



Mr Weston

X is not so. My view of the
Chief of Staff meeting yesterday explained
the point. On Y, all I can say is
that the ambiguity may be even larger.
The point about Oscar was that it covered the
any case about a
warning they might be
given without warning.

Mr Gillmore

RULES OF ENGAGEMENT: MARITIME AND AIR EXCLUSION ZONE

1. I attach a note of a meeting which Mr Darwin and I had with the Attorney-General and Mr Steel of the Law Officers' Department this afternoon. This note was agreed in draft with Mr Steel afterwards.

/had

2. As you will see, the Attorney-General saw certain difficulties, of varying degrees of importance, in the draft submission and ROEs attached to COS(Misc)148/742/1. The principal difficulty related to the treatment of merchant ships. None of us was fully in the picture as regards the disappearance of the suffix OSCAR which appeared in an earlier version of the ROEs; but we all thought that the ROEs as they now stand would leave a considerable degree of uncertainty about the circumstances in which merchant ships, whether Argentine or of other flags, could be attacked.

X
Y

3. I now understand, from what you have told Mr Darwin since the meeting with the Attorney-General, that the intention is that all merchant ships, of whatever flag, should be liable to attack in the zone after they have received a warning, if they continue on course to or from the Islands. If that is indeed the intention, I think the Attorney-General would still be of the view that the ROEs should be clarified. He would also wish to consider whether more persistence by a merchant ship in following a course to or from the Islands, after having received a warning, was a sufficient basis for treating it as liable to attack, where there was no other reason for regarding it as directly involved in the support of the Argentine military effort.

Freeland

J R Freeland
Second Legal Adviser

pa 114

23 April 1982

cc Mr Wright
Mr Weston
Mr Darwin
Sir I Sinclair o/r

(Deluxe Dept.)

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27 APR 1982

JR 24/4



NOTE OF MEETING WITH THE ATTORNEY-GENERAL: 23 APRIL

1. The Attorney-General expressed the view that the treatment of merchant ships in the ROE was unclear. This matter had been clear in the earlier version of the ROE where under the suffix OSCAR merchant vessels subject to attack were indicated as those "which can be positively identified (eg by deck cargo) as carrying military supplies or military personnel". With the omission of this suffix the present ROE seemed to imply that a merchant ship might be sunk even if it could not be positively identified as carrying military supplies or personnel. Indeed it seemed anomalous that a merchant ship might be sunk in these circumstances when aircraft were dealt with under suffix PAPA as requiring to be positively identified as carrying military supplies or military personnel. A further uncertainty was caused by Rule 202 which ended with the words "all enemy units which constitute a threat", but which was subsequently applied apparently to all merchant ships.
2. The Foreign and Commonwealth Office was invited to report the view of the Attorney-General that it was not clear what the intention was in this regard. If the action proposed went beyond that envisaged by the former suffix OSCAR he would need to consider further whether this was legally permissible, of which he was not at present satisfied (the same uncertainty is in the Attorney-General's view manifested in paragraph 5 of the covering submission).
3. Consideration was then given to suffix SIERRA concerning aircraft on the ground. The possibility existed that aircraft would be present on the ground in Port Stanley airport which were obviously not there in support of the Argentine military effort. An example might be an air taxi, clearly identifiable as such, which had brought press correspondents. The Attorney-General said that it was desirable that the instruction under the suffix SIERRA should be adjusted so that aircraft which were positively identified as not being there in support of the Argentine military effort should not be attacked.
4. Suffix UNIFORM was then discussed. The Attorney-General recognised that it was difficult to adjust this instruction so as to eliminate the risk of attack on an innocent aircraft, perhaps one that had entered the zone because it was in distress. In these circumstances, he recommended that the general public declaration which would cover the establishment of the air exclusion zone should be expanded in order to make explicit the risk of attack on any aircraft flying in the zone in conditions which prevented positive identification.

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5. As regards suffix JULIETT Mr Freeland drew the attention of the Attorney-General to the view of the Secretary of State for Defence that, the Brazilians having given an assurance that their submarines will be held within 200 miles of the Brazilian coast, there is no likelihood of encountering conventional submarines from any other navy in the area. On this basis the Attorney-General was content.

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