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SOUTH GEORGIA: LEGAL ACTION

1. The Secretary of State has asked for a view on whether there is any legal action we can take to ensure the departure of the Argentinians from South Georgia.
2. South American Department have consulted the duty Legal Adviser. The only standing court competent to resolve disputes of this nature would be the International Court of Justice. The Legal Adviser is not aware of any basis for the Court to exercise jurisdiction in this matter. Disputes can only be referred to the Court if both parties agree. It is unlikely that the Argentinians, who have not accepted the Court's compulsory jurisdiction, would give their consent.
3. A further disadvantage would be that, even if the Argentinians agreed that the matter could be referred to the ICJ, the Court could take months to make a ruling. But, worse, there is no guarantee that the ICJ would find in our favour. The last time Law Officers were consulted about the question of referring the dispute over the Falkland Islands and their dependencies to international arbitration (in 1966) they advised that our title to South Georgia was strong. But the composition of the Court is weighted towards the Third World and the Soviet bloc; and whatever the strength of our title, we might encounter resistance to what the Argentinians would claim is a continuation of colonial domination.
4. Presentationally, there would undoubtedly be some advantage in announcing our willingness to take the matter to the ICJ. If the Argentinians refused, there would be no legal action we could take against them, but they would be put in the wrong. However, there is the danger that, if we made such an offer, the Argentinians would seek to expand the Court's consideration to the whole Falkland dispute. In this last consideration the Law Officers were of the view that 150 years of continuous occupation of the Falklands themselves should confer a sufficiently solid title on Britain, but Legal Advisers point out that the composition of the ICJ is not in our favour and that there could be no guarantees that the Court would not find against us and award the Argentinians sovereignty over the Falklands.
5. Before, therefore, any decision could be taken to refer the particular South Georgia issue or the wider Falkland problem to the ICJ, the Law Officers would need to be consulted again.

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R Cooper

R F Cooper
Senior Resident Clerk

28 March 1982

cc PS/Mr Luce
PS/PUS
Mr Giffard
Mr Ure
SAMD
Legal Advisers