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Copy to:
PSO/CDS
AUS(D Staff)
Head of DS 11

MO 5/21

PS/PUS

DEATH OF ARGENTINIAN PRISONER

The Secretary of State had a short discussion with PUS about his note of 27th April. The Secretary of State said that his own inclination was to delay notification until tomorrow morning because of the implications for the diplomatic process. However, if the Prime Minister and the FCO felt that the requirements of the Geneva Convention dictated notification tonight he would go along with this. But in any event notification should not be passed until we had the name of the prisoner concerned.

NHR Evans

27th April 1982

(N H R EVANS)
APS/S of S

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PUS/82/506
9/31/F

5/21

Secretary of State

Copy to:
CDS
AUS(D Staff)
Head of DS11

I think
tomorrow morning

SW

DEATH OF ARGENTINIAN PRISONER

You will have seen the letter of today's date from the FCO to No 10 on this subject. It was discussed at Sir Robert Armstrong's meeting this afternoon. We concluded that:

- a. we should fulfil the terms of the Geneva Convention and that this evening the Brazilians should be asked to pass on the necessary notification to the Argentinians;
 - b. the United States should be informed simultaneously;
 - c. MOD should make a low key announcement.
2. The first two actions should be taken by the FCO and the third by the MOD.
3. It was felt that we would be very badly wrong-footed if we failed to fulfil the terms of the Geneva Convention. It was also believed that we would be even more wrong-footed if the news came from other sources and that, in any event, once we had set the notification procedure in motion we should act speedily thereafter.
4. I would be grateful to know if you agree. The Prime Minister is being consulted.

FRANK COOPER
27 April 1982

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1. To see the attached note on the death of the prisoner, which has gone to OD(SA). Although it is clear that we are strictly outside the terms of the convention it would seem that a delay until say, tomorrow morning would be reasonable in all the circumstances. The main risk remains that we will be caught on the wrong foot as a result of a leak. You will note that the official groups are looking at this and will reach a view which will be subject to final ministerial decision.
2. Also attached (Flags A+B) are notes from Sir Ian Sinclair on the status of POWs.

3
(N E)



cc PS0/CDS
 PS/PUS
 Sec/CNS
 PS/PUS(A)
 AUS (to Staff)
 RA 2811
 RA 2815(4)

Foreign and Commonwealth Office

London SW1A 2AH

27 April 1982

Dear John, 5/21

Death of Argentine Prisoner

I understand that ODSA this morning decided that no publicity should be given to the incident yesterday and that we should take no further action for the time being, pending further details from South Georgia. However, I enclose a copy of a note from one of our Legal Advisers about our obligations under the Third Geneva Convention in the event of the death of a prisoner. The important point is that we are obliged to communicate immediately with the protecting power (in this case Brazil). I also enclose the text of the relevant article, No 121.

ODSA may wish to consider in the light of this, the timing of our notification to the Brazilians of this incident. It is clearly important that we should not be vulnerable to accusations that we have fallen down on our legal obligations under the Geneva Convention. In the view of our Legal Advisers, ignorance of the details of the soldier's name and number would not constitute a valid reason for not notifying the protecting power immediately. We should avoid if at all possible a situation in which news of the incident leaks out before we have notified the Brazilians and in a way which will immediately put us on the defensive about it. Against this, we clearly need to consider the implications for Mr Haig's efforts of publicity about this incident which we must assume would follow immediately any notification to the Brazilians.

ODSA may need to meet again to consider this, but it might be helpful if the group of officials meeting under Sir R Armstrong's chairmanship at 3.30 today could consider it first. Meanwhile, it is possible that the news will leak at any moment and the Prime Minister needs a line to take in the House today, which could also serve as a press line for ourselves and the Ministry of Defence. I enclose a suggested line agreed with the Ministry of Defence and our Legal Advisers. This overtakes any previous advice already offered.

I am copying this letter to the Private Secretaries to members of ODSA, to Sir R Armstrong and to Sir M Palliser. In view of the urgency I am sending this before Mr Pym, who is in Luxembourg, has been consulted. He is aware of the incident.

(J E Holmes)
 Private Secretary

Yours ever
 J E Holmes

A J Coles Esq

Mr Wright

KILLING OF ARGENTINE PRISONER OF WAR

1. Article 13 of the Third Geneva Convention prohibits any "unlawful" act causing the death of a prisoner of war and treats such an act as a "serious breach" of the Convention. Article 42 provides that:

"The use of weapons against prisoners of war, especially against those who are escaping or attempting to escape, shall constitute an extreme measure which shall always be preceded by warnings appropriate to the circumstances".

2. The authoritative Red Cross commentary on this Article makes it clear that shooting a prisoner of war who is threatening a member of the detaining forces is also covered by this provision and shooting to kill must only be used as a last resort.

3. Without knowing the full details, it is impossible to say whether or not an offence has been committed. But it is quite probable that this has happened.

4. Article 121 provides that when a prisoner of war has been killed this must be immediately followed by an official enquiry and a communication sent immediately to the protecting power. It also provides that statements shall be taken from witnesses, especially those who are prisoners of war, and a report including such statements forwarded to the protecting power. If the enquiry indicates guilt, the detaining power shall take all measures for prosecution of the person or persons responsible.

5. We must therefore inform the Brazilian Embassy of the death giving the name, rank and number of the prisoner of war and tell them that an official enquiry has been instigated and that the further information required by Article 121 will be supplied to them as soon as possible. We should also add that if the enquiry would indicate guilt of one or more persons, the facts will be submitted to the appropriate authorities for the purpose of considering a criminal prosecution.

6. In view of the explicit terms of the Convention and the likelihood that the story will inevitably leak soon, it would seem preferable to pass the initial information without delay. Even if there is no leak it would look extremely bad if we waited, say, a week or more before passing on the information.

/The



-The Argentines would no doubt make damaging propaganda out of this.

A. I. Aust

pp. A I Aust
Emergency Unit

27 April 1982.

cc PS
PS/PUS
Mr Fearn
Mr Giffard
Mr Gillmore
Sir I Sinclair

The detaining authorities shall ensure that prisoners of war who have died in captivity, are honourably buried, if possible according to the rites of the religion to which they belonged, and that their graves are respected, suitably maintained and marked so as to be found at any time. Wherever possible, deceased prisoners of war who depended on the same Power shall be interred in the same place.

Deceased prisoners of war shall be buried in individual graves unless unavoidable circumstances require the use of collective graves. Bodies may be cremated only for imperative reasons of hygiene, on account of the religion of the deceased or in accordance with his express wish to this effect. In case of cremation, the fact shall be stated and the reasons given in the death certificate of the deceased.

In order that graves may always be found, all particulars of burials and graves shall be recorded with a Graves Registration Service established by the Detaining Power. Lists of graves and particulars of the prisoners of war interred in cemeteries and elsewhere shall be transmitted to the Power on which such prisoners of war depended. Responsibility for the care of these graves and for records of any subsequent moves of the bodies shall rest on the Power controlling the territory, if a Party to the present Convention. These provisions shall also apply to the ashes, which shall be kept by the Graves Registration Service until proper disposal thereof in accordance with the wishes of the home country.

ARTICLE 121

Every death or serious injury of a prisoner of war caused or suspected to have been caused by a sentry, another prisoner of war, or any other person, as well as any death the cause of which is unknown, shall be immediately followed by an official enquiry by the Detaining Power.

A communication on this subject shall be sent immediately to the Protecting Power. Statements shall be taken from witnesses, especially from those who are prisoners of war, and a report including such statements shall be forwarded to the Protecting Power.

If the enquiry indicates the guilt of one or more persons, the Detaining Power shall take all measures for the prosecution of the person or persons responsible.

Part V.—Information Bureaux and Relief Societies for Prisoners of War

ARTICLE 122

Upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall institute an official Information Bureau for prisoners of war who are in its power. Neutral or non-belligerent Powers who may have received within their territory persons belonging to one of the categories referred to in Article 4, shall take the same action with respect to such persons. The Power concerned shall ensure that the Prisoners of War Information Bureau is provided with the necessary accommodation, equipment and staff to ensure its efficient working. It shall be at liberty to employ prisoners of war in such a Bureau under the conditions laid down in the Section of the present Convention dealing with work by prisoners of war.

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We have received reports of [such] an incident, but do not yet have the full details. These are being sought as a matter of urgency. As soon as they are available, we shall take any action required of us under the Third Geneva Convention. We shall keep the House informed.

Mr Fearn

PRISONERS OF WAR CAPTURED ON SOUTH GEORGIA

Arising out of the discussion at this morning's meeting about the prisoners of war captured on South Georgia, I attach a minute which I put up to the Private Secretary last night covering a draft PS letter to No.10. The PS letter was, I believe, in fact delivered to No.10 last night because I was subsequently asked to provide a further Note giving chapter and verse for the view which I had expressed. Accordingly, I also attach a copy of my further minute to Mr Holmes of 26 April covering a Note on the legal position.

Ian Sinclair

Ian Sinclair
Legal Adviser

26 April 1982

cc Mr Bullard
Mr Giffard
Mr Wright
Lord Bridges
Mr Ure
Mr Gillmore
Mr Mallaby
Mr Williams (UND)
Mr Weston
Mr Fenn
Mr Chamberlain
Mr Aust

DS 15 (L) Dist: -

→ APS/S/S (Mr Evans)
PS/PUS (Mr Webb)
DCPR
DS 11
DS 5
DALS

Private Secretary

PRISONERS OF WAR CAPTURED ON SOUTH GEORGIA

The Prime Minister, apparently on briefing from MOD, this afternoon stated that the prisoners captured in South Georgia are not prisoners of war. This is not a correct statement of the legal position. I attach a draft Private Secretary letter which, I think, should be sent to No.10 as quickly as possible.

Ian Sinclair

Ian Sinclair
Legal Adviser

26 April 1982

cc PS/PUS

Registry
No.

DRAFT

Type 1 +

SECURITY CLASSIFICATION

Top Secret.
Secret.
Confidential.
Restricted.
Unclassified.

To:-
A.J. Coles, Esq
Private Secretary
10 Downing Street

FROM

Private Secretary
Telephone No. Ext.

Department

PRIVACY MARKING

..... In Confidence

You will see from the enclosed copy of an extract from Prime Minister's Questions this afternoon that the Prime Minister stated that the prisoners captured in South Georgia are not prisoners of war. Unfortunately, this is not an accurate statement of the legal position, although apparently based on briefing from the MOD. It is important that the position be ~~qualified~~ ^{clarified}.

The following is a form of words which the Prime Minister could use in the House early this evening, or possibly even in her Panorama interview, to set the position straight:-

"I wish to clear up a misunderstanding which may have arisen over the answer which I gave in the House earlier today to a question from Sir Bernard Braine. In it I was at pains to emphasize that a state of war does not exist between ourselves and Argentina. But in saying this I may have given the impression that the Geneva Conventions do not apply to the members of the Argentine forces captured on South Georgia and that they are not therefore prisoners of war. This is not so. The four Geneva Conventions of 1949 (to which both Argentina and Britain are parties) apply not

/only

NOTHING TO BE WRITTEN IN THIS MARGIN

only when a state of war exists but also when any other armed conflict arises between two or more parties to the Conventions. They also apply in all cases of partial or total occupation of territory. Thus, the Conventions have been applicable since 2nd April when Argentina used armed force against British forces and occupied the Falkland Islands and, later, South Georgia. They will remain applicable until all hostilities, and the occupation, have ceased and all prisoners have been repatriated."

PS (Mr Holmes)

PRISONERS OF WAR CAPTURED IN SOUTH GEORGIA

1. As a follow up to my minute to you of 26 April covering a draft Private Secretary letter, you asked me to provide chapter and verse for the view I expressed that the prisoners captured in South Georgia are prisoners of war within the meaning of the relative Geneva Convention of 1949.

2. I attach a Note setting out the legal position.

Ian Sinclair

Ian Sinclair
Legal Adviser

26 April 1982

cc PS/PUS

PRISONERS OF WAR CAPTURED IN SOUTH GEORGIA

Note by the FCO Legal Adviser

1. The Geneva Convention relative to the treatment of prisoners of war (to which both Argentina and the UK are parties) was concluded in August 1949.

2. Article 2 of the Convention provides that:-

"In addition to the provisions which shall be implemented in peace-time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognised by one of them."

Article 2 also provides that the Convention shall:-

"apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance".

3. Article 4 of the same Convention defines prisoners of war, in the sense of the present Convention, as persons belonging to one of the following categories, who have fallen into the power of the enemy. Six categories are listed, of which the most significant is:-

"members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces".

4. There is also a separate defined category of persons to be treated as prisoners of war under the Convention. These are:-

"(1) Persons belonging, or having belonged, to the armed forces of the occupied country, if the occupying Power considers it necessary by reason of such allegiance to intern them, even though it has originally liberated them while hostilities were going on outside the territory it occupies, in particular where such persons have made an unsuccessful attempt to rejoin the armed forces to which they belong and which are engaged in combat, or where they fail to comply with a summons made to them with a view to internment..

(2) The persons belonging to one of the categories enumerated in the present Article, who have been received by neutral or non-belligerent Powers on

/their

their territory and whom these Powers are required to intern under international law, without prejudice to any more favourable treatment which these Powers may choose to give and with the exception of Articles 8, 10 15, 30, fifth paragraph, 58-67, 92, 126 and, where diplomatic relations exist between the Parties to the conflict and the neutral or non-belligerent Power concerned, those Articles concerning the Protecting Power. Where such diplomatic relations exist, the Parties to a conflict on whom these persons depend shall be allowed to perform towards them the functions of a Protecting Power as provided in the present Convention, without prejudice to the functions which these Parties normally exercise in conformity with diplomatic and consular usage and treaties."

Neither of these two defined categories of persons to be treated as prisoners of war apply to the prisoners captured in South Georgia.

5. In the circumstances, there is, in my view, no doubt whatsoever that the prisoners captured in South Georgia must be regarded as prisoners of war within the meaning of the Geneva Convention of 1949 relative to the treatment of prisoners of war.