

13/7/6

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Secretary of State

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Mr Day
PS/Mr Rinkley
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Mr Rinkley did not see before
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cc: PS/LPS
PS/PUS
Mr Ure o.r.
Legal Advisers

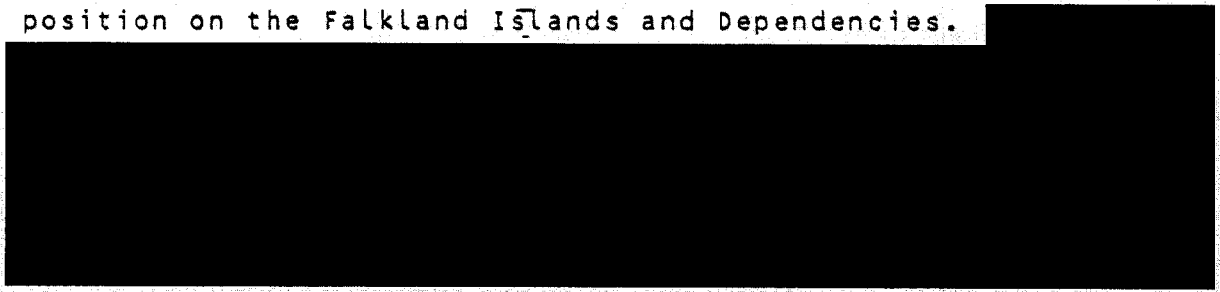
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Mr A Smith
CB
21/10

FALKLAND ISLANDS: INTERNATIONAL ARBITRATION

1. At his office meeting on 7 September the Secretary of State asked whether there would be merit in referring our sovereignty dispute with Argentina over the Falkland Islands to the International Court of Justice (ICJ).

2. The attached paper, prepared for the last round of negotiations with the Argentines, sets out our view of the legal position on the Falkland Islands and Dependencies.



3. The question of British sovereignty in the area has not been submitted to the ICJ or to any other international tribunal. In 1947 and subsequently HMG offered to submit the dispute over Argentine claims in the Dependencies to the ICJ; and in 1955 HMG applied unilaterally to the Court against encroachments on British sovereignty in the Dependencies by Argentina and Chile. However, the matter could not be pursued since both Argentina and Chile declined to submit to the Court's jurisdiction in the matter.

4. In 1966 the question arose as to whether in the course of negotiations with the Argentines, the UK should offer to refer the dispute over the Falkland Islands to the ICJ. The Law

/Officers

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Officers were asked to advise whether the strength in law of the British case for sovereignty over the Falkland Islands and Dependencies was sufficient to justify such a reference. [REDACTED]

5. The question was not, however, pursued further. This was partly because reference to the Court would have had no attraction for Argentina (as Argentina does not accept the compulsory jurisdiction of the ICJ, any reference to the Court could only be made with the agreement of the Argentine Government), [REDACTED]

6. [REDACTED]

[REDACTED] If for political reasons it seemed advisable to offer international adjudication or arbitration to the Argentines again as a method of resolving the dispute, the Law Officers would first need to be consulted. Legal Advisers also consider that reference to an ad hoc arbitration tribunal might be preferable to reference to the ICJ since the composition of the former would have to be agreed between us and the Argentines. But given the Argentines' repudiation of the award made by an arbitration tribunal in the Beagle Channel case, despite their prior agreement to accept its findings, no reference to international arbitration is likely to help solve the dispute. The Argentines would be unlikely to accept a ruling that the Islands were British and it would be politically very difficult for the UK to hand them over to Argentina. If the ruling went the other way. If arbitration

went in our favour we might gain some advantage at the UN,
but this would be only temporary as the great majority of
UN member-states will continue to see the dispute as a
colonial problem.



P R Fearn
South America Department

14 October 1981

But we should not be right
this possibility - in case, I saw stage,
there was a tactical advantage in
a well-ventured.