

ADVANCE COPIES: FALKLAND ISLANDS

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DESKBY 110800Z

FM UKMIS NEW YORK 102325Z APR 82

TO IMMEDIATE F C O

TELEGRAM NUMBER 440 OF 10 APRIL 1982

INFO PRIORITY BERNE.

MIPT

FOLLOWING WOULD BE SUBSTANTIVE PARAS OF OUR REPLY:

1. THE GENERAL ASSEMBLY'S DEFINITION OF AGGRESSION (CONTAINED IN RESOLUTION 3314 (XXIX)) RECALLS THAT IT IS FOR THE SECURITY COUNCIL, IN ACCORDANCE WITH ARTICLE 39 OF THE CHARTER, TO DETERMINE THE EXISTENCE OF ANY THREAT TO THE PEACE, BREACH OF PEACE OR ACT OF AGGRESSION. ARTICLE 2 OF THE DEFINITION STATES THAT:

"THE FIRST USE OF ARMED FORCE BY A STATE IN CONTRAVENTION OF THE CHARTER SHALL CONSTITUTE PRIMA FACIE EVIDENCE OF AN ACT OF AGGRESSION . . ."

RESOLUTION 502 (1982) ADOPTED BY THE SECURITY COUNCIL ON 3 APRIL 1982 REFERRED TO "AN INVASION ON 2 APRIL 1982 BY ARMED FORCES

AGGRESSION"

RESOLUTION 502 (1982) ADOPTED BY THE SECURITY COUNCIL ON 3 APRIL 1982 REFERRED TO "AN INVASION ON 2 APRIL 1982 BY ARMED FORCES OF ARGENTINA" (EMPHASIS ADDED) AND WENT ON TO DETERMINE THAT A BREACH OF THE PEACE EXISTED IN THE REGION OF THE FALKLAND ISLANDS. ARTICLE 3(A) OF THE DEFINITION STATES THAT

"THE INVASION . . . BY THE ARMED FORCES OF A STATE OF THE TERRITORY OF ANOTHER STATE" (EMPHASIS ADDED) QUALIFIES AS AN ACT OF AGGRESSION. ACCORDINGLY, A TRUE READING OF THE DEFINITION OF AGGRESSION TOGETHER WITH RESOLUTION 502 (1982) LEADS INEXORABLY TO THE CONCLUSION THAT IT IS ARGENTINA WHICH IS COMMITTING AGGRESSION BY ITS INVASION AND FIRST USE OF FORCE IN DEFIANCE OF THE APPEAL MADE BY THE PRESIDENT OF THE SECURITY COUNCIL ON BEHALF OF THE COUNCIL ON 1 APRIL 1982 (S/14944). MOREOVER, RESOLUTION 502 (1982) LEAVES NO DOUBT THAT IT IS ARGENTINA WHICH BEARS RESPONSIBILITY FOR THE CURRENT BREACH OF THE PEACE IN THE REGION.

2. THE DECLARATION OF A MARITIME EXCLUSION ZONE (WHICH WAS THE SUBJECT OF MY LETTER TO YE OF 9 APRIL 1982) FALLS SHORT OF WHAT WOULD NORMALLY BE HELD TO CONSTITUTE A "BLOCKADE" UNDER INTERNATIONAL LAW. AT THE SAME TIME AS THE TEXT OF THE DECLARATION ITSELF MAKES CLEAR, THIS MEASURE IS WITHOUT PREJUDICE TO THE RIGHT OF THE UNITED KINGDOM TO TAKE WHATEVER ADDITIONAL MEASURES MAY BE NEEDED IN EXERCISE OF ITS INHERENT RIGHT OF SELF DEFENCE UNDER ARTICLE 51 OF THE UNITED NATIONS CHARTER. ARTICLE 3(C) OF THE DEFINITION OF AGGRESSION LISTS "THE BLOCKADE OF THE . . . COASTS OF A STATE BY THE ARMED FORCES OF ANOTHER STATE" (EMPHASIS ADDED) AS AN EXAMPLE OF AGGRESSION. IN RELATION TO THE FALKLAND ISLANDS, THE UK IS NOT "ANOTHER STATE" BECAUSE THE MARITIME EXCLUSION ZONE SURROUNDS BRITISH TERRITORY INHABITED BY FALKLAND ISLANDERS WHO RETAIN BRITISH NATIONALITY. IN THIS CONNEXION, IT IS RECALLED THAT THE UNITED KINGDOM HAS BEEN ACCEPTED SINCE THE FOUNDATION OF THE UNITED NATIONS AS THE ADMINISTERING AUTHORITY FOR THE PURPOSES OF ARTICLE 73 OF THE CHARTER AND THAT THE UNITED KINGDOM HAS ALWAYS FULLY DISCHARGED ITS DUTIES BOTH TO THE INHABITANTS OF THE FALKLAND ISLANDS AND THE UNITED NATIONS IN THAT REGARD.

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FM UKMIS NEW YORK 102320Z APR 82

TO IMMEDIATE F C O

TELEGRAM NUMBER 439 OF 10 APRIL 1982

INFO PRIORITY BERNE.

YOUR TELNO 243: FALKLANDS AT THE UN - "DEFINITION OF AGGRESSION".

1. UNLESS WE HEAR TO THE CONTRARY BY 112000Z, WE WILL AT THAT TIME DELIVER TO THE SECRETARIAT OF THE SECURITY COUNCIL A NOTE OR LETTER ADDRESSED TO THE PRESIDENT IN THE TERMS OF THE DRAFT IN MIFT, BEFORE THE MEZ COMES INTO BEING. WE WOULD THUS HOPE TO HAVE OUR LETTER CIRCULATED TO MISSIONS ON 12 APRIL, I.E. AT THE SAME TIME AS YESTERDAY'S ARGENTINE NOTE. THIS TIMING SHOULD NOT INCREASE THE EXISTING RISK OF EARLY RECOURSE TO THE SECURITY COUNCIL BY THE ARGENTINES OR THE DO-GOODERS.

2. AS YOU WILL SEE, WE SUGGEST INCLUSION OF ALL POINTS IN YOUR TELEGRAM UNDER REFERENCE. WE HAVE DRAFTED THE WORDING ABOUT THE BRITISH NATIONALITY OF THE FALKLAND ISLANDERS IN PARA 2 BECAUSE MANY DELEGATIONS HERE SAY THEY DO NOT RECOGNISE BRITISH SOVEREIGNTY OVER THE ISLANDS. THE UK WAS ACCEPTED AS THE ADMINISTERING AUTHORITY OF RHODESIA DURING THE REBELLION AND SO WE COULD TRY TO DERIVE SOME ADVANTAGE FROM THAT STATUS VIS A VIS UN MEMBERS IN THE PRESENT CASE BY MEANS OF THE LAST SENTENCE OF PARA 2.

WHYTE

PS
PS/LPS
PS/MR HURD
PS/PUS
MR J C MOBERLY

Mr faxed 4/4

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FM UKMIS NEW YORK 102305Z APR 82

TO IMMEDIATE F C O

TELEGRAM NUMBER 438 OF 10 APRIL 1982

INFO IMMEDIATE TEL AVIV, BEIRUT, DAMASCUS, WASHINGTON,

INFO PRIORITY AMMAN, CAIRO, JERUSALEM.

WASHINGTON TELNO 1205: ISRAEL/LEBANON.

1. THE LEBANESE PR HAS TODAY (10 APRIL) WRITTEN TO THE PRESIDENT OF THE SECURITY COUNCIL DRAWING HIS ATTENTION TO THE ISRAELI MILITARY BUILD UP IN NORTHERN ISRAEL AND TO REPORTS OF AN IMMINENT INVASION. TUENI DOES NOT ASK FOR AN IMMEDIATE MEETING OF THE SECURITY COUNCIL BUT RESERVES HIS RIGHT TO DO SO IF THE "ESCALATION" CONTINUES.

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