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# Toward Resolution?

## The Falklands/Malvinas Dispute

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edited by  
**Wayne S. Smith**

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## Preface

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The British call them the Falkland Islands. To the Argentines, they are the Malvinas. Neutral observers carefully avoid taking a position by referring to them as the Falklands/Malvinas. All three terms will be used in this book.

Whatever they are called, the dispute over whose flag should rightfully fly over these remote islands continues. Argentina and Great Britain have declared an end to hostilities, reestablished diplomatic relations, resumed trade and air links, and in other ways returned to the status quo ante bellum. The dispute, however, remains as sharp and potentially disruptive as it was before the outbreak of hostilities in April 1982. It will take a very long time for the scars of war to heal. Meanwhile, however, it should be borne in mind that eventually the dispute must be addressed.

The North American authors of this book are motivated by the conviction that when that time comes, it will be possible to fashion a settlement that will protect the interests and satisfy the bottom-line needs of all sides, the islanders included. It is but a matter of good will and flexibility on all sides.

Our British and Argentine colleagues did not necessarily share that conviction, but they too were guided by the belief that henceforth the matter must be handled without resort to force. That blood has already been spilled over an issue so clearly within the faculties of humankind to resolve is tragic; that it should ever again be spilled would be inexcusable.

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This book was made possible by a grant from the United States Institute of Peace to the Johns Hopkins University's Paul H. Nitze School of Advanced International Studies (SAIS). Those who wrote and edited the book wish to take this opportunity to thank the Institute of Peace for the vision and generosity behind that grant. If world peace is ever to become a reality and force excluded as an instrument of international relations, disputes such as this one must be *resolved* through peaceful means. Clearly, the

Institute of Peace was guided by that conviction in supporting this project, and those involved in the writing of the book have been guided by the same conviction.

Thanks are also due to the Exxon Corporation, which has long and generously supported the Argentine Studies Program at SAIS. That support made it possible for the Argentine Studies Program to bring together the authors of this book for an exchange of views and a public discussion of the dispute in October 1990.

Finally, our deep appreciation to Cynthia Carlisle, who translated the two Argentine chapters, and to Maria Gutierrez, the program assistant at SAIS who prepared the manuscript.

W.S.S.

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## A Short Historical Chronology

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*Mauricio Reina*  
*Enrique Velasco-Ibarra*

- 1501 On his second expedition to the new world, Amerigo Vespucci sights some islands, which, according to his description and their latitude, were probably the Falklands/Malvinas.
- 1520 Esteban Gómez, one of Ferdinand Magellan's captains, sights the islands and calls them Islas de Sansón y de los Patos.
- 1522-1523 Pedro Reinel, a Portuguese cartographer, draws the first known map showing the islands.
- 1540 A lost ship from Francisco de Camargo's expedition finds refuge from violent weather in the islands. The crew remained there several months and called the place Puerto de las Zorras.
- 1592 John Davis, who had deserted his leader, Thomas Cavendish, sights the islands and "discovers" them for Great Britain.
- 1600 Returning to Holland, part of Jacob Mahu's expedition under the command of Sebald Van Weert sights the islands and calls them the Sebaldes in honor of Van Weert.
- 1690 During the War of the English Succession, Captain John Strong is pushed off course by contrary winds and enters the sound between the islands, naming it Falkland Sound in honor of Anthony, Viscount Falkland. This is the first landing of an Englishman on the Falklands/Malvinas.
- 1713 Under Article 8 of the Peace Treaty of Utrecht, signed on July 13, 1713, England agrees that Spain has the right to control the seas around Spanish dominions.

- 1763  
February 10 The Treaty of Paris renewed and confirmed Spain's right to control the South Atlantic.
- 1764  
March 17 Without officially informing Spain, the French government allowed Louis Antoine de Bougainville to found Port Louis, the first known settlement on the islands.
- 1765  
January John Byron lands and claims the islands for George III.
- 1766  
January 8 An expedition under the command of Captain John McBride lands in the islands. He warns the French to leave and establishes Port Egmont.
- 1767  
April 1 After a negotiation with the Spanish government, Bougainville agrees to return the islands to Spain, receiving a sum from the Marques de Grimaldi for expenses incurred in establishing an illegal settlement. He returns Port Louis to Spain.
- 1770  
June 4 A Spanish expedition under Juan Ignacio de Madariaga anchors in the bay of Port Egmont and demands the peaceful withdrawal of the English from Spanish territory. The English refuse and the Spanish attack Port Egmont. The English surrender and are expelled.
- 1771  
September 15 To avoid a "pride war," the Spanish return Port Egmont to the British, though stressing that this in no way dilutes their claim to full sovereignty over the islands. There is speculation that the British have given assurances that they will abandon the islands after a brief face-saving reoccupation of Port Egmont. No documentary evidence of such an agreement has ever been produced, however.
- 1774  
May 20 The English abandon Port Egmont, leaving a lead plaque fastened on the block house indicating their continued claim to sovereignty.
- 1776 Charles III of Spain creates the viceroyalty of Rio de la Plata and places the Malvinas under its jurisdiction.

- 1777 Charles III orders the complete destruction of the abandoned Port Egmont to prevent its use by foreign vessels.
- 1781 Port Egmont is destroyed by the Spanish.
- 1790 England signs the Nootka Sound Convention, giving up any rights to settle in the South Atlantic areas and acknowledging Spanish sovereignty over islands in the southern ocean just off the mainland.
- 1811  
January 8 The Malvinas are evacuated by the Spanish because of the wars of independence raging on the mainland.
- 1816  
July 9 Argentina declares its independence from Spain as the United Provinces of Rio de la Plata.
- 1820  
November 6 Daniel Jewitt, a North American in the service of the United Provinces, takes formal possession of the Malvinas for Argentina.
- 1823 A concession is granted to Jorge Pacheco and Luis Vernet by the United Provinces, giving them lands on East Falkland Island.
- 1826  
January Vernet, a French-German in the service of Argentina, establishes a settlement on the islands.
- 1829  
June 10 After the great success of his colony, Vernet is appointed military and political governor of the islands.
- August 30 Vernet issues a decree telling the captains of ships in the area to stop whaling and sealing, under the penalty of being arrested and taken to Buenos Aires for trial.
- 1831  
August Three US vessels disregard Vernet's decree and are apprehended while sealing off the coasts of the islands. They are arrested and Vernet escorts their captains to Buenos Aires to stand trial. The US consul in Buenos Aires protests vigorously.
- December On instructions from the US consul in Buenos Aires, the USS *Lexington*, under the command of Captain Silas Duncan, retaliates for the arrest of the US sealers by

- attacking Puerto Soledad, sacking the town, destroying its cannons and fortifications, imprisoning the officer left in charge by Vernet and his garrison of six soldiers and removing them to the Argentine mainland.
- 1832  
August The United Provinces protest Duncan's actions to Washington, calling them "piratical."
- September The United Provinces send Captain José María de Pinedo to reinstate their authority in the islands and to reinforce the colonists who remain there.
- 1833  
January 2 Two British warships, the *Clio* and the *Tyne*, arrive under the command of Captain James Onslow. Onslow sends a message ashore announcing that he is there to claim the islands for Great Britain. He gives Pinedo twenty-four hours to surrender.
- January 3 Without cannon or fortification, Pinedo is helpless. He surrenders under protest.
- January 6 Pinedo and his handful of soldiers embark for Buenos Aires. Many of the colonists take to the hills. Eventually, however, they are all driven off the islands by the British.
- January 15 As soon as Buenos Aires learns of the British attack on its garrison and seizure of the islands, it protests in the strongest terms and demands that the islands be returned.
- June 17 The Argentine ambassador in London, Manuel Moreno, repeats his country's protest and demand, both of which are rejected. Additional protests are lodged in 1834, 1841, 1842, and from time to time thereafter.
- 1834  
January Henry Smith, the first British officer to govern the Falklands, arrives at Port Louis, the former Argentine capital of the Malvinas.
- 1842 The capital is moved from Port Louis to Port William, later renamed Port Stanley.
- 1843  
June 23 Queen Victoria issues a letter patent incorporating the islands into the dominions of the Crown.
- 1852 The Falkland Islands Company, organized by a group of British entrepreneurs, receives a royal charter from Queen Victoria to develop the colony.
- 1960  
December 14 The United Nations calls for the end of colonialism through Resolution 1514. Britain lists the Falklands among its colonies and Argentina protests.
- 1965  
December 15 United Nations Resolution 2065 calls for Argentina and Britain to negotiate over the islands. Secret conversations between the two countries begin.
- 1968  
November Lord Chalfont, undersecretary for Latin American affairs in the British Foreign Office tries to persuade the islanders to accept a "position of agreement," discussing with them the possible future transfer of the islands to Argentina.
- December The British Parliament refuses to accept the "position of agreement," arguing that it was not the policy of Britain to transfer the sovereignty over the Falklands against the islanders' wishes. The "position of agreement" is not presented to the United Nations as previously scheduled.
- 1971  
July 1 An agreement is reached by Argentina and Britain on providing improved transportation and communication between the islands and the Argentine mainland in both directions. The declaration includes a statement that in signing it neither nation renounced its claim to sovereignty over the islands.
- 1973  
April Britain refuses to negotiate the question of sovereignty, arguing that it cannot give up the islands without the consent of the inhabitants. Negotiations virtually cease.
- December The General Assembly of the United Nations passes Resolution 3160, urging Argentina and Britain to renew negotiations over the islands.
- 1975  
October A mission, under the direction of Lord Shackleton, is sent by Britain to investigate the possibilities of exploiting the natural resources of the Falklands. Argentina protests declaring that it has not given official permission.

- 1976  
January Argentina withdraws its ambassador to London to protest the Shackleton mission and the British attitude toward the question of sovereignty. Britain also recalls its ambassador to Buenos Aires.
- 1979 Argentina and Britain agree to reinstate diplomatic relations on the ambassadorial level.
- 1981  
September The British Foreign and Commonwealth Office gives up the initiative in the negotiations. It suggests that Argentina make proposals.
- December 20 Without British authorization, Argentine scrap dealer C. S. Davidoff visits South Georgia to inspect some purchases.
- 1982  
February 3 Britain protests the Davidoff episode to Argentina.
- February 27 Argentina and Britain reach an agreement to establish a permanent negotiation commission.
- March 19 Argentine workers contracted by Davidoff land in the Leith station in South Georgia without British authorization.
- March 23 The Thatcher government sends the *Endurance* to expel the Argentines from the islands.
- March 24 The Argentine navy orders the *Bahia Paraiso* to South Georgia.
- April 2 Argentine troops land on the Malvinas.
- April 3 The United Nations Security Council calls for the withdrawal of Argentine troops from the islands and the immediate cessation of hostilities.
- April 8 The United States secretary of state, Alexander Haig, attempts to mediate.
- April 30 Haig declares his mission terminated. President Ronald Reagan declares US support for Britain and economic sanctions against Argentina.
- May 2 Belaunde Terry, president of Peru, presents a peace proposal to Argentine president Leopoldo Galtieri, who gives his preliminary acceptance with some proposed modifications. Before the Argentine junta ratifies the acceptance, Britain sinks the cruiser *General Belgrano*. The junta

- rejects the proposal.
- May 4 Argentina sinks the HMS *Sheffield*.
- May 18 A peace proposal presented by the United Nations secretary general, Pérez de Cuéllar, is rejected by Britain.
- May 21 British forces land on East Falkland.
- June 14 Argentine forces surrender.
- July Britain formally declares an end to hostilities, and the 200-mile exclusion zone established around the islands during the war is replaced by a Falklands Islands Protection Zone (FIPZ) of 150 miles.
- September An agreement is reached on the reciprocal lifting of the financial restrictions imposed by each country against the other during the war. While Britain fully implemented the agreement, Argentina did so only partially.
- November 7 Prime Minister Thatcher declares in a newspaper interview that she is willing to enter into talks about normal relations with Argentina, but not about sovereignty.
- 1984  
January The British government starts confidential exchanges through the Swiss government with the purpose of setting an agenda of practical measures of mutual benefit for both countries as a means of working towards the restoration of bilateral relations.
- July 18-19 Talks between the two countries take place in Berne, as agreed, but the meeting fails because the Argentines at once raise the issue of sovereignty. The Argentine government declares that it was not prepared to discuss normalization of bilateral relations until Britain agrees that a mechanism be established for the eventual discussion of sovereignty.
- 1985  
July A new Falklands Islands constitution is promulgated.
- July Britain unilaterally lifts the ban on Argentine imports imposed during the war. Argentina responds by stating that relations can be improved only if Britain agrees to discuss sovereignty.



- 1986  
 October The British government announces the establishment of the Falklands Islands Interim Conservation and Management Zone (FICZ) coinciding with the FIPZ.  
 February
- November Outraged by the establishment of the FICZ, the Argentine government launches a diplomatic offensive against the British action.
- 1987  
 January Failing to achieve diplomatic results, the Argentine government makes an indirect approach to Britain through the US government, suggesting confidential discussion on fisheries topics. The British government is reluctant to enter into new talks.
- 1989  
 July After his inauguration, the new Argentine president, Carlos Menem, proposes direct bilateral talks with Britain with the question of sovereignty to be set aside.  
 October At their meeting in Madrid, both sides agree to set the sovereignty issue aside and note that all hostilities between them have ceased. After these talks, Argentina would remove all remaining economic measures against Britain.
- 1990  
 February At a further meeting in Madrid, both governments agree to restore full diplomatic relations. A permanent working group on South Atlantic issues is set up to provide a forum for further considerations of fishing and confidence-building measures.

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## Why Resolution of the Dispute Is Important

Wayne S. Smith

There are those who ask why a settlement is needed at all. The two parties to the dispute, they point out, have now not only ended hostilities, resumed diplomatic and trade relations, and agreed to a series of confidence-building measures, but have also put aside the question of sovereignty over the islands. Why, then, must the question be addressed at all? Why can it not be left aside indefinitely? Indeed, does the mutual agreement to reserve positions not in effect recognize that the positions are mutually exclusive and can never be accommodated—and hence that the best thing to do is to carry on relations as though the underlying dispute did not exist? Is it not, in short, best to leave well enough alone and not remind anyone that the dispute is still there?

There is a certain logic at least to the last question. For the moment, it may indeed be best to let well enough alone. All sides understand that in the wake of the war in 1982, the matter is more complex and will take more time than ever to resolve. The scars of war must heal before there can be any hope of a propitious atmosphere to address the underlying dispute. That may be many years away. Thus, for the foreseeable future, the best course of action for the two parties is to carry on as normal a relationship as possible, go forward with their confidence-building measures, and say very little about the underlying dispute.

That having been said, it is also important that all parties bear in mind, albeit in an innermost corner, that the present arrangement is temporary and that the dispute will not simply go away. One has the sense that the British—and certainly the islanders—rather hope that it will. Indeed, the British and the Argentines have doubtless entered into the Madrid agreements with very different expectations. For their part, the British remember that it was precisely during the period when Argentina was most prosperous and when it was virtually an extension of the British economic system (say, from 1880 until 1943) that it seemed to attach the least importance to the question of whose flag should fly over the Falklands/Malvinas. They probably now hope that by facilitating Argentina's greater economic engagement with the

European Community, and by being helpful in other ways, they can contribute to its economic recovery and bring about a situation in which Argentina will again be less inclined to raise the sovereignty question.

If that is the British expectation, it is an understandable one. As a general rule, the more desperate a nation's economic and internal political situation, the greater the enthusiasm with which it turns to issues that have to do with national pride. If this rule holds, then it would not be unreasonable to hope that an Argentina that had left hyperinflation behind, resumed economic growth, and developed a greater sense of national well-being would pursue the sovereignty issue less passionately—if at all.

It is not an unreasonable expectation, but neither is it likely to be realized. The conviction that the islands rightfully belong to Argentina is now so deeply embedded in the Argentine psyche, and the sense of national outrage over their loss is so profound, that no amount of economic prosperity is likely to dispel them. Indeed, the Argentines enter into the Madrid agreements with exactly the opposite expectation to that of the British. They recognize that the invasion was a mistake and that the period of military dictatorship, with its dirty war and blatantly arbitrary rule, caused great damage to Argentina's image in the world at large, damage not alleviated in any way by the country's seemingly chronic economic difficulties. As one Argentine diplomat summed it up at a recent conference in Washington: "If I were an islander looking at Argentina today, I would not see any advantages in a closer association with it. That is up to us to change."

And that is one of the major expectations with which Argentina undertakes the Madrid agreements: it believes that by reengaging with Great Britain, by putting its economic house in order, by demonstrating over time that democracy has taken firm root, and by winning the approval of the Western European countries, it *can* change the unfortunate image alluded to above. Argentines hope to demonstrate that theirs is a serious nation with a prosperous, democratic future. But while the British hope that a more prosperous, stable, democratic Argentina would be less inclined to pursue the Falklands/Malvinas issue, the Argentine expectation is that it is precisely under those circumstances that the question of sovereignty could again be raised, i.e., after Argentina has proved itself to be a reliable partner.

Should that expectation prove groundless, the reaction in Argentina might be dangerous indeed. The present Argentine government fully acknowledges that resort to force was wrong and has committed itself to the search for a peaceful solution. Public opinion polls cited in the following chapters point up the Argentine public's support for that position. But they also point up the fact that the Argentine public expects that at some point there will be a solution. If force didn't produce one, in other words, then peaceful means will. Should years of slow, patient diplomacy not result in meaningful discussions of the underlying sovereignty dispute, the chances

that Argentines will begin to demand more resolute action of their government are quite high. This probably would not result in another Argentine invasion, but it might well mean sharply renewed tensions—tensions that could quickly force Great Britain to return to a Fortress Falklands posture, with thousands of troops garrisoned permanently in the islands. Indeed, Argentina could virtually force the British to such a posture simply by positioning its own naval and air units in the far south, within striking distance of the islands.

This would divert the resources of both sides from tasks really more vital to their national interests, to say nothing of the emotional strain it would place on both nations, and on the islanders themselves. The latter's overriding wish is to be left alone to pursue their traditional way of life in peace. But should it become clear that the way to a settlement is permanently blocked, and tensions again rise, as already suggested, that wish would become forlorn indeed. The traditional way of life does not include constant tensions and thousands of troops garrisoned in the islands.

Further, the virtual resumption of a state of hostilities—even if no shots were ever fired—would likely be far more disruptive in the future than in 1982. Though in the latter instance the Latin American states supported Argentina's claims to the islands, few had any sympathy for the oppressive military government then in power in Buenos Aires, and even fewer thought that it had been right to invade. Chile and Brazil especially were lukewarm in their support for Argentina even though they also were under military governments at the time. Chile, which had its own territorial disputes with Argentina, may even have secretly cheered the British on.

That is not likely to be the case in the future. Argentina is now under a democratic government in good standing with its neighbors. It has committed itself to search for a peaceful settlement. The other Latin American countries, like Argentina itself, expect that at some point that "search" will lead to a serious discussion of the underlying dispute, i.e., concerning the question of sovereignty. Should it become apparent that that is not to be the case, a solid bloc of Latin American states would share Argentina's acute frustration and could be expected to back almost any Argentine response short of armed force.

After 1992, on the other hand, Great Britain's dispute would in a sense become that of the European Community. To a far greater extent than was the case in 1982, then, renewed tensions over the Falklands/Malvinas would probably involve and affect Latin America and Western Europe as a whole, possibly even leading to some antagonism between the two in the United Nations.

In sum, while the Madrid agreements wisely place the dispute over sovereignty to one side, this simply *postpones* the need to address it. It may be left on the shelf for an indefinite period, but failure to come to grips with it eventually could lead to a dangerous situation inimical to the interests of all parties involved—the British, the Argentines, and the Islanders—and not at

all helpful to the communities of nations to which Argentina and Great Britain belong. This is not an issue that will go away. In the final analysis, it behooves all sides to seek an acceptable solution rather than allowing it again to come to the verge of conflict.

*Part One* \_\_\_\_\_

Historical and Juridical Bases  
of the Claims to the Islands

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## The View from Whitehall

David Thomas

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The purpose of this chapter is to describe the approach of successive British governments to the dispute with Argentina over sovereignty over the Falkland Islands and Dependencies. (I will use the term "Falkland Islands" throughout this chapter, rather than "Falkland Islands/Malvinas" or other variants, for simplicity, and because I seek to reflect the official British viewpoint). I will refer especially to the period since 1965, when the United Nations General Assembly adopted Resolution 2065 inviting the two countries to enter into discussions intended to lead to a peaceful solution of the differences between them. I will not attempt to analyze the conflicting historical and legal arguments adduced from the often confused dealings between Britain, France, and Spain during the eighteenth century, still less to adjudicate them.

### THE BRITISH CLAIM TO SOVEREIGNTY

The most recent authoritative, albeit summary, statement of the principal elements of the United Kingdom's claim to sovereignty over the Falkland Islands is contained in a memorandum submitted by the Foreign and Commonwealth Office (FCO) to the House of Commons Foreign Affairs Committee in November 1982.<sup>1</sup> It is worth reproducing at length:

In brief, the United Kingdom's title to the Falklands Islands is derived from early settlement, reinforced by formal claims in the name of the Crown and completed by effective occupation for nearly 150 years. The exercise of sovereignty by the United Kingdom over the Islands has, furthermore, consistently been shown to accord with the freely expressed wishes of the people who form their permanent population.

In 1690 Captain John Strong RN made the first recorded landing on the Falkland Islands and gave them their English name after Viscount Falkland, who was the Treasurer of the Royal Navy. The Islands remained uninhabited until 1764 when a small French colony was established at Port Louis on East Falkland. A British landing in 1765 was followed by a British settlement at Port Egmont on

West Falkland in 1766 (initially unaware of the presence of the French). After remonstrance by Spain (to which the French handed over Port Louis in 1767 in return for financial compensation) the British settlers were expelled in 1770, but returned in late 1771 after an exchange of declarations between the two Governments and agreement to return to the *status quo*. The British settlement withdrew for reasons of economy in 1774; but the British Commanding Officer left the British flag flying and a plaque affirming British ownership and possession of the Islands in the name of George III. After the withdrawal of the Spanish garrison in 1811 the Islands were left unpopulated; but from 1820 the new Government in Buenos Aires made various attempts to establish occupancy. In 1823 a Governor was appointed but he never visited the Islands; a settlement was established in 1826. The Buenos Aires Government issued a Decree claiming the Islands in 1829; HMG protested formally. In 1831, the Argentine Governor seized three American sealing ships and in return a US warship dispersed the settlement and declared the Islands free of all government. British occupation of the Islands was resumed in 1833. From that date until April 2, 1982, Britain remained in open, continuous, effective and peaceful possession, occupation and administration of the Falkland Islands. This situation has been restored following the Argentine surrender of June 14. The facts as briefly outlined above set out the basis for legal title on the part of the United Kingdom to the Falkland Islands.

It is also necessary to take account of another factor which is nowadays recognized as of fundamental importance, namely the right of self-determination of peoples. This principle is enshrined in Article 1 of the United Nations Charter. It is highly relevant that the inhabitants of the Islands, who are a permanent and not a transient population, have repeatedly made clear their wish that the Islands should remain British.

It flows from the United Kingdom sovereignty over the Falkland Islands that the United Kingdom also exercises sovereignty over their territorial sea . . . and the air space above the Islands. Thus the geographical extent of the United Kingdom's sovereignty over the Falkland Islands comprises the Islands themselves, the territorial sea and the superjacent air space.

This account reflects changes in the emphasis that British governments have come over time to place on different aspects of Britain's title to sovereignty in the light of historical research and developments in international legal concepts. Thus, for example, there is no reliance placed on the doubtful argument of prior discovery, which formed one of the bases for the traditional British claim in the eighteenth and nineteenth centuries. Both the Spanish claims to prior discovery (Magellan in 1520 and Camargo in 1540) and the British (Davies in 1592 and Hawkins in 1594) rest on inadequate evidence; the first conclusively authenticated sighting was that of the Dutch navigator Sebald van Weert in 1600. In any event, it is a generally accepted principle of international law that any inchoate form of title that discovery may confer must be consolidated within a reasonable time by the effective occupation and possession of the territory concerned.<sup>2</sup> Debate about which country's sailors first sighted the Falklands is interesting but irrelevant.

Arguments about the implications for the validity of the conflicting British and Spanish claims of the events of 1764-1774 (summarized earlier),

the alleged and unsubstantiated "secret pledge" by Lord North in 1770 to withdraw from the Falklands, the Anglo-Spanish Nootka Sound Convention of 1790, the Spanish evacuation of East Falkland in 1811, and the applicability of the doctrine of *uti possidetis* are complex. The crucial factor, from the British standpoint, is that at no time did the British Crown consider that it had relinquished its title—as was made clear in the British government's formal protest against the Buenos Aires government's decrees of June 10, 1829, in which Argentina asserted that its rights over the Falkland Islands derived from the Spanish Viceroyalty of La Plata. And in a note responding to the Argentine protest at the bloodless repossession of the islands by Britain in 1833, the British government stated that it had "only exercised its full and undoubted rights. . . . The rights of His Majesty are of ancient standing and have been relinquished."<sup>3</sup> Throughout the remainder of the nineteenth century, sporadic Argentine protests were met, when they were not ignored, with responses reaffirming Britain's rights to the islands and declaring that the question of sovereignty was closed (e.g., March 1842, November 1887).

Notwithstanding the confidence expressed by successive British governments, a revival of the Argentine challenge to Britain's title in the early years of the present century gave rise to a reexamination of the history of the dispute up to 1833 by Gaston De Bernhardt, the assistant librarian of the Foreign Office. De Bernhardt's memorandum of December 7, 1910, identified potential weaknesses in a British case that had hitherto been accepted almost without question by British governments over the years and implied that the Argentine claim to possession of the islands in 1833 could be stronger than Britain allowed. Nearly three quarters of a century later, De Bernhardt's doubts were echoed by the Foreign Affairs Committee of the House of Commons in their report on the Falkland Islands of October 1984.<sup>4</sup> After referring to the conflicting evidence that had been presented to them and to "doubts [about the strength of the British claim] expressed, by Government officials at least, during the first half of this century," the committee concluded that "the historical and legal evidence demonstrates such areas of uncertainty that we are unable to reach a categorical conclusion on the validity of the historical claims of either country." They added, however, that "much of the historical argument . . . has been rendered less relevant by Argentina's illegal resort to arms in April 1982." Commenting on the report, the government regretted the committee's reluctance to reach a categorical conclusion on the legal validity of Britain's title to the Islands and displayed no such reluctance itself, roundly declaring: "The Islands are British territory." As for the official doubts to which the committee had referred, the government observed that "it is hardly surprising that, with a subject as complicated as the history of the Falkland Islands, differing and in some cases conflicting views on the question of sovereignty should in the past have been expressed from time to time by officials. These comments were made when concepts of

international law, such as prescription and self-determination, were less clearly established than they are today. Successive British Governments have made it clear that they have no doubts about our sovereignty over the Falkland Islands."<sup>5</sup>

The distinction drawn in these comments between the views of officials from time to time and the consistent position of successive governments may appear strained, but it is a valid reflection of British constitutional theory and practice. More significant, however, is the reference to the modern evolution of the concepts of prescription and self-determination, which have become important pillars of the British case—as the FCO memorandum quoted earlier illustrates. As a consequence of developments in international law, the emphasis in the British case since the 1930s has tended to be placed more on post-1833 than pre-1833 criteria.<sup>6</sup> Thus, the judgment in the *Island of Palmas* case in 1928 marked an important stage in the definition of international law on prescription, that is to say, the acquisition and consolidation of title through continued possession and settlement. The British government has never had occasion formally to advance detailed legal arguments on prescription in relation to the Falkland Islands; and debate among international jurists and historians raises as many questions as it answers as to the extent to which arguments based on acquisitive prescription may be held to validate the British claim. It is tempting to recall Goebel's comment that there is "a certain futility in interposing the lean and ascetic visage of the law in a situation which first and last is merely a question of power."<sup>7</sup> Controversy remains over whether the British occupation of the islands in 1833 constituted usurpation of Argentine territory inherited from Spain or repossession of territory belonging to the British Crown, and over the extent to which subsequent Argentine protests may be considered to have delayed or prevented the process of prescription. But the fact of the exercise of British sovereignty through "open, continuous, effective and peaceful possession, occupation and administration" of the islands since 1833 (apart from the ten weeks of forcible Argentine occupation in 1982) does undoubtedly serve to consolidate the British position.

By contrast, that short-lived Argentine occupation cannot be held to have strengthened Argentina's claim. Indeed, it can be argued that the attempt to resolve the dispute by force has had the reverse effect. In their 1984 report, the House of Commons Foreign Affairs Committee concluded that "whatever the strength of Argentina's claims to the Falklands prior to the invasion, we have no doubt that those claims have been seriously weakened by Argentina's resort to arms." The committee added: "Equally, whatever the previous uncertainties about the United Kingdom's legal claims to sovereignty, the invasion and war have greatly reinforced the moral and political force of HM Government's commitment to protect the interests and rights of the population of the Falklands."<sup>8</sup>

The latter comment goes to the heart of the contemporary dispute between Britain and Argentina. The clash between the principles of self-determination and territorial integrity was the issue over which the 1982 war was fought, and it has presented an impassable obstacle to progress towards a peaceful resolution of the dispute both before the war and since. It has been said that self-determination is "a political axiom . . . not a legal concept . . . it has no strength in international law but great strength in international relations."<sup>9</sup> There may be room for debate about how far Britain's prescriptive title is reinforced in law by the facts that its occupation and administration of the Falkland Islands have been done with the consent of their inhabitants and that these inhabitants have repeatedly made clear their wish that this state of affairs should be preserved. There can be little doubt that the British government sees its defense of the islanders' right democratically to determine their own future as the most important function of its exercise of sovereignty. In April 1982, Mrs. Thatcher declared that "we cannot allow the democratic rights of the Islanders to be denied by the territorial ambitions of Argentina";<sup>10</sup> and Britain's resolve to defend and sustain the islanders' right of self-determination is reaffirmed in nearly every official statement on the subject.

The Argentine contention that the principle of self-determination does not apply to the Falkland Islanders—on the grounds that they are a transient or impermanent population and thus not a "people" in terms of the relevant United Nations resolutions, and that they originally replaced an indigenous Argentine population expelled by force—is dismissed by the British government. The Falklands never had an indigenous population, and the handful of inhabitants there in 1833 cannot be said to have constituted a settled population. Today the permanent population is still small (around 1,900 people occupying a group of islands with a total land area of 12,000 square kilometers—greater than Cyprus or Jamaica). But it is an established and ethnically homogeneous community: over 95 percent of the islanders are of British origin and, according to the 1980 census, about 75 percent of them were born in the Falklands. Far from being transients or recent arrivals, many of them can trace their island ancestry back through five or six generations: "Many Falkland Islands families have been established there far longer than many Argentines in Argentina."<sup>11</sup> The British view is that the small number of the islanders in no way detracts from the rights that the United Nations Charter and the international covenants on human rights accord them, including, specifically, the right of self-determination. "In the judgment of my Government," Sir Anthony Parsons, the British permanent representative at the United Nations, told the Security Council on April 3, 1982, "whether they are 1,800 or 18,000 or 18,000,000 they are still entitled to have their freely expressed wishes respected."<sup>12</sup>

To underline the point, the introduction to the chapter on human rights in the new Falkland Islands Constitution of 1985 contains language drawn from

Article 1 of the International Covenant on Civil and Political Rights: "All peoples have the right to self-determination. By virtue of that right they freely determine their status and freely pursue their economic, social and cultural development." This formal affirmation of the islanders' right to self-determination was inserted in their constitution (and approved by the British Parliament) in response to the wishes expressed by elected members of the Falkland Islands councils. It did not mark any new departure in British policy but was consistent with the undertakings entered into by the United Kingdom on its own behalf and on behalf of its dependent territories when it ratified the covenant in 1976, and with the position it had consistently adopted at the United Nations.

The argument over self-determination finds political expression in the contentious question of how far the "wishes," as opposed to the "interests," of the inhabitants should be taken into account in determining the putative future status of the Falkland Islands. Argentina, relying on the letter of Article 73 of the United Nations Charter, which provides only that "the interests of the inhabitants of [non-self-governing] territories are paramount," has on numerous occasions offered to safeguard the interests of the islanders and to allow them to preserve their culture and way of life after sovereignty is transferred (or, as it would argue, restored) to Argentina. But, as already noted, Argentina does not concede that the islanders enjoy the right to determine their own future and insists that resolution of the sovereignty issue is exclusively a matter for decision by the British and Argentine governments. The trouble is that the Argentine position implies that it is for others—Britain and Argentina during the negotiating phase and, after sovereignty is transferred, Argentina alone—to define the islanders' interests, not the islanders themselves. This is the antithesis of the British position that since the islanders have the right to "freely determine their status and . . . pursue their economic, social and cultural development," it is for them to decide where their interests lie; their wishes will consequently reflect their own assessment of their interests.

The constitutionally inexact doctrine that "the wishes of the islanders are paramount," first articulated by the Labour foreign secretary, Michael Stewart, in the House of Commons in 1968 and repeated by representatives of both Labour and Conservative governments ever since, is shorthand for the condition on which the British government at the time was prepared to negotiate a change in the islanders' status, namely that it would do so "only if it were clear . . . that the islanders themselves regarded such an agreement as satisfactory to their interests."<sup>13</sup> It is constitutionally inexact because the decisions of Parliament are paramount, not the wishes of the islanders (or any other minority interest group subject to the British Crown at home or abroad). But it reflects the political reality that, as Baroness Young, minister of state at the Foreign and Commonwealth Office, told the House of Commons Foreign

Affairs Committee in 1984, "it would be inconceivable for [Parliament] to take a decision on sovereignty against the wishes of the islanders."<sup>14</sup>

Viewed from afar it may appear obvious that, in the words of the first Shackleton report (1976), "In any major new developments of the islands' economy, especially those relating to the exploitation of offshore resources, cooperation with Argentina—even participation—should, if possible, be secured."<sup>15</sup> The Anglo-Argentine Communications Agreement of 1971 and the Oil Agreement of 1974 had earlier marked an effort by Britain to encourage in the islands a habit of closer practical collaboration with their mainland neighbor and in Argentina a policy of courting the islanders' goodwill (critics would say that the unspoken aim was to promote the islands' growing dependence on and eventual absorption by Argentina). The 1976 Shackleton report itself, so fiercely criticized in Argentina as a provocative challenge to Argentine territorial aspirations, was conceived by the British government of the day as a means of engaging Argentine cooperation in joint development of the economic resources of the Southwest Atlantic.<sup>16</sup> The desirability of "educating Islander opinion" on the material benefits that a closer relationship or even integration with Argentina could bring has frequently been canvassed both in Britain and Argentina. But the most effective lesson in the consequences of Argentine intervention in the islanders' affairs was given by the Argentine army in 1982; and its traumatic effects will not be erased from the collective memory of the islanders for many years to come.

#### SOUTH GEORGIA AND THE SOUTH SANDWICH ISLANDS

The Argentine claim to sovereignty over South Georgia and the South Sandwich Islands, designated until 1985 as the Falkland Islands Dependencies, is of relatively recent origin. It forms part of a geopolitically inspired aspiration to control territory that also includes the sector of Antarctica claimed by Argentina (this overlaps sectors claimed by Britain and Chile; the competing claims were frozen by Article 4 of the Antarctic Treaty of 1959). It need not detain us long.

The British case for sovereignty over South Georgia and the South Sandwich Islands was set out in the FCO memorandum to the House of Commons Foreign Affairs Committee<sup>17</sup> as follows:

The Falkland Islands Dependencies consist of South Georgia and the South Sandwich Islands. (Until 1962 the Dependencies also comprised British islands and territories south of 60° South latitude, principally the South Orkney Islands, South Shetland Islands, Graham Land, Palmer Land and Coats Land. In 1962 these southern islands and territories were detached from the Falkland Islands Dependencies so as to constitute the British Antarctic Territory. It is necessary to bear in mind the more extended scope of the Falkland Islands Dependencies in relation to statements made and events occurring before 1962.)

The question of title to the Falkland Islands Dependencies is legally distinct from the question of title to the Falkland Islands themselves, although for convenience the Dependencies are administered by the Falkland Islands Government. The United Kingdom's title to the Dependencies is accordingly based on different facts from those which support title to the Falkland Islands, although in some respects similar general considerations apply.

South Georgia was discovered in 1775 by Captain Cook, who landed there and took formal possession on behalf of the Crown. The South Sandwich Islands were also discovered by Captain Cook in 1775 on the same voyage. In 1908 British sovereignty over the Dependencies was confirmed and defined by the Crown by Letters Patent (amended by further Letters Patent in 1917) and since 1909 there has been a continuous British administrative presence on South Georgia. In 1955 Her Majesty's Government submitted to the International Court of Justice an Application instituting proceedings against Argentina (and a similar Application was submitted instituting proceedings against Chile) concerning sovereignty over the islands and territories which then comprised the Falkland Islands Dependencies. The Application set out in detail the facts and arguments which establish the United Kingdom's sovereignty over all the islands and territories in question. However, neither the Argentine nor the Chilean Government accepted the Court's jurisdiction for the purposes of HM Government's Application.

As with the Falkland Islands, United Kingdom sovereignty over the Falkland Islands Dependencies extends also over the territorial sea around the Dependencies and the air space above the Dependencies and their territorial sea.

Prior to [1982], the Dependencies have, at no stage in their history, been occupied by Argentina. Argentina did not make any claim to South Georgia until 1927 and no specific claim to the South Sandwich Islands was made until 1948 (although a reservation of rights claimed by Argentina was made in 1937 in general terms in relation to the Falkland Islands Dependencies as then comprised). Whatever historical basis Argentina may advance for its claim to the Falkland Islands could not therefore apply to the Dependencies. In 1976 Argentina established a research station on Southern Thule in the South Sandwich Islands. Her Majesty's Government repeatedly protested to Argentina and asserted British sovereignty over Southern Thule. Argentine occupation of the research station was ended in June 1982.

In contrast to the doubts they expressed over the relative merits of the historical claims by Britain and Argentina to the Falkland Islands, the House of Commons Foreign Affairs Committee in their report of 1984 had "no difficulty in concluding that the claims advanced by Argentina in respect of the Dependencies of South Georgia and the South Sandwich Islands are without legal foundation."

In 1977, the British government did agree with the Argentine government that the question of sovereignty over the Falkland Islands Dependencies would be considered in future negotiations, along with sovereignty over the Falkland Islands themselves. But the negotiations came to nothing (see next section) and the offer lapsed. It has not been renewed. In 1985, the promulgation of a new constitution for the Falkland Islands provided the occasion for a change in the arrangements for the administration of the Dependencies,

involving a modification of the role of the Falkland Islands government. The governor of the Falklands remains also the commissioner for South Georgia and the South Sandwich Islands, but the Falkland Islands Executive Council has lost its former executive powers with respect to the Dependencies, although it may still be consulted on matters relating to the Dependencies that are also relevant to the interests of the Falklands.

#### ANGLO-ARGENTINE NEGOTIATIONS 1966-1979

When Argentina raised the Falklands issue in the Committee of 24 at the United Nations in 1964, the British representative responded in the fashion of British governments since 1833 that the issue was not negotiable. Yet, within three years Britain and Argentina were discussing a transfer of sovereignty. Various factors contributed to this remarkable change in the British position. By securing the adoption by the UN General Assembly in December 1965 of Resolution 2065, which invited Britain and Argentina to enter into negotiations for a peaceful solution to the Falklands problem, Argentina succeeded in giving this hitherto relatively obscure bilateral dispute an international dimension and thereby laying the foundation for the first meaningful exchanges on a matter hitherto treated as non-negotiable by Britain.<sup>18</sup> In January 1966, as part of an effort by the Foreign Office to restore Britain's waning economic and political influence in Latin America, Michael Stewart paid the first-ever visit to the subcontinent by a British foreign secretary; inevitably the Argentine claim to the Falklands was raised with him in Buenos Aires. To a Labour government committed to completing the process of colonial disengagement as smoothly as possible, already set on reducing Britain's overstretched international defense commitments to match its diminished military and economic capabilities and interested in repairing its relations with Latin America, a resolution of the long-standing and newly active dispute with Britain's historically closest partner in the region appeared a highly desirable aim.

There was never any question of simply abandoning the Falkland Islands to Argentina. This was politically unthinkable and, besides, it was feared that giving up the islands could undermine the British position in Antarctica. Indeed, the *Operación Condor* incident in September 1966, when an armed group of young Argentines landed a hijacked Aerolíneas Argentinas aircraft on the racecourse at Port Stanley, led to the reinforcement of the largely symbolic Royal Marines detachment on the Islands to platoon strength of about forty men (at which it remained until 1982). The perceived Argentine threat also led to the establishment of a naval presence—also largely symbolic—in the form of regular deployment to the South Atlantic of a lightly armed ice patrol vessel. But the successful negotiation of the Antarctic Treaty (which came into effect in 1961) had induced a feeling in the Foreign Office that the



imagination, hard work and, goodwill that had defused the increasing tensions generated by competing territorial claims in Antarctica could equally well be applied to solving the intractable Falklands problem—a feeling later described by one of the British officials involved as “negotiator’s *hubris*.”<sup>19</sup>

Britain’s opening gambit in bilateral talks in November 1966 was, accordingly, to propose a “sovereignty freeze” for thirty years, at the end of which the islanders would be free to choose between British and Argentine rule. This was rejected by Argentina; and in March 1967, the British government for the first time stated formally to Argentina that it would be prepared to cede sovereignty over the islands under certain conditions, provided that the wishes of the islanders were respected.<sup>20</sup> There followed several months of confidential negotiations at the official level on the drafting of an Anglo-Argentine memorandum of understanding. The crucial passage in the draft, agreed *ad referendum* in August 1968, provided that “the Government of the United Kingdom as part of . . . a final settlement will recognize Argentina’s sovereignty over the Islands from a date to be agreed.”<sup>21</sup> The date—not less than four and not more than ten years after signature—was to be set once the British government had satisfied itself that the interests of the islanders would be secured by the as yet undetermined safeguards and guarantees to be offered by Argentina.

But by this time, Britain’s negotiating options had been narrowed by dissent in the islands and its louder echoes in London. In February, Falkland Islands councillors had been consulted in confidence about an early draft of the memorandum of understanding. Their reaction was to appeal to members of Parliament for help to prevent “the handing over of the Falklands to the Argentines.” Their cry for help led to the formation of a powerful all-party Falkland Islands lobby, and the government found itself under assault in Parliament and the press. The government had entered into the negotiations with Argentina with the implicit assumption that it was the best judge of the interests of the islanders and that they could be brought to share its judgment.<sup>22</sup> It was soon disabused. It therefore proposed that the Anglo-Argentine memorandum of understanding should be accompanied by a unilateral statement making clear that the British government would proceed to transfer sovereignty to Argentina only if and when it was satisfied that this was acceptable to the inhabitants of the islands. Argentina was not prepared to agree to this; and for its part the Falkland Islands Legislative Council in May affirmed the islanders’ resolve “to remain British under the British Crown.” Nevertheless, in November, Lord Chalfont, the responsible Foreign Office minister, visited the Falklands to try to gain the islanders’ acquiescence in the prospective Anglo-Argentine agreement. He was not successful; and on his return, the Falkland Islands lobby mobilized 100 members of Parliament to sign a motion calling on the government once and for all to assert that the Falkland islanders were British and would not be transferred

against their wishes to an alien land.

Faced on the one hand with inflexible Argentine opposition to the test of acceptability to the islanders of any agreement between the two governments and, on the other, by the prospect of what at least one cabinet minister regarded as an “unnecessary storm”<sup>23</sup> in Parliament over an issue of marginal importance compared with other major economic and foreign policy problems, the cabinet decided in December to abandon the effort to reach agreement with Argentina on the basis of the memorandum of understanding. Announcing the decision to a noisy House of Commons on December 11, 1968, the foreign secretary stated that the government still desired to continue negotiations with Argentina, but only on condition that “in no circumstances would the United Kingdom put itself in a position in which it would be required to surrender sovereignty against the wishes of the islanders.”<sup>24</sup> The paramountcy of the islanders’ wishes as reflected in Parliament had been established, and the question of sovereignty over the Falklands had become an issue of domestic politics rather than foreign policy.<sup>25</sup>

After 1968, successive British governments fell back on trying to manage the dispute with Argentina rather than resolve it. From time to time Britain was prepared to discuss the sovereignty issue or to explore devices such as condominiums or leaseback, which were designed to finesse it; but the inescapable condition of any such discussion was that the outcome must be acceptable to the islanders. The British tactic, therefore, was to concentrate on seeking to develop functional cooperation with Argentina in relation to the Falklands in the hope that over time this would sway opinion in the islands towards closer organic links with Argentina. Argentina, while willing to go some way along this track, never deviated from its insistence that the only solution acceptable to it was a transfer of sovereignty.

Talks resumed in 1969 and were continued by the Conservative government elected in 1970. Sovereignty was off the agenda. The talks, which took place without prejudice to either side’s position on sovereignty (under the so-called “sovereignty umbrella”), were concerned with improving communications between the islands and Argentina. The agreements announced in September 1971 included a weekly air service between Comodoro Rivadavia and the islands provided by the Argentine airline LADE, provisions to facilitate travel by islanders to and through Argentina, and exemption from Argentine military service for inhabitants of the islands. In 1972, the Argentines built an airstrip at Port Stanley and in 1974 (despite setbacks in the Anglo-Argentine political dialogue), a further agreement provided for YPF, the Argentine national oil company, to supply petroleum products to the islands at mainland prices. Paradoxically, these agreements, intended in part to encourage the islanders to appreciate the benefits of closer collaboration with Argentina, served rather to stimulate their suspicion of Britain’s motives. The British government’s failure, due to financial constraints, to replace the