

London S.W.1

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Dear Clive

THE FALKLAND ISLANDS: MR HAIG'S VISIT OF 12 APRIL

1. You asked us to give thought to what Mr Haig might propose tomorrow. This letter provides material as a basis for the meeting of Ministers this evening.
2. When Mr Haig was here last week, such ideas as he then had for a settlement of the present crisis were not explained clearly. But he seemed to be thinking of a process in three stages. The first stage would be Argentine withdrawal under international supervision. The second would be the restoration of local administration, apparently under some kind of international umbrella. The third stage would be negotiations on self-determination and sovereignty, apparently with some international involvement. The international element which Mr Haig seemed to be envisaging in all three stages would involve the United States and Canada and perhaps two Latin American states acceptable to Britain and Argentina.
3. The main problem with these ideas is that the restoration of British administration is not explicitly provided for. Thus, if negotiations under stage 3 were to last indefinitely or to be inconclusive, the temporary international administration foreseen in stage 2 might continue and British administration never be resumed. At one point, Mr Haig mentioned the possibility of Argentine involvement in the administration in stage 2, which would be even more unacceptable to Britain. A further weakness of Mr Haig's ideas is that they do not explicitly provide that the wishes of the Islanders should be respected. If, for instance, negotiations were to produce an outcome not approved in the past by the Islanders, it might well be necessary to arrange a referendum.
4. Mr Haig may urge the UK to suspend the Maritime Exclusion Zone, to give more time for negotiations. To do so would of course leave Argentina free to continue to strengthen and to supply the occupation force in the Falkland Islands. If Mr Haig does urge that the UK should not enforce the zone because of a prospect of a peaceful settlement, the Prime Minister may wish to counter with a proposal involving important concessions by Argentina. A possible arrangement might be for Argentina to undertake, if the UK conditionally suspends the Exclusion Zone,

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that her naval vessels will immediately leave the area of the Zone and none will enter it; that she will not supply her forces in the Falklands by air; and that her merchant vessels will not enter the area of the Zone. Merchant vessels of other nations would be allowed to go to the Falkland Islands with food and other essential supplies, under some kind of US verification of cargoes.

... 5. I enclose a note of other theoretically possible diplomatic arrangements which Mr Haig might suggest. This may be useful as a source of comment to make about Mr Haig's proposals at the beginning of the second session of talks tomorrow morning. But the Prime Minister may also wish to have at hand ideas for ... positive use. My second enclosure, therefore, is a note of an arrangement which may be acceptable to the UK but also offers minimal presentational advantages to Argentina. These elements are for: a stand-off by the British task force while Argentina withdraws; non-British, probably US, administration of the islands for a finite period, probably confined to the time needed for Argentine withdrawal; American chairmanship of future negotiations about the Falklands; and an international method of ascertaining the future wishes of the Islanders after the re-establishment of British administration.

6. We shall also provide very shortly a note about the economic measures towards Argentina which we would like the United States to take. This might be given to the Americans at the end of the first session tomorrow morning so that they can consider it during the recess.

7. I am sending copies of this letter with the enclosures to the Private Secretaries of the Defence Secretary, ~~and~~ the Home Secretary and the Chancellor of the Duchy of Lancaster.

Yours ever,



B J P Fall

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ENCLOSURE 1

Other Theoretically Possible Outcomes Which Mr Haig Might Suggest
(not in order of desirability)

1. Argentine withdrawal; re-establishment of British administration; reference to the International Court of Justice for an advisory opinion about sovereignty

The Security Council would need to direct the request to the International Court for an advisory (ie not binding) opinion. The Law Officers have advised in the past that the strength in law of the British case was probably sufficient to justify reference to the Court, although they could not altogether exclude the possibility that the Court might find against the UK, particularly over the South Sandwich Islands. Since that advice was given, the composition of the court has become more unfavourable to the UK. This arrangement would therefore be risky for the UK (although the wishes of the Islanders could still be ascertained at the time if the advisory opinion was against the UK).

2. Argentine withdrawal; re-establishment of British administration; reference to the International Court of Justice for a binding decision

In the case of a binding decision, the UK and Argentina would need jointly to refer the question of sovereignty to the International Court. But this course would be even more risky for Britain; a binding ruling against us would virtually remove the Islanders' freedom of choice in the future.

3. Argentine withdrawal; re-establishment of British administration; joint reference by the UK and Argentina to an ad hoc arbitration tribunal

Although the UK would have to agree to the composition of the tribunal, this course presents the same risks as the second one above because the decision would be binding. Argentina, too, might not agree to it. She repudiated the award in the Beagle Channel arbitration tribunal, despite having agreed in advance to accept the findings.

4. Argentine withdrawal; temporary administration by a neutral authority, eg the US, during arbitration or negotiations

If there was a ruling by the International Court or a tribunal against Britain, or if negotiations were inconclusive, the UK would not be in possession of the Falklands and British administration might never be re-established.

5. Argentine withdrawal; cession of Sovereignty over some or all of the Falkland Islands Dependencies; re-establishment of British administration and continued British Sovereignty in the Falklands themselves

This would meet the main British requirements in theory, since the Dependencies are without population. The question is whether Ministers would wish to cede even uninhabited territory.

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6. Repatriation of the Falklanders to the UK or evacuation elsewhere; Argentine military withdrawal; continued Argentine administration.

The Islanders have never wanted evacuation and it is impossible in present circumstances to ascertain whether they have changed their minds. Continued Argentine administration anyway goes against one of the main British requirements.

7. Argentine withdrawal; transfer of Sovereignty from the Falkland Islands and Dependencies to Argentina; lease-back of all the territory to the UK for British administration.

The obvious problem with this is that the Islanders in the past have opposed cession of Sovereignty and lease-back. So any arrangements of this kind, unlike previous versions of the idea, would need to provide for the Islanders to be consulted in the future. One possible arrangement might be a transfer of Sovereignty with indefinite lease-back, the question of termination of the lease being left for the future but requiring a referendum in any case. Another version would be lease-back for 50 years with a referendum near the end of that period. If the Islanders voted against expiry of the lease, it would be extended for another, say, 10 years. There would be another referendum near the end of the extended period ... and so on. Under either version, limits on Argentine immigration would be needed.

8. Extension of the Antarctic Treaty to the Falkland Islands and Dependencies.

This is still being considered and is mentioned tentatively. The idea would be for the UK, the US and Argentina jointly to propose to the other Parties the extension of this successful and well-regarded Treaty to the Falkland Islands and Dependencies. Since Sovereignty is frozen under the Treaty, British retention of Sovereignty and the Argentine claim would both stand. It is relevant that the UK and Argentina already have overlapping Sovereignty claims in the Antarctic, which have not led to friction since the establishment of the Treaty in 1959. Participating countries administer their own settlements in Antarctica. The UK could thus continue to administer all the existing settlements on the Falklands and the Dependencies. ~~But~~ Argentine settlements would also be allowed on the Islands, which could be under Argentine administration. It is questionable whether Argentina would agree that this part of the Treaty should not be applied. A further problem is that the Treaty insists on the demilitarisation of the area. This would provide legal reason for Argentine withdrawal and for Argentina not invading again; but it would also prevent the UK from keeping warships or marines in the Falklands. The association of a number of major world powers, including the US and the USSR, as Parties to the Treaty might provide some political deterrent to Argentine intervention in future. The Treaty is due for review in 1991 - an appropriate test period. The Governor of the Falklands is also Commissioner for the British Antarctic Territories; he would therefore be able to return to Port Stanley and exercise his full new functions.

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ENCLOSURE 2

A Possibly Acceptable Arrangement

1. No compromise is possible on Argentine withdrawal. But a limited stand-off by the British Task Force might be presented as a quid pro quo. If the exclusion zone was still in force when the arrangement was announced, its suspension could also be presented in this way.
2. Argentine withdrawal may take several weeks to complete. There would be no disadvantage to us in having some international observation to ensure the completion of withdrawal. Those doing this supervision might also exercise temporary administration during the withdrawal. But the duration of the temporary administration must be finite, so as to give us the guarantee that British administration would later be re-established. It would be possible, on this basis, for HMG, in announcing these arrangements, to state the date when British administration would resume. The supervision of withdrawal and the temporary administration might be undertaken by the United States.
3. Negotiations about the Falklands problem could resume at the same time as British administration was re-established. Negotiations could possibly begin even during the period of temporary administration. To give a new look to the negotiations, the US might chair them, with the UK and Argentina and Falklands representatives participating. The wishes of the Islanders about their future would be ascertained by a referendum or an international commission some time after British administration had resumed.
4. The above arrangements would give Argentina four nominal concessions: the stand-off by the British Task Force, non-British administration of the islands for the period of Argentine withdrawal, American chairmanship of future negotiations and an international method of ascertaining the future wishes of the Falkland Islanders. If Argentina is desperate, she might conceivably use these as a way out. If not, we could consider whether to negotiate about a longer, but still finite, period of non-British administration and about some international element, eg a small advisory committee of nationals of other countries than Britain and Argentina, being added to the re-established British administration to give it a slight tinge of an international appearance.

Footnote: If these ideas were put to the Americans, the essential elements might be extracted in a short note for the purpose.