

# The Sovereignty Dispute Over the Falkland Islands

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## The Sovereignty Dispute Over the Falkland Islands

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### Legitimacy and Political Authority: The Sovereignty Dispute Over the Falkland Islands/ Islas Malvinas

#### INTRODUCTION

There have been more than one hundred territorial disputes since World War Two (Huth, 2001) and by 2013, 51 of these remained unresolved (Osterveld et al., 2015) thus showing the United Nations' limited power to resolve certain international conflicts. One of those disputes is that of the Falkland Islands (Islas Malvinas in Spanish). The archipelago is located about 300 miles from Argentina, almost 1,200 miles from Buenos Aires and about 8,000 miles from London (Lindsey, 1983). The Falklands are administered by Britain, with a substantial degree of self-government but claimed by Argentina. In 1982, after seventeen years of failed diplomatic negotiations, Argentina attempted to take the islands using military action and Britain responded by sending a task force, restoring British rule after two months of armed conflict. Almost 1,000 people lost their lives during the war (Viana, 2015). Far from resolving the controversy, the war made the prospect of an eventual settlement even more difficult. Why is the Falkland Islands dispute relevant in the early 21st century? This is a concerning issue because the United Nations (henceforth, the UN) has not only been unable to resolve the conflict, it also failed to prevent the war and became more of an obstacle towards finding a peaceful solution than a facilitator (Gonzalez, 2013). This paper will demonstrate how complex this issue is; nevertheless, this sovereignty dispute is undeniably less intricate, for example, than the Israeli-Palestinian conflict, currently involving five million Palestinian refugees (UNRWA, 2015). If after half a century of diplomatic negotiations the UN is still powerless to resolve the Falklands dispute; would it be realistic to expect an effective and peaceful solution to other, more complex disputes, such as the Israeli-Palestinian example? The specific research problem concerning this dissertation is the UN's limited means to fulfil its obligations towards 'maintaining international peace and security' (UN, 1945: non-paginated) stated in Article 1 of the Charter.

This research has an interdisciplinary approach, including elements of political theory and history, as well as international law. Heywood (2011:25) argues that "politics and history are inextricably linked", but what is history? Carr (1990:30) describes history as "a continuous process of interaction between the historian and his facts, an unending dialogue between the present and the past". Heywood (2011) notes that in the world of politics, not solely history but also theory is important, because "it gives shape and structure to an otherwise shapeless and confusing reality" (ibid: 53). The Falklands' controversy is examined here within the theoretical framework of International Relations, giving particular attention to two of its key theories: realism and liberalism. From a realist perspective, history does not move forward, it repeats itself, international relations are characterized more by conflict than cooperation and states have primacy in an international system that is in a constant state of anarchy. Nation-States act only to promote their national interest, that is, self-preservation and must rely on self-help (Griffiths, 2007; Halliday, 1994; Heywood, 2011). From a liberal perspective, international politics can be better understood by giving importance to nation-states as well as other key actors, in a world in which progress is possible and history is "characterised by a growing prospect of international cooperation and peace" (Heywood, 2011:15). The UN is underpinned by liberal principles. However, even though it has brought a certain degree of international cooperation for more than seventy continuous years, yet there is a strong tension between its liberal values and the "bloody reality of world politics" (Reisman, 1983:312). The Falkland Islands' controversy illustrates the extent to which Reisman is correct.

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Four key political concepts will be discussed in order to provide a conceptual framework for analysis. These concepts are: political authority, sovereignty, self-determination, and colonialism; It will be essential to identify and examine the complex interaction between these concepts as well as their evolution over time. Leach *et al.*, (2011:3) define authority as “the rightful use of political power, or legitimate use of power. Power may compel obedience, while authority is widely accepted by those over whom it is exercised”. Yet another key concept for this study is sovereignty, meaning “ultimate power, not subject to any higher authority” (Calvert, 1982:1). During the 19th and first half of the 20th century, a number of European states practiced colonialism, defined by Loomba (2005:8) as “the conquest and control of other people’s land and goods” but in 1960, the UN started the process of decolonisation, when a “Third-World dominated General Assembly began to preach the end of colonialism and the paramountcy of self-determination” (Gonzalez, 2013:20). Self-determination is defined by Toase (2005:148) as the peoples’ “right to be allowed to determine freely their own political status”. Heywood (2011:114) notes that the UN operates in a framework that follows the principle of external sovereignty, which “guarantees that the territorial integrity and political independence of each state is inviolable”, nevertheless as long as the principle of external sovereignty is given unquestionable supremacy, a serious concern exists that nation states could treat their citizens in any way that suits the state, highlighting the inevitable tension between external sovereignty and human rights (Heywood, 2011).

In present times, Argentina claims that Britain’s possession of the Falklands is an attack on its territorial integrity and demands that sovereignty over the archipelago is transferred, disregarding the wishes of the islands’ population. Britain, argues that all peoples have the right to self-determination and as long as the islanders wish to ‘keep the Falklands British’ this should remain so. The Argentine claims are based on events which occurred over 180 years ago, when Britain allegedly usurped the islands. Britain’s claims are based on the present situation, arguing the rights of the islanders should be respected according to 21st century democratic standards. The Falkland Islands controversy covers a broad period of time; however, it would not be possible to offer an objective assessment of it without evaluating the assertions made by both claimants. Bearing in mind these remarks, the main purpose of this undergraduate dissertation will be threefold: it will highlight the main claims made by Argentina and Britain, consequently, it will evaluate the validity of such claims and finally, it will answer a key question the UN has so far been unable to answer: who has the legitimate political authority over the Falkland Islands?

## CHAPTER ONE

Calvert (1982) suggests the roots of conflicting sovereignty claims over the Falklands refer back to the middle ages, when it was believed that all earthly power came from God, and the Pope had the power to arbitrate on territorial conflicts. In 1481, Pope Sixtus IV issued the Bull *Æterni regis*, which confirmed Castile’s sovereignty over the Canary Islands and gave Portugal possession of *all* further territorial acquisitions west of them (Daniel and Ezpeleta, 2013). In 1493, Pope Alexander VI issued *Inter caetera*, which made *Æterni regis* obsolete by giving to Spain all overseas territorial possessions west and south of a particular line of demarcation (Muldoon, 1978). In 1494, Spain and Portugal, without any involvement from the Pope and excluding all other European states, signed the Treaty of Tordesillas (Hope, 1983), in which the line of demarcation was shifted and “all newly discovered lands to the east to be Portuguese and to the west to be Spanish” (Calvert, 1982:2-3). It is important to highlight the shift at the time, from absolute papal authority towards the so-called divine right of kings, marking the beginning of a slow process, which in 1648 led to the Peace Treaty of Westphalia and “recognition of the rights of each sovereign prince to determine the internal elements of his state” (Bethlehem, 2014:13) and so the international system was born, with the idea that clearly defined geographical units interact between them without any higher ruling authority, underpinning, still today, the core realist premise of state-centrism, which considers the nation-state as “the key actor in the domestic realm and on the world stage” (Heywood, 2011:4). It is essential to bear in mind the extent to which Papal Bulls and later international treaties sometimes became obsolete shortly after being signed, reflecting a particularly delicate balance of power; every time this balance changed new treaties were created to reflect the new balance of power (Escudé, 1986).

Goebel (1982: 2) notes that, “upon more than one occasion when the title to the [Falkland] islands was under discussion, the right to occupy and possess was grounded upon the allegation of discovery”. Landaburu, (1989) mentions a number of explorers who *may* have discovered the islands: Vespucci (1502), working for Portugal, Magallanes (1520), working for Spain and the English sailors Davis (1592) and Hawkins (1594). For Goebel (1982) the first navigator to voyage into the lower South Atlantic and potential discoverer was Vespucci. However, Groussac

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(1936: 150) argues that even “if Vespucci discovered the islands, he didn’t have such authority, since he represented Portugal and the Malvinas are to the west of the [1494] line of demarcation”. Escudé, (1986), Hastings and Jenkins, (1983) and Reisman (1983) point out that it is unlikely it will ever be known who discovered the Islands, although, for Groussac (1936:165), “from the point of view of international law, the Spanish sovereignty over the Malvinas started on the same day of discovery and possession of the River Plate”. The importance of Groussac (Ibid)’s perception that Spanish and later Argentine rights to the Falklands are unquestionable cannot possibly be overstated: his book *‘Les îles Malouines’*, with highly selective historical data, became an essential school text book in 1930s Argentina. Carr (1990:11) argues that “every journalist knows today that the most effective way to influence opinion is by the selection and arrangement of the appropriate facts”. This paper will show that Groussac (1936) was neither the first nor the last person to follow that journalistic practice in relation to the Falklands.

We may never know who discovered the Falklands but what we *do* know is that their first recorded name was given by Dutch sailor Sebald de Weert in 1600, who called them ‘Sebald Islands’ (Escudé, 1986). In 1690, English sailor Strong made the first undisputed landing on the Falklands as well as the first sailing across the channel which divides the two main islands (Groussac, 1936; Strange, 1981), calling it ‘Falkland Channel’, from which their second name derives. The third name was given by the first recorded settlers the Falklands ever had, a French colony established in 1764, which called them ‘îles Malouines’ (Goebel, 1982). The current Spanish name, ‘Islas Malvinas’, the fourth in chronological order, is a translation of the French name (Honeywell and Pearce, 1982). Escudé (1986) gives particular attention to the chronological order in which the islands were named, adding that also in chronological order Spain was the third state to settle on the Falklands. Calvert (1982:5) argues that “the absence of a Spanish name for the islands is the clearest possible proof that they were neither discovered nor settled in the first instance by Spain”. However, Calvert (ibid) stops short in acknowledging the Falklands were not first discovered, named or settled by Britain either. Hastings and Jenkins, (1983:2) note that although the Treaty of Utrecht of 1713 gave Spain control over its overseas territories in the Americas, the 18th century was characterised by a strong trade rivalry between Spain, Britain and France.

In 1749 Britain requested permission from Spain for an expedition to the Falklands, permission was not granted and the British withdrew this plan (Lindsey, 1983). The first settlement, called ‘Port Louis’, on East Falkland, was that of Bougainville, who in 1764 took formal possession for France (Goebel, 1982). Nine months later, Commodore Byron landed on Saunders Island, established ‘Port Egmont’ and formally declared British possession of “this harbor and all the neighboring Islands” (cited in Goebel, 1982: 232). According to Goebel (ibid.) Byron was unaware of the French settlement as he had left Europe before the public announcement of it. In 1766 the British and French found each other and “the Falklands thus stumbled onto the stage of world politics” (Hastings and Jenkins, 1983:3). The Spanish were furious at what they regarded as a breach of the treaty of Utrecht by Britain and France. Spain complained to France and negotiations were soon on the way for a transfer of rights from France to Spain (Lindsey, 1983), this task was completed in 1767 in return for indemnity from Spain and Port Louis was renamed ‘Puerto de la Soledad’ (Calvert, 1982). Port Egmont remained under British control (Etchebarne Bullrich, 2000).

In 1770, a Spanish naval force expelled the British garrison from Saunders Island (Landaburu, 1989), this development nearly led to an Anglo- Spanish war, however, Spain chose to disown this action (Calvert, 1982), a diplomatic settlement was reached, war was avoided and the British were allowed to return to Port Egmont. According to Goebel (1982) there was a ‘secret negotiation’ by which Britain promised to leave the islands as soon as possible, however, no official document has ever been found to evidence this (Escudé, 1986). One way or another, Britain left Port Egmont in 1774 and did not return to the Falklands until 1833. Goebel (1982) notes the request for seamen to leave Port Egmont was related to an economy measure and they were instructed to leave “the proper marks or signs of possession and of its belonging to the Crown of Great Britain” (Ibid: 409). The inscription left on May 20th 1774 by the British read:

“Be it known to all nations that the Falkland Islands, with this fort, the storehouses, wharfs, harbors, bays, and creeks thereunto belonging are the sole right and property of His Most Sacred Majesty George the Third, King of Great Britain, France and Ireland” (Cited in Goebel, 1982:140)

In 1776 Spain created the Viceroyalty of the River Plate (Landaburu, 1989), with Buenos Aires as its capital, and

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which jurisdiction included today's Argentina, Bolivia, Paraguay, Uruguay and the Falkland Islands (Kohen, 2006). Goebel (1982) argues that between 1774 and 1811, Spain exercised sovereignty over the Falklands without any British protest. The settlement was abandoned in 1811, when as a result of the independence wars in Buenos Aires. In the same way British settlers had left a plaque asserting rights to the Falklands, the Spanish left their own version of it:

"This island, with its ports, buildings, dependencies and contents, belongs to the Sovereign King Fernando VII of Spain and his indies, Soledad of Malvinas, 7th February 1811" (cited in Destefani, 1982:71)

The 1810 May revolution marked the final separation between Buenos Aires and Spain and 6 years later emerged the United Provinces of the River Plate, declaring independence from Spain in 1816 (Freedman, 2005). According to Landaburu (1989), the period marked the transition in which the Falkland Islands, following the *Uti Possidetis* principle, were transferred from Spain to the Viceroyalty of the River Plate, and finally to the United Provinces of the River Plate. *Uti Possidetis* suggests that "borders should be those that the respective countries had possessed at the time of their independence from Spain" (Hensel et al., 2006:10). However, Metford (1982) and Hensel et al. (2006) note that the *Uti Possidetis* principle was initially an agreement between Latin American states, it could only be applied to conflicts between them, and it was not formally adopted until the Congress of Lima in 1847-1848, almost four decades after the alleged inheritance from Spain.

Calvert (1982:18) argues that "the United Provinces were anything but united"; The new nation had serious internal disagreements and soon after independence, even though Buenos Aires expected to continue being the capital of the whole territory formerly under the jurisdiction of the Viceroyalty, as many provinces refused to recognise Buenos Aires' authority, leading this to a serious crisis of legitimacy in which vast areas which would eventually form Bolivia, Paraguay and Uruguay decided to become independent from Buenos Aires (Palermo, 2007). This shows that the idea that modern day Argentina inherited from Spain the area formerly administered by the Viceroyalty of the River Plate, including the Falkland Islands, has to be taken with extreme caution. The islands remained empty between 1811 and 1826, with the exception of a brief visit in 1820 by Captain Jewitt, an American at the service of the United Provinces navy who claimed sovereignty on their behalf, before returning to Buenos Aires (Metford, 1982).

In 1825, The United Provinces and Britain signed the "Treaty of Friendship, Commerce and Navigation", in which Britain recognized the 1816 Independence Declaration, Landaburu (1989) and Taiana (2011) note this treaty does not mention any territorial dispute between the two states. In 1829 Buenos Aires appointed Vernet as Governor of Malvinas (Goebel, 1982), five months later The British Chargé d' affairs, Woodbine Parish, officially complained to the Minister of Foreign Affairs in Buenos Aires "The Argentine Republic, in issuing this decree assumed authority incompatible with His Britannic Majesty's rights of sovereignty over the Falkland Islands" (Cited in Freedman, 2005: 6). If there was a belief in Buenos Aires that the United Provinces had inherited the islands from Spain, what became clear was that in fact the Provinces actually inherited a territorial dispute with Britain, still present to this day.

The 1820 United Provinces' claim over the islands had made no effect on fishing activities from other nations. In 1831 Vernet seized three American vessels fishing in Falklands' waters and sailed to Buenos Aires in one of them to put it to trial (Metford, 1982). The American consul in Buenos Aires protested and Captain Duncan, sailed to the islands with USS Lexington, destroyed the military installations at Port Soledad and declared the islands free of all government (Freedman, 2005). In 1832 Buenos Aires sent Mestivier to the Falklands as a new acting commander but within a few weeks, Mestivier was killed by his own soldiers (Strange, 1981). In January 1833, while Argentine Commander Pinedo was attempting to re-establish order, Captain Onslow arrived in East Falkland "to take possession in the name of his Britannic Majesty" (Goebel, 1982:455). The Argentine garrison was expelled (Groussac, 1936) but the small civilian population present on the islands was encouraged to remain there (Fitte, 1974:373). Argentina formally protested to Britain but the official answer was that British rights to the Falklands were "founded upon original discovery and subsequent occupation" (Palmerston, 1834, cited in Groussac, 1936:163).

Goebel (1982:468) brings his research to an end suggesting the validity of the Argentine claims are unquestionable but it is unfortunate his extraordinary study only covers the period up until 1833 because, for example, according to the Foreign Office, (1862) and Publicación Oficial (1863), in 1849 Britain and Argentina signed the "Convention for

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re-establishing the perfect relations of friendship between Her Britannic Majesty and the Argentine Confederation”, also known as the “Southern-Arana Treaty”. This peace treaty brought to an end the British and French blockade of the River Plate. It was ratified by Queen Victoria on 14th February 1850 (Publicación Oficial, 1863:180) and by General Juan Manuel de Rosas on 10th May 1850 (Publicación Oficial, 1863:176), with ratifications exchanged in Buenos Aires on 15th May 1850 (Foreign Office, 1862:7). Clause VII describes the “perfect friendship between Her Britannic Majesty’s Government and the Government of the Confederation” (Foreign Office, 1862:10; Publicación Oficial, 1863:175). The wording used in this convention suggests there were no pending issues between the two nations since it would be unreasonable to suggest two states can have a ‘perfect relationship’ while having a territorial dispute.

The matter seemed to be finally settled in 1850, further evidence to support this claim is the Latzina map (Latzina, 1883) (appendix B1), printed under the auspices of the Argentine President, Juárez Celman, and officially approved by the Argentine Congress (United Nations, 2006). This map includes the southern tip of South America, with Argentina printed in darker colours than its neighbouring countries. ‘Islas Malvinas’ are shown outside Argentine jurisdiction, printed in the same colour as Chile and Uruguay (Latzina, 1883). Other maps followed, also excluding the islands from the Argentine territory, for instance, one printed by La Prensa (1887) (Appendix B3), although it has to be mentioned that a later version of the Latzina map does show the Falklands as part of the Argentine territory (Latzina, 1888) (Appendix B4). In 1888 Paz Soldán (1888a) (Appendix B5) published a map of “Gobernación de Tierra del Fuego e Islas Malvinas”, with Falklands considered as part of the Argentine territory; In contrast with another Paz Soldán map (1888b) (Appendix B6) printed in the same year, which excludes the Falklands from the Argentine territory. There were further Argentine maps excluding the islands even into the first years of the 20th century, for instance, one printed by the Argentine War Ministry (Ministerio de Guerra, 1905) (Appendix B.7). The noted maps clearly show that Argentina’s position towards the Falklands at the end of the 19th century was far from consistent. There were a number of short-lived Argentine protests to Britain in 1884, 1885, 1888 and 1908 (Beck, 1988) but the economic relationship between the two states was so important that the issue was “forgotten” for the time being (Etchebarne-Bullrich, 2000: 156).

Chapter one has set the historical scene of the Falklands discussion. Goebel (1982) argues that in 1833 Argentina was exercising its legitimate sovereignty over the islands and he may be correct, but history did not stop in 1833. By giving so much attention to issues like the alleged ‘secret agreement’ between Spain and Britain and focusing on developments *pre*-1833, he chose to ignore historical facts which occurred only a few years after the alleged British conquest of 1833; For instance, the 1850 ratification of the “Convention for re-establishing the perfect relations of friendship between Her Britannic Majesty and the Argentine Confederation” (Foreign Office, 1862; Publicación Oficial, 1863). Had Goebel included the noted Convention, his conclusion could have been favourable toward Britain. Did Argentina have any rights to the islands when it declared sovereignty over them in 1820? The Falklands had been under Spanish rule and in Buenos Aires’ jurisdiction for nearly half a century. According to Beck (1988) any British rights had lapsed since Britain had left the islands four decades earlier and Spain did not show any particular interest in returning to the Falklands after 1811. One way or another, it seems that Britain, being the most powerful empire at the time, took by force the archipelago from a young and powerless nation, while Argentina was fighting its own civil wars. It must also be highlighted that Britain never had a settlement on East Falkland until 1833. Was the British return to the Falklands just a “petty conquest” as described by Lindsey (1983:30)? Reisman (1983:304) argues that “stolen or not, the islands became British according to the prevailing international law”, suggesting that force was a legal way to acquire title to a territory in 1833. The next chapter will give Reisman’s statement the importance it deserves.

## CHAPTER TWO

In 1910, de Bernhardt produced a memo for the Foreign Office which had the implication that in 1833 Britain seized control of a legitimate Argentine possession (Lanús, 2011). In 1927, the British ambassador in Buenos Aires, after reading de Bernhardt’s memorandum contacted the Falklands’ governor stating “I had no idea of the strength of the Argentine case, nor of the weakness of ours” (Robertson, 1927, cited in Beck, 1988:52). The memorandum remained unpublished and those doubts only existed in private. In the same year de Bernhardt’s memo was completed, Chueco (1910), published in Buenos Aires “La República Argentina en su Primer Centenario”, which included a map (ibid: 39) (appendix B.8), depicting the southern tip of South America, including Argentina, its

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neighbouring countries and “Islas Malvinas ó de Falkland”. However, those islands are not named in chapter XV, which explores in detail the entire Argentine territory. There is another map (ibid: 54) (appendix B.9), comparing the geographical area covered by Argentina against the size of some European countries which also excludes the Falklands. Chueco’s publication seems to suggest that in 1910, the perception that the Malvinas were part of the Argentine territory was in doubt in important Argentine publications. The situation was about to change in Buenos Aires as well as London.

In the 1930s Argentina suffered what would later be called ‘*the infamous decade*’, triggered by its first coup d’état, and to a greater extent, the country’s political instability that brought to an abrupt end a period of economic prosperity. It is in that historical context that the sovereignty dispute over the Falklands reawakens in Buenos Aires, with the government actively promoting “the indoctrination of public opinion through the dissemination of maps and school textbooks with explicit references to the nation’s rights over the Malvinas” (Gonzalez, 2013:25). At the same time but on the other side of the Atlantic, the British government, after accepting that events prior to 1833 were not as supportive to the British claims as first thought, reached the conclusion that “one hundred years’ possession, whether disputed or not, should find a perfectly sound title to sovereignty in international law” (Beck, 1988:53).

The 20th century, described by Hobsbawm (2002, non-paginated) as “the most murderous in recorded history” had a significant impact on the Falklands controversy as well as on the broader arena of world politics. 1914 witnessed the beginning of World War One, arguably brought to an end in 1919 with the Treaty of Versailles and the creation of the League of Nations. Heywood (2011:32) notes that “World War I was meant to be the ‘war to end all wars’ and yet, within a generation a Second World War broke out”, the League of Nations proved to be ineffective towards its purpose of promoting world peace. Carr (1970) dedicated “*The 20 years’ crisis, 1919-1939*” to “the makers of the coming peace” (Carr, 1970:iv), not because he believed, like the liberals, that “self-interest could be replaced by the shared objective of security for all” (Burchill and Linklater, 2009:1), instead, Carr (1970), as well as Morgenthau (1993), concluded that the only way to properly reform and improve international relations is by taking into account the struggle for power inherent in the international system, which is exactly what the League of Nations had failed to do (Burchill and Linklater, 2009). The League of Nations’ failed to avert World War Two but the end of the war brought the creation of the UN, also based upon liberal principles and with the same objective of promoting international peace. However, the UN is significantly different from The League of Nations’ in one key respect; it appears to acknowledge the struggle for power inherent in the international system by adopting its Charter and subsequent resolutions designed in an “often vague and ambiguous” way thus taking into account opposing national interests which “find a common basis on which all those different national interests can meet in harmony” (Morgenthau, 1993:259).

In 1960 the UN General Assembly adopted Resolution 1514 entitled “Declaration on the Granting of Independence to Colonial Countries and Peoples” (UN, 1960a: non-paginated). In 1961, the UN created the Special Committee on Decolonisation with the purpose of monitoring the implementation of Resolution 1514 (UN, 1964). Most Falkland Islands’ key debates between Argentina and Britain during the 20th century occurred within the framework of the UN process of decolonisation. However, is the process of decolonisation truly related to the Falklands? The main purpose of such process is to grant independence to subjugated peoples but in this case, none of the political actors involved has ever shown any interest in transforming the islands into an independent state, moreover, the islands’ population are by all accounts not subjugated by a colonist power and from the Argentine viewpoint, they are not ‘a people’ either, but “British citizens who live in the Islas Malvinas” (Timerman, 2013, in McElroy, 2013). The UN has other important bodies which could address this sovereignty issue more appropriately, for example, the International Court of Justice, described by Heywood (2011: 342) as “the most far-reaching attempt to date to apply the rule of law to international disputes”. It has to be mentioned that the Falkland Islands dispute has never been brought for arbitration to the International Court of Justice (Beck, 1988).

In 1965, the General Assembly adopted Resolution 2065 inviting Argentina and Britain to enter negotiations in order to resolve this sovereignty dispute. Resolution 2065 was a direct result of Argentine ambassador Ruda’s speech to the Decolonization Committee, described by Argüello, (2011: 70) as “the cornerstone of the obliged source of consultation about the Question Malvinas”. It is unfortunate that Gonzalez’s (2013) detailed research of the Argentine- British negotiations of the 1960s, in more than 200 pages chose to focus on the *results* of Ruda’s speech without assessing the accuracy of its assertions. A critical analysis of the 1964 speech shows it contains a significant

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number of historical inaccuracies, which raises serious questions about the real, as opposed to imaginary strength of the Argentine claims.

Ruda (2015) argued that the Falklands were undoubtedly discovered by Spanish navigators thanks to whom Spanish maps started including the islands between 1526 and 1529. In contrast, Escudé, (1986), Hastings and Jenkins, (1983) and Reisman (1983) point out it is unlikely it will ever be known for sure who discovered the Falklands. Furthermore, Escudé, (1986) and Groussac, (1936) note it was only after a Dutch explorer's voyage to the South Atlantic, in 1600, that these islands were added to maps. Ruda (2015) also stated that the British left a plaque in Port Egmont claiming the Falkland's *island*, in singular, belonged to King George III, and, in any case, only a plaque could not possibly give any right to sovereignty since it was against the international law of the time. First of all, Ruda clearly confused the 1774 British plaque which stated "the Falkland Islands *are*" (in Goebel, 1982: 140), in unambiguous plural, with the Spanish plaque left on East Falkland in 1811 which did refer to "this island", in singular (Destefani, 1982:71). The fact that Britain and Spain left signs informing of their intentions not to abandon the territory suggests that it was according to common practice of the time. Ruda also argued that almost all Argentine settlers were expelled from the islands in 1833 but according to Fitte's research (1974), only 4 civilians chose to leave, and by 1851, almost 70 people from the pre-1833 civilian settlement were still living on the islands (Etchebarne Bullrich, 2000). Even today, the English speaking islands' population uses Spanish words inherited from the pre-1833 settlement (Niebieskikwiat, 2014). Lastly, Ruda (2015) suggested that when Britain and the United Provinces signed the 1825 Treaty of Friendship, Britain, by not mentioning explicitly there was a pending territorial dispute, implicitly recognised Argentina's sovereignty over the islands. If this was valid criticism, in any case, Ruda conveniently forgot to mention the Southern-Arana treaty, signed in 1849 and ratified in 1850, after nearly two decades of effective British administration of the Falklands, which describes the "perfect relationship" between Argentina and Britain and made no reference about any pending territorial disputes either.

Should the Argentine and British claims be judged by 19th century or by present standards? Judge Huber, in the international arbitration of the Island of Palmas case, stated that "a juridical fact must be appreciated in the light of the law contemporary with it" (Huber, 1925, cited in Elias, 1980:286). Sharma (1997) argues that the use of force was a perfectly legal way to acquire title to a territory until 1945. Furthermore, according to Elias (1980:292) "the state that is in effective occupation at the time of the dispute should be deemed to possess a superior title, since modern international law does not accept an abstract title unsupported by effective occupation". If the interpretations of international law included above are accurate, even if any previous British rights had lapsed, Britain acquired the sovereign right to the Falklands in 1833 following the law at the time, perhaps not in an admirable manner but still legally (Reisman, 1983). Ruda's 1964 speech raises at least two major questions: why did he make such a number of inaccurate assertions if the Argentine rights to the Falklands are as strong as he wanted the UN to believe? This certainly undermines any credibility towards the Argentine claims. There is another important question; were the British representatives at the UN unaware of Ruda's inaccurate claims? Or were those representatives unwilling to challenge them?

In answer to the first question, it appears that Ruda was attempting to achieve a resolution favourable to Argentina, even if this meant deliberately misleading the Decolonisation Committee. Why did Britain not challenge this? The British representatives did not want to attract any unnecessary attention, because, unlike Argentina, Britain had other pending colonial issues at the UN, one of them was, Diego Garcia, one of the islands that form the Chagos archipelago, in the Indian Ocean. In 1965, British ministers offered the man who would become the first Mauritian Prime Minister, Seewoosagur Ramgoolam, independence from Britain in exchange for three million Pounds and accept the detachment of Chagos from Mauritius, or no independence at all. Ramgoolam accepted independence in those terms (Vine, 2009). Between the 1960s and 1970s, more than 2.000 native islanders were expelled from Diego Garcia, without any consultation and denying them the right to self-determination (Gonzalez, 2013; Honeywell and Pearce, 1982; Pilger, 1998; Vine, 2009). Once Diego Garcia was uninhabited, without any involvement from the UK Parliament or American Congress, Britain leased the island to the United States, in order to build a US military base (Pilger, 2004). The fact that British colonialist ambivalence honours self-determination to the Falkland Islanders but denied this to the native population of Diego Garcia does not mean the international community should ask or allow Britain to repeat a wrong and deny this right to Falklanders as well.

In 1965 the UN General Assembly adopted resolutions 2065 and 2066, on the questions of The Falkland Islands

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(Malvinas) and Mauritius respectively. Resolution 2065 invited the governments of Argentina and Britain to proceed “with the negotiations recommended by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples” (UN, 1965) (Appendix A3). In contrast, resolution 2066 explicitly mentions the “inalienable right of the people of the Territory of Mauritius to freedom and independence” and invites the administering power, Britain, “to take no action which would dismember the Territory of Mauritius and violate its territorial integrity” (UN, 1965: non-paginated). It must be highlighted that Resolution 2065 is particularly unhelpful, since it does not suggest either that the Falklands’ population have the right to self-determination or that the islands are perceived as part of the Argentine national territory. There were 17 years of failed diplomatic negotiations between Argentina and Britain after the adoption of Resolution 2065.

In *Mein Kampf*, Hitler (1926:708, cited in Carr, 1970:210), argued that “the winning back of lost territories is not achieved through solemn invocations of the Lord God or through pious hopes in a League of Nations, but through armed force”. Hitler’s statement relates to the realist belief that states can only rely on self-help, and places a strong emphasis on the idea that the most effective tool for a state to protect its territory is not through diplomacy but by actual armed force. As if inspired by Hitler’s words, on 2nd April 1982, the military junta governing Argentina decided to take by force the territory their country had been unable to ‘recover’ by diplomatic means and invaded the Falklands. The civilian population on the islands was assured it would be protected and respected in every possible way but at the same time the Argentine military imposed an order for all vehicles to be driven on the right-hand side of the road (Middlebrook, 1989), mail from the islands became postmarked ‘Islas Malvinas, República Argentina’ (Beck, 1988:5) and Port Stanley was re-named “Puerto Argentino” by national decree (Infojus, 1983). Toase (2005) notes that Argentina violated the UN Charter, which prohibits the use of force in international relations; however, Argentina’s foreign Minister at the time, Costa Mendez, suggested that the “Charter’s reference to the non-use of force only applied to disputes which began after 1945, when the Charter came into effect” (Costa Mendez, 1982, cited in Toase, 2005:155). Swiftly after the Argentine invasion, the UN adopted resolution 502 (Appendix A4) demanding “an immediate withdrawal of all Argentine forces from the Falkland Islands” (UN, 1982: non-paginated), Argentina ignored this resolution and Britain responded by sending a task force. On 26th May, the UN adopted Resolution 505 (Appendix A5) demanding a cessation of hostilities, however, this resolution was also ignored, this time by both sides. The realists secretly rejoiced: this was pure realism in action; two UN members went to war with each other, openly disregarding resolutions adopted by the General Assembly. The war continued until Argentina surrendered after an armed conflict in which almost 1.000 people lost their lives (Viana, 2015). The UN became a powerless bystander, failing its primary obligation towards maintaining international peace and security.

It is essential to highlight that regardless of which state had the strongest claims, the Falklands remained administered by the strongest military power, thus showing there is a stark difference between people having the right to self-determination and being able to exercise it; without the British Armed Forces, it is unthinkable the Falklands’ population would have been able to recover their freedom. Perhaps the best example to illustrate this is the case of Diego Garcia; Pilger, (2004, non-paginated) highlights the way in which in 1982 Britain sent a fleet to “save two thousand Falkland Islanders at the other end of the world, while two thousand British citizens in islands in the middle of the Indian Ocean had been expelled by British governments. The only difference was that one lot were white and the others were black”. In 1982 the British Government paid four million Pounds to the Mauritius Government as a final settlement of all claims on the condition that the Ilois people would not be returning to Diego Garcia (Colling, 1999). In the same year, Britain had spent an estimated seven hundred million Pounds during the Falklands war, in order to defend the Falkland Islanders right to determine their own way of life and political future (Thatcher, 1982, in New York Times, 1982).

It is beyond the scope of this paper to explore the reasons for the 1982 war, or its broader political consequences, although it must be said the Falklands War changed radically the fortunes of British Prime Minister Thatcher as well as Argentina’s military dictatorship (Gonzalez, 2013). President Galtieri was forced to resign three days after Argentina surrendered (Calvert, 1982) and the country held democratic elections the following year, marking the end of the military rule. In Britain, ironically, the Conservative defence cuts which to some extent encouraged the Argentine military to believe Britain would not respond to an invasion, led to a war which “as a result of victory, greatly increased the government’s popularity” (Garnett and Lynch, 2012: 451). Margaret Thatcher, who was well behind in the polls before the war, yet won the 1983 General Election by landslide (Jenkins, 2013).



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It is in this chapter that the theories of realism and liberalism clearly start to face each other. Was the 20th century characterised more by conflict than cooperation? The two world wars, let alone many other important international conflicts, seem to suggest so. Nevertheless, the creation of organisations like the League of Nations and the UN support the idea that liberalism is well prepared to challenge the realists' beliefs. This chapter highlights the extent to which international law is different from domestic law; national courts can impose a verdict on a person found guilty of an offence, in international law, in contrast, a state can simply disregard the jurisdiction of the international court of justice (Morgenthau, 1993). Argentina and Britain chose, arguably without any more attractive alternative, to bring the Falklands' issue to the Decolonisation Committee, which so far has been inadequate to solve this dispute; Both countries seem to be at odds with the UN; the former is attempting to impose alien rule over the Falklands population, the latter, wants to give the islanders the right to self-determination which no UN resolution has explicitly given to them up to this date. This chapter shows that from the standpoint of the UN, the answer to our research question is somewhat inconclusive. There is a third perspective which may help us to reach a clearer outcome to our main question: what are the roots of legitimate political authority in the early 21st century? The next and final chapter will explore that fundamental question.

## CHAPTER THREE

The last decade of the 20th century, during Menem's presidencies (1989-1999), can be described as the highest point in the Argentine- UK relations since the 1982 war (Dodds, 2007). The 1990s were characterised by the so-called Argentine 'charm offensive'; without affecting either party's sovereignty claims over Falklands, Argentina and Britain were able to re-establish a reasonably good relationship, setting aside differences and focusing on their common interests. Thanks to this initiative, called the 'sovereignty umbrella' Britain and Argentina started to cooperate on fisheries conservation and oil and gas exploration and an air link was created between Falklands and Chile overflying Argentine airspace (Dodds, 2012; Gil, 1999). At the same time, in 1994 Argentina made a constitutional amendment which included a mandate to 'recover' the full exercise of sovereignty over the islands, respecting islanders' way of life and their interests but not their wishes (appendix A.6) (Gil, 2012).

In 2001, Argentina suffered one of its worst economic and political crises (Cohen, 2012). The country changed five presidents in ten days (Clarín, 2003), the national currency lost 70% of its value and there were dramatic levels of inflation and unemployment (Hendrix, 2015). The 21st century started in Argentina by repeating a situation highlighted twice in chapter two; echoing Morgenthau's (1993:7) suggestion that "man responds to social situations with repetitive patterns", the 2001 Argentine crisis was followed, just like in the 1930s and 1980s, by an intensification in Argentine pressure towards the Falklands. Successive Kirchner governments implemented an economic blockade aimed at strangling the islands' economy. Between other measures, Argentina withdrew permission for charter flights to Falklands to overfly Argentine airspace, cancelled the 1995 oil exploration agreement around the islands and, shipping companies were not allowed to cross Argentine territorial waters when travelling to and from the Falklands (Doods, 2012; Miller, 2012; Niebiesikwiat, 2007). There were some dissenting Argentine voices against the government's strategy to 'recover' the Islands; a group of intellectuals and journalists published an open letter demanding that the islanders are included in all Falklands related discussions and the abdication of "all intention of imposing on them a sovereignty, a citizenship and a government they do not wish" (La Nación, 2012, non-paginated). There were also concerns about the practicalities of any potential sovereignty transfer as Lanata (2012) highlighted the lack of consideration towards the fate of the 3.000 people living on the islands in the unlikely event of a sovereignty transfer. How can Argentina possibly follow its constitutional mandate on respecting the interests of the islanders without having a meaningful dialogue with them? In 2009 an amended Falkland Islands Constitution came into force, enhancing the powers of the islands' Executive Council and explicitly including the islanders' right to self-determination (Falkland Islands Government, 2009). Aramburu (2012) argues that it is not a constitution as such in the modern understanding of it, since instead of being adopted by the people it has been dictated by a British Monarch. This paper will return to such argument in due course.

In 2011, Argentine defence minister, Puricelli, (2011, in Mercopress, 2011, non-paginated) described Britain as keeping "2,000 islanders hostages of its obstinate strategic motives", the following year an all-party coalition joined Argentine President Cristina de Kirchner on a formal visit to reaffirm their sovereignty claims over the Falklands' at the UN, showing a political unity beyond party politics. In March 2013, a referendum was held in the Falklands and the voting population was given the choice to change or maintain the political status of the islands. The referendum

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result was an overwhelming 99.8% for maintaining the status quo (Marroquín, 2014:413). Kohen (2014, in Maastricht University, 2014, non-paginated) argues no one should give too much attention to a plebiscite in which “British citizens were asked if they wanted to remain British”. However, the referendum question was not about the nationality of the electorate but about the political status of the islands; the specific question asked in the referendum was: “*Do you wish the Falkland Islands to retain their current political status as an Overseas Territory of the United Kingdom? YES or NO*” (United Nations, 2014:1). The referendum proceedings were supervised by an independent group of observers from Brazil, Chile, Mexico, New Zealand, Uruguay and the USA, which reached the conclusion that the “referendum process was free and fair, reflecting the democratic will of eligible Falkland Island voters” (The Referendum International Observation Mission, 2013). Argentine President Cristina de Kirchner described the islanders not as hostages any longer, but as “a bunch of squatters voting on whether or not to keep occupying a building illegally” (Kirchner, 2013, in Clarín, 2013, non-paginated).

Let us now summarise the current Argentine and British sovereignty claims so these can be evaluated. Argentina argues the islands are geographically part of its national territory, insisting that regardless of who lives on them, these were discovered by Spain, inherited by Argentina, illegally occupied by Britain in 1833 and Argentina has been complaining ever since (Kohen, 2014, in Maastricht University, 2014). The claim that Falklands are geographically part of Argentina has been described by Chehabi (1985:221) as the most attractive argument “to the layman”; since the Falklands are closer to Argentina than to Britain, it is natural to assume they belong to the former. However, “territorial proximity alone is meaningless in international law” (Chehabi, 1985:221), otherwise, Ceuta and Melilla, in Northern Africa, ironically overlooking the British Overseas Territory of Gibraltar, would not be Spanish cities, Alaska would not be part of the United States and Greenland would not belong to Denmark. Regarding discovery and further inheritance from Spain, Argentina does not acknowledge, let alone challenge, the argument that it is unlikely it will ever be known who actually discovered the islands (Escudé, 1986; Hastings and Jenkins, 1983; Reisman, 1983). Moreover, Escudé (1986), Lindsey (1983), Nixon (2013), Reisman (1983) and Sharma (1997) argue that acquiring territory by conquest was actually legal until 1945. Furthermore, the suggestion that Argentina has been complaining since 1833 is simply untruthful: the 1849-1850 Peace Treaty, which unambiguously describes the ‘perfect friendship’ between Britain and Argentina (Publicación Oficial, 1863: 175) suggests the matter was settled in the 19th century. The British argument is considerably simpler: Britain claims the islands’ population has the right to self-determination and since the 2013 referendum shows that the islanders want the Falklands to remain British, this should be so until the population decides otherwise. The inconvenience for this position is that self-determination, in practice, means *national* self-determination (Pittman, 2009). In the context of the UN decolonisation process, self-determination is about state formation and not about choosing to remain a non-self-governing territory (Toase, 2005). Was it not the case that “all peoples have the right to self-determination”? (UN, 1960a: non-paginated). Here, an important point must be highlighted, which although does not make the Argentine case any stronger, presents a problem for the islanders: the Falkland Islands are not a nation, nor part of one, the islanders have no formal parliamentary representation in the UK and pay no taxes to the British treasury (Aramburu, 2012). Individual rights *may* undermine the sovereignty of the nation state, however, in the case of self-determination; realism clearly holds the upper hand, supporting the state-centrist approach. The UN is underpinned by liberal principles; nevertheless, it honours some rights for individuals that live in a nation state but restricts the same rights to those who do not: self-determination is one of those rights. The UN appears to be ill-prepared to deal with people living in a non-self-governing territory which is unwilling or unable to declare independence. Here is the enormous difference between, for example, the possibility of Scotland declaring independence from Britain, and the people of the Falklands attempting to exercise self-determination by retaining their relationship with Britain as a non-self-governing territory.

Put concisely, Argentina claims Britain has been violating its territorial integrity since 1833. Britain argues the controversy over the Falklands should be assessed in the light of current principles, like the right to self-determination. Should the Argentine and British claims be evaluated according to 19th or by 21st century standards? Chapter two briefly mentioned the doctrine of Intertemporal Law, used by Judge Huber’s ruling in the international arbitration of the Island of Palmas case, where he concluded that “a juridical fact must be appreciated in the light of the law contemporary with it” (Cited in Elias, 1980:286). However, Huber noted that there is a difference between acquiring a sovereign title and keeping it suggesting suggests that even if a sovereign title was acquired according to the international law at the time, the only way to *continue* holding that title is if the state administering the territory is able to adjust to the evolution of international law (Huber, 1925, in Elias, 1980). This presents a problem for both claimants: Britain is ignoring the fact that, for the UN, it is not an option for Falklands to remain a non-self-governing

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territory (Willetts, 2013). On the other hand, with or without historic rights over the islands, Argentina is intending to impose alien rule over a community that, in some cases, can trace up to nine generations living in the Falklands (Niebieskikwiat, 2014). Argentina insists that “Malvinas is not an issue of self-determination, it is about sovereignty and who these islands belong to” (Timerman, 2013, cited in MinutoUno, 2013). Timerman, among many others, refers to the Falklands as if there was no population on them but Calvert (1982:145), in contrast, describes the islands as “a place where people live”.

According to Article 1 of the 1948 declaration of Human Rights “all human beings are born free and equal in dignity and rights” (UN, 1948, non-paginated). With this Article in mind, Buchanan (2003) asks a fundamental question: why is it that “if we are all fundamentally equal, some should have the power to make, apply, and enforce laws on the rest of us?” (ibid: 155). After a careful analysis, Buchanan (2003) reaches the conclusion that “any agent who attempts to impose rules on us without enjoying democratic authorisation would not satisfy the requirement of reconciling the inequality that the exercise of political power invokes with the fundamental equality of persons” (ibid:158). In other words, according to Buchanan (2003) the roots of legitimate political authority in the 21st century are in what is called ‘popular sovereignty’, the idea that “people are the ultimate source of all legitimate authority” (Duncan et al, 2009:273).

The current situation regarding the Falklands is not ideal for either of the two claimant states. However, from the perspective of Human Rights, there is sufficient evidence to suggest the British argument, although not flawless, weighs more than the Argentine. The Argentine grievances related to 1833 are real, but from a historical point of view, the Argentine arguments for sovereignty over the islands are based on wishful thinking and manipulated accounts of history, to the extent that Escudé (1986:217) calls the islands as part of Argentina’s “imaginary territory”. Heywood (2011:113) argues that “the sole legitimate source of political authority is success in regular, fair and competitive elections”, no political authority can be legitimate without democratic authorisation. This suggestion is not completely unproblematic for Britain and the islanders: although it is beyond this paper’s scope to explore the relationship between the Falklands’ democratically elected Legislative Assembly and their governor, appointed by the British monarch, it is important to return to Aramburu (2012)’s argument that not only the Governor, but also the constitution is ‘imposed’ on the islanders. In response to this, the Falklands’ referendum may only have a symbolic significance, however, it challenges head-on the claims that the islanders have a government *imposed* on them, since 99.8% of the islands’ voting population clearly accepts the constitutional arrangement in which “The executive authority of the Falkland Islands is vested in Her Majesty” (Falkland Islands Government, 2009: 31).

Perhaps Argentina’s major problem regarding the Falklands is the fact that if or when the islanders decide so, they can resort to UN resolution 1541 (UN, 1960b) (Appendix A.2), which provides three clear alternatives for the islands to become a self-governing-territory but there is no legitimate course of action for Argentina, as long as it tries to subjugate the population of the islands and impose on them a government they do not want. There is in this paper an implicit defence of the right of peoples to shape their own political lives, however, in spite of the fact that from a Human Rights’ perspective, the British argument for sovereignty over the Falklands is stronger than the Argentine, yet, it is not flawless. If we isolate this controversy from the wider context of international politics, and consider the contradictions of the Argentine claims over the islands, it is attractive to conclude the British rights over the Falklands are self-evident. However, international disputes do not happen in a vacuum, and bearing in mind the way Britain dealt with other colonies, the inconsistency of the British argument comes to light, as well as the dichotomy between positive and normative analysis of international relations. Heywood (2011) asks three fundamental questions: To what extent has the 1948 Universal declaration of Human rights truly challenged the 1648 Westphalian system? Are human rights unquestionably universal in practice, or only in theory? Do human rights apply equally to all peoples and societies? In the particular case of Diego Garcia, for instance, the way in which British citizens were expelled by a British government from their native land, was condemned and described as unlawful by the British High Court in 2000 (Vidal and Bowcott, 2012). Buchanan (2003)’s search for the roots of legitimate political authority undeniably grants the Falklands’ sovereignty to Britain. However, as noted in chapter two, the reality is that the Falkland islanders were able to counteract the 1982 invasion and the 2000s economic blockade not because of their rights, but thanks for British military and economic support respectively. It is worth mentioning that at the time of writing, Argentina seems to be going through a significant political transition, characterised less with conflict than with cooperation, in domestic and international matters. The Kirchner era appears to be over, but it remains to be seen

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what impact recently elected President Macri, will have in relation to the Falklands dispute. Nearly 20 years ago, Macri expressed his opinion that a sovereignty transfer of the islands would mean an additional deficit to the Argentine economy, in a country so large, which should not have any territorial disputes (Macri, 1997, cited in Perfil, 2015). As president, Macri is more cautious in expressing his standpoint about the Falklands, but there is a more reconciliatory tone in the new Argentine government regarding this conflict. In the Kirchner days, the dominant discourse was about “the absolute historical validity and legality of the [Argentine] claim” (Atanasof, 2011: 20); in 2016, Macri argues “we don’t renounce what we believe ours, but we are willing to dialogue” (Macri, 2016, in Minuto Uno, 2016). Is Macri starting to suggest that there may be a conflict between the Argentine beliefs towards Falklands and a potentially different reality?

With or without historical rights over the territory, as long as Argentina does not consider the wishes of the islands’ population, its sovereignty claims over the islands in question are inadequate for contemporary democratic standards. However, if the Falkland islanders are able to shape their political future, it is not because of their right to do so, instead, it is British political, military and economic power which preserves the islands’ way of life against undue external influence. There is no international legislative body to enforce the respect for human rights; this fact further supports the realist belief in the anarchical nature of international relations. As noted, realists believe that states have primacy in the international system, hence the national interest, sometimes in conflict with individuals’ rights, must come first, thus for realists, human rights are a ‘soft’ issue, as opposed to ‘hard’ concerns “such as the pursuit of security and prosperity” (Heywood, 2011:310). Perhaps the most interesting irony in the Falkland Islands dispute is having a former colonial empire, Britain, defending the liberal right to self-determination of people in one of its late colonies, on the other hand, there is a former Spanish colony, Argentina, arguing the 16th century colonial borders should be respected, regardless of the wishes of the population that lived in the Falklands for nearly two centuries.

## CONCLUSION

This paper illustrates the complexities entailed in assessing rights and wrongs in a sovereignty dispute which developed over such a long period of time. The British claim that the islanders have the right to choose their political future coincides with 21st century democratic values, by which no political authority can be legitimate without democratic authorisation (Heywood, 2011). This paper also shows Argentina is attempting to apply 21st century principles, like the illegality of conquest, to an act that occurred two centuries earlier, while its claims over the islands are based on misleading and manipulated accounts of history. Furthermore, as long as Argentina attempts to interfere with the islands’ way of life without the islanders’ consent this does not “satisfy the requirement of reconciling the inequality that the exercise of political power invokes with the fundamental equality of persons” (Buchanan, 2003:158). From a strictly legal point of view, the analysis provided suggests that Britain has a stronger claim, since, first of all, the use of force was a legitimate way to acquire title to a territory in the nineteenth century (Escudé, 1986; Lindsey, 1983; Nixon, 2013; Reisman, 1983; and Sharma, 1997) and a state which is in effective possession of a territory has a superior title, let alone when the possession existed for almost two centuries (Elias, 1980). Having said that, the only way to reach a definitive answer to this sovereignty dispute from the viewpoint of international law, would be if or when both claimant states decide to take the matter for arbitration to the International Court of Justice since the involvement of the Decolonisation Committee has been inadequate to resolve this conflict which does not involve a subjugated people. This leads us to a clear field for further research: to what extent do Argentina and Britain truly want to find a final settlement for this dispute? Do any of these states want to resolve the conflict at all? This study highlights a number of reoccurring historical patterns; one of those reoccurrences is the fact that from the onset, this dispute has been managed, as opposed to resolved, first between Britain and Spain and later between Argentina and Britain. Briscoe (2014, in Maastricht University, 2014; non-paginated), describes the Falklands’ controversy as “a dispute in both sides’ interests”. What is the impact on this dispute of other, apparently unrelated political interests? Does Britain have a Royal Navy so it can defend the Falklands *or* does Britain have the Falklands so it has an excuse to fund its Royal Navy? (Briscoe, 2014, in Maastricht University, 2014). Does Argentina truly want to resolve a dispute which, as long as it remains dormant, can be re-awakened as politics of deflection every time there is a serious crisis, such as in the 1930s, 1980s or early 2000s? There is yet another major question this short dissertation could not address: what role does oil in the South Atlantic play in this dispute? Unfortunately, answering these important questions falls outside this paper’s scope. Nevertheless, these questions do not represent a barrier towards finding a clear answer to the main question concerning this paper; in summary,

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who has the legitimate authority over the Falkland Islands? This dissertation demonstrates the legitimate political authority over the territory rests with Britain, as long as it has the consent of the islanders. However, this is not to idealise Britain as the champion of human rights; Escudé (1984:91) suggests that “for Argentines the territory is sacred, for the British it is the individual rights that are sacred”. This study shows Escudé’s suggestion is exaggerated; the inconvenient truth for Britain is that, although it is defending a community of some 3.000 people from a hostile neighbour and supporting their right to choose their way of life without undue external interference, in similar but not identical circumstances, Britain expelled the entire population of Diego Garcia from their native land during the 1960s and 1970s. Nevertheless, this is not to say the Falklands’ population should be punished for the British colonialist past. The uncomfortable truth for Argentina, is that a careful analysis of 19th century historical facts, does not support its historical claims, moreover, setting aside the significant amount of inconsistencies in the Argentine assertions, what the country is trying to do is annex, in the 21st century, a territory with no cultural links with Argentina and against the wishes of its non-Argentine permanent population. Even if the islanders have the right to self-determination, this does not mean they can automatically exercise that right; the 1982 war shows that it is not only about *who* has the legitimate authority over the Falklands, there are other important factors which determine if or when the islands’ population can exercise its self-determination. The doctrine of self-determination is highly problematic and in some cases even unenforceable; up to this date, the UN has not provided a definition of ‘a people’. Without a definition, how can anybody argue where self-determination applies and where it does not? Jennings, (1956:55-56) famously stated that let the people decide is a noble idea but “the people cannot decide until somebody else decides who the people are”. This paper illustrates that in the case of the Falklands, the key element which allows the islanders to choose their way of life is the fact that they are supported by Britain; it is hard to argue the right to self-determination *alone* would secure the islands’ population right to determine their political status. This supports the realist core premise that “the state-system operates in a context of international anarchy, in that there is no authority higher than the sovereign state” (Heywood, 2011:54). As noted in chapter two, the Falklands’ war did not change the nature or the validity of the claims made by Argentina or Britain, however, it has truly had an impact on the popular support towards each country’s stance on the matter and it will be difficult for a government on either side to reach a final settlement involving anything less than full sovereignty without paying a high political cost. It remains to be seen if recently elected Argentine president Macri’s change in the tone towards the islands supports the liberal belief that history moves towards increasing levels of progress and cooperation or, if instead, this is only a reversal, back to the sovereignty umbrella of the 1990s, until the next Argentine crisis erupts, supporting the realist premise that history simply repeats itself, endlessly.

## Appendix A –United Nations Resolutions/ 1994 Argentine Constitutional Amendment

### A.1 – Most relevant sections of UN Resolution 1514 (UN, 1960a)

Article 1: “The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation”

Article2; All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 5: Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.

Article 6: Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.

### A.2- Most relevant section of UN Resolution 1541 (UN, 1960b)

*Principle VI states that:*

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A Non-Self-Governing Territory can be said to have reached a full measure of self-government by:

(a) Emergence as a sovereign independent State;

(b) Free association with an independent State; or

(c) Integration with an independent State.

## **A.3 – UN Resolution 2065 (UN, 1965)**

“The General Assembly invites the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland to proceed without delay with the negotiations recommended by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples with a view to finding a peaceful solution to the problem, bearing in mind the provisions and objectives of the Charter of the United Nations and of General Assembly Resolution 1514 (XV) and the interests of the population of the Falkland Islands (Malvinas).

## **A.4 – UN Resolution 502 (UN, 1982a)**

The Security Council,

Recalling the statement made by the President of the Security Council at the 2345th meeting of the Security Council on 1 April 1982 (S/14944) 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 Argentine forces from the Falkland Islands (Islas Malvinas);
3. Calls on the Governments of Argentina and the United Kingdom to seek a diplomatic solution to their differences and to respect fully the purposes and principles of the Charter of the United Nations

## **A.5 – UN Resolution 505 (UN, 1982b)**

The Security Council,

Reaffirming its resolution 502 (1982) of 3 April 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 to the Security Council at its 2360th meeting, on 21 May 1982, as well as the statements in the debate of the representatives of Argentina and of 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 of the United Kingdom of Great Britain and Northern Ireland,

1. Expresses appreciation to the Secretary-General for the efforts which he has already made to bring about an agreement between the parties, to ensure the implementation of Security Council resolution 502 (1982), and thereby to restore peace to the region;

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2. Requests the Secretary-General, on the basis of the present resolution, to undertake a renewed mission of good offices bearing in mind Security Council 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.

## A.6 – Argentine constitution amendment- (Senado de la Nación Argentina, 1994)

“The Argentine Nation ratifies its legitimate and non-prescribing sovereignty over the Malvinas, Georgias del Sur and Sandwich del Sur Islands and over the corresponding maritime and insular zones, as they are an integral part of the National territory.

The recovery of these territories and the full exercise of sovereignty, respecting the way of life for its inhabitants and according to the principles of international law, constitute a permanent and unwavering goal of the Argentine people”

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