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DISPUTED SOVEREIGNTY IN THE SOUTH ATLANTIC: A HISTORY OF THE
FALKLAND ISLANDS (ISLAS MALVINAS) AND THE EVOLUTION OF THE
ARGENTINE AND BRITISH CLAIMS

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A thesis presented in partial fulfillment of the requirements for completion of
the Bachelor of Arts degree in International Studies
Sally McDonnell Barksdale Honors College
University of Mississippi

University, Mississippi

Spring 2011

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Acknowledgements

There are many people without whom this thesis and my graduation would not have been possible. I would like to thank my cohort for all of their antics and support, especially this year. Thank you to Dr. Dinius for his tireless efforts in improving my thesis and telling me which direction I should take. I could not have done it without him. Thank you to Dr. Brower for his invaluable insights on my interpretations (and occasional misinterpretations) of international law. Thank you to Dr. Gispen for being my second reader. He was encouraging when I needed it. I want to thank my friends and family for their encouragement and occasional jabs at how seriously I sometimes took myself. Thank you to the staff of the Sally McDonnell Barksdale Honors College and the Croft Institute for International Studies for all the help they have given me over the years. I want to thank Rachel Johnson, my partner in crime and co-advisee of Dinius, for all of the hours we have spent deciphering handwritten comments and telling each other that we would make it to the end. Lastly, I would like to thank dirigibles.

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*All the citations in this thesis are in Chicago Style.

Chapter One

Introduction

It is impossible to walk the streets of Buenos Aires or any other large city in Argentina without seeing multiple signs declaring that “Las Malvinas fueron, son, y serán Argentinas.”¹ This attitude pervades the Argentine people. Their longing for the Falkland Islands is more romantic than practical; they ignore the impossibility of their claims to the territory. Having lived in Argentina and traveled throughout the country during my time there, I have seen and experienced the Argentine perspective firsthand. However improbable the return of the Falklands may be, the Argentines refuse to relinquish their claims or even recognize that they are slightly delusional in their pursuit of it.

For nearly 180 years, Argentina and the United Kingdom have disputed the sovereignty of a small archipelago in the South Atlantic: the Falkland Islands. The Islands have sparked controversy over their sovereignty from the beginning. The specific facts of the discovery of the islands are unknown, but France, Spain, Great Britain, and Argentina have all occupied the islands since their discovery in the 16th century. But in 1833 the British took over the Falklands, evicting the Argentine settlement.² For 149 years (1833-1982), Argentina continually filed

¹ Translation: The Falklands were, are, and will be Argentine.

² James F. Gravelle. "The Falkland (Malvinas) Islands: An International Law Analysis of the Dispute between Argentina and Great Britain." *Military Law Review* 107, no. (1985): 25.

protest with the British government, until, on April 2, 1982, Argentina invaded the Falkland Islands triggering a 72-day conflict with the United Kingdom.

Nearly 1000 soldiers lost their lives before the British reclaimed the Falklands, and for the last 29 years, the British have maintained their control. The dispute remains unresolved today, although it appears unlikely that it will escalate again to conflict.

Recently in statements made to the UN Special Committee on Decolonization in 2009, members of the Legislative Assembly of the Falkland Islands categorically refuted Argentina's claims.³ They have repeatedly denied that the islands are a colonial possession and have no desire to break from Great Britain. During the 2010 summit between the European Union and Latin America, President Cristina Fernandez de Kirchner called for the new British coalition government to resume talks over sovereignty. However, the United Kingdom Foreign and Commonwealth Office responded that "the United Kingdom 'had no doubts' about the sovereignty of the islands."⁴

Throughout the history of the disputed sovereignty, Argentina has consistently seemed to lose ground with every attempt to regain the Islands. With every year, their claims become weaker, and their argument seems more and more ridiculous. Argentina appears to occupy a position of strength in the discussion, until the Argentine position is examined closely, then it breaks down.

³ U.N. Secretariat. *Special Committee on Decolonization Unanimously Approves Text Calling for Direct Negotiations over Falkland Islands (Malvinas): Members Hear from Foreign Minister of Argentina, Petitioners, Including Members of Territorial Legislative Assembly*, 2009. June 18, 2009. (Press Release GA/COL/3196).

⁴ "Malvinas o Falklands: Argentina quiere hablar con el nuevo gobierno británico," *BBC Mundo*, May 18, 2010. Note: author's translation.

Argentina continues to pursue its claim to the Falklands, but that does not mean that there is still a justification for its actions.

Relevance of the Sovereignty of the Falkland Islands Today

When I began my research for this thesis, I assumed that the contested sovereignty of the Falkland Islands involved somewhat of a contest between the claims made by Argentina and the United Kingdom. As the evidence began piling up, I realized that this simply was not the case, and I had to reevaluate my understanding of the situation. Perhaps my assumption of the relatively even balance of power came from having lived in Argentina, and I will admit that I hoped to find some evidence that would bolster the Argentine claim and give their continued protests a reason to be so adamant. This thesis examines the situation of the Falklands with the idea that Argentina makes two different kinds of claims over the Falklands: legal and rhetorical, and I look at how these claims coincide with the history of the Islands.

Although disputes over the sovereignty of a territory are not uncommon in history and are not even uncommon to the history of the United Kingdom, the situation in the Falkland Islands does not fit into the model created by international law. Although the situation in the Falklands may on the surface resemble several other former colonial possessions of the United Kingdom, the Islanders themselves have clearly chosen to strengthen their relationship with the British government rather than opt for a looser bond or independence. The Islanders are even full citizens of the United Kingdom. The Falklands' right to

self-determination allowed them to choose to remain connected to the UK, but Argentina also has a claim to the Falklands, which complicates the discussion. While many former colonies might not be comfortable with the continued relationship between the Falklands and the UK, they can accept it because the Islanders choose it. However, Argentina insists upon its claim to the Islands regardless of the opinions of the Islanders. The case of the Falklands clearly does not fit into the standard model of the transfer of sovereignty in a former colonial possession because of its long-standing nature and the Falklands use of their right to self-determination.

There is another point in the history of the Falklands that distinguishes it from similar cases of disputed sovereignty: the Falklands War. How does the violent conflict in recent years between two civilized countries affect their separate claims to the sovereignty of the territory? It is impossible to believe that the war changed nothing, though this seems to be the opinion of the current Argentine administration. The war changed only a few of the facts that existed before 1982 and none of them in favor of Argentina. It did not even disrupt the 178-year possession of the Islands by the United Kingdom for more than a few months. It did drastically alter the relationship between the UK and Argentina and the balance of power in the region. Because the United Kingdom handily defeated the Argentines, it solidified its position in the Falklands and its intent to maintain that position beyond the shadow of a doubt. Yet the Argentines continue to assert their claims to the Islands. Because of this interesting

relationship between Argentina's defeat and its continued protest of British possession, the Falkland Islands case warrants further study.

In this thesis, I examine the changes in the status of the Islands since their discovery, determining where possible who had possession of the Islands when. The period before 1833 can be interpreted in one of two ways: that throughout the period there was no one state that possessed the islands without qualification, or that Argentina claimed the territory when the British left their settlement in 1774. But even if the Islands rightfully belonged to Argentina in 1833, the British have controlled them for nearly 200 years. Could such an old claim still be valid today? The case has never been submitted to any arbitration or international court, so there has never been an official adjudication of the answer to this question. Further, there is no specific body of the United Nations or other international organization that would have the authority to make a determination on the status of the Falkland Islands without the express consent of both Argentina and the United Kingdom.

I also look at the issue of sovereignty as applied to the Falklands in general in its present day context. Since 1982, the Falklands have enjoyed a peaceful and prosperous development. They have a healthy economy fueled by agricultural exports and tourism, and their political stability is unquestioned. They are even mostly autonomous from the United Kingdom. The British clearly exercise their sovereignty over the Islands because the Islanders openly recognize it, and Argentina exercises no control over the Islands except where they can hamper the Islands economically through restrictions on travel via

Argentine national waters. But Argentina simply refuses to quit. Argentine politicians annually restate their claims to the Islands in a show of political rhetoric, typically on the anniversary of the Falklands War. Although Argentina does still put forward evidence in support of their legal claim to the Islands infrequently, the majority of the discussion of the sovereignty of the Islands occurs in a manner that reflects a desire to use the Islands for domestic political gain rather than for territorial expansion. Argentina's ongoing pursuit of its claims to sovereignty in public discourse signifies that a negotiation between Argentina and the United Kingdom needs to occur.

Structure of the Thesis

In chapter two, to provide an understanding of how to interpret the legal situation in the Falklands today, I focus on the development of the legal status of the Falkland Islands and its relationship with specific cases in international law concerning the transfer and acquisition of sovereignty over a territory. Considering the differing modes of acquisition possible to a state, I look at how both Argentina and the United Kingdom have asserted their claims to the Falklands. I outline the history of the possession of the Islands by several European states and eventually Argentina before the United Kingdom begins its lasting possession. Next, I examine the relationship between sovereignty in the Falklands and sovereignty in the Antarctic, evaluating how a change in the status of the Falklands would influence the claims in Antarctica. They have historically

been linked, through the administration of British Antarctica from the Falkland Islands before 1961.

In chapter three, I chronicle the history of the 1982 conflict and try to illuminate how it related to the sovereignty claims over the Islands. I review the reaction of the United Nations and the United States. The support of either the US or the UN would have greatly influenced the conflict in 1982. Both the UN and the US attempted to mediate the conflict before the outbreak of violence, but neither Argentina nor the United Kingdom was willing to yield any ground in the negotiation over the sovereignty of the Islands. Last, I review the immediate post-war period before the 1990s and how it altered the domestic politics of Argentina, particularly those events that led to the reestablishment of democracy. After the war, the Argentines differentiated between their claims to sovereignty and the conflict.⁵ I also detail the situation in the Falklands and the response of the United Nations to the Argentine-British cease-fire.

In chapter four, I investigate the more recent events related to the Falkland Islands in Argentina. I look at how the Argentines have changed the opinion and interpretation of the conflict inside Argentina and how they use this new image to justify the continued pursuit of their claims to the sovereignty of the Falklands with the United Kingdom. Argentina attempts to ignore the shift in the balance of power after the war in the debate over sovereignty. It is important to examine this revisionist history of the conflict because it provides a context for the overwhelming Argentine public support of attempts to reclaim the

⁵ Vicente Palermo. *Sal en las heridas*. Buenos Aires: Editorial Sudamericana, 2007. p. 282.

Falklands. I analyze the relationship between Argentina and the United Kingdom through a series of agreements concluded in the 1990s and the special relationship between the Falklands and the governments of Néstor Kirchner (2003- 2007) and Fernandez (2007-present). They have both pursued Argentina's claims to the Falkland Islands aggressively during their presidencies. There is a stark contrast between the disposition of the Argentine government in the 1990s and the 2000s, which I believe is a result of the creation of separate legal and rhetorical claims. Understanding why this difference exists and how it came about could lead to a better understanding of the current state of the sovereignty and its possible future. I also examine the relationship between the Falkland Islands and the UN Special Committee on Decolonization, which has discussed the Falkland Islands but has accomplished very little. Currently, it merely calls for a resolution to the dispute, but a change in this in favor of either position would irrevocably tip the scales.

In chapter five, I offer some conclusions that clarify the status of the Falkland Islands in international law and how the dispute over sovereignty may eventually be resolved based on evidence from the previous chapters.

Data and Methods

The thesis has to rely on fewer sources than would be desirable for a project of this length, simply because it has attracted less scholarly attention than I anticipated when I started research. Since the close of the 1980s, there has been very little new research or scholarly work done related to the sovereignty

of the Falkland Islands. The fervor of interest created by the 1982 conflict dwindled quickly but left behind a swathe of articles in legal journals and books devoted to the study of the conflict but not necessarily to the transfer of sovereignty. The three principal authors used in the legal research section of the thesis published their articles in 1983 and 1985. Although there is a lack of recent research, the developments in the Falklands can be tracked through documents published by the United Nations and in newspaper articles from the BBC and *La Nación*, the principal newspaper in Argentina. Fortunately, analysis of the 1982 Falklands War does not need to be recent to be relevant, and both firsthand accounts and scholarly work on the history of the conflict are available. To understand the nature of the conflict and its ramifications from both sides, I used works written both by Argentine and British scholars.

The events since the war also lack scholarly research, but there are numerous newspaper articles in both Argentine and British newspapers, as well as many other large newspapers that have an international focus. I used an online database—falklands.info—to obtain the text of agreements concluded and modified between the United Kingdom and Argentina since the conflict. The information from this source compiles it in one convenient location, and it matches exactly what I also found on the website of the United Kingdom Foreign and Commonwealth Office. Additionally, the site claims to have received its copies of the agreements from the government of the Falkland Islands. The United Nations maintains an online database of all the meetings of the Special Committee on Decolonization and the results of those meetings. I had hoped to

include information concerning the economic value of the Falkland Islands and the Antarctic but could find little scholarly work about the value of fisheries in the South Atlantic or the possibility of offshore oil well drilling.

Chapter Two

International Law and Historic Claims to Sovereignty in the Falkland Islands

Introduction

In this chapter, I will explain the modes of sovereignty acquisition and how the historic claims to sovereignty by Argentina and the United Kingdom in the Falkland Islands relate to these modes. It is important to look at sovereignty in general and the history of the territory before understanding the present situation of the Falkland Islands in terms of the legal status of their sovereignty. The Falklands occupy an interesting place in history as a vestige of the colonial empire of the United Kingdom that has never tried to attain its independence. Because it is not its own state, insofar as international law is concerned, the United Kingdom and Argentina are the principal actors in any discussion over the sovereignty of the Islands, not the government of the Islands. The local government is, however, responsible for all matters concerning the Falklands except defense and foreign affairs, where the Islands defer to the mother country.

According to international law, a state consists of its landmass and its appurtenances, or its airspace and territorial sea. This, along with its

government and the population within its borders, composes the social and physical manifestations of a state, and within the territorial borders of a country, the state exercises full sovereignty. How does the law define sovereignty for individual states? Sovereignty is “the general power of government, administration, and disposition [of territory]... independently of the consent of any state.”⁶ It is the legal competence of a state to act on its own behalf in all actions within its territory and in conjunction with other states. Sovereignty is the basis of a national identity, and without it, a particular state cannot be said to exist outside of the largesse of another state.

There are several historically proven and legally accepted modes of acquisition of sovereignty over territory. Five methods of acquiring sovereignty within a territory include: occupation, accretion, cession, conquest, and prescription, but, because scholars occasionally disagree, this list has fluctuated.⁷ Additional modes include discovery, erosion, avulsion, abandonment, revolution, succession, and annexation. Currently, claims to sovereignty can also be acquired, transferred, and evaluated through more refined means based in international legal concepts. Title has developed as a concept related to the sovereignty of a territory but not coterminous with it. Title is the validity of a claim to sovereignty within a territory, and can be equated to the superior right to possess a territory. Title can develop from situations wherein there is an immemorial and uncontested possessor of a territory, like those countries that

⁶ Ian Brownlie. *Principles of Public International Law*. 7 ed. Oxford: Oxford University Press, 2008. 106.

⁷ Ibid., 127.

have developed gradually from disparate people groups in Europe. But title is not limited to these situations and can also be determined by a court.⁸ Although title is important in any determination of sovereignty, claims to sovereignty are still based on specific modes with their roots in historical interpretations of international norms, but a claim used to establish sovereignty need not encompass all the possible modes and realistically could not. The claims used by Argentina and the United Kingdom fall under only some of the above modes of acquisition.

Claims to Sovereignty

Argentina and the United Kingdom both have asserted claims to the Falkland Islands based on competing modes of acquisition. This section of the thesis will go through each pertinent mode of acquisition, addressing the ways both countries justify their claims.

Argentina and the United Kingdom asserted a claim to sovereignty established by occupation. Occupation is the possession of a territory by the physical presence of a country in a territory. After the Revolution of 1810 the former viceroyalty of Río de la Plata broke away from Spain and fragmented into several smaller autonomous territories. Although Argentina was not to become a unified state until 1816 when it assumed all rights held by the disparate cities, already its component territories had inherited all claims previously held by Spain in the Falkland Islands as part of the doctrine of *uti possidetis*, literally

⁸ Ibid., 119-120.

referring to use and possession. This means that the right to sovereignty is transferred to the party that is in use and possession of the territory. This theory of transferred sovereignty allows for formerly colonial territories to inherit any relevant title that had been held by the previously governing state and is widely used by countries in Latin America that are former Spanish colonies to allow the borders previously delineated to become the borders of the newly independent states in an attempt to avoid border wars.⁹ However, Argentina can inherit no more than Spain actually held at the time. If Spain did not establish clear title over the Islands, then Argentina cannot inherit such title from Spain, and it is doubtful that Spanish sovereignty could be asserted given that there was a concurrent British settlement on one of the Islands.¹⁰ The doctrine of *uti possidetis* has been used to assert a claim to sovereignty based on succession, but it does not apply in the Falklands case. Succession can be a valid form of sovereignty acquisition, but here it is only important to show a derivation of the title that Argentina claims to hold.

One country or another has occupied the islands almost continuously since 1764 when the French established Port Louis on East Falkland, and the British have had a physical presence on the Islands for the better part of 200 years.¹¹ The French maintained their settlement until its sale to Spain in 1767.¹² Spain had protested the French occupation of the islands based on the Papal bull

⁹ Brian M. Mueller. "The Falkland Islands: Will the Real Owner Please Stand Up." *The Notre Dame Law Review* 58 (1983): 626-627.

¹⁰ Gravelle, 26.

¹¹ Mónica Pinto. "Argentina's rights to the Falkland/Malvinas Islands." *Texas International Law Journal* 18, no. (1983): 2. and Mueller, 618.

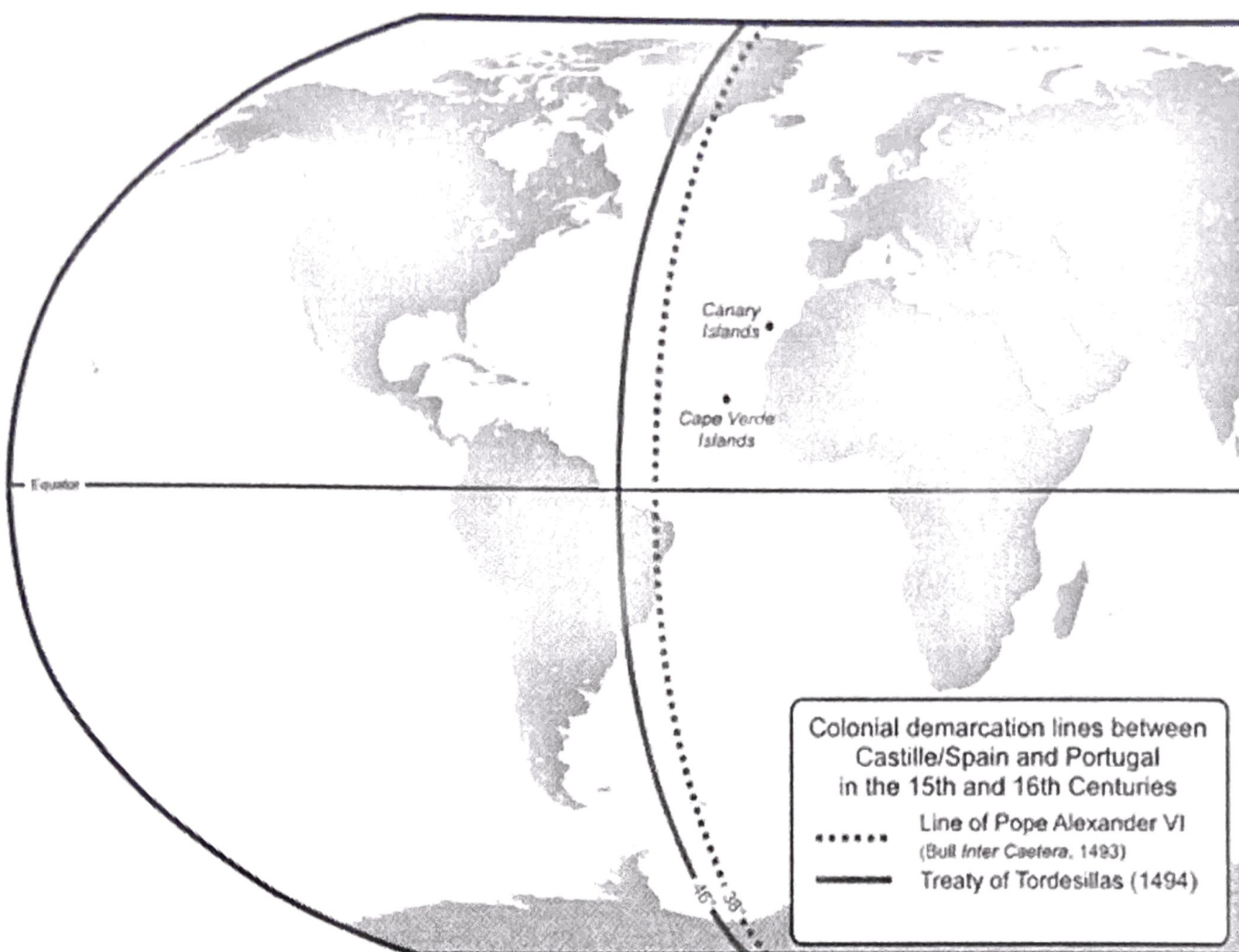
¹² *Ibid.*, 2.

Dudum Sequidem of 1493 issued by Pope Alexander VI that divided the New World between Spain and Portugal, excluding other European powers.¹³

Pope Alexander VI issued two papal bulls related to the division of the New World, *Inter Caetera* in May of 1493 and *Dudum Siquidem* in September of that same year, granting to Spain under Ferdinand and Isabella exclusive rights to all lands west of a line of demarcation. The line was originally drawn on the meridian 100 leagues west of the Azores or Cape Verde Islands, and included all territory except those lands already held by another Christian sovereign. The second bull confirmed the first and clarified it for any lands discovered by Spain in westward exploration, even if they lie in the eastern region belonging to India. However, the following year, King John of Portugal still contested the line of demarcation and sought to reestablish it through direct negotiation with Spain. The 1494 Treaty of Tordesillas pushed the line of demarcation to 370 leagues west of the Cape Verde Islands. Portugal was to receive all lands discovered and undiscovered to the east of this line, and Spain received all lands both discovered and undiscovered to the west of the meridian.¹⁴ But because of a principle established in the *Island of Palmas* case—that no state can pass on more title than it already possesses—the legality of the Pope’s ability to grant territory and divide the New World is questioned. Whether the Pope and the Vatican had the authority to grant title to lands not yet discovered and over which it did not hold sovereignty is of valid concern as a matter of law.

¹³ Gravelle, 11.

¹⁴ Francis G. Davenport. *European Treaties Bearing on the History of the United States Dependencies to 1648*. Washington, D.C.: Carnegie Institution of Washington, 1917. 71-83.



Map 1.1¹⁵

In the treaty of sale for the settlement, France recognized the right of the Pope to have already given the lands to Spain.¹⁶ The treaty of sale passed the title to the islands formerly held by France to Spain by way of succession.¹⁷ The British established the settlement of Port Egmont in 1766 on Saunder's Island, an island off the coast of West Falkland. The British settlement was short-lived, ending in 1774 when the British withdrew from the island but left behind markers of their intent to return, including a leaden plaque, engraved with the

¹⁵ "Spain and Portugal." *Wikimedia Commons*. Accessed December 9, 2010.

<http://en.wikipedia.org/wiki/File:Spain_and_Portugal.png>

Note: Image altered for better quality, originally also displayed green line marking an additional meridian drawn in the eastern hemisphere.

¹⁶ Pinto, 2.

¹⁷ Mueller, 625.

name "Falkland Islands."¹⁸ For the next six decades (1774-1833), the British merely exercised an intent to govern the territory, but displayed no actual evidence of that authority.¹⁹

The Spanish abandoned their settlement in 1811 because of financial difficulties arising from the Napoleonic Wars, and the Falklands remained unoccupied for 12 years until the Argentine government appointed a governor over the islands.²⁰ Argentina established an official settlement in 1826, and the following year the government of Buenos Aires declared it had succeeded to all the rights originally held by Spain in the territory.²¹ Argentina maintained its settlements on the Islands for almost a decade with a single break before 1833. In 1831, the Argentine governor of the Islands seized an American fishing vessel and refused to release it, which led to a reprisal action from the government of the United States. The USS Lexington and its crew razed the Puerto Soledad settlement on May 21, 1831, and diplomatic ties between Argentina and the United States were severed. The settlement was reestablished in 1832.²²

Because the territory had been claimed and governed by some state since the mid-eighteenth century, the territory could not have been *res nullius* in 1833 when the United Kingdom took control of the islands from the Argentines. *Res nullius* literally refers to a thing that no man possesses and is the legal concept that a territory has no sovereign because it has been abandoned and lain derelict

¹⁸ Pinto, 2.

¹⁹ Gravelle, 28-29.

²⁰ Mueller, 619.

²¹ Gravelle, 14.

²² Pinto, 3-4.

or because no state has ever held sovereignty over it because it remained undiscovered or unsettled. In order for a state to claim a territory through occupation, it must first have been *res nullius*.²³

Because the territory could not have been *res nullius* in 1833, other modes of acquisition and legal precedents apply for a territory that has already been settled. For example, in the *Eastern Greenland Case* both Norway and Denmark held competing claims to the territory in Eastern Greenland based on modes of acquisition rather than treaty agreements, but in order to establish sovereignty in this case, a state must demonstrate both the intention to be sovereign over the territory and an actual exercise of such authority. The presence of a settlement and governor on the Falkland Islands indicates the clear intention to govern the Islands, and the seizure of an American fishing vessel to prevent illegal fishing activities in the surrounding waters is considered an exercise of sovereign authority.²⁴ But whether this could have been sufficient to establish the Argentine claim as superior and extinguish all other claims is a question for legal theorists because in 1833, the British took the Islands by force, occupying the Argentine settlement and expelling its inhabitants.²⁵

Both Argentina and the United Kingdom assert discovery as a means for establishing title in the territory. However, there are two reasons why discovery does not help either country establish their sovereignty. First, discovery only creates an inchoate or incomplete title, requiring further action on the part of

²³ Brownlie, 168.

²⁴ Gravelle, 22-23.

²⁵ Pinto, 4.

the discovering state to establish sovereignty. It can only serve as a statement of intent to gain title over a territory.²⁶ Second, because the facts of the original discovery remain unknown because of the incomplete means of communication among nations in the late 16th century, no state can claim, without contest, first discovery of the Islands.

The principle of inchoate title established by discovery stems from the *Island of Palmas* case, in which both the United States and the Netherlands claimed sovereignty over the Island of Palmas between the Philippines and what is now Indonesia. The states submitted the dispute in 1928 to the Permanent Court of Arbitration in The Hague. The United States claimed it had acquired the title held by Spain after the Spanish-American War in the Treaty of Paris (1898) that also gave it title to the Philippines. However, the arbiter resolved the issue of title by discovery stating that mere discovery is not sufficient to establish title, but rather it grants an inchoate title that requires further action by the state, an exercise of authority over the territory, even if that exercise were as simple as planting a flag or as involved as the establishment of a settlement with a form of government. Because Spain had never exercised such authority in the Philippines, it could not pass any title over the island to the United States, and the arbiter ruled in favor of the Netherlands.

Prescription is asserted by both states in support of their claims. Prescription is sovereignty gained through long-standing or customary use of territory, and there are two forms that prescription can take: acquisitive and

²⁶ Mueller, 624.

extinctive.²⁷ Acquisitive prescription requires the long-term and peaceful possession of a territory without any other claimants in the same territory, and extinctive prescription is the originally wrongful possession of a territory for such a length of time that the previous claimant is prevented from asserting a claim.²⁸ Although the British have been in peaceful and continuous possession of the Islands since 1833 and this possession has been open and notorious, there has always been another claimant to the Islands: Argentina. This should prevent the sovereignty of the Islands from passing into the hands of the British by acquisitive prescription. But what does this mean that the Argentine protests accomplish? The situation created in the Falkland Islands reveals several gaps in the understanding and interpretation of international law relating to protested sovereignty. There are no specifics to be had from previous cases or international organizations, leaving the thesis with several unanswerable questions.

Argentina has protested the British occupation of the Islands in some form since 1833, usually through direct appeals to the British government and appeals to international organizations. Diplomatic protests like these can be sufficient to prevent the sovereignty of a territory from being transferred by prescription for a certain time.²⁹ Until the formation of the League of Nations and the International Court of Justice (ICJ), Argentina's protests through diplomatic channels were certainly sufficient to maintain the Argentine claim to

²⁷ Gravelle, 19.

²⁸ Gravelle, 24.

²⁹ Mueller, 632.

the Islands because it was the only option available to Argentina short of war. In 1922 when an international court was established to decide disputes between states, another option became available to Argentina to air its grievances. The United Kingdom possessed the Islands for more than 150 years before the war in 1982, and for the last 73 of those years the ICJ could have settled the dispute, if either state had been willing to agree to submit to the court. But neither Argentina nor the United Kingdom has taken the issue of the sovereignty of the Falkland Islands directly to the ICJ nor submitted to any form of arbitration. One scholar argues that because Argentina never took advantage of this new medium of conflict resolution, the state was not fulfilling its obligation to contest the claim to sovereignty made by the United Kingdom, and during those 73 years, Argentina lost its claim to the Islands.³⁰

Neither state can truly claim to have held the Islands in possession with no other claimants. As mentioned above, the British left their settlement in 1774 and left behind a plaque marking their intent to return and staking their claim to the Islands, but Argentina's settlement could be said to have been the sole settlement on the Islands from 1774 until 1833. Does almost 60 years of possession without any other settlers provide for acquisitive prescription? How long does a plaque count as a form of protest on another state's claim to sovereignty?

James Gravelle argues that the United Kingdom established sovereignty over the Falkland Islands by extinctive prescription before the 1982 war because

³⁰ Gravelle, 30-31.

the protests made by Argentina were no longer sufficient after the establishment of an international court by the League of Nations in 1922. In the 62 years between the admittance of both Argentina and Great Britain to the League of Nations in 1920 and the outbreak of war, neither state brought a complaint about the Islands before the court. The same scholar argues that Argentina had never established its sovereignty over the Islands before 1833, although his theory of extinctive prescription requires that the ousting by the British be considered a wrongful action.³¹

January 3, 1833, marks a turning point in the sovereignty of the Falkland Islands. It not only begins the current possession of the islands by the United Kingdom, but also it can be considered a critical date in the determination of the sovereignty of the islands. The critical date rule dictates that at whichever date is determined to be the critical date, time stops. Anything that happens after the critical date to alter the state of the sovereignty is discounted because it is too late.³² This could mean that Argentina can take the debate back to 1833 to determine who had sovereignty over the Islands then and use that to determine who has sovereignty over the Islands now, although this is an unlikely course of action.

Abandonment is asserted by Argentina in support of its claim to the territory. Abandonment reverts the territory into a state of *res nullius* and requires that a state physically quit a territory and have no intention of maintaining sovereignty. The British left their settlement on Saunder's Island in

³¹ Gravelle 30-31, 24.

³² Pinto, 4-5.

1774, leaving behind a plaque engraved with just such an intent to hold sovereignty over the territory even without a settlement.³³ But is a plaque left on a small island off the coast of a larger pair of islands enough to sustain the British claim to sovereignty? After 60 years without the return of the British is that claim still as strong as when the plaque was first placed? When would this stop being enough?

Finally, one scholar treats the ideas of conquest and contiguity, although they are inapplicable to the discussion. Although Argentina uses neither mode in the support of its claims, one of them is important to the understanding of the debate. Conquest can be considered immediately irrelevant because there was not a state of war between the United Kingdom and Argentina in 1833, and acquisition by conquest requires the forceful taking of territory during wartime. But contiguity has a certain obvious logic to it: that the physical proximity of a territory to a country creates some kind of title over it, but this is not a recognized principle of international law.³⁴ Because the Falklands are 8000 miles from the United Kingdom and only 300 from Argentina, it seems more efficient that the country that is closer to the territory should have more right to governing the territory. It seems that anything that close can be seen as an extension of the Argentine mainland with very little difficulty, and Argentina has recently made just such an argument as explained in chapter four.

Argentina does a very good job of positioning itself to appear stronger than it actually is in the discussion of the claims to the Falkland Islands. After

³³ Gravelle, 26.

³⁴ Gravelle, 26-27.

examining each of the types of claims made by Argentina and the United Kingdom, it is fairly obvious that Argentina's claims are weaker than those made by the United Kingdom.

Claims to Antarctica

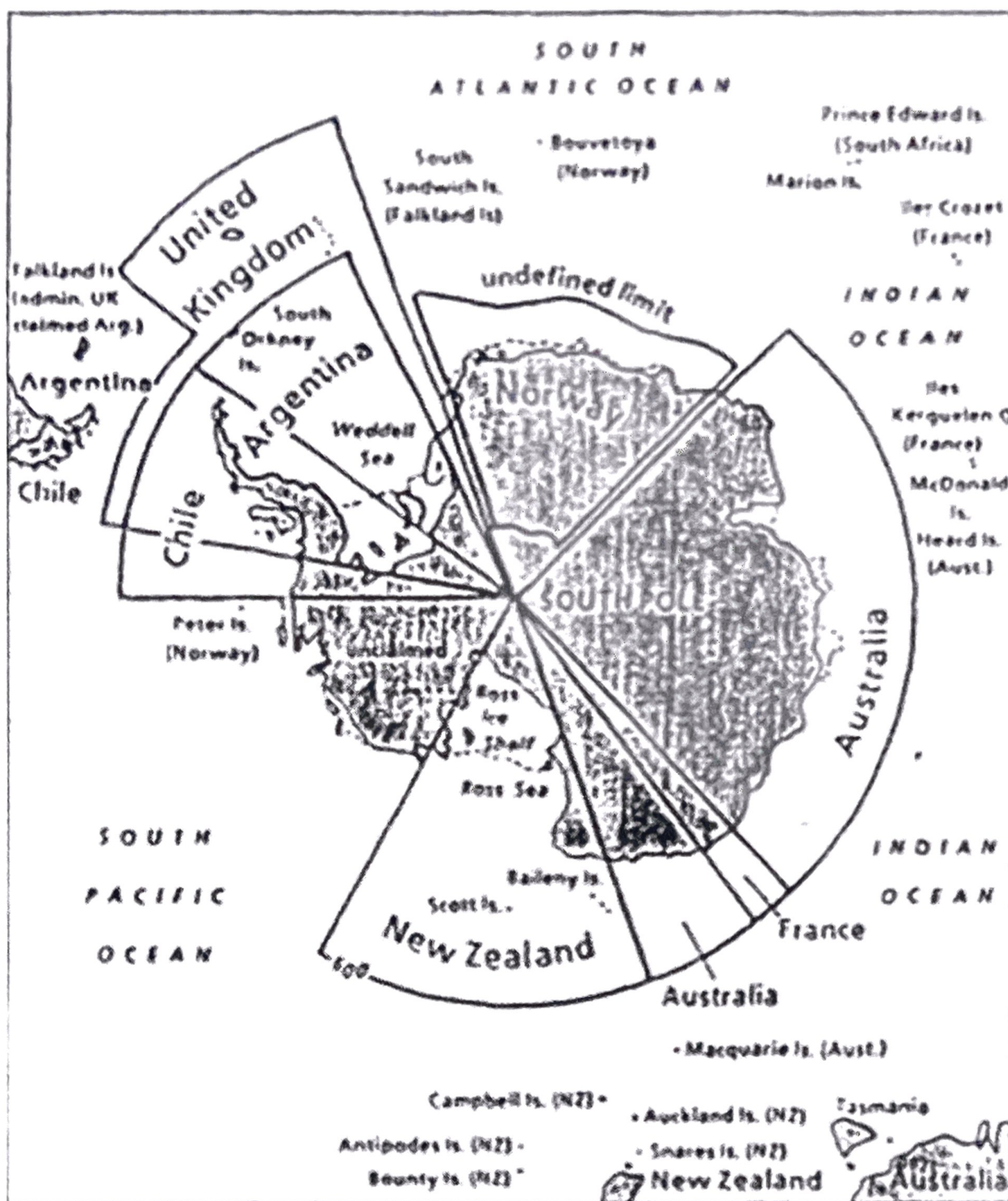
The concept of contiguity raises the question of the claims to the Antarctic by both the United Kingdom and Argentina. Currently, claims to the Antarctic are based on the proximity of the territories of other states. If the Falklands were to become the sovereign territory of Argentina, then as a logical consequence the British claim to their territory on Antarctica would be greatly weakened and the Argentine bolstered.³⁵

In 1940, Argentina staked its claim to the polar continent on paper, but it was not until 1942 that it set out to explore what lay within its Antarctic claim. The Argentine claim lies below 60 degrees south latitude and between 25 and 74 degrees west longitude, and the crew of the expedition sailed south, planting plaques along the way marking the territory that belonged to Argentina. However, even at this early stage, the claim conflicted with the United Kingdom's: the British had replaced one of the Argentine plaques placed during a previous expedition with one of their own. The Argentines replaced the contested plaque and continued on; nothing more came of the incident.

³⁵ Russell Lanker, "Competing Claims Among Argentina, Chile, and Great Britain in the Antarctic: Economic and Geopolitical Undercurrents" (Master's thesis, Naval Postgraduate School Monterey, CA, 1991) 18.

The United Kingdom has closely associated the Falklands with territory in the Antarctic previously. In fact, before the adoption of the Antarctic Treaty in 1961, the United Kingdom administered its territorial claim in the Antarctic through the Falkland Islands along with several other islands in the region. The British stake their claim extending south in an asymmetrical shape that absorbs the entire Argentine claim and the majority of the Chilean claim. Their claim comes from several whaling stations on islands in the South Atlantic, which are administered, along with the entire region, by the Falkland Islands for the British government.³⁶

³⁶ Ibid., 46.



Map 1.2³⁷

The key determinant in any settlement over the sovereignty of Antarctica in the disputed territory will be based on the degree of occupation a state has achieved in the region. Argentina has been moving people into the region since the 1970s and has even had children born on the continent with Argentine citizenship.³⁸ However, the United Kingdom has twice submitted sovereignty

³⁷ Lanker, 113.

³⁸ Ibid., 42.

claims to the ICJ over territory known as the Falkland Island Dependencies for arbitration. The Dependencies are several smaller islands in the South Atlantic that the United Kingdom claims independently from the Falkland Islands but that are administered directly from the Falklands. However, Argentina and Chile, which have both claimed territory that is overlapped by the British claim, have refused to submit to any arbitration because they see the entire claim by the British as unfounded, and in order for any decision made to be binding, all states party to the decision must agree to such a condition beforehand.³⁹

There are myriad reasons that Argentina and the United Kingdom would want the sovereignty of the Falkland Islands to influence their claims to the Antarctic as well. The Antarctic has great potential to represent huge economic and scientific gains for whichever country can control it. Although the Antarctic Treaty has limited the ability of states to alter their claims to the continent, the ownership of the Falkland Islands is an opportunity for change. Because the Argentine and British claims overlap, either state would increase the strength and size of their claim by making permanent their claim to the Falkland Islands and therefore their potential for gain in the future.

Antarctica is considered to hold a wealth of natural resources in the way of minerals and oil, as well as opening a larger sphere for fishing resources. However, any mineral exploration on the continent has been suspended or prohibited by the Antarctic Treaty of 1959 and the supplementary Madrid Protocol signed in 1991. The original Antarctic Treaty banned the militarization

³⁹ Lanker, 46-47.

of the territory in order to maintain the peace between all the claiming nations and to preserve the continent for scientific exploration. Only Article X of the original treaty could be interpreted as limiting the scope of economic uses of the land. It discourages any actions “contrary to the principle and purposes of the...treaty,”⁴⁰ and mineral exploitation could be considered against the principles of scientific inquiry because it would destroy the landscape. The Madrid Protocol is a supplementary treaty to establish environmental principles that are considered to be in keeping with the international ideal, if not the actual practice of all signing countries. All of the language in the treaty is written to protect the environment of Antarctica from the adverse effects of human presence, even if it is scientific, and Article VII prohibits “any activity relating to mineral resources, other than scientific research,”⁴¹ which would include mining and oil drilling. However, the original treaty and the Madrid protocol only cover the land below 60°S latitude and expressly excludes the high seas; while it would seem that all activity on the mainland is more or less prohibited, any exploration conducted on territory below the ocean could still be done, including commercial activities like fishing.

In 2006-2007, fisheries in the Southern Ocean, the waters surrounding Antarctica, landed nearly 140,000 tons, of which 82% was krill and 9.5% Chilean sea bass, also known as Patagonian toothfish. This represents an enormous

⁴⁰ National Science Foundation Office of Polar Programs, “The Antarctic Treaty.” April 26, 2010.

⁴¹ Australian Government Department of Sustainability, Environment, Water, Population and Communities Australian Antarctic Division, “The Madrid Protocol Articles 10 to 10.” August 12, 2010. <<http://www.antarctica.gov.au/Antarctic-law-and-treaty/the-madrid-protocol-/articles-1-to-10>>.

resource that can be harvested for profit, and it is regulated internationally by the Convention of the Conservation of Antarctic Marine Living Resources. Fishing is just one part of the Antarctic economy. In the 2007-2008 Antarctic summer, there were more than 45,000 tourists to the Southern Ocean, almost a 30% increase from the previous year.⁴² Because of the surge in popularity of ecotourism, agencies have organized trips for tourists to visit the mainland as well as explore the surrounding islands. If they are to sail through British or Argentine territorial waters, or land on British or Argentine Antarctic territory, then either state can require the purchase of licenses.

⁴² CIA World Factbook. "Oceans: Southern Ocean," page last modified May 27, 2010, <<https://www.cia.gov/library/publications/the-world-factbook/geos/oo.html>>.

Chapter Three

The War and Its Aftermath as a Measure of Sovereignty

Chronology of the War

On March 18th, 1982 Argentine scrap merchants landed on South Georgia and raised the Argentine flag, triggering a diplomatic reprimand from the British government and the deployment of a detachment of Royal Marines to the small island. Over the next two weeks, British intelligence reported on increased military preparation in Argentina, which culminated in the April 2nd invasion of East Falkland near Port Stanley, the capital city.⁴³ Plans for the invasion and occupation of the Falkland Islands had been in place within the Argentine military since at least 1963. The Argentine military had plans ready for almost every contingency because of the possibility of an escalation to orchestrated violence in the territorial disputes between Argentina and her neighbors. When preparations intensified among the Argentines, many observers inside and out of the military were convinced that the main theater of operations would be in South Georgia because of the flag-raising incident in March. Only fourteen of the Marine Corps officers knew the true target of the mission, codenamed Operation Rosario, until the rest of the senior officers were informed on March 29th. Three

⁴³ Ian J. Strange. *The Falkland Islands*. 3rd ed. North Pomfret, VT: David & Charles Inc, 1983. 246-251.

days later on the evening of April 1st the rest of the soldiers involved in the operation were officially informed, less than 24 hours before the invasion.⁴⁴

Because of inclement weather, the ships had to wait a day in deeper water. Now the Argentine plan had to be revised. Where originally the military commanders had planned on multiple landing points with alternative routes in case the primary assault were to go awry, they now focused all their efforts on the main landing because they had lost the element of surprise. The Argentine forces landed at 06:30 hrs, and by 09:25 hrs the surrender of the British forces on the island had been negotiated. Although not part of the original plan, the Argentine leadership decided that the takeover of South Georgia would strengthen their position once the diplomatic negotiations began, and by 13:22 hrs, the British forces at South Georgia had surrendered as well, completing the Argentine invasion.⁴⁵

London received the news piecemeal. That first day, the British government was largely unaware of the extent of the Argentine military efforts, with one Member of Parliament discussing the invasion as though it were imminent when it was already over. However, by the end of the day, the British government had begun its mobilization efforts, even before it was sure of the strength of the force it would be sending.⁴⁶

On Saturday April 3rd, Prime Minister Margaret Thatcher addressed the House of Commons, informing it of the Argentine invasion and clarifying the

⁴⁴ Lawrence Freedman and Virginia Gamba-Stonehouse. *Signals of War*. Princeton, NJ: Princeton University Press, 1991. 103-109.

⁴⁵ Freedman. 112-117, 120.

⁴⁶ Ibid., 121-124.

rumors of the day before. She confirmed that Argentine soldiers occupied the Islands, but she vowed that the Falklands and their Dependencies would remain sovereign British territory. She described to the House in brief the details of the invasion. Through communication with the deposed governor of the Islands who had been transported to Uruguay, she had learned that the people of the Islands were still loyal to the Crown and wanted to remain British subjects. Thatcher stated that it was her government's "objective to see that the Islands are freed from occupation and are returned to British administration at the earliest possible moment."⁴⁷ Within a week, a large naval force began arriving at Ascension Island, a small island administered by the British government located in the equatorial waters off the coast of Brazil and the staging point for British operations.

During the occupation, the Islanders were cut off from the British government and lived for two months under the rule of the Argentine forces. Many minor changes were introduced in the Islands which complicated their lives: the right side of the road was to be used for driving and the postal service was switched to Argentine control. Signs were posted almost exclusively in Spanish, creating problems with the language barrier between the Argentines and the Islanders.⁴⁸

The original Argentine plan had assumed only a token force would remain to administer the Islands and ensure their control; the plan changed,

⁴⁷ "Thatcher announces the invasion of the Falkland Islands to the House of Commons." *Youtube.com*. February 4, 2011.

<<http://www.youtube.com/watch?v=GZaP0TgOpig&feature=related>>.

⁴⁸ Strange. 254-255, 274.

however, when the Junta received the results of the debate in the British Parliament the day after the invasion—that the British would be sending both a diplomatic and military response. The withdrawal orders were reversed even though the general on the Islands had already begun to ship his men back to the mainland.⁴⁹ The original command structure called the Malvinas Operational Theatre, responsible for Operation Rosario, had been replaced with the South Atlantic Operational Theatre under a different general.

At the United Nations, the Security Council met on April 3rd and approved Resolution 502, demanding a full withdrawal of Argentine forces. The resolution passed with ten votes (France, United Kingdom, United States, The Democratic Republic of the Congo, Guyana, Ireland, Jordan, Japan, Togo, and Uganda), four abstentions (China, Poland, Spain, and the Soviet Union), and one negative vote (Panama). Argentina tried to elicit a veto from the USSR because of the countries' strong trade relationship, but all the communist bloc provided was an abstention.⁵⁰ The Russian government promised that Argentina could count on a Russian veto in any future resolutions, but this never came to pass.⁵¹ Both countries lobbied with the members of the Security Council. When the Argentine Foreign Minister Costa Mendez went to New York to meet with the nations who could be considered undecided, he spoke ineloquently arguing too much on the issue of anti-colonialism and not enough on the merits of their use of force.⁵² But

⁴⁹ Freedman. 142-144.

⁵⁰ "Consejo de Seguridad demanda retiro argentino de Malvinas," *La Nación*. April 4, 1982, 2, 20.

⁵¹ Freedman. 138-139.

⁵² *Ibid.*, 136-139.

the discussion of the Falklands War was not limited to the conference tables of the United Nations.

That same month, the United States took a more active role in pursuit of a resolution to the conflict. US Secretary of State Alexander Haig attempted to mediate between Argentina and the United Kingdom to bring a peaceful resolution to the question of the sovereignty of the Falkland Islands. Haig practiced what is known as shuttle diplomacy, which refers to mediation between parties unwilling to agree to negotiation and involves the “shuttling” back and forth of the mediator between the two parties. Beginning in London on April 8th, Haig traveled back and forth between Buenos Aires and London several times before returning to Washington, D.C on April 13th. He came home with the possibility of settling the dispute like similar decolonization cases and with the hope that war could be avoided. Three days later, Haig returned to Buenos Aires to begin again his attempts at negotiation between Argentina and the United Kingdom. Although Haig was hopeful throughout the negotiation, the British refused to eliminate the possibility of the use of force without the full withdrawal of Argentine troops. Both sides came to an impasse, and on April 25th Great Britain retook South Georgia by force.⁵³

For the first two months of the conflict, the majority of the fighting that took place was naval. On April 28th, the British established a Total Exclusion Zone (originally a Maritime Exclusion Zone that gave merchants ships the opportunity to turn around and leave), a circle with a radius of 200 miles around the Islands,

⁵³ Freedman, 186, 216-218.

forcing the Argentine navy to move carefully. The British and Argentine forces both suffered from insufficient knowledge of the enemy and misinterpretation of the information that they did have, but this did not stop military operations. On May 2nd, the British sank the Argentine ship *Belgrano*, killing 321 Argentine sailors. Although the British worried about the international reaction from such a large loss of life to the Argentines, as the British Chief of Defence Staff put it: "In war opportunities must be taken while they exist; there may not be a second time." On May 4th, the Argentines sank the British destroyer *Sheffield*, the first large-scale loss of life suffered by the British in this conflict. The Argentines also destroyed two British aircraft in a subsequent attack on the Argentine defenses, altering the British perception of the battle from one of playing the bully to recognizing the risks the task force in the Falkland Islands was undertaking.⁵⁴

The maritime fighting continued until May 21st when the British landed at San Carlos on the west side of East Falkland with the intent to reclaim Goose Green, an area fortified by the Argentines and holding prisoners of war. On May 26th, the UN Security Council approved Resolution 505 reaffirming Resolution 502 and calling for a ceasefire and peaceful negotiation to be led by the Secretary General.⁵⁵ Goose Green was retaken on May 29th, and on June 11th, the Battle for Stanley began.⁵⁶ After 72 days of fighting, on June 14th, the Argentine General Mario Menéndez, the acting governor of the Islands, signed a ceasefire with the

⁵⁴ Freedman, 249, 260, 265-266, 288-291.

⁵⁵ U.N. Security Council, 2368th Meeting. "Resolution 505 (1982) [Falkland Islands (Malvinas)]" (S/RES/505). May 26, 1982. (Mimeo).

⁵⁶ "1982 Falklands War Timeline." <<http://www.falklands.info/history/82timeline.html>> (accessed February 23, 2011).

British Major General Jeremy Moore. Menéndez agreed to a formal ceasefire, the disarmament of Argentine troops, and the evacuation of all Argentine troops with all possible speed.⁵⁷ Menéndez surrendered his forces and the troop evacuation was carried out, although this did not represent a full surrender of the Argentine armed forces because Menéndez did not have the authority to make such an agreement.

The Junta as a whole had, as of November, not formalized any ceasefire with Great Britain. On November 4th, the UN General Assembly passed Resolution 37/9 calling for renewed formal negotiations between Argentina and the United Kingdom to resolve the dispute. It recognized that the ceasefire was only *de facto* but that both countries had expressed intentions not to renew hostilities.⁵⁸

Attempts at a Peaceful Resolution

During the war, the already uneven scales were further tipped in favor of the British with respect to the sovereignty of the Islands. First, the UN Security Council, while not actively condemning the Argentines for their actions, sided with the British. The only marginal recognition of the dispute over the sovereignty in Resolution 502 lies within the name of the territory, where the Security Council includes the Spanish name of the Islands in parentheses. The

⁵⁷ "Afirmar que Argentina se rindió," *La Nación*. June 15, 1982, 1, 20.

⁵⁸ U.N. General Assembly, 55th plenary meeting. "Resolution 37/9 (1982) [Falkland Islands (Malvinas)]" (A/RES/37/9). November 4, 1982. (Mimeo).

UN has always used both the English and Spanish names in its official reports and resolutions. On April 3rd, the Security Council approved:

The Security Council,

Recalling the statement made by the President of the Security Council at the 2345th meeting of the Council on 1 April 1982 calling on the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland to refrain from the use or threat of force in the region of the Falkland Islands (Islas Malvinas),

Deeply disturbed at reports of an invasion on 2 April 1982 by armed forces of Argentina,

Determining that there exists a breach of the peace in the region of the Falkland Islands (Islas Malvinas),

1. *Demands* an immediate cessation of hostilities;
2. *Demands* an immediate withdrawal of all Argentina forces from the Falkland Islands (Islas Malvinas);

Calls on the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland to seek a diplomatic solution to their difference and to respect fully the purposes and principles of the Charter of the United Nations.⁵⁹

Resolution 502 was a victory for the British. Although it did not denounce Argentina as an aggressor country, it called for the full withdrawal of its troops. The vote passed ten to one, and a fellow Latin American country Panama was the only member of the Security Council to vote against the resolution. This represented the support of the Latin American nations of Argentina; however, Panama was the only Latin American country then serving on the Security Council.⁶⁰ In its attempts to lobby the votes of the Security Council to support its decision to invade the Falklands, Argentina played heavily into the idea of decolonization and hoped the countries that had been former colonies would take their side. However, if the Security Council had approved of the actions taken by Argentina, it would have created a precedent for the use of force in resolving long-standing territorial disputes. Several nations feared this situation,

⁵⁹ U.N. Security Council, 2345th Meeting. "Resolution 502 (1982) [Falkland Islands (Malvinas)]" (S/RES/502). April 3, 1982. (Mimeo).

⁶⁰ Freedman. 138-139.

and Guyana in particular, a former British colony, had a long-standing dispute with Venezuela over a similar border issue that it would not have wanted to resort to violence to resolve. Given this unwanted precedent and the fact that the Islanders did not consider themselves to be a colonial holding, it is unclear if anyone was truly convinced it was a colonial issue.⁶¹

The determination of the United Nations to see peace restored only increased as the war progressed. On May 26th, the Security Council approved Resolution 505:

The Security Council,

Reaffirming its resolution 502 (1982),

Noting with the deepest concern that the situation in the region of the Falkland Islands (Islas Malvinas) has seriously deteriorated,

Having heard the statement made by the Secretary-General at its 2360th meeting, on 21 May 1982, as well as the statements made in the debate by the representatives of Argentina and the United Kingdom of Great Britain and Northern Ireland,

Concerned to achieve, as a matter of the greatest urgency, a cessation of hostilities and an end to the present conflict between the armed forces of Argentina and the United Kingdom,

1. *Expresses appreciation* to the Secretary-General for the efforts that he has already made to bring about an agreement between the parties, to ensure the implementation of resolution 502 (1982), and thereby to restore peace to the region;
2. *Requests* the Secretary-General, on the basis of the present resolution, to undertake a renewed mission of good offices, bearing in mind resolution 502 (1982) and the approach outlined in his statement of 21 May 1982;
3. *Urges* the parties to the conflict to co-operate fully with the Secretary-General in his mission with a view to ending the present hostilities in and around the Falkland Islands (Islas Malvinas);
4. *Requests* the Secretary-General to enter into contact immediately with the parties with a view to negotiating mutually acceptable terms for a cease-fire, including, if necessary, arrangements for the dispatch of United Nations observers to monitor compliance with the terms of the cease-fire;
5. *Requests* the Secretary-General to submit an interim report to the Security Council as soon as possible and, in any case, not later than seven days after the adoption of the present resolution.⁶²

⁶¹ Ibid., 136-139.

⁶² U.N. Security Council, 2368th Meeting.

If the implications from the actions of the United Nations are indicative of the international opinion on the issue of the sovereignty of the Falkland Islands, then it is clear that the world considered the actions of Argentina wrongful. The UN no longer called for a diplomatic resolution to the conflict outright, but rather Resolution 505 calls for a “cessation of hostilities and an end to the present conflict.” The Security Council enlisted the aid of the Secretary-General’s office to ensure that the conflict came to an end.

While the United Nations discussed the situation in the terms of its paper resolution, the British discussed the fighting. In her address to the House of Commons on March 3rd, the Prime Minister referred to the Falkland Islands as “British sovereign territory.” At the end of her speech, Thatcher reminded the House that the “Falkland Islands and their Dependencies” are still British territory. Further, she stated that no invasion and no act of aggression will alter this fact.⁶³ But because of the tricky relationship between Great Britain, Argentina, and the United States, no formal state of war was declared. War would have obligated several countries like the United States to act upon their treaty obligations. The United States had concluded defensive treaties with both Argentina and the United Kingdom, and this overlap would have left the United States in a diplomatic quagmire. Instead, the British justified their use of force through the “‘inherent right of self-defense’ under Article 51 of the UN Charter” which was reinforced by the passage of Resolution 502 by the Security Council.⁶⁴ This was a clear demonstration of the intent to exercise sovereignty over the

⁶³ “Thatcher announces the invasion of the Falkland Islands to the House of Commons.”

⁶⁴ Freedman, 247.

Islands by the British government. The protection of territory against military threats from other nations was a clearly justified and well-accepted use of the doctrine of self-defense.

Because of its treaty obligations, the United States wanted to prevent the situation in the Falklands from escalating and to ensure that it did not become a drawn out conflict. This led to an attempt in April to mediate between Argentina and Great Britain, but this weakened the relationship between the US and Argentina and the US and the UK. This should have been a benefit to both sides because while the US was at the time a treaty-bound ally of both countries, the US maintained its neutrality against strong public opinion in favor the British. Haig's efforts were limited in their impartiality because of three main factors: his personal opinion regarding what outcome would most benefit US interests in the region, his personal disapproval of the Argentine use of force, intelligence and military ties that bound the US to a pose of neutrality, and the aforementioned strong American public support of the United Kingdom. In the negotiations, the US desired the return of the *status quo ante bellum*, meaning the restoration of the Islands to British administration. The US did not want to reward the Argentines for their use of force to settle a political issue. Also, the US desired a final resolution of the sovereignty dispute that would not come back to harm US interests in the future by affirming the power of the Argentine Junta.⁶⁵

The British forces physically repulsed the Argentines, establishing the superiority of the British navy. During the occupation, the Argentine forces were

⁶⁵ Freedman, 248.

disorganized and unable to maintain order in the ranks because of a lack of a proper supply line with the mainland. The Islanders themselves recognized the disorganization of the Argentine camp through their interactions with the *conscriptos*, as scholar Ian Strange refers to them. He even goes so far as to state that the soldiers themselves had no desire to be on the Islands because of all the problems.⁶⁶ The weaknesses revealed during this conflict not only established British military dominance in the South Atlantic but probably undermined the control of the Junta in Argentina.

The Post War Period

Soon after the Falklands War, the Argentine military dictatorship fell apart. On June 17th, 1982, President Leopoldo Galtieri resigned and was replaced by another military general, Reynaldo Bignone, who led the Junta until the next year when he too resigned.⁶⁷ On October 30, 1983, Argentina held elections that were recognized as open and free by outside observers, and on December 10th, Raúl Alfonsín became the first president in Argentina's return to democracy.⁶⁸ He spent the majority of his presidency battling the economic depression that faced his country after the failure of several economic initiatives implemented by the Junta. It was not until two years after the end of the war that Alfonsín reestablished diplomatic contact—but not formal relations—with the United Kingdom, resulting in the lifting of British economic sanctions against Argentina.

⁶⁶ Strange. 254-255, 274.

⁶⁷ "1982 Falklands War Timeline."

⁶⁸ "Alfonsín adelante en la Argentina," *La Nación*. October 31, 1983, 1, 21.

The most drastic changes, however, took place on the Islands themselves. The British armed forces became thoroughly vested in the infrastructure of the Islands, sharing buildings such as the post office and airport with the local civilian population. The territory's telephone system was overwhelmed and had to have its capacity doubled in order to meet the increased demand placed on it by the presence of the soldiers. Because of the damage caused by the Argentine invasion and the subsequent British retaking of the territory, the roads were rendered all but impassable and travel throughout the territory was all but impossible. The overland roads leading into Stanley, in particular, were heavily mined by the Argentines during the final stages of the occupation, which made travel not only difficult but dangerous.⁶⁹

The image and idea of the "Islas Malvinas" became a national rallying point for both the Argentines and the British, respectively. After the military victory in the South Atlantic, the British Conservative government received a boost in popularity that undoubtedly played a part in the reelection of Margaret Thatcher's government to another term. Public support of her handling of the war fomented her success. There were no antiwar rallies or great outcries against the use of force in the British press. In fact, Thatcher had an 84% approval rating at the time of the cease-fire.⁷⁰ Before the conflict, Great Britain had clearly recognized the Islands in the South Atlantic as part of their sovereign territory because of the constant irritation from Argentina over this fact.

⁶⁹ Strange, 291,-292, 296-298, 308.

⁷⁰ Thomas Pakenham. "Behind the Falklands Victory." *New York Times*, July 11, 1982.

Soon after the war that the British government solidified its connection to the people of the Islands by making them full British citizens with the passage of The British Nationality Bill in March 1983.⁷¹ The British Nationality (Falkland Islands) Act 1983 established full British citizenship for all British dependent territories citizens of the Falkland Islands—as established under the British Nationality Act 1981—and those who have “settled” in the Islands. All future persons born in the Islands who have one or more parents that meet this definition of citizenship are also British citizens.⁷² On May 21, 2002, all British overseas territories citizens became British citizens with the passage of the British Overseas Territory Act 2002.⁷³

On November 4th, 1982, the UN General Assembly passed Resolution 37/9 explicitly calling both Argentina and Great Britain to resume discussion of the sovereignty of the Falkland Islands.⁷⁴ However, neither nation was ready to do this; the wounds of the war were still open. Diplomatic relations between Argentina and Great Britain remained severed until 1989 with the adoption of the Sovereignty Umbrella, which is explored in depth in the next chapter. This agreement allowed the two countries to set aside the issue of sovereignty temporarily so that they could discuss other matters of mutual concern, such as issues of fisheries cooperation and air and maritime communications. This

⁷¹ Strange, 310.

⁷² Parliament of the United Kingdom. “British Nationality (Falkland Islands) Act 1983.” March 28, 1983. < http://www.legislation.gov.uk/ukpga/1983/6/pdfs/ukpga_19830006_en.pdf>.

⁷³ Home Office UK Border Agency, “Who is a British overseas territories citizen?” <<http://www.ind.homeoffice.gov.uk/britishcitizenship/othernationality/britishoverseasterritories>> (accessed April 24, 2011).

⁷⁴ U.N. General Assembly, 55th Plenary Meeting.

agreement also lifted all remaining economic sanctions imposed by Great Britain on Argentina.⁷⁵

⁷⁵ "International Agreements involving the Falkland Islands."
<<http://www.falklands.info/history/agreement.html>> (accessed March 2, 2011).

Chapter Four

Politics of the Falkland Islands (Islas Malvinas) Today

Introduction

In this chapter, the thesis will explore the more recent developments in the debate over the sovereignty of the Falkland Islands. Looking into the domestic political situation of Argentina and its relationship with the United Kingdom and the international community, specifically the United Nations, reveals a still changing position on the reclamation of the Islands as Argentine sovereign territory. Especially in their attitude towards the war and its immediate aftermath, Argentina has created a nuanced public opinion of the Malvinas that condemns the violence of the military Junta but maintains their claim to the Islands. Through what can be considered a public image campaign, the process of *desmalvinización* (demalvinization in English) worked to accomplish this goal of recrafting the public perception, both nationally and internationally, of the relationship between Argentina and the Falkland Islands in the years after the war. Further, the Kirchner governments have created a contradiction between what they have said in speeches to the Argentine people and what they are actually doing to accomplish the reclamation of the Falklands.

In the 1990s Argentina concluded a series of bilateral agreements

with the United Kingdom establishing a more cooperative attitude and relationship concerning the use of the Falkland Islands territorial waters. It marked a strong step away from the animosity of just a few years before. Argentina and the United Kingdom were willing to agree to set aside the majority of the dispute concerning sovereignty to improve their use of the South Atlantic. This attitude prevailed in the Argentine government until after the economic collapse in 2001 and the election of Kirchner as president. In the last eight years, he and his wife Fernandez have aggressively reasserted the Argentina claim to the sovereignty of the Falkland Islands. And during this time, the United Nations has reiterated its plea for a long-term resolution of the dispute, but it has done very little to bring about this discussion.

Desmalvinización

Demalvinization describes the rewriting of the history of the Falklands War and the demonization of the officials of the Junta.⁷⁶ The war has been reduced in importance to a caprice of the Junta's oligarchy, but the desire to reclaim the Islands as part of Argentine sovereign territory has become a part of the Argentine national identity. Even within the new democratic administration, there was a desire to move forward past the history with the Junta. For example, during his presidency Carlos Menem pardoned almost all of the Junta government officials, leaving only those who could be held most responsible to

⁷⁶ Fernando Cangiano. "¿Qué es la "desmalvinización"?" February 4, 2008. <http://www.izquierdanacional.org/soclat/articulos/que_es_la_desmalvinizacion/> (accessed February 26, 2011).

be tried by the Argentine courts for their human rights violations, signifying a desire to forget the negative aspects of this period in Argentine history. A new president, a new system of government, and an economic recession in the 1980s gave the Argentine people enough new problems.

In the years after the war, the government of Argentina aimed to alter the image and memory of the war, exclusively blaming the top ranking officials in the Junta for all the negative consequences in the post war and for the ravages that the soldiers suffered during the war.⁷⁷ With this attitude, the Argentine government sought to resume negotiations over the sovereignty of the Falkland Islands. Declaring the Junta an illegitimate form of government for Argentina allowed the new democratic government to say the Junta's actions had done nothing to change the state of the sovereignty of the Falkland Islands and had done nothing to reduce the position of Argentina in any negotiations. Alfonsín and Menem removed the legitimacy of their dictatorial predecessors while restoring confidence in the new government. At least in the minds of the *desmalvinizadores*, Argentina could and should return to the path it was on towards reclaiming sovereignty over the Islands before the Junta took its "shortcut."⁷⁸ In short, Argentina wanted to pretend that the war never happened.

Agreements

Because of the distinction created by the demalvinization between Argentina's claims to sovereignty and the violence of the war, the new Argentina

⁷⁷ Cangiano.

⁷⁸ Palermo, 306-308.

was able to forge bilateral agreements with the United Kingdom in the late 1980s and 1990s. Both countries were able to recognize the existence of the dispute in such a way that they were able to put it aside and agree that any future actions taken would not change the status quo of the sovereignty and would not affect any future negotiations of the islands. President Menem defended the first of these agreements concluded between his government and the United Kingdom to the Argentine people saying that the war had been lost and every defeat has its consequences.⁷⁹

In October 1989, the Argentine and British governments sent representatives to Madrid to discuss the status of relations between their countries and to examine ways to improve their relationship, bearing in mind the Falkland Islands. On October 19th, the delegations released a joint statement covering issues such as the reestablishment of consular relations, the removal of barriers to Argentine merchant vessels in the Falkland territorial waters, and the lifting of all remaining economic restrictions imposed by both countries that had been in place since 1982. These concessions were possible because

2. Both Governments agreed that:

(1) Nothing in the conduct or content of the present meeting or of any similar subsequent meetings shall be interpreted as:

(a) A change in the position of the United Kingdom with regard to sovereignty or territorial and maritime jurisdiction over the Falkland Islands, South Georgia and the South Sandwich Islands and the surrounding maritime areas;

(b) A change in the position of the Argentine Republic with regard to sovereignty or territorial and maritime jurisdiction over the Falkland Islands, South Georgia and the South Sandwich Islands and the surrounding maritime areas;

⁷⁹ Palermo, 319-320.

(c) Recognition of or support for the position of the United Kingdom or the Argentine Republic with regard to sovereignty or territorial and maritime jurisdiction over the Falkland Islands, South Georgia and the South Sandwich Islands and the surrounding maritime areas.

(2) No act or activity carried out by the United Kingdom, the Argentine Republic or third parties as a consequence and in implementation of anything agreed to in the present meeting or in any similar subsequent meetings shall constitute a basis for affirming, supporting, or denying the position of the United Kingdom or the Argentine Republic regarding the sovereignty or territorial and maritime jurisdiction over the Falkland Islands, South Georgia and the South Sandwich Islands and the surrounding maritime areas.⁸⁰

This created what became known as the Sovereignty Umbrella, which allowed both the Argentine and British governments to freeze the negotiations over the sovereignty of the Islands in 1989 and continue working to improve diplomatic relations without weakening or strengthening the position of either country in any future negotiations. Because of the text of this agreement, Argentina and the United Kingdom were able to work together rather harmoniously to their mutual benefit.

While the Sovereignty Umbrella enabled the future agreements as a result of the 1989 meeting, another important point resulted from this negotiation. Because the 1982 war had not ended well for the Argentine government and the threat of future use of force had hampered the development and reconstruction of the Falklands since 1982:

3. The two Governments confirmed their commitment to respect fully the principles of the Charter of the United Nations, in particular:

- The obligation to settle disputes exclusively by peaceful means; and
- The obligation to refrain from the threat or use of force.

The two Governments noted that all hostilities between them had ceased. Each Government undertook not to pursue any claim against the other,

⁸⁰ British and Argentine Delegations. "Joint Statement of 19 October 1989."
<<http://www.falklands.info/history/1989agreement.html>> (accessed March 1, 2011).

including nationals of the other, in respect of loss or damage arising from the hostilities and all other actions in and around the Falkland Islands, South Georgia and the South Sandwich Islands before 1989.⁸¹

Argentina and the United Kingdom agreed to refrain from the use of force. It is more than understandable that the British would ask for the exclusion of the use of force and that the Argentines would agree to it, considering it had only been seven years since the end of the conflict.

As agreed upon at the first meeting in 1989, the delegations of the United Kingdom and Argentina met again in Madrid on the 14th and 15th of February, 1990, to discuss further how they could improve their bilateral relations, the condition of the people living in the South Atlantic, and the economic exploitation of the Islands and the surrounding waters. This agreement is important because in it neither nation makes concessions or gains in the negotiation of sovereignty. The only mention of the sovereignty issue comes at the very beginning of the statement when both nations “reaffirmed that the formula on sovereignty over the Falklands Islands (Islas Malvinas)...applied to this meeting and its consequences.”⁸² Both Argentina and Great Britain have, in this agreement, moved past their differences to establish a working relationship in matters of mutual interest, such as the expansion of the fishing industry and the exploration of possible offshore oil well drilling. Both countries also resumed diplomatic relations that included the reopening of embassies, and the lifting of

⁸¹ Ibid.

⁸² British and Argentine Delegations. “Joint Statement of 15 February 1990.” <<http://www.falklands.info/history/1990text.html>> (accessed March 1, 2011).

the Protection Zone surrounding the Islands meaning that Argentine warships and aircraft were no longer excluded.

In that same year, both Argentina and the United Kingdom concluded another agreement over the protection of fish stocks in the South Atlantic. A commission made up of delegations from both Argentina and the United Kingdom would meet every two years to ensure the continued prosperity of the fishing industry in the area.⁸³ In 1995, Argentina and Great Britain entered into another joint agreement, this time concerning offshore hydrocarbon exploitation. They established another commission to meet twice annually to establish guidelines for exploring the future of offshore drilling in the waters around the Falkland Islands. Agreeing to establish commissions to govern the harvesting of fish stocks and oil well exploration demonstrates a level of cooperation between Argentina and the United Kingdom that would have been unthinkable during the Junta administration. Little more than a decade had passed since the losses and horrors of the Falklands War and already the two countries were willing to negotiate over the use of territorial waters that they both claimed. The 1995 agreement, however, excluded the waters surrounding South Georgia and the South Sandwich Islands.⁸⁴ Both agreements began by reiterating the protections against changes in the sovereignty established by the 1989 Umbrella agreement. Both of these agreements are marked by their practicality and strict adherence to issues of mutual economic benefit to both

⁸³ British and Argentine Delegations. "Joint Statement of 28 November 1990." <<http://www.falklands.info/history/90fishjoint.html>> (accessed March 2, 2011).

⁸⁴ British and Argentine Delegations. "Joint Declaration of 27 September 1995." <<http://www.falklands.info/history/95agree.html>> (accessed March 2, 2011).

Argentina and the United Kingdom. It is clear that the relationship between both countries was improving at this time. One factor that may have led to this was the decreasing importance of the sovereignty claims in the 1990s. Menem had already demonstrated a desire to sweep unsavory parts of Argentine history under the rug with the mass pardoning of lower level Junta officials. Perhaps he was attempting to do something similar with the Argentine claims to sovereignty in the Falkland Islands because they were an inconvenient part of Argentina's diplomatic relationship with the United Kingdom and he recognized their weakness legally.

In the summer of 1999, the delegations from Argentina and the United Kingdom met again in Madrid to discuss issues greater than cooperation in developing the use of resources in the territory surrounding the Falkland Islands, such as the amelioration of the diplomatic and cultural wounds left by the war. The United Kingdom agreed to allow Argentine citizens to travel freely to the Falklands and that the resumption of air travel from mainland Argentina was important to the development of the Islands, although the only flights mentioned by name in the agreement were those operated by a Chilean corporation and would have to originate in Chile. The British and Falkland delegations also talked about "Confidence Building" measures. They agreed on the erection of a monument to the Argentine soldiers that were killed and buried on the island. In exchange, the Argentine government agreed to look at the toponymy—the study of place names—of the Islands. Argentina agreed to consider accepting the English place names and abandon the Spanish versions.

Lastly, both nations agreed to work together to find a feasible solution to the large number of land mines left buried in the soil of the Falklands.⁸⁵

The 1999 Agreement contains elements of both a pragmatic evaluation of the situation in the Falklands and a negotiation over the future of their sovereignty. The resumption of flights and the deregulation of travel for Argentine nationals represented a desire to continue to improve the economic situation of the Falkland Islands by increasing tourism. But the second part of the Agreement, the "Confidence Building" measures, indicated a move towards the give and take of a legitimate negotiation over the state of the sovereignty of the Islands. For the Argentines to consider renouncing their Spanish place names for the Falklands and its geography and cities would be like admitting defeat in their pursuit of their claim.

In 2001, Argentina and the United Kingdom concluded two more agreements dealing with flights by private civilian aircraft, navigation of private vessels, and a study on the feasibility of mine clearance on the islands. Both of these follow-up agreements lacked the fanfare of the agreements in the 1990s although they were just as diplomatically and legally binding.⁸⁶ This reduction in the formality surrounding agreements between the United Kingdom and Argentina could have signaled a new era of relations in which both countries are able to effectively and efficiently cooperate in matters of mutual interest. It seemed as if the Sovereignty Umbrella could be invoked automatically and that

⁸⁵ British and Argentine Delegations. "Agreement of 14 July 1999."
<<http://www.falklands.info/history/99agree.html>> (accessed March 2, 2011).

⁸⁶ "International Agreements involving the Falkland Islands."

the profitability of the region was more important than trying to revive old rivalries. But the economic crisis in 2001 in Argentina removed all focus from the Falkland Islands until the election of Kirchner in 2003.

The Kirchners and the Malvinas

If the 1990's were a period of reconciliation between Argentina and the United Kingdom, the 2000's were a period of Argentine expansionism. Excluding 2001-2003, when Argentina underwent a major economic crisis resulting in the rapid turnover of the presidency almost a dozen times in three years, Argentina has made the sovereignty of the Falkland Islands a sticking point in its relationship with the United Kingdom and the international community. This is in large part due to the efforts of the late former president Kirchner (2003-2007) and his now widow President Fernandez (2007-present).

The Kirchner government has made a habit of saying one thing and doing almost nothing when it comes to the Falkland Islands. According to some analysts, Kirchner had been using the "Malvinas question" as a political crutch and had repeatedly called for a renewal of negotiations and discussion over the sovereignty of the Islands to improve his domestic political situation.⁸⁷ For example, in 2004, less than a year after assuming office and on the anniversary of the Falklands War, Kirchner reaffirmed the Argentine commitment to reclaiming the islands by saying that nationality cannot be recovered from one's knees, it is recovered with peace, with love, but with dignity. He ended his

⁸⁷ Sophie Arie. "Argentina snubs UK over oil deal as anniversary nears." *The Telegraph*, March 29, 2007.

statement with a phrase printed on many Malvinas protest signs: that the Malvinas are and will be Argentine.⁸⁸ This gave an early indication of the level of priority that the Kirchner government would ascribe to the issue of the Malvinas. But his comments do not reflect the reality of the dynamic between Argentina and the United Kingdom relating to the strength of their claims under international law. I think Kirchner here began to use claims to the Falkland Islands as part of his public rhetoric in stead of advancing the legal claims. In 2005 on the anniversary of the conflict, Kirchner renewed his affirmation that the Falklands will return to their former status as part of Argentine sovereign territory. He stated that the recovery of the Islands is a permanent objective of the Argentine people.⁸⁹ One year later, he made similar statements commemorating the anniversary of the conflict with a renewal of the Argentine people's commitment to the Malvinas.⁹⁰ The Argentine claim to the Falkland Islands holds a special significance to the Argentine people, and Kirchner's repeated invocation of it on the anniversary of the Argentine invasion of the Islands indicates a more rhetorical use of the claims rather than a realistic pursuit of them under international law. Repeating every year that the Falklands belong to Argentina will not make it so, but it will remind everyone in Argentina that they want it to be so and that their government wants it, too.

In 2007, days before the 25th anniversary of the invasion, Argentina withdrew from the 1995 Hydrocarbons Agreement. As part of this agreement,

⁸⁸ "Aniversario de la invasión a islas Malvinas." *El Universo*, April 3, 2004.

⁸⁹ "Malvinas: Kirchner reclama soberanía." *BBC Mundo*, April 3, 2005.

⁹⁰ "Kirchner: recuperación de Malvinas es irrenunciable." *Los Tiempos*, April 3, 2006.

Argentina and the United Kingdom have cooperated in joint efforts to make the extraction of oil and gas reserves a profitable possibility. After concluding the agreement, both states developed their own interpretation of the areas of seabed they were supposed to be exploring for oil, and citing this as a failure of the British to respect the terms of the agreement regarding cooperation, the Kirchner government unilaterally ended an agreement that had been formed as part of an effort to improve relations between the Argentines and the British. The British and Falklands governments responded by stating that the withdrawal of Argentina changed nothing in the current situation of oil exploration, and that this “symbolic snub” would do the opposite of what Kirchner intended. After ending the 12-year long agreement, the Argentines only caused the British line to harden.⁹¹

On April 21, 2009, Argentina submitted a claim to the United Nations Commission on the Limits of the Continental Shelf (CLCS) of a vast area of ocean that includes the Falkland Islands, South Georgia, the South Sandwich Islands, and parts of Antarctica.⁹² The CLCS has the power to recommend the delineation of the edges of continental shelves based on submissions by coastal states. The limits of the shelf established on the basis of recommendations from the CLCS are binding under the United Nations Convention on the Law of the Sea.⁹³ The Argentines submitted nearly a ton of documents in support of this claim that

⁹¹ Arie.

⁹² U.N. Commission on the Limits of the Continental Shelf, “Submissions to the CLCS.” <http://www.un.org/Depts/los/clcs_new/commission_submissions.htm> (accessed April 18, 2011).

⁹³ U.N. General Assembly, “United Nations Convention on the Law of the Sea.” December 10, 1982.

were the result of 11 years of scientific research into the extent of the Argentine continental shelf. According to current international law, a state's "ownership of the continental shelf can exceed 200 nautical miles until its natural extension ends."⁹⁴ If the UN approves this claim, Argentina will have gained important leverage in the negotiation with the United Kingdom over the Islands and in the negotiation with the United Kingdom and Chile over the Antarctic. The UN, however, will not make a decision based on any of this evidence until the dispute between Argentina and the United Kingdom is resolved because it does not wish to prejudice any delineation of borders between states.⁹⁵ On May 11, 2009, the United Kingdom submitted its own claim to the CLCS concerning the Falkland Islands, South Georgia, and the South Sandwich Islands.⁹⁶

With the death of Kirchner in October 2010, some analysts thought that the tension between Argentina and Great Britain over the issue of the Falklands would be relieved. Fernandez had been seen to rely heavily on the counsel of her husband, and it appeared as though he were the more passionate about the issue of the Falkland Islands.⁹⁷ Conversely, many analysts recognize Fernandez as being capable in her own right, and she has pursued the Malvinas Question with just as much fervor and passion as her late husband. She has been likened to Margaret Thatcher as the Iron Lady, and the last few years have been compared to the years building up to the 1982 conflict. In February, Argentina announced

⁹⁴ Candace Piette. "Argentina claims vast ocean area." *BBC News, Buenos Aires*, April 22, 2009.

⁹⁵ Ista Binnie. "Argentina's New Claim to Falkland Islands Rejected." *The Argentina Independent*, May 4, 2009.

⁹⁶ U.N. Commission on the Limits of the Continental Shelf

⁹⁷ Robin Yapp. "Falkland Islands tensions could be eased with death of Nestor Kirchner, analysts predict." *The Telegraph*, October 28, 2010.

what could be considered a blockade of shipping in the waters around the Falkland Islands by requiring a special permit to use the Argentine national waters. However, it is unlikely that Argentina would resort to the use of force, at least not yet. Currently, British and European firms are willing to undertake the “heavy-lifting” of establishing the rigs and drilling the wells in the Falklands Basin. Some journalists believe that Argentina would be wise to wait until these projects are paid for, before they make any aggressive moves to reclaim the islands, meaning that a territory with already built infrastructure would be more worthwhile than one with only partially established industries.⁹⁸ On April 1, 2011, President Fernandez repeated the annual Argentine expression of its desire to reclaim the Falklands and asked again for the British government to resume negotiations over sovereignty.⁹⁹ It would seem that she is as willing to pursue these claims in public discourse as her late husband was.

The UN Committee on Decolonization

In 1960, the United Nations General Assembly adopted Resolution 1514, the Declaration on the Granting of Independence to Colonial Countries and Peoples, also known as the Declaration on Decolonization. In this resolution, the General Assembly proclaimed that the existence of what it calls Trust or Non-Self-Governing Territories was contrary to the ideals of the United Nations Charter and should be brought to a swift end. The resolution pushed for the

⁹⁸ Simon Tisdall. “This isn’t Falklands II.” *The Guardian*, February 17, 2010.

⁹⁹ “La presidenta de Argentina reclama las Malvinas/Falklands en el 29 aniversario de la guerra.” *BBC Mundo*. April 2, 2011.

independence of all such territories but also recognized the right of self-determination for every territory, meaning that territories could choose to continue their relationships with the governing territory. Although the language of the resolution suggests that the writers intended the right of self-determination to undermine the subjugation of peoples in a colonial context, it is currently being used by the Falkland Islands to defend their close relationship with the United Kingdom. The Falkland Islanders have repeatedly stated that they want to remain a part of the United Kingdom and affirmed the connection between their governments. In 1962, the United Nations created the Special Committee on Decolonization to ensure the adoption of the tenets of the Declaration on Decolonization and to advise countries on the application of Resolution 1514.¹⁰⁰

Since its creation, the Special Committee on Decolonization has sought to improve the political situations of dozens of Non-Self-Governing Territories and has seen the successful independence of roughly 60 colonial holdings. There are just 16 Non-Self-Governing Territories remaining today. Interestingly, the United Kingdom administers ten of them, and they are almost exclusively island territories. Gibraltar is a notable exception to this rule.¹⁰¹ Since the inclusion of the Falkland Islands in the list of Non-Self-Governing Territories in 1965, the Committee has repeatedly called for a negotiation between Argentina and the

¹⁰⁰ U.N. Committee on Decolonization. "History."

<<http://www.un.org/Depts/dpi/decolonization/history.htm>> (accessed March 24, 2011). and U.N. General Assembly, 947th Plenary Meeting. "Resolution 1514 (1960) [Decolonization]" (A/RES/1514). December 14, 1960. (Mimeo).

¹⁰¹ U.N. Committee on Decolonization. "Non-Self-Governing Territories."

<<http://www.un.org/Depts/dpi/decolonization/trust3.htm>> (accessed March 24, 2011).

United Kingdom to bring a lasting resolution to this dispute. As recently as June 2010, the Special Committee on Decolonization has reiterated its annual call for a negotiation between Argentina and the United Kingdom to reach a long-term, peaceful, and just resolution to their dispute.¹⁰² The United Kingdom has resisted for years any sort of negotiation like this citing the right of self-determination by the Islanders to remain British.

¹⁰² U.N. Secretariat. *Special Committee on Decolonization Recommends General Assembly Reiterate Call For Resumption of Negotiations over Falkland Islands (Malvinas)*, 2010. June 24, 2010. (Press Release GA/COL/3212).

Chapter Five

Conclusions

The disputed sovereignty of the Falkland Islands is an issue that has endured the passage of almost two centuries and has seen the conquest of the territory on more than one occasion (1833 and 1982). The thesis has determined certain realities of the situation in the Falklands and the relationship among Argentina, the United Kingdom, and the people of the Falkland Islands. First and foremost among them is the distinction between the types of claims made by Argentina. Especially with the advent of the Kirchners in the government of Argentina, their administrations have repeatedly called for the return of the Islands, but they have done very little, excluding the submission of new territorial claims to the CLCS, to promote the legal claim. Argentina would be hesitant to submit their claims to an international court because it is more than likely aware of the contradiction it is creating with its claims.

It can be determined that the Falklands War did nothing to alter the state of the sovereignty of the Falkland Islands in favor of Argentina. In fact, none of the efforts of the Argentine government before, after, or during the war to reclaim the territory can be seen to have shifted anything in the favor of Argentina. All the war accomplished was to reaffirm the dominance of the United Kingdom.

Kingdom in the Falkland Islands and humiliate an already weak military dictatorship within Argentina.

The past twenty years of interaction between Argentina and the United Kingdom can be divided into two distinct periods: reconciliation (1990s) and attempted expansion (2000s). Argentina is still in its period of attempted expansion and the recent actions of the Argentine government reveal its aggressive desire for the Falklands to once again become the Malvinas. Given the current trajectory of the negotiation between Argentina and the United Kingdom—nonexistent—there is no foreseeable change in the future of the sovereignty of the Falkland Islands. They are currently and will remain sovereign British territory. Because of the lengthy duration of the current period of British possession, the United Kingdom has most likely acquired the sovereignty of the Islands through prescription, be it acquisitive or extinctive. But this is not to say that Argentina would be amenable to renouncing its claim. Just as the British have become entrenched in their position against any sort of negotiation over sovereignty, the Argentines are becoming more aggressive in their pursuit of just such a negotiation. The relationship between Argentina and the United Kingdom will most likely become increasingly antagonistic over this issue without a change in the leadership of Argentina.

For the past decade, the politics of Argentina have been dominated by Kirchnerismo, the election of the Kirchner family and support of its political philosophy. It has created a small dynasty with power being passed from husband to wife in an election for the first time. However, the future of the

Kirchner dynasty is uncertain. It had been assumed that Kirchner would run for reelection in 2011, but his death in October 2010 has left Kirchnerismo without a clear candidate. It is most likely, however, that Fernandez will run again. Even if Fernandez is less vehement than Kirchner, that is not to say that Fernandez will ignore the issue of the Falkland Islands, but it is possible that she will spend her efforts on issues more central to Argentina.

Because the Falkland Islands case has never been submitted to an international court or arbitration, there is no definitive ruling to look at and determine who has the superior claim to sovereignty. If the case were submitted to a court any time within the next decade or perhaps even later, the ruling would undoubtedly be in favor of the United Kingdom. This does not mean that the Argentine claim is unfounded or without merit, but with every passing year of the British occupation of the Islands, the Argentine claim becomes weaker and the British claim stronger. There is no indication that either state is willing to submit to any kind of binding arbitration or adjudication. The United Kingdom feels secure in its position and sees no need to entertain any possibility of losing the Islands when the Falkland Islanders provide a ready excuse for avoiding an outside resolution: self-determination. To avoid resolution in the court system, Argentina seeks a solution through diplomatic channels, currying the support of fellow Latin American nations in a hope to place the United Kingdom in a position to be forced to turn over the Islands in the face of overwhelming international opinion. Argentina constantly finds itself weaker than it started in the debate, so it has had to invent new ways to maintain its claims.

There are only a few foreseeable reasons that would cause a change in the South Atlantic. First, just such an overwhelming tide of public opinion within the international community could cause the UK to reduce its involvement with the Falklands to the point of a renunciation of their relationship. The growth in the collective power of the Latin American states coupled with the waning power of the European States could cause just such a change, and it is possible that such a shift in global power is already underway. This, however, is no guarantee that the Islands would become Argentine rather than independent, especially because the Islanders are already British citizens. Second, if the opinion of the Falkland Islanders were to shift towards a desire to join with Argentina or become independent, then most likely the United Kingdom would be forced to recognize this new development in the Islanders' self-determination. The dissolution of the British Empire in the past 60 years suggests that the British are disposed to releasing their former colonial possessions. Third, if the United Kingdom and Argentina were to submit to a binding arbitration of their claims, then a resolution could be reached. But none of these outcomes are likely to occur in the near future.

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