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MO5/21

14 May 1982

Dear John,

As you know the Argentines have converted and designated their 10,000 ton survey ship BAHIA PARAISO as a hospital ship. They notified us of this through the Swiss authorities on 8 May.

It was clear from this intelligence that the Argentines are prepared to use the ship for military purposes in contravention of the appropriate Geneva Conventions (I attach at Annex A a note by FCO Legal Advisers prepared in consultation with the Attorney-General's Department, which defines clearly how a hospital ship should be used and treated).

In recent days, the BAHIA PARAISO has called in at the Port of Ushuaia on Tierra del Fuego. We have received some unsubstantiated intelligence that she may have taken on board large quantities of food, and possibly some weapons. This could be significant, in that we have reliable reports that the Argentine garrison on the Falklands is short of food. We suspect that the BAHIA PARAISO has now sailed from Ushuaia, possibly for Santa Cruz, but she could be diverted on passage to make a dash for Port Stanley. The ship could carry some 800 tons of food, which would represent 40 days supply of food for the 10,000 Argentine soldiers on the Falklands.

In consultation with FCO Legal Advisers and the Attorney General's Department officials of our two departments have been considering what action we might take, taking account of the Chiefs of Staff's view that it would be a significant setback for us if supplies of food on this scale got through to Port Stanley. Our 2 departments have agreed that:

- a. The International Red Cross should be invited through the Swiss authorities to dispatch a representative to inspect the BAHIA PARAISO, confirm that she is equipped and configured only for her role as a hospital ship, and remain with her for the duration of the conflict.
- b. The Argentine Government should be informed, again through the Swiss, that we have reason to believe the BAHIA PARAISO is undertaking tasks inconsistent with her status as a hospital ship, and informing them that our forces reserve the right to stop, board and search her to confirm whether or not this is so.

J Holmes Esq

c. The Task Force Commander should be informed of the problem and the action we have taken, and instructed that if the BAHIA PARAISO is located within the Total Exclusion Zone he should:

1. Order her to stop for inspection.
2. Put an armed search party aboard to look for evidence that the BAHIA PARAISO is being used for purposes contravening the relevant provisions of the Geneva Convention governing hospital ships, e.g. carrying food outside her normal requirements or weapons or military supplies.

Telegrams and signals covering the foregoing actions have been dispatched.

The question which remains is what authority the Task Force Commander should have to attack the BAHIA PARAISO if she refuses to stop or submit to search. It is clear that if our suspicions are well founded and the ship, because of its refusal to stop, actually got through to the Falkland Islands garrison, the consequences would be of very real military significance. The stock of food alone which the BAHIA PARAISO could carry would add very greatly to the garrison's endurance. On the other hand, the agreement reached between FCO, MOD and Cabinet Office officials on the rationalisation of ROE (OD(SA)(82) 47) specifically precluded attacks on hospital ships. As the Legal Advisor's note makes clear, political problems surround the use of force especially if an attack resulted in the ship being sunk and with her the evidence that she was not acting as a hospital ship. The military view here is unambiguously that the Force Commander should have as a last resort the discretion to attack the BAHIA PARAISO accepting the risk that she may be sunk.

If Ministers agree with the military advice it will, of course, be essential to have ready a carefully prepared public line to rebut the obvious allegations which will be made by the Argentine. Instructions on the need to brief embarked press immediately any incident takes place and guidance on the line to be taken would be sent to the Task Force concurrently with the amended ROE. It is clearly imperative that we should avoid being put on the defensive over this.

I shall be seeking the views of the Defence Secretary urgently on this point and should be grateful if you could bring it to the attention of the Foreign and Commonwealth Secretary. We shall need to send further instructions to the Task Force Commander as soon as possible.

I am copying this to John Coles (No 10), to the Private Secretaries of other OD(SA) members and of the Attorney General, and to David Wright (Cabinet Office).

Yours ever

Gene Ridley
MISS JE RIDLEY
(Assistant Private Secretary)

Note on Hospital Ships
and rights in relation to them under the Geneva Convention

1. Under the Second Geneva Convention, hospital ships are "military hospital ships, that is to say, ships built or equipped by the Powers specially and solely with a view to assisting the wounded, sick and shipwrecked, to treating them and to transporting them." (Article 22) Converted merchant vessels used as hospital ships may never be put to any other use during hostilities. (Article 33)
2. "A hospital ship may in no circumstances be attacked or captured, but shall at all times be respected and protected." (Article 22)
3. A hospital ship must not be used for any military purpose. (Article 30)
4. The parties to have the right to control and search hospital ships. "They can refuse assistance from these vessels, order them off, make them take a certain course, control the use of their wireless and other means of communication, and even detain them for a period not exceeding seven days from the time of interception, if the gravity of the circumstances so requires." "They may put a commissioner temporarily on board whose sole task shall be to see that orders given in virtue of the provisions of the preceding paragraph shall be carried out." (Article 31)
5. "The protection to which hospital ships and sick-bays are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after due warning has been given, naming in all appropriate cases a reasonable time limit, and after such warning has remained unheeded. (Article 34)
6. A hospital ship may not possess or use a secret code for its wireless or other means of communication. (Article 34)
7. A hospital ship may, however, carry arms of the crew for the maintenance of order or for their own defence, and ammunition for this purpose, as well as arms and ammunition taken from the sick and wounded. (Article 35)
8. A hospital ship may carry equipment and personnel intended exclusively for medical duties over and above normal requirements. (Article 35)
9. This is important because it might be claimed that any materials loaded on the ship were of this character.
10. There are also provisions concerning medical transports, but these require that particulars regarding the voyage of the medical transport should be notified to the adverse power and approved by the latter. (Article 38) But this has no application here.
11. Article 31, set out in paragraph 4 above, gives guidance as to what can be done to the hospital ship, if it submits to search and cooperates.

12. The most difficult question is what the intercepting ship can do if the other ship declines to cooperate. It can fire a warning shot across the bows to require the ship to stop and to submit to search. It can send a boarding party, eg by helicopter. But if this is not possible, can the intercepting ship in the last resort fire at the hospital ship?

13. Legally this depends on whether it is or is not in fact a hospital ship being properly used. If in fact it is being properly used, firing at it to inflict damage would be unlawful; and any suspicions deriving from its loading or from its conduct during the interception go only to mitigate the breach of the Convention.

14. On the other hand, if it was carrying ammunition or supplies, even including food, outside its normal requirements and destined for Argentine forces, this would be use for a "military purpose" prohibited by Article 30, and it would be "acts harmful to" the UK which would, after due warning, disentitle it under Article 34 to protection.

15. The warning requiring it to comply with the instructions of the intercepting vessel must be clearly given, with a time limit for compliance if possible, and indicating that the intercepting vessel is exercising its rights under the Convention and that failure to comply will disentitle it to protection as a hospital ship.

16. The intercepting ship must use minimum force. It should aim to cripple and not to sink the hospital ship. If force were used on it, it would be essential to preserve the evidence establishing that there had been an abuse of its status as a hospital ship. A full record of the warnings and other action taken under Article 34 should be kept, on the basis of which it could be argued that the hospital ship had forfeited that status.

17. The above results from discussion with the Attorney-General and in particular he has approved the position set out in paragraphs 12 to 16.

HG Darwin

H G Darwin
Deputy Legal Adviser
Foreign & Commonwealth Office

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