Foreign and Commonwealth Office

London SW1A 2AH

13 May 1982

Dear John

J.a.
13/5

Falkland Islands

On the evening of 11 May the Prime Minister spoke to Mr Rifkind about the legal aspects of keeping Parliament informed before the Government made any decisions on proposals put forward by the UN Secretary-General. I attach a note prepared by Sir Ian Sinclair covering the points raised by the Prime Minister.

Yours sincerely

Mash

P.P. (J E Holmes)
Private Secretary

A J Coles Esq
10 Downing Street

PS/Mr Rifkind

FALKLAND ISLANDS

1. You asked for a brief note about the exchanges which took place the other day between the Prime Minister and Mr Foot concerning the need to keep Parliament informed before the Government made any decision on proposals which might emerge from the Secretary-General's current mediatory efforts. The strict legal and constitutional position is that the treaty-making power is vested in the Crown as part of the royal prerogative. If and to the extent that the implementation of a treaty by the United Kingdom would require primary legislation, the constitutional practice of successive administrations has been to ensure that the treaty is signed subject to ratification. The necessary domestic legislation is then enacted between signature and ratification so that the Crown can ratify the treaty in full knowledge that it already has available to it all necessary powers to ensure its effective execution as and when it enters into force.

2. In the particular case of the Falkland Islands, what is being sought is an Interim Agreement for the cessation of hostilities, withdrawal of forces, interim administration of the Islands and a formula permitting negotiations on the future of the Islands. By virtue of its very nature, an Agreement on the cessation of hostilities must enter into force on signature. In the particular circumstances of the Falkland Islands, any necessary adjustments to the constitutional instruments to accommodate an interim administration can be effected by way of modification of subordinate legislation - that is to say, to the extent necessary, the Falkland Islands (Legislative Council) Orders and the Royal Instructions. There would thus be no need for primary legislation to give effect to any Interim Agreement that might be reached along the lines now under consideration.

3. I should perhaps also say a word about the Ponsonby Rule. This is a rule of constitutional practice which has been broadly observed since 1924 and which requires that any treaty subject to ratification should be laid before Parliament for 30 sitting days before the government of the day proceeds to ratification. The object and purpose of the Ponsonby Rule is to ensure that Parliament has an opportunity to debate the terms of any treaty subject to ratification before the Crown actually proceeds to ratification. As will be apparent, the Ponsonby Rule does not apply to treaties expressed to come into force on signature. However, any agreement expressed to come into force on signature must be laid before Parliament as soon as it has been concluded.

4. There have been one or two occasions in the past (notably in the context of the negotiations on Cyprus in 1960) when the text of a treaty has been laid before Parliament in draft - that is to say, before signature. These have, however, been exceptional cases, and there is no legal or constitutional reason why the text of any Interim Agreement on the Falkland Islands should be laid before Parliament before it is signed (this is on the assumption that the

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Agreement is expressed to come into force on signature). It is of course a question of policy as to how much of the detail of any Interim Agreement that might be negotiated should be revealed to Parliament by way of Ministerial statement before signature.

Ian Sinclair
Legal Adviser

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