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FOREIGN SERVICE DESPATCH

1055
DESP. NO.

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Antarctic
1055
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FROM : AmEmbassy, BUENOS AIRES
TO : THE DEPARTMENT OF STATE, WASHINGTON.
REF : --

May 17, 1955

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24 For Dept. Use Only	ACTION	DEPT.	RM/R-2 061-0 GE-1 P-1 10-4 GE-1 CIA-7 USIA-10 OEB-2 ARMY-4 NAVY-3
	REC'D 5/23	IN F O	

SUBJECT: ARGENTINA REJECTS BRITISH PROPOSAL FOR ARBITRATION
CLAIMS OF ANTARCTIC TERRITORIES

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Argentina in its reply of May 4, 1955, to the British note of December 21, 1954 (copies in English enclosed, supplied by the British Embassy), rejected the British proposal that the two countries submit "to the verdict of an independent ad hoc arbitral tribunal, the question of their respective rights, in accordance with international law, to the territory designated as the Falkland Islands Dependencies by Letters Patent of 1908 and 1917". The texts of the notes were made public by the Argentine Foreign Office on May 12. The Chilean Government has rejected a similar proposal made to it by the British Government. On May 12 an officer of the Embassy was called to the Foreign Office and handed copies of the texts of the notes, in Spanish. The Embassy officer gained the impression these texts were also being handed to the other missions here.

It was a foregone conclusion that the Argentine Government would reject any proposal which in any way involved an admission of British sovereignty over the Islas Malvinas (Falkland Islands). Such a recognition was implicit in the British proposition to arbitrate the conflicting Antarctic claims in the form of an adjudication of rights to the "Falkland Island Dependencies". In its note the Argentine Government declares, after renewing its oft repeated charge of aggression by the British in seizing and occupying the Falklands, "it cannot conceive nor accept as friendly or just any proposal which has as its base the maintenance of this occupation". The Argentine note adds, "Still less can it admit that such a proposal should claim to support titles of sovereignty over other Argentine territory, with the result that these would become affected by the consequences of the aggression suffered by the Falkland Islands. This situation cannot produce any right in favor of Great Britain".

In its rather elaborately argued note, the Argentine Government bases its rejection on the following points:

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Desp. No. 1055

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Desp. No. _____

From _____

1) The Letters Patent of 1908 and 1917, on which the British Government relies for its claim, are unilateral acts and therefore totally ineffective as a basis for a claim of sovereignty;

2) The foundation of these documents is false because the territories to which they relate are under the sovereignty of Argentina, a sovereignty resting upon "unquestionable legal bases";

3) The British claim is fatally defective innot providing for consideration of the fundamental problem of sovereignty over the Falkland Islands;

4) Even assuming the relationship of dependency of the Antarctic territories to the Falkland Islands, this would attribute sovereignty to Argentina and not to the British because of Argentina's unquestioned sovereignty over the Islands. Leaving aside the question of illegal British occupation in the Falkland Islands there would be no basis for the arbitration proposed because the territories in question are under the sovereignty of Argentina;

5) No juridical or moral principle requires a State to submit to the decision of external powers its territorial rights based on legitimate titles, such as are those which underly "the unquestionable sovereignty of the Republic over the Antarctic sector and the adjacent Islands";

6) The Rio Treaty of Mutual Assistance in establishing a defense zone for this Hemisphere "excludes all possibility that the sovereignty of an American country over territories falling within this geographical area could be discussed in the halls of an internal tribunal";

7) The acceptance of the course proposed by the British "would be incompatible with the aspirations of the peoples and governments of this Continent who have confirmed in the Tenth Inter-American Conference at Caracas their desire finally to eliminate colonialism".

8) Argentina and Chile in their joint declaration of March 4, 1948, agreed "to carry out in mutual accord the legal defense of the sovereignty which the two countries have in the portion of their respective sectors which actually overlap".

The Argentine Government concluded by reserving the right to reject any intervention by tribunals to the jurisdiction of which it had not previously consented. This had reference to

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the British statement that if Argentina rejected this proposal, it would consider itself free to seek the determination of its legal rights by the International Court of Justice.

On May 8 the Buenos Aires press reported the action of the British Government in proceeding immediately upon receipt of the Argentine and Chilean replies with the filing of two applications in the International Court of Justice, one against Argentina and the other against Chile, asking the Court to recognize the validity of British titles to sovereignty over the Antarctic areas in question and "to declare that the pretensions of Argentina and Chile, as well as other encroachments in the territories, are contrary to international law". The press on May 13 reported a statement by a British Foreign Office spokesman that despite rejection by both Argentina and Chile of Britain's proposal to submit the dispute to arbitration, the Court had under its rule no option but to ask the two South American Republics if they would accept its judgment.

The action of the Argentine Government, of course, received the unanimous approval of the Argentine press. This is one subject on which there is complete unanimity in the Argentine. La Nación said, for example, "thus there has been stated once more in unequivocal terms a fundamental problem of our existence as a nation. Argentina secure in its rights cannot resort on this subject to deals or transactions. The Malvinas are Argentine. That the Antarctic, dependency or not, is also Argentine, there is no room for doubt. In the first place, the usurpation of 122 years ago cannot create any right. In the second place, in addition to the clearly defined origin of our sovereignty we have invoked and reinforced it in major abundance by scientific action in the remote regions of the South over a long period of time. END UNCLASSIFIED

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COMMENT: It is not clear what the British Government hopes to accomplish by its application to the International Court of Justice. It can have no illusions about the acceptance of the jurisdiction of the Court by either Argentina or Chile. It will be recalled that in a recent conversation with an Embassy officer concerning the possibility of the British filing such an application, Ambassador MUÑOZ of the Foreign Office pointed out that Argentina had not accepted the compulsory jurisdiction of the Court, and that if it did it would certainly exclude from such acceptance any territorial question, particularly the Malvinas and the Antarctic. The British

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Desp. No. 1055

From Buenos Aires

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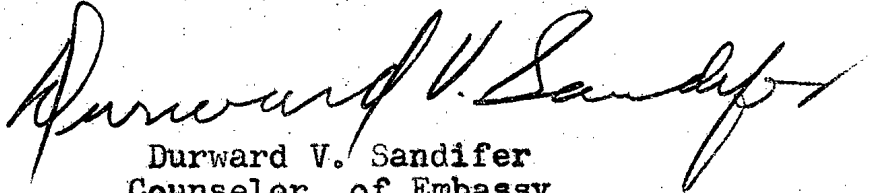
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Desp. No. _____

From _____

would seem to have no prospect of achieving anything more than a tactical and propaganda result, as acknowledged in the following passage quoted in the press here from a statement made by Foreign Secretary MACMILLAN in the House of Commons. "If the two governments do not see fit to accompany us to the Court we shall at least have acquainted the Court of the facts of the case and have placed on record before the Court and world opinion generally the grounds on which we consider our title to the United Kingdom sector of the Antarctic to be firmly rooted in international law". END OFFICIAL USE ONLY

For the Ambassador:



Durward V. Sandifer
Counselor of Embassy
for Political Affairs

Enclosures:

- 1/ Copy of British note No. 314 of December 21, 1954;
- 2/ Copy of Argentine note No. 675 of May 4, 1955.

Copy to RPA, ARA
AmEmbassy, London

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No. _____
From _____**UNCLASSIFIED**
(Classification)Encl. No. 4
Desp. No. 1055
From Buenos Aires

No. 314.

Her Britannic Majesty's Embassy present their compliments to the Ministry of Foreign Affairs and Worship and, on instructions, have the honour to make the following communication to the Ministry.

2. Her Majesty's Government in the United Kingdom have on many previous occasions drawn the attention of the Argentine Government to the terms of Letters Patent of 1908 and 1917 by which the Antarctic Territories known as the Falkland Islands Dependencies were stated to be part of His Majesty's Dominions and were made dependencies of the Falkland Islands Colony. Her Majesty's Government have repeatedly reminded the Argentine Government that these Dependencies are and remain under the sovereignty of the United Kingdom of Great Britain and Northern Ireland.

3. The Argentine Government for their part have persisted in maintaining that certain parts of the Falkland Islands Dependencies are Argentine Territory and in committing various acts which in the opinion of Her Majesty's Government in the United Kingdom constitute a trespass and a violation of United Kingdom sovereignty over these Dependencies.

4. Her Majesty's Government believe that the most satisfactory way of settling the dispute concerning the sovereignty over the Falkland Islands Dependencies would be for Her Majesty's Government and the Government of Argentina together with the Government of Chile to refer the question to judicial settlement and they have many times invited the Argentine Government to submit their claims to the adjudication of the International Court of Justice. The Argentine Government, however, have so far declined this invitation. Her Majesty's Government regret that the Argentine Government have taken up this position and they wish to enquire whether as an alternative to adjudication by the International Court of Justice, the Argentine Government would be prepared, jointly with the Government of the United Kingdom, to submit to an independent ad hoc arbitral tribunal the adjudication of their respective rights under International Law in the territory designated the Falkland Islands Dependencies by Letters Patent of 1908 and 1917.

5. Her Majesty's Government trust that the above proposal will meet with an early and favourable response from the Argentine Government. If, however, this is not the case, Her Majesty's Government will consider themselves free to avail themselves of any means that may be open to them to seek a determination

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UNCLASSIFIED

Encl. No. 1

From _____

(Classification)

Desp. No. 1055

From Buenos Aires

of their legal rights by the International Court of Justice.

6. Her Majesty's Government avail themselves of this opportunity to renew to the Ministry of Foreign Affairs and Worship the assurances of their highest consideration.

BRITISH EMBASSY,

BUENOS AIRES.

December 21, 1954.

TO THE MINISTRY OF FOREIGN AFFAIRS AND WORSHIP,

BUENOS AIRES.

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Encl. No. _____

Desp. No. 1055

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From Buenos Aires

MINISTRY OF
FOREIGN AFFAIRS AND WORSHIP

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No. 675

The Ministry of Foreign Affairs and Worship present their compliments to Her Britannic Majesty's Embassy and refer to the Note No. 314 of the 21st of December last with regard to the problem of the rights which the United Kingdom claims over the Argentine Antarctic territories. After reiterating their opinion that the most satisfactory way to settle the problem would be to resort to the decision of the International Court of Justice of The Hague, Her Britannic Majesty's Government enquire whether, as an alternative to this course, the Argentine Government would be disposed to submit jointly with the United Kingdom "to the verdict of an independent ad hoc arbitral tribunal, the question of their respective rights, in accordance with international law, to the territory designated as the Falkland Islands Dependencies by Letters Patent of 1908 and 1917".

2. The Letters Patent of 1908 and 1917, on which the British Government rely so much to support the rights which they invoke are, from the point of view of international law, acts or measures totally ineffective as a basis of sovereignty because they were exclusively unilateral and did not in any way have the concurrence of the Argentine Government.

3. Furthermore the foundation of the said documents is absolutely false because the territories which they mention and declare to be British are under the sovereignty of the Republic. The Falkland Islands are Argentine as are the lands which fall within our Antarctic sector, as well as the South Georgia and Sandwich Islands. This, as Her Majesty's Government well know, rests upon unquestionable legal bases. Known historical reasons and geographical factors also support and give evidence to this. These apart from forming the incontrovertible basis for its material and permanent condition, are beyond all possibility of being invoked by Great Britain.

Nevertheless, Her Majesty's Government avoid the fundamental question and, as though everything were reduced to one factor alone, mention as the only problem requiring solution, that which refers to the Antarctic territories to which they presume and which they class as dependencies of the Falkland Islands. On the other hand, nothing is said about the fundamental problem of sovereignty regarding the latter.

UNCLASSIFIED

Sp. No. _____

UNCLASSIFIED

E. d. No. 2

From _____

(Classification)

Desp. No. 1055

From Buenos Aires

4. Faced with such a position, the Argentine Government must begin by pointing out that if the stated relationship of dependency really existed, the fact could not be adduced by Great Britain since, the Falkland Islands, the principal element of the presumed subordination, being Argentine, the antarctic territories which, according to the statement of the United Kingdom, depend from them, must clearly and necessarily belong to the Republic. Apart from the circumstances stated above, the uninterrupted possession which the Republic has maintained in its Antarctic sector for more than 50 years must be taken into account. This is a situation which cannot be invoked by any other state as far as permanent occupation is concerned.

5. Moreover, it must furthermore be stated that a correct approach to the question to which Her Britannic Majesty's Embassy refers cannot be made if it fails to consider the unlawful occupation by the United Kingdom of the Falkland Islands. While the aggression committed in usurping its possession has not been repaired through the handing of the archipelago back to the Republic, the Argentine Government cannot conceive nor accept as friendly or just any proposal which has as its base the maintenance of this occupation. Still less can it admit that such a proposal should claim to support titles of sovereignty over other Argentine territory, with the result that these would become affected by the consequences of the aggression by the Falkland Islands. This situation cannot produce any right in favour of Great Britain.

6. In consequence, while the question referred to above is not settled in the sense indicated, it is not suitable to propose, as has Great Britain, the submission of the matter to the International Court of Justice at The Hague or to any ad hoc arbitral tribunal.

7. It is still relevant to state that, even if the British occupation of the Falkland Islands had not happened or had terminated, there would be no reasons to justify the course proposed by Her Majesty's Government. The fundamental point is that those territories in the Antarctic sector, the final jurisdiction over which it is desired to submit to the decision of a judicial or arbitral tribunal are under the sovereignty of the Republic.

No judicial or moral principle forces States to submit to the decision of external powers or entities their territorial rights based on legitimate titles such as are those which underlie the unquestionable sovereignty of the Republic over the Antarctic sector and the adjacent islands.

UNCLASSIFIED

Sp. No. _____
From _____UNCLASSIFIED
(Classification)Encl. No. 2
Desp. No. 1055
From Buenos Aires

This is an incontrovertible principle which all Nations practise and respect. It is furthermore confirmed by the fact that almost all the countries which have submitted to the obligatory jurisdiction of the International Court of Justice at The Hague have put forward reservations necessary to exclude from this jurisdiction any possibility of being obliged to permit the tribunal to pronounce on the legitimacy of their territorial rights. This is exactly the case with the United Kingdom which in addition to excepting disputes arising before 1930 excepted those concerned with questions under its exclusive jurisdiction.

8. It is moreover necessary to examine the further implications raised by this problem, in that it refers to territories which, because they are Argentine, are at the same time American. In this way the provisions adopted in America by the twenty States which have declared all the continent and the maritime extension contemplated by the Treaty of Mutual Assistance of Rio de Janeiro as essential to the defense of the hemisphere, are affected. This excludes all possibility that the sovereignty of an American country over territories falling within this geographical area could be discussed in the halls of an international tribunal.

Furthermore the acceptance of the course proposed by Her Majesty's Government would be incompatible with the aspirations of the peoples and Governments of this Continent who have confirmed in the Tenth Inter-American Conference at Caracas their desire finally to eliminate colonialism and who have confirmed their solidarity with the just claims to territories occupied by extra-continental countries.

With regard to the area of the South American Antarctic, for the above reasons it should be added that the Argentine Government, by virtue of the joint declaration of the 4th of March, 1948, has agreed with the Republic of Chile to carry out in mutual accord the legal defense of the sovereignty which the two countries have in the portion of their respective sectors which actually overlap.

9. In consequence of what has been said above, the Argentine Government regrets that it cannot agree that the matter referred to by the British Embassy should be submitted to the decision of the International Court of Justice at The Hague, or to that of any other judicial or arbitral tribunal.

With regard to the statement made by Her Majesty's Government to the effect that "they will consider themselves free to avail themselves of any means that may be open to them

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to seek a determination of their legal rights by the International Court of Justice", the Argentine Government places on record that it reserves the right to reject any intervention by tribunals to the jurisdiction of which it has not previously consented, and that it will, for its part also continually defend its rights, using those means which, as a sovereign state, are available to the republic within the actual structure of the international community.

The Ministry of Foreign Affairs and Worship avail themselves of this opportunity, etc.....

Buenos Aires, 4th of May, 1955.

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