

Inhand.

I think these are excellent points, in which I have no comment. Could the relevant parts be turned into a telegram to UKMis NY.

Mr Giffard

FALKLAND ISLANDS

1. I was asked to do a quick commentary on the draft Interim Agreement prepared by UKMis New York, the text of which is contained in UKMis New York Telegram No 713 of 11 May.

General

2. Mr Anderson's draft was of course prepared before the subsequent developments reported in UKMis New York telegrams Nos. 714, 728 and 729. The text is, accordingly, already a bit out-dated. Nevertheless, the following comments are offered on it, in the hope that they may be of some value in the context of future drafting. It should be noted that the UKMis New York text is drafted on the basis that the Dependencies (ie South Georgia and the South Sandwich Islands) are excluded from its scope; this results from the reference to the Falkland Islands (Islas Malvinas) in the third preambular paragraph. It is understood that OD(SA) will this morning be considering the basic point of principle as to whether the Interim Agreement should or should not extend to the Dependencies.

Article 1

3. We should try to keep as much of Article 1 as possible, notwithstanding that the Argentines have now accepted the non-prejudgment formula recorded in paragraph 1 of UKMis New York telegram No. 728. The point is that we need a general "without prejudice" clause to safeguard the positions of both parties in the context of an interim agreement of the type now under consideration. We should accordingly continue to press for a general provision along the lines of Article 1 of the UKMis New York text.

Article 2

4. Mr Anderson's draft may have been overtaken by the subsequent developments reported in paragraph 5 of UKMis New York telegram No. 728. It is impossible to draft a specific withdrawal article until one has a clearer idea of the principles involved - particularly whether the Dependencies are or are not to be included.

Article 3

5. The only point I would make here is that this article should presumably be prefaced by the phrase "With effect from time "T", ...".

Article 4

6. I think that there might be some danger in a specific undertaking "not to resume hostilities during or after withdrawal", given that such an undertaking might be wrongly construed as depriving us of our right of self-defence if Argentina cheated.

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In any event, there is a general undertaking by each party to cease all firing and other hostile actions in Article 2(1) of the draft. For these reasons, I would suggest a revised Article 4 on the following lines:

"On completion of the steps for withdrawal specified in Article 2, each Party undertakes to refrain from re-introducing any armed forces into the Islands or within [] nautical miles thereof."

The introductory phrase would enable us to get rid of the phrase at the end beginning "except for ...".

Article 6

7. In sub-paragraph (2), I do not think that we can use the phrase "and with effect from time "T"". The administration of the Islands can not be undertaken by the United Nations until the Resolution referred to in paragraph 1 has been adopted. I would accordingly suggest the following slight redraft:

"(2). Immediately after the adoption of the Resolution referred to in paragraph (1) of this article, the administration of the Islands shall be undertaken by the United Nations."

8. The remaining paragraphs of this article may raise major problems. Sub-paragraph (3) talks about the United Nations administrator to be appointed by the Secretary-General. This will have to be fleshed out. What laws is he to administer? What powers and functions is he to exercise? What will be the position of officials who have been expelled from the Falkland Islands? Will they be allowed to return? What seems to be needed is some kind of supplementary agreement or protocol spelling out the terms of reference for the United Nations administrator. It would clearly be difficult to cover all this in the main Agreement. The following is suggested as a replacement for sub-paragraph (3):

"A United Nations administrator, acceptable to Argentina and the United Kingdom, will be appointed by the Secretary-General as the officer administering the Government of the Islands. The Secretary-General, in consultation with Argentina and the United Kingdom, will make proposals about the way in which the United Nations administrator will exercise his powers and functions, having regard to the need to maintain the existing rights of the settled population resident in the Islands."

9. The last sentence of sub-paragraph (4) seems to go too far. Perhaps it could be modified to read as follows:

"The United Nations flag will be flown at the headquarters of the United Nations Administration."

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10. Sub-paragraph (5) also needs to be considerably fleshed out. We need to have more clarity about verification of withdrawal.

11. Sub-paragraph (6) also requires some modification. We cannot really leave it to the United Nations administrator to determine how many staff he should have. Perhaps something on the following lines might suffice:

"The Secretary-General shall make proposals, acceptable to Argentina and the United Kingdom, for the United Nations administrator to be provided with such staff as may be required to ensure the performance of the functions entrusted to him under this Interim Agreement."

Article 7 and 8

12. Paragraphs (1) and (2) should presumably now be regarded as having been, in large measure, superseded by the formula quoted in paragraph 2 of UKM's New York telegram No. 728. There is a problem about sub-paragraph (3). As drafted, there is an ambiguity in the expression "the next steps". Although Article 8 makes it clear that the Interim Agreement remains in force until a definitive agreement about the future of the Islands has been reached and implemented by the Parties, the use of the phrase "the next steps" in Article 7(3) might suggest that some further action was needed by the Security Council in order to prolong the interim administration beyond 31 December 1982. This would clearly be unacceptable. One way of removing the ambiguity would be to redraft Article 7(3) as follows:

"(3) If no agreement has been reached by 10 December 1982, the Secretary-General shall submit a report to the Security Council about the progress achieved in the negotiations, together with any recommendations about their future conduct."

This would make it quite clear that the report to the Security Council would be a progress report confined to the negotiations themselves. It would of course be essential in these circumstances to retain Article 8 as drafted.

Ian Sinclair
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cc PS
— PS/PUS
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