

Foreign and Commonwealth Office

London SW1A 2AH

21 April 1982

S Webb Esq Private Secretary to Sir Frank Cooper GCB CMG MINISTRY OF DEFENCE PUS DIST (21.4.82)

PSO/CDS ACNS(O) AUS(D Staff) Head of DS5 Head of DS11 Head of DS15(L)

Pear Simon,

MERCHANT SHIPS

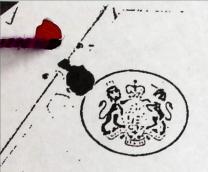
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FC 202 (Flag C)

1. I have now had the benefit of Sir Ian Sinclair's advice on the points raised in your letter of 16 April. I am sorry for the slight delay, but Sir Ian was waiting for further factual information about the curent Argentine Defence Zone. This information is not yet to hand. Accordingly, I trust that you will forgive me if our reply is confined only to questions (a) and (c).

Question (a) enquires whether the position is the same for merchant ships of other nationalities/flags as is recorded in Mr Freeland's minute of 15 April with respect to Argentine merchant ships. The short answer is yes. A neutral merchant ship which directly participates in the military operations of a belligerent force (eg as a troop ship or supply vessel) is considered to be engaged in unneutral service and thereby to have acquired enemy character. Neutral merchant vessels which have acquired enemy character are liable to bear the same treatment accorded to enemy warships. The qualification should, however, be added that, clearly, the onus of proof that a neutral merchant vessel is engaged in unneutral service is even higher than the onus of proof that an Argentine merchant vessel can properly be regarded as forming part of the Argentine military effort at sea. DATE 22/4/82

/3.



3. Question (c) enquires whether, even if we were justified in sinking an Argentine (or other) merchant ship, we would need to give prior warning. It is not clear what is meant by a ''prior warning''. One sense of ''prior warning'' is the warning in general terms which would have to be given in advance of action under any rules of engagement that might be authorised, the ''prior warning'' indicating that Argentine (or other) merchant ships forming part of the Argentine military effort at sea are liable to attack. A general prior warning of this kind would of course be essential if submarines in the MEZ were to be authorised to attack such merchant ships. On the other hand, if by ''prior warning'' is meant an individual warning (after such a general warning had been given), the short answer is that the giving of such a warning where operational circumstances permit (which they would not in the case of submarines) might well serve to improve our position in relation to onus of proof, but could not be said to be legally essential.

5:14

4. A copy of this letter goes to David Wright.

Volum ever

R A Burns Private Secretary to the Permanent Under Secretary