



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.

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

Yours ever,

R A Burns

R A Burns
Private Secretary to the
Permanent Under Secretary