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United States Senate

WASHINGTON, D.C. 20510

June 23, 1982

Mr. Robert Kimmitt
National Security Council
17th & Pennsylvania Avenue, N. W.
Washington, D. C.

Dear Mr. ~~Kimmitt~~: *Bob*

Because of your interest in the Falkland crisis and the issue of how to resolve the conflicting claims of sovereignty, I thought you would be interested in the enclosed sense of the Senate resolution which Senator Specter introduced. Also enclosed is his introductory statement. The resolution will now be referred to the Committee on Foreign Relations.

The helpful suggestions you made previously were much appreciated.

We would be interested in any reaction and comments you may have to the enclosed materials.

Thank you very much.

Sincerely,

Paul

Paul R. Michel

PRM:ww
Enclosures:

REFERRAL OF ISSUE OF SOVEREIGNTY OVER
FALKLAND ISLANDS TO INTERNATIONAL COURT OF JUSTICE

MR. SPECTER. Mr. President, today I am submitting a sense of the Senate resolution proposing a peaceful means for resolving the continuing dispute between Great Britain and Argentina over sovereignty of the Falkland Islands. The resolution asks the President to seek agreement of these two friends of the United States to submit the issue to the International Court of Justice at the Hague.

Argentina and Great Britain each claim sovereignty over the islands. The former, Argentina, sought to assert its claim by force and was repulsed by force of arms by Great Britain. The fighting has now ended, perhaps only temporarily, but the underlying dispute remains. Unless the issue of sovereignty can be resolved, peace in the islands can again be shattered at any time. The two countries themselves cannot agree on sovereignty. As the mutual friend of both, the United States should advance a solution which preserves the peace and offers the disputants a face-saving way out of their dilemma.

According to press reports, there appears to be a danger of renewed warfare. Argentine President Galtieri was quoted yesterday as saying that there can be no lasting peace as long as Britain rules the islands, that Argentina would eventually fulfill "our aspirations over the Malvinas," and that "sooner or later" Argentina will retake the islands.

Reports of domestic political turmoil and violent demonstrations in Argentina corroborate the implication that President Galtieri may feel under pressure to initiate further military action as a means of retaining his own power.

Reports in the New York Times today carry the banner headline, "British Warn Enemy of Risk for Ill POW's if War Lasts; But Terms Still Split Junta."

The situation has evolved on the Falklands that there are 15,000 Argentine troops which need to be returned to safe conditions for adequate treatment and adequate medical care. The commander of the British forces is concerned that it is not possible to return those troops because the British forces have neither a guarantee of safe passage for British ships nor agreement from the Argentinians on disembarkation. The battle which has waged for the past several weeks now leaves continuing problems in terms of implementing a ceasefire in the light of Galtieri's problems on the home front.

Resolution 502 of the United Nations calls for a withdrawal of Argentine forces, an end to hostilities between Britain and Argentina, and negotiations between the two countries over sovereignty for the Falklands.

At the moment, Great Britain refuses to agree to negotiations over the issue of sovereignty, which is understandable in the context of the British victory, but the victory, may indeed, be hollow if fighting may break out again, encouraged and fomented by internal strife in Argentina.

The suggestion for submitting the dispute to the International Court of Justice at the Hague is a face-saving device which may give the Galtieri government time; it may be a soothing factor for the internal Argentine factions; and it may be a way which is acceptable to Prime Minister Thatcher and to the Government of Great Britain.

On May 5, 1982, a resolution was introduced in the House of Representatives by Mr. Bingham, for himself and others. H. Cong. Res. 328 addressed the problem of the Falkland Islands at that time and proposed that the issue of sovereignty be submitted to the International Court of Justice. That resolution contains the recitation, "Whereas, British Prime Minister Thatcher has stated that if Argentina would accept referral of the sovereignty issue to the International Court of Justice, Great Britain would give serious consideration to such a referral."

I am advised that there is some question as to whether Great Britain was at any time willing to have the issue of sovereignty referred to the International Court of Justice, but there is at least some basis for thinking that such a possibility might be considered by Great Britain.

Such consideration might be a lesser likelihood in the light of the extent of the military action and Great Britain's victory there. However, it is entirely possible that the new problems might again pose a likelihood that Great Britain would consider such a referral on sovereignty.

Today's New York Times, in a story by Leslie Gelb, relates that President Reagan is expected to press Britain to compromise with the Argentines and that there is renewed effort on the part of our Administration to encourage Great Britain to seek some way to propose a compromise which may be face-saving for the Argentinian Government. This may be just the approach which could be successful.

It is not the task of the United States, nor of its elected representatives, to pass judgment on the validity of a long-standing and deeply felt dispute between these countries over the legitimacy of their respective claims of sovereignty over the islands in question. Sovereignty claims are legal issues -- and the International Court of Justice, not the battlefield, is the place for their resolution. It is crucial to both Argentina and Britain that this dispute, that dates back to the 1820's, be settled once and for all.

It is equally important to the international community at large, and the regional community of American states -- of which the United States is a member -- that the argument between our friends, the British and the Argentines, not be allowed to continue its corrosive effect. To further this second objective -- resolving disputes within the international community -- it becomes particularly important that the United States take an active role in assisting the Buenos Aires and London governments to negotiate a permanent peace and resolution of the dispute.

Recently, Sir Nicholas Henderson, British Ambassador to the United States, stated during an interview on television that the question remains: What now? Sir Nicholas pointed out that what has been resolved in the South Atlantic is the issue of whether military aggression in pursuit of national objectives can be tolerated. What has not been resolved is the issue of sovereignty.

The United States, I submit, holds a special responsibility to move our friends along in their pursuit of lasting peace. Our friends and allies in this hemisphere have already been unsettled and confused by America's efforts to reconcile our divided loyalties when two of our friends take up arms to resolve a dispute. It is as important that the nation states of the Americas be reassured of Washington's continuing respect for their responsibilities to their own best interests as it is for the British-Argentine dispute itself to be resolved.

In this spirit, the resolution, and the proposal it puts forth, offer hope for a beginning to the discussions and the healing.

Recently, I had occasion to be in The Netherlands. On June 1, I visited the International Court of Justice. I have long been an admirer of the International Court, studied it as a political science major at the University of Pennsylvania many years ago, and have long believed that the International Court of Justice could be a very useful instrument for solving international disputes.

In the long run, it will be necessary that nations which have disputes submit them to the rule of law and to the International Court, very much as our own disputes have been submitted to the Supreme Court of the United States for ultimate resolution.

This is obviously a complex matter. It is difficult, when issues of national sovereignty are involved, to persuade nations to submit, on a voluntary basis, deep-seated and important national interests; and we are not ready, as a world community, to have compulsory referral of disputes to the International Court of Justice. The dispute of the Falklands, however, is uniquely susceptible to that kind of submission.

While at the International Court of Justice, at The Hague, in The Netherlands, I discussed the possible submission with officials of the International Court of Justice and found great receptivity there. Unlike the dockets of American courts, the docket of the International Court of Justice is relatively clear, and the Court would be in a position to give such an issue a very prompt hearing and very prompt treatment.

At the same time, it would provide, through the normal processes of litigation and resolution, breathing room for the complex political matters in Argentina to be resolved, and for the pressing issue of the 15,000 troops and the other pressing matters to be resolved while the Court takes the normal time for resolution of this legal issue.

Mr. President, I ask unanimous consent to have the resolution printed in the Record.

MR. SPECTER. Mr. President, I believe it also appropriate to note that I wrote yesterday to Secretary of State Alexander Haig and to the Special Assistant to the President on National Security Affairs, William Clark, advising them of my intention to submit this resolution and asking for their response and their consideration of this idea.

IN THE SENATE OF THE UNITED STATES

Mr. Specter submitted the following resolution; which was _____

RESOLUTION

Urging referral of the issue of sovereignty over the Falkland
(Malvinas) Islands to the International Court of Justice.

Whereas Argentina claims to have sovereignty over the Falkland
(Malvinas) Islands, as does Great Britain, which has governed
them since 1833;

Whereas the Argentine effort to assert sovereignty over the
islands by military force has been thwarted by the British
through a military engagement costly and painful to both
countries;

Whereas a permanent resolution of the British-Argentine
sovereignty dispute is in the highest interest of the
international community as a whole, the Western Hemisphere in
general, and the United States in particular;

Whereas a peaceful settlement to the sovereignty dispute between
Argentina and Great Britain has been a continuing objective
of the United Nations Security Council and the Organization
of American States;

Whereas the issue in contention, sovereignty, is fundamentally a
legal one; and

Whereas Article 36 of the Charter of the United Nations provides
that "legal disputes should as a general rule be referred by
the parties to the International Court of Justice", the

principal judicial organ of the United Nations: Now,
therefore, be it

1 Resolved, That it is the sense of the Senate that the
2 President should--

3 (1) seek immediate agreement by the Government of
4 Argentina and the Government of Great Britain to submit
5 the issue of sovereignty over the Falkland (Malvinas)
6 Islands to the International Court of Justice; or

7 (2) if such agreement is not obtained, direct the
8 Permanent Representative of the United States to the
9 United Nations to urge the United Nations Security
10 Council to request that the International Court of
11 Justice render an advisory opinion on the issue of which
12 of the two conflicting claims of sovereignty should
13 prevail under international law.

14 Sec. 2. The Secretary of the Senate shall transmit a copy
15 of this resolution to the President.