before completion .....' given that the obligation is only to take measures to terminate sanctions 'simultaneously, and without delay'.

In the final analysis, we could accept the existing text.

It is highly desirable to set a staff limitation in the agreement itself, if only to avoid a major dispute on this subject in negotiating the separate protocol creating the Authority.

This is a reversion to the 13 April text subject to the inclusion of the phrase 'on the nomination of the Special Interim Authority'. We would not want the nominations to be made by the Government of Argentine and it would seem absurd to have an election. It should be noted that the latest Haig text refers to the continuance of traditional local administration 'through the executive and legislative councils'. This could be taken to imply the non-return of British administrators (not just the Governor).

We could if necessary consider substituting 'the local police shall be re-established and shall be subject to the supervision of the Special Interim Authority, which is authorised to make proposals to the two Governments for its enlargement to include a representative of the resident Argentine population'.

A.Paragraph 7(A)

Delete and substitute:-

*PUS believes a key change*

'Pending a definitive settlement, the Special Interim Authority shall make proposals to the two Governments to facilitate and promote travel, transportation, communications (including the movement of persons) and trade between the mainland and the Islands. Such proposals shall simultaneously be transmitted to the Executive and Legislative Councils. The two Governments undertake to respond promptly to such proposals. The Special Interim Authority shall monitor the implementation of all such proposals agreed by the two Governments'.

*[ whose views shall be sought*

Paragraph 7(B)

Delete 'property'.

Paragraph 8(A)

Delete and substitute:-

*the Falkland.*

'December 31, 1982, will conclude the interim period during which the signatories shall conclude negotiations on mutually agreed conditions for the definitive status of [each of the three groups of] Islands in accordance with the purposes and principles of the Charter of the United Nations and bearing in mind relevant General Assembly Resolutions. The negotiations shall begin within fifteen days of the signature of the present Agreement.'

*includes favourable ones*

B.

This is an essential counter-proposal. We could if necessary offer to discuss the subjects of residence ownership and disposition of property in the negotiations for a definitive settlement.

We must insist that possible arrangements for compensation of Islanders who do not wish to remain is a matter for us. ✓

Our proposed text here is basically a reversion to the first Haig text, but with some modifications. The first Haig text permitted recommendations to be made to the two Governments 'or to the Executive and Legislative Councils'. Under the text now suggested, proposals would be made to the two Governments but transmitted simultaneously to the Executive and Legislative Councils. LL  
The reference to 'movement of persons' has been included because movement of persons is covered by the 1971 communications agreement. The last two sentences, taken from the second Haig text, seem fundamentally unobjectionable.

As noted on the comment on 7(A) above, we could if necessary offer to discuss this subject in the definitive negotiations.

This paragraph is fundamentally flawed, in that, when read in conjunction with the remainder of the text, it seems to envisage integration with Argentina as the only final solution for the Falklands. There is a basic difficulty in constructing an alternative formula which might just, in the final analysis, be acceptable to Argentina. Any specific reference to the 'wishes' of the Islanders would encounter Argentinian insistence that it be balanced by a reference to the principle of territorial integrity. The phrase 'bearing in mind relevant General Assembly Resolutions' would probably be the absolute minimum that Argentina would be prepared to accept by way of reference to UN activity; but that phrase would, in our view, include more favourable Resolutions, such as 2625 (XXV) as well as the less favourable ones.