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Mr Freeland

FALKLAND ISLANDS: SURVEILLANCE OF THE TASK FORCE BY ARGENTINE AIRCRAFT

1. The Attorney-General held a meeting with you on 22 April to discuss this question. Mr Steel (Law Officers Department) and I were also present.
2. It was explained to the Attorney-General that the Task Force had been overflown by a Boeing 707 aircraft in military markings on 21 and 22 April. Under the high seas Rules of Engagement for south of 35°S, the Task Force Commander has authority to attack only aircraft positively identified as being Argentine combat aircraft. These are further defined to include only fighter, bomber, ground attack and long-range maritime patrol aircraft, as well as armed and ASW helicopters. The FCO had cast some doubt on the question whether there was any real military disadvantage in these flights and had revealed the possibility of public criticism if an unarmed aircraft were shot down.
3. The Attorney-General was then shown a draft minute from the Chief of Defence Staff to the Secretary of State for Defence (copy attached). This was prepared by DS11 MOD for consideration by the CDS, but at the end of paragraph 5 and in paragraph 6 it had been adapted to take account of FCO comments at an earlier meeting with Mr Bowen (DS11 MOD).
4. In the course of discussion of the minute it was noted that paragraph 4 required that the Argentine aircraft in question should be positively identified as engaging in surveillance of the Task Force; but attention was concentrated on paragraphs 5 and 6, where action was proposed.
5. On paragraph 5, which does not go beyond authorisation to maintain harassment, the Attorney-General said that he had no objection to the proposal in this form. He understood that it was considered desirable in current circumstances to limit action against an Argentine surveillance aircraft to that described in the last sentence of that paragraph. If current political restraints on action were to be removed, where action of that kind had failed to secure the departure of the aircraft from the neighbourhood of the Task Force, measures going beyond harassment would be justifiable as a matter of law.
6. On paragraph 6, which concerns a warning to the Argentine Government, the Attorney-General recalled his advice given in connection with the Rules of Engagement, which were those given to the Task Force for its defence while in passage against Argentine interference, referred to in paragraph 2, that a prior general warning should be given. He considered that in the present case the need for such a warning along the lines envisaged in paragraph 6 was even clearer.

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HG Darwin  
 H G Darwin  
 Deputy Legal Adviser

23 April 1982

- Mr Gillmore (AUS, FCO)
- Mr Weston (Hd Def Dept, FCO)
- Mr Steel (Law Officers' Dept)
- Mr Bowen (DS11 MOD)

Mr Peters (AUS (Air Staff) MOD)

REVISED DRAFT 22 April 1982

DRAFT MINUTE FROM CDS TO S OF S

1. S of S will be aware that Argentina yesterday deployed a 707 aircraft in military markings in the close vicinity of the Carrier Battle Group. This aircraft was intercepted by a Sea Harrier. No offensive action was taken by either side.
2. The current Rules of Engagement which are relevant to this case are at annex. Essentially, they authorize the local commander to use minimum force against hostile units, including positively identified Argentine combat aircraft. These are specified as fighter, bomber, ground attack and long range maritime patrol (LRMP) aircraft, and armed and ASW helicopters.
3. We believe that the Argentine 707 intercepted yesterday would not normally be regarded by any strict definition as a LRMP aircraft. But that it was effectively performing that role. It is unlikely to have any direct offensive capability but it would nonetheless be an effective shadower of the Task Force, capable of directing Argentine <sup>combat</sup> ~~conduct~~ units, including submarines, to an attack position. Patrols by Argentine 707s or other aircraft, civil or military, on surveillance missions against the Task Force, pose a real and considerable threat to the security of the Task Force.
4. We believe it is essential that the Task Force commander should be given clear instructions on how to deal with this threat. We propose that he

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should be told to treat all Argentine aircraft, positively identified as engaging in surveillance of the Task Force, as combat aircraft. Surveillance activities can be positively identified both electronically by the Task Force and by visual observation by an intercepting Sea Harrier.

5. The current Rules of Engagement authorise the local commander to warn off all enemy units which constitute a threat. We propose that once an Argentine aircraft has been positively identified as conducting surveillance of the Task Force, an intercepting Sea Harrier should use the internationally accepted signalling procedure to order the departure of the surveillance aircraft from the area. The area should be defined as a 25 mile radius from the nearest British unit. If the Argentine aircraft did not comply, we propose that the Sea Harrier should be permitted to fire across its path and maintain harassment until the aircraft leaves the area.

6. In order to reinforce our objection to this surveillance and to maximise the deterrent effect, we propose that the FCO should issue a bilateral warning to the Argentine authorities, through the Swiss, that we would treat Argentine aircraft engaging in surveillance of the Task Force as hostile and liable to be dealt with accordingly.