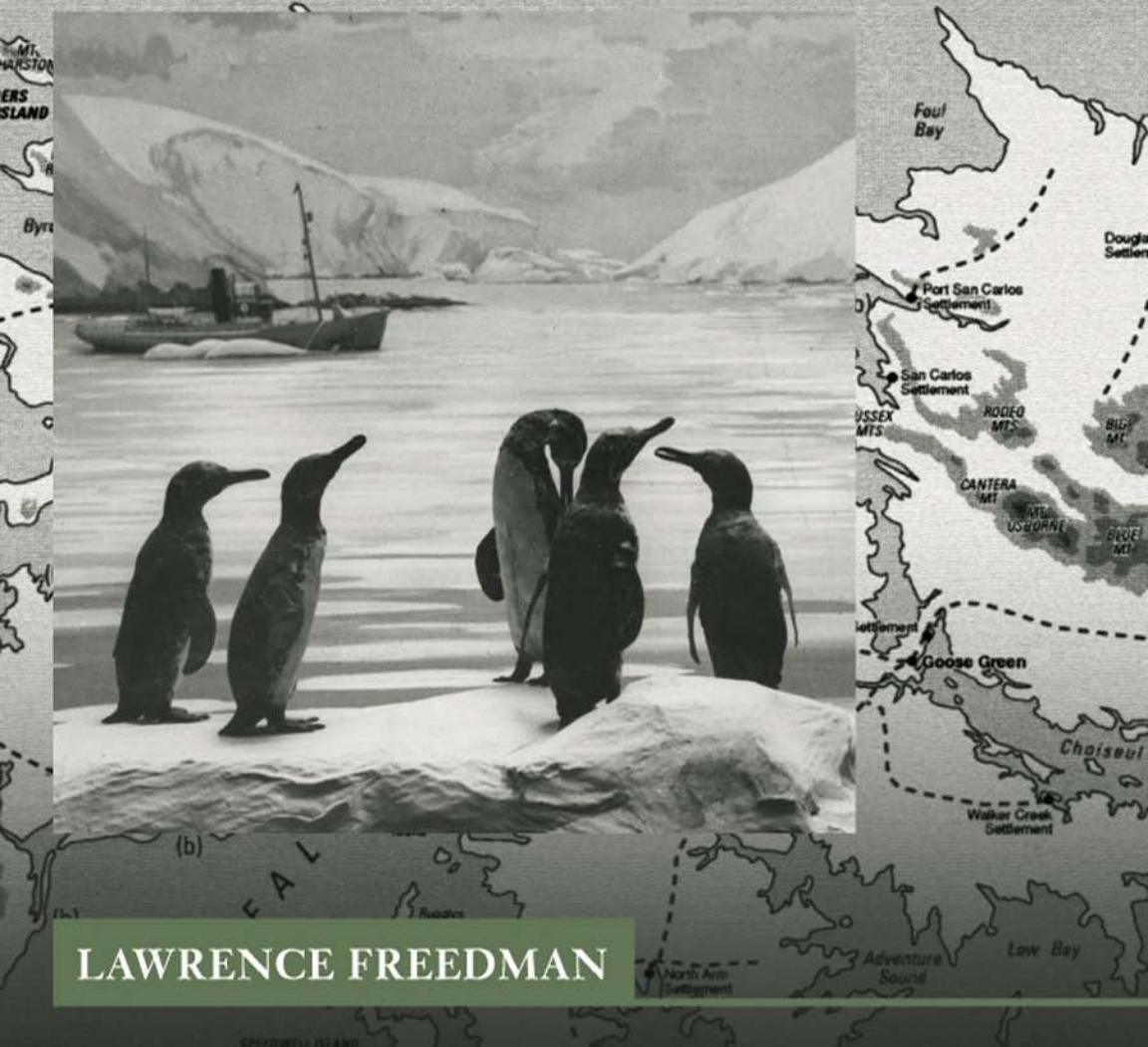


# The Official History of the Falklands Campaign

REVISED AND UPDATED EDITION

VOL. I

THE ORIGINS OF THE  
FALKLANDS WAR



LAWRENCE FREEDMAN

# THE OFFICIAL HISTORY OF THE FALKLANDS CAMPAIGN

## Volume I: The Origins of the Falklands War

Drawing on a vast range of government archives, as well as interviews with key participants, the first volume of *The Official History of the Falklands Campaign* provides the most authoritative account of the origins of the 1982 war.

In the first chapters the author analyses the long history of the dispute between Argentina and Britain over the sovereignty of the Islands, the difficulties faced by successive governments in finding a way to reconcile the opposed interests of the Argentines and the islanders, and the constant struggle to keep the Islands viable.

He subsequently gives a complete account of how what started as an apparently trivial incident over an illegal landing by scrap-metal merchants on the island of South Georgia turned into a major crisis. Thanks to his access to classified material, Sir Lawrence Freedman has been able to produce a detailed and authoritative analysis which extends the coverage given by the Franks Committee Report of 1983.

This volume is ultimately an extremely readable account of these events, charting the growing realisation within the British government of the seriousness of the situation, culminating in the Argentine invasion of the Falkland Islands at the start of April 1982.

**Sir Lawrence Freedman** is Professor of War Studies at King's College London where he is currently Vice-Principal. He has written extensively on military strategy, cold war history and contemporary conflict and is a regular newspaper columnist.

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# THE OFFICIAL HISTORY OF THE FALKLANDS CAMPAIGN

Volume I: The Origins of the Falklands War

*Sir Lawrence Freedman*



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# ABBREVIATIONS

|           |                                               |
|-----------|-----------------------------------------------|
| ASW       | Anti-Submarine Warfare                        |
| BAS       | British Antarctic Survey                      |
| BBC       | British Broadcasting Corporation              |
| C         | Head of the Secret Intelligence Service       |
| CIA       | Central Intelligence Agency                   |
| CIG       | Current Intelligence Groups                   |
| CINCFLEET | Commander-in-Chief, Fleet                     |
| DIS       | Defence Intelligence Service                  |
| DOE       | Defence Operations Executive                  |
| DP & L    | Dundee, Perth and London Securities Ltd       |
| EEC       | European Economic Community                   |
| FCO       | Foreign & Commonwealth Office                 |
| FOF1      | Flag Officer First Flotilla                   |
| GMT       | Greenwich Mean Time                           |
| HMG       | Her Majesty's Government                      |
| ICJ       | International Court of Justice                |
| IMF       | International Monetary Fund                   |
| JIC       | Joint Intelligence Committee                  |
| LACIG     | Latin America Current Intelligence Group      |
| LADE      | Líneas Aéreas del Estado                      |
| LPD       | Landing Platform Dock                         |
| LSL       | Landing Ship Logistic                         |
| MFA       | Ministry of Foreign Affairs                   |
| MoD       | Ministry of Defence                           |
| MP        | Member of Parliament                          |
| NATO      | North Atlantic Treaty Organisation            |
| NERC      | National Environmental Research Council       |
| OAS       | Organisation of American States               |
| OD        | Defence and Oversea Policy Committee          |
| OPEC      | Organisation of Petroleum Exporting Countries |

|        |                                              |
|--------|----------------------------------------------|
| RAF    | Royal Air Force                              |
| RFA    | Royal Fleet Auxiliary                        |
| RM     | Royal Marines                                |
| RN     | Royal Navy                                   |
| ROE    | Rules of Engagement                          |
| RRS    | Royal Research Ship                          |
| RTZ    | Rio-Tinto Zinc                               |
| SAS    | Special Air Service                          |
| SATO   | South Atlantic Treaty Organisation           |
| SATCOM | Satellite Communications                     |
| SBS    | Special Boat Squadron                        |
| SSBN   | Polaris Ballistic Missile-Carrying Submarine |
| SSN    | Nuclear-Powered Submarine                    |
| UK     | United Kingdom                               |
| UN     | United Nations                               |
| UNCLOS | UN Conference on the Law of the Sea          |
| US     | United States                                |
| VLF    | Very Low Frequency                           |
| WSI    | Weekly Survey of Intelligence                |
| YPF    | Argentine State Oil Company                  |

## PREFACE

This volume takes the story of the Falkland Islands up to the point when it became apparent to the British Government that an Argentine invasion was about to take place. In the next volume I deal with the consequences—military and diplomatic—of that invasion and the policies adopted following the recapture of the Islands. The fact that a British government could be caught out so badly in a long running dispute over such a remote territory led to many post-mortems, including an official review. The broad outlines of what happened over the period are well known. I believe nonetheless that the opportunity that I have had to go through the archives, as well as appraise the considerable material already in the public domain, does throw new light on these events.

I have been able to speak to many people involved in the events. I was particularly pleased to be able to visit the Falklands in March 2000 and was very grateful to the warm hospitality shown by the Governor and his staff and the islanders. I was able to interview many of the senior policy-makers, who often provided important insights and recollections. This was in addition to those that I had interviewed in the 1980s when I first began writing about these events. It is of the nature of this subject that I keep on meeting people with interesting stories to tell about this period. I am also aware of other people who might be surprised that I have not interviewed them. Often I have learned a lot about the personalities involved and attitudes towards the conflict, but in general, and notwithstanding some frustrating gaps, the great advantage of an official history is the ability to make full use of the archives.

Although this story begins in the sixteenth century, the constraints of space mean that only the first three chapters cover the period up to 1974. They draw predominantly on secondary sources which are footnoted in the text, as well as FCO Research Department memorandums on the Falkland Islands Dispute covering developments from 1965–74 together with official records from the House of Commons. The period from 1974–82 is covered in greater detail. I have used materials in the Prime Ministers' files, the relevant Cabinet Office papers, including Defence and Oversea Policy Committee minutes and memoranda<sup>1</sup>, Foreign & Commonwealth Office files, Secretary of State for Defence papers, and those of the Chief of the Defence Staff and Chiefs of Staff, including Defence Intelligence Staff files. I have also been able to consult intelligence materials, including Joint Intelligence Committee reports. Use was also made of a staff history produced by the Naval Historical Branch and papers relating to the Report of the Committee of Privy Counsellors, chaired by Lord Franks. I have also been able to make use of US documents kindly made available by the State Department and the Ronald Reagan Presidential Library.

The Franks Report addressed the issue of political responsibility for the Argentine invasion coming as a surprise. As will be seen I have some differences in analysis with this report, but my task has never been to assign blame or to make recommendations for reform. Not only was I able to review all the files prepared for Franks, and some that the Committee may not have seen, but I was also able to explore this material more fully, and with different questions in mind. One of the great breakthroughs of the Franks report was to acknowledge the role of the Joint Intelligence Committee. It is difficult to discuss events such as this without examining the influence of intelligence on policy and I believe that I have been able to do this while recognising the sensitivity of much of the material I have been allowed to see. I am grateful to the mature attitude shown by the relevant agencies in accepting the importance of this task. This attitude has extended to the Cabinet Office and the other ministries that have been involved in this project. The analysis in this history is entirely my own. No attempt has been made to suggest that some things are best left unsaid or that particular interpretations would be helpful, irrespective of the evidence supporting them.

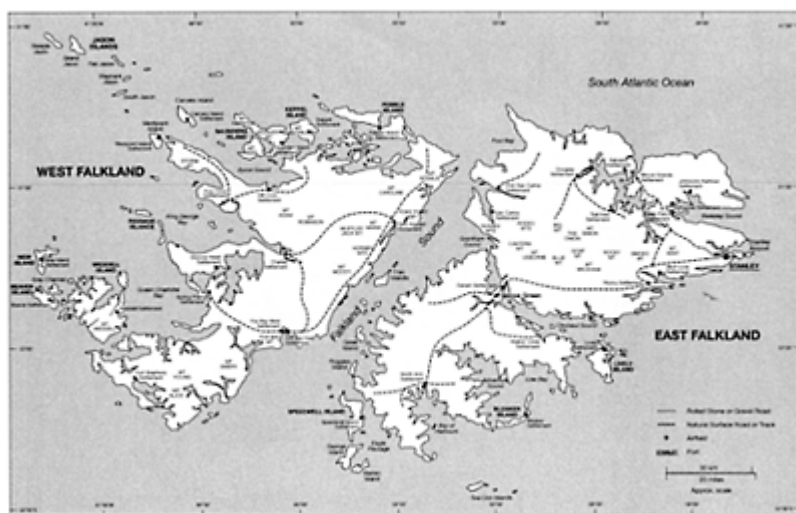
Lastly I wish to acknowledge the tremendous contribution made by my researcher, Dr Chris Baxter, without whom I would have been quite overwhelmed by the sheer volume of the material to be covered. It has also been a pleasure to work with Tessa Stirling, Head of the Cabinet Office's Histories, Openness and Records Unit, who has seen this project through from start to finish and has given me marvellous support at every stage. In this she was ably supported by Richard Ponman and Sally Falk.

### **Notes**

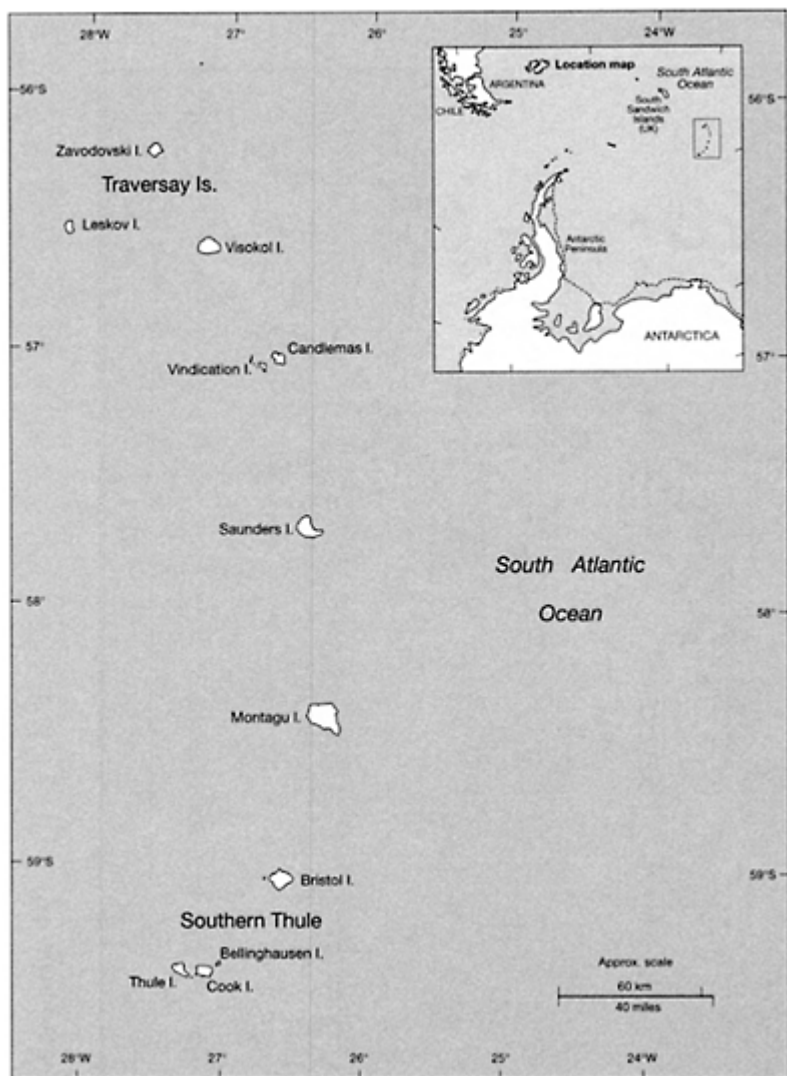
- 1 There is an alternating designation between Oversea Policy and Defence Committee and Defence and Oversea Policy Committee with changes of government. I have largely referred to this simply as the Defence Committee or OD as its normal abbreviation, but on occasion retained the full title.



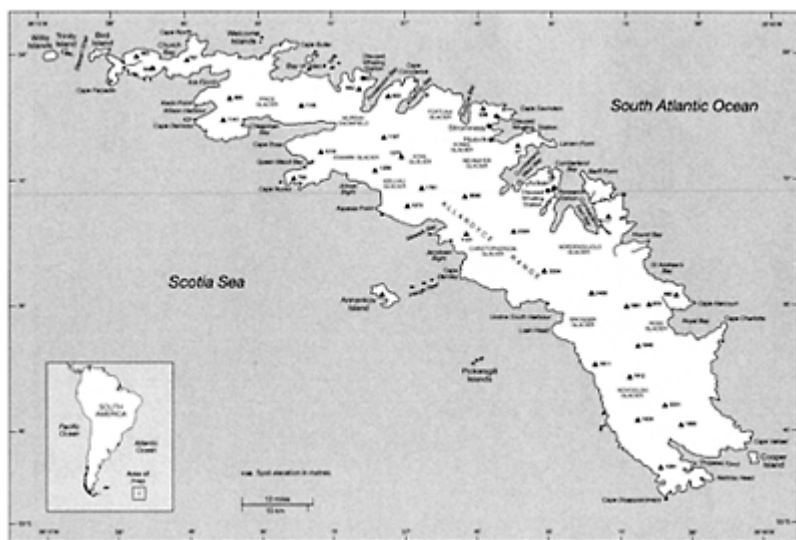
Map 1 The South Atlantic



Map 2 Falkland Islands—1982



Map 3 South Sandwich Islands



Map 4 South Georgia



## ORIGINS OF THE DISPUTE

What, but a bleak and gloomy solitude, an island thrown aside from human use, stormy in winter, and barren in summer; an island which not even southern savages have dignified with habitation; where a garrison must be kept in a state that contemplates with envy the exiles of Siberia; of which the expence will be perpetual, and the use only occasional; and which, if fortune smiles upon our labours, may become a nest of smugglers in peace, and in war the refuge of future Buccaneers.

So wrote Samuel Johnson about the Falkland Islands in 1771. He wondered then why Britain might be prepared to go to war for such a desolate place. Significantly this quote was put in the files of the Secretariat of the Chiefs of Staff at the end of March 1982, just as Britain was gearing up to war. It reappears often in later files.

Johnson's assessment of the Falklands may have been widely cited during the 1980s, but it was quite unfair. The climate of the Falklands is not at all Siberian. It is temperate, somewhat warmer than Britains in its winter although cooler in its summer. It is perfectly habitable, although there are difficulties with access and internal communications. There is a marked lack of trees although an abundance of wildlife. This archipelago in the South Atlantic Ocean consists of two large islands and about 780 smaller islands. The larger East Falkland has an area of 2,580 square miles while West Falkland, with adjacent islands, covers 2,038 square miles. The Islands are found at the eastern entrance to the Straits of Magellan and some 250 miles to the west is the Argentine province of Patagonia. About 800 and 1,300 miles respectively to the south east are South Georgia and the South Sandwich Islands, which were throughout the period covered by this account Dependencies of the Falkland Islands.<sup>1</sup>

Although South Georgia has been used by transient workers from the whaling industry in its past its sub-polar climate discourages habitation: the South Sandwich Islands are quite uninhabitable as they are mountainous, volcanic and covered with glaciers. By contrast, the Falklands have proved able to sustain a settled population and a pastoral economy. The local inhabitants became known as "kelpers" (seaweed gatherers), and anywhere outside of Stanley as the Camp, derived from the Spanish word *Campos* meaning country. By the early 20<sup>th</sup> century the community was thriving, with a non-military population of around 3,000. At the previous peak, in 1931, the population

reached 2,392. The 1980 census found a total population of 1,813, but declining at the rate of about 30 a year. All but around five percent were British, but there were some 30 Argentines, connected with the links established between the Islands and the mainland, 27 Chileans, mainly farm and road workers, and 24 Americans, largely of the Bahai faith. There were in total 589 residential buildings in the Islands (363 of them in Stanley).<sup>2</sup> Until 1982 the most important military association of the Falklands was the battle fought close by in 1914 when four German cruisers were sunk with the loss of some 1,900 men, after a squadron had been sent urgently from Britain to respond to the loss of two British cruisers in an earlier engagement.

The main problem for the Falkland Islands was, and still is, disputes over its ownership, continuing over 250 years. Since 1833 they have been under British control, and successive British governments have insisted that this is right, but an international court has never tested the claim and Argentina disagrees. This question was considered in public in a semi-formal manner a few months after the Falkland Islands had been retaken by Britain after an Argentine attempt to settle the matter in its favour by force. A Select Committee of the House of Commons addressed seriously the question of who actually owned the Islands. The Government insisted that there was no issue, but Members of Parliament were clearly troubled by a confusing story, which went some way to explaining why it was that Argentina had been so persistent in its claim. As the Committee was about to reach a conclusion, the May 1983 general election intervened, and it took until the next year before a reconstituted Committee could issue a report. The result was hardly a ringing endorsement of Britain's claim to a territory on whose behalf it had just gone to war. The Committee declared itself 'unable to reach a categorical conclusion on the legal validity of the claims' of either Britain or Argentina.<sup>3</sup> It then raised the significance of the Argentine invasion of 1982 by declaring that this in effect had decided the matter. The 'historical argument...has been rendered less relevant by Argentina's illegal resort to arms.'

The British Government disputed the suggestion of any serious doubt surrounding its claim, but it could not ignore the fact that for some 15 years it had been prepared to talk with Argentina about the future of the Falklands, with the transfer of sovereignty often explicitly on the agenda, and that these talks also involved the Dependencies, albeit tentatively and even though the British claim here had quite different foundations. There is no doubt that the 1982 war was a watershed in the sense that it bolstered the resolve of the British Government to defend robustly the right of the islanders to live under a government of their choosing and diminished even further any islander interest in joining Argentina. This is, however, no more than to confirm what has always been the case with the Falklands: that law has mattered less than power and determination when it comes to deciding ownership.

The Government expressed its regret in 1985 at the Committee's reluctance to reach a conclusion. The official, confident line on sovereignty still held as if it had been constant for over 200 years. In practice, however, the British position had evolved, with an increasing stress on constant occupation and then on self-determination. In this chapter we shall chart this evolution and evaluate the legal claims made by the two sides against the historical record. In doing so it is important to note that there has never been any formal presentation of the British claim before any international or judicial body. Britain has certainly never repudiated the original basis for its claim.<sup>4</sup>

The question of ownership of the Falklands remains bound up, as it has always been, with the ability to sustain relatively small settlements, if necessary by force. In the years up to 1833 a number of states pursued parallel claims to these Islands without a consensus on sovereignty emerging, as each attempted to sustain their own settlements and on occasion ejected those of others. After 1833 Britain was able to maintain its settlement against Argentine objections. Argentina never renounced its claim even when there was not much that could be done about it. Equally when British officials considered the possibility of transferring the Islands to Argentina this was not because of a lack of confidence in the claim but more in their ability to sustain the Islands in the face of continued pressure from Argentina. Handing the matter over to international lawyers would not have taken the matter out of politics. Any opinion from the International Court of Justice (ICJ) would not arise simply out of a disinterested process of legal analysis. Much would depend on the composition of the Court, including the nationality and legal philosophy of individual members, as well as whether they were disposed to see the Falklands as a relic of colonialism or a shining example of self determination.

### Origins

Both sides seek to justify their claim to the Falklands by drawing on the complex history of the Islands, and the chronology of discovery, settlements, treaties, conflicts, claims and protests, but also to the meaning of sovereignty in practice during some fleeting moments of occupation.<sup>5</sup>

The dispute starts with the question of discovery. Argentina argues that the first sightings should be credited to either Amerigo Vespucci in 1502, Esteban Gomez, a Portuguese sailor in Magellan's expedition of 1520 or the Camargo expedition of 1540, and point to their appearance on early sixteenth century Spanish maps. Britain puts the discovery of the Islands at 1592 and attributes this to a British Captain, John Davies, aboard the *Desire*, followed two years later by Sir Richard Hawkins who passed along their northern coast. Both sides agree that the Islands were first named in 1600 as the 'Sebaldes' by the Dutchman Sebald van de Weert who came across them as he sailed through the Straits of Magellan and into the Atlantic. This is the only authenticated discovery. The question of discovery constitutes the pre-history of the dispute. The question of ownership only really became moot in the middle of the eighteenth century.

Britain can claim the first recorded landing, on 27 January 1690, by Captain John Strong of the Royal Navy, from the *Welfare*. It was he who named the sound between the eastern and western islands, Falkland, in honour of the third Viscount Falkland, Anthony Cary, who was later to become First Lord of the Admiralty. Some decades later it was argued within the Admiralty that this could be just the strategic base Britain required in the South Atlantic to interdict Spanish sea lines of communication. In 1748 it was therefore decided to send an expedition to the Falkland Islands. Spain objected. It considered itself to have rights to all territories in this part of the world. This was traced back to the Treaty of Tordesillas of 1494, which divided the New World between Spain and Portugal on a line that ran from Pole to Pole, 370 leagues to the west of Cape Verde. Portugal would remain predominant to the east of the line, the Spanish to the west. Spain had continued to argue for exclusive rights to the whole region under the Anglo-Spanish

Treaty of 1604 and the Treaties of Madrid of 1670 and Utrecht of 1713 reinforced this claim. Britain refuted the Spanish claim, asserting that it could not 'in any respect give in to the reasonings of the Spanish ministers.' The right 'to send out ships for the discovery of the unknown and unsettled parts of the world must indubitably be allowed by everybody.' Nevertheless, this was a time of important commercial treaty negotiations with Spain and so while denying the Spanish claim the British did not pursue the expedition.

At this point France enters the picture. Having lost its position in North America during the Seven Years' War (1756–1763), it sought to rebuild its colonial power at Spain's expense. Antoine de Bougainville, a French navigator, established a settlement at Port Louis on the Falkland Islands in 1764, proclaiming the Islands (*Les Malouines*) in the name of Louis XV. Spain contested this occupation on the same basis that it had challenged the proposed British expedition, referring to papal awards and prior discovery. The French backed down, reluctant to enter into another war at a time when relations with Spain in Europe were improving. As important, they received a substantial sum from Spain under an agreement of 4 October 1766, which led to the French evacuation of Port Louis and its formal transfer to Spain the next April when it was renamed Puerto de Soledad (Port Solitude). The Islands were incorporated into the jurisdiction of the Captaincy General of Buenos Aires, and Don Felipe Ruiz Puente became the first Governor of the *Islas Malvinas*.

On 23 January 1765, just before this Franco-Spanish agreement, which concerned East Falkland, Commodore John Byron, the poet's grandfather, arrived aboard HMS *Dolphin* at West Falkland, which he claimed for King George III. He reported that: 'the whole navy of England might ride here in perfect security from all winds,' leading Lord Egmont, the First Lord of the Admiralty, to contend that the Islands were of extreme strategic importance and:

undoubtedly the key to the whole Pacifick Ocean. The Island must command the Ports and trade of Chile, Peru, Panama, Acapulco and in one word all the Spanish Territory upon that sea. It will render all our expeditions to those parts most lucrative to ourselves, most fatal to Spain.

Having decided to take the Falklands seriously, the British sent a second expedition. This arrived a year later in January 1766 under the command of John McBride, commander of HMS *Jason*. At this point a British settlement of some 100 people was established in Port Egmont at Saunders Island on West Falkland. So by this time two settlements, apparently in ignorance of each other, co-existed on the two islands. Because of this ignorance the British laid claim to all of the Falklands and when the French were discovered they were ordered to leave, although without this order having much effect.

As soon as Spain acquired its settlement from France it demanded that the British leave their settlement. The two countries swapped demands, until June 1770 when 1,400 Spanish soldiers arrived in five frigates sent from Argentina and the British were compelled to abandon Port Egmont. The British Government were outraged and made preparations for war. It was these preparations that prompted Johnson's outburst on the dismal quality of the Islands. Now it was Spain's turn to back down, which it did by means of a declaration in January 1771 that permitted the British to reestablish their

settlement, although at the same time it reserved its position on sovereignty. Britain did not, however, make a counter-claim on its sovereignty rights at this time and, although this did not constitute in itself an implicit acknowledgement of Spanish sovereignty, the Government was criticised for the omission in Parliament.

Furthermore, the British were having their own second thoughts on the value of this property. At a time of growing unrest in its American colonies, the Falklands appeared expensive and of marginal strategic value and so Saunders Island was left voluntarily in 1774 as Britain concentrated on North America.<sup>6</sup> A flag and a plaque, left behind as the settlers withdrew, with the following inscription sustained the country's claim:

Be it known to all nations that the Falkland Islands, with this fort, the storehouses, wharfs, harbours, 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, Defender of the Faith, etc. In witness whereof this plaque is set up, and His Britannic Majesty's colours left flying as a mark of possession. By S.W.Clayton, Commanding Officer at Falkland Islands, AD 1774.

The Spanish Government viewed Britain's departure with great satisfaction and instructed their Governor of the Malvinas 'to make sure that they do not return to that quarter.' In 1775 the plaque was retrieved and transported to Buenos Aires. In 1780 the Viceroy of Buenos Aires instructed that the settlement be destroyed. From 1774 to 1810 Spain, through this Vice-Royalty, was the exclusive administrator of the Falkland Islands. The old settlement was used largely as a prison camp. With a population estimated in the mid-1780s at only 80–120, of which a substantial minority were convicts, Spain's interest in these barren islands remained slight. There were even suggestions that they might be abandoned. The main task of the numerous governors of the Islands over this period was to undertake inspection tours 'to prevent British sailors and fishermen from settling anywhere'. In the St. Lawrence Convention of 1790 Spain conceded to Britain navigation and fishing rights in the Pacific and South Seas in return for an agreement not to establish any settlements on the eastern or western coasts of South America or on the adjacent islands to the south or those parts occupied by Spain. This clearly prevented Britain from occupying the Falklands and although this Convention was abrogated in 1795 it was revived in 1814.

When, in 1806, Spain was threatened by Napoleon and an unofficial British expedition briefly captured Buenos Aires (in the process retrieving the plaque that had been left on the Islands in 1774) the Spanish Governor in Puerto Soledad fled from the Malvinas. The Spanish eventually withdrew from the Falkland Islands altogether in 1811, leaving behind a few gauchos and fishermen, and a plate proclaiming Spanish rights on a church door at Puerto de Soledad: 'The island, with its ports, buildings, dependencies...belongs to the sovereignty of His Majesty Fernando VII... King of Spain and the Indies'. For the next ten years the Islands were uninhabited, used only by whalers and sealers, and it could be argued that they had become *terra nullius*.

Having rejected Spanish rule in 1810, on 9 July 1816, the United Provinces of Rio de la Plata declared their independence. The United Provinces became Argentina and

claimed as its inheritance the territorial rights of Spain. This is the basis, along with geographical contiguity, for the Argentine claim to the Falkland Islands.

The governments of the United Provinces generally were unstable in their first years and had difficulty establishing their authority over the territories they claimed. In November 1820 Colonel Daniel Jewett, an American, raised the flag of the United Provinces on behalf of the new government in Buenos Aires at Puerto de Soledad. Finding fifty vessels of various nationalities on the Falkland Islands, Jewett ordered them to cease their fishing activities and leave the Islands. No British protest was made: this may have reflected ignorance, as there was no representative in Buenos Aires at the time. A Governor was appointed, although he never visited the Islands, and there is little evidence of any serious effort to exercise any effective control. When, in 1825, Britain recognised the United Provinces it made no mention of the issue of sovereignty over the Falkland Islands, but there is no reason to suppose that the omission was deliberate. Nor did Britain protest the next year about the establishment of a permanent settlement. It took the appointment of a political and military Governor, Louis Vernet, on 10 June 1829 to revive British interest.

The creation of the Argentine colony was largely free enterprise on Vernet's part. He was granted exclusive rights of the fisheries and endowed with 'all the authority and jurisdiction necessary to fulfil his job' as Governor. When the decree became known in Buenos Aires the British Chargé d'Affairs delivered a formal protest on 19 November 1829, noting that: 'the Argentine Republic, in issuing this Decree, [has] assumed authority incompatible with His Britannick Majesty's rights of sovereignty over the Falkland Islands', citing as he did so, British rights from discovery and the restoration of occupation in 1771. At this time the British Government, with the Duke of Wellington Prime Minister, considered reoccupation of the Islands but decided against it.

Vernet had received a concession of land on East Falkland as early as 1823 for fishing and grazing rights and since then had been working hard to establish a settlement. The population was between 120 and 200, engaged in the production of cow hides, meat and seal skins. It was at this time that wool began to be exported to London. Gaining in confidence, Vernet decided to enforce Argentine fishing regulations by seizing three American ships, one of which was taken with its Captain to stand trial in Buenos Aires. The American Consul in Buenos Aires, George W. Slacum, protested and threatened reprisals. A warship USS *Lexington* happened to be in the River Plate at the time and its captain, Silas Duncan, chose to sail to the Islands, landed, destroyed all military installations, razed the buildings, seized sealskins, put most inhabitants under arrest and then left, declaring the Islands free of all government. As a result relations between the United States and Argentina were broken. The US explicitly denied Argentine jurisdiction over the Falklands, and in their arguments with Argentina appeared to acknowledge British sovereignty. Diplomatic relations between the two were not restored until 1844.

In London, the Admiralty decided to take advantage of the dislocation created by the *Lexington* incident by sending two warships, HMS *Clio* and HMS *Tyne*, to reassert British sovereignty on the Falkland Islands. They reached Port Egmont in December 1832. The Argentine authorities had meanwhile taken steps of their own to repair the damage and reinstate law and order in the colony. In September 1832 a new interim military and political commander, Juan Mestivier, was appointed and a gunboat, the ARA

*Sarandi*, was dispatched to support him. The British objected that this appointment infringed British sovereignty over the Islands. More problematic for Mestivier was that his own forces would not accept his authority and two months later, when the *Sarandi* sailed away from the Islands, the garrison mutinied and killed him. The *Sarandi* returned and attempted to rout the mutineers. Just as it was doing so, on 2 January 1833, the *Clio*, under the command of Captain J.J. Onslow, appeared in Port Louis. Onslow told Don José Maria Pinedo aboard the *Sarandi* that the Islands belonged to no one, and that the British flag would replace that of Argentina the next day, 3 January 1833. Pinedo protested but in the face of superior force he did not resist. To Britain this demonstrated that the transfer of control was a matter of persuasion, for no shots were fired. Argentina points to the coercive nature of the persuasion.

Two days later the *Sarandi* left the Islands, taking with it the Argentine soldiers, convicts from the penal colony at San Carlos and some, but not all, of the Argentine settlers. Pinedo had appointed the head gaucho (farmhand) as Governor, but other gauchos murdered him in August. In July the British explained their action to the Argentine Government on the grounds that the claim to the Falklands had never been relinquished: 'The British government at one time thought it inexpedient to maintain any Garrison in those Islands: it has now altered its views, and has deemed it proper to establish a post there.' If this seemed inconsistent it was added that, 'His Majesty is not accountable to any Foreign Power for the reasons which may guide him with respect to territories belonging to the British Crown.' In January 1834, a British naval officer was placed in charge of Port Louis, and the Falkland Islands remained under Admiralty control until 1842, when the Colonial Office appointed a British Governor, Lieutenant Richard Moody. Under an Act of Parliament in 1843, letters of patent were issued in June 1844, and the Falkland Islands became a crown colony with a governor, legislative council, and executive council, in 1845.

### **The quality of the claims**

Much of the debate revolves around the question of whether Britain acted illegally in 1833. The British defence depends on the view that Onslow was merely reasserting an established British claim and that Argentina had failed to establish a settlement worthy of the name when it had a chance to do so.

The quality of the British claim cannot depend credibly on prior discovery or occupation. Reliance was placed instead on the settlement at Port Egmont, West Falkland. When established in 1766 the Falkland Islands were not *res nullius* (belonging to no one) as the French had a claim based on their earlier settlement in East Falkland and there were the existing Spanish claims. At most perhaps Britain was establishing a claim to West Falkland. Moreover, the departure of the settlers in 1774 could be taken as abandonment. So the claim depended on one settlement of a short duration, not replaced for almost sixty years and sustained by a plaque, which was soon removed and was of dubious validity after so many years.

Evident weaknesses in the British claim, however, did not necessarily translate into a strong Argentine claim. Territorial contiguity by itself is no basis for transfer, even with small islands. On this basis the Channel Islands would be transferred to France, while

Canada would demand from France two small islands—Miquelon and St. Pierre—in the St Lawrence River. The real issue is the quality of the original title and much depends here on the nature of Argentina's inheritance from Spain under the doctrine of Succession of States (*uti possidetis*). Spanish sovereignty, it is argued, had been recognised by France and Britain in contemporary treaties. The Islands were occupied and administered peacefully by 19 Spanish governors from 1774 until Argentina's independence. In 1770 Spain had objected to the British presence in West Falkland and took action four years later. This line of argument is bolstered by the Saint Lawrence Convention of 1790 which appears to have prohibited either Britain or Spain from establishing new settlements on islands adjacent to the coasts of South America, thereby preserving the *status quo*. The argument goes on to note that Britain recognised Argentina's independence in 1825 without any claim to the Falkland Islands, which were then under an Argentine governor living in the Islands. Peaceful, undisputed occupation and administration of the Islands continued under five Argentine governors. In the Lexington incident, Argentine rights to the Islands were never at stake.

There are a number of problems with this case. Could Spain cede territories it did not possess at the time? The Spanish settlement on East Falkland was abandoned in 1811. If it is argued that the British withdrawal in 1774 meant relinquishing a claim, then so might the Spanish withdrawal in 1811, thereby leaving the territory in a state of *res nullius*. Argentina did not gain independence until 1816. There is no evidence of any renunciation of title by Spain in favour of Argentina, express or implied, although Spain showed no interest at all in the events surrounding these islands with so much else to worry about in terms of her South American colonies at this time. The establishment of the Port Egmont settlement also meant there had been no absolute possession of the Falkland Islands from 1766 to 1833. As for the Argentine claim that it was the successor to the Spanish vice-royalty of the River Plate, it might be noted that this vice-royalty also governed most of what became Uruguay, Paraguay, Bolivia and Chile. At no point did Spain acknowledge or formally cede a transfer of title to Argentina. The Argentine case relies, therefore, on what has tended to be the more generous interpretations of *uti possidetis* by Latin American jurists, assuming territories to be included in the succession, whether or not they were ever formally ceded by Spain or occupied.

If it is the case that the Falklands had not simply passed to Argentina from Spain through a process of natural succession, but was in effect up for grabs at this time, then the question becomes one of whether Argentina had really established occupancy of the Islands from 1820 to 1832. At most this involved the acquisition of *de facto* sovereignty and the expectancy of something more firm. The actual exercise of Argentine control was brief and uncertain. Vernet exercised minimal administrative control from 1826 to 1829. He received no salary as a Governor, no assistance from Buenos Aires and did not collect taxes. As soon as the Argentines began to consolidate their position both the United States and Britain thwarted them. So while one can assume that if these two countries had not intervened Argentina would gradually have established an undisputed sovereignty, at that time it had not quite done so.



## Prescription

Few of those who have examined the historical evidence are confident that the Port Egmont settlement provided a sufficient basis for the seizure of the Islands by Britain. Having perused the papers in 1829, the Duke of Wellington as Prime Minister remarked that it was not clear to him 'that we have ever possessed the sovereignty of these Islands.'<sup>7</sup> Through the rest of the nineteenth century successive British governments assumed the case to be closed and did not always bother to respond to the occasional Argentine protest. In 1908 the issue suddenly came to a head as a result of Argentine protests at the inclusion of the Falkland Islands as a British possession in the Rome Postal Union Convention. As always Britain rejected the protests but, aware of the coming centenary celebrations in Argentina, decided to investigate the matter further. In 1910, Gaston de Bernhardt, the Foreign Office's Assistant Librarian, produced a substantial memorandum on the history of the dispute. The effect was to increase respect for the Argentine claim. 'For more than 60 years we have refused to discuss the question with the Argentine government,' observed a recipient of the memo, 'but from a perusal of this memo it is difficult to avoid the conclusion that the Argentine government's attitude is not altogether unjustified, and that our action has been somewhat high handed.'

Thus confidence remained at a low ebb for the next couple of decades, not helped by a substantial American analysis supporting the Argentine claim which was published in 1927.<sup>8</sup> By 1933, however, the centenary of British control, the length and peaceful nature of the exercise of British sovereignty began to offer a more impressive basis for it to continue than the means by which it had been obtained in the first place. Over a decade later, after the second world war, there was a firm view that, whatever the quality of the original case, the passage of time had created a new basis for title. While international law was still unsettled in relation to the acquisition and loss of territory, the Islands had been firmly acquired through the process known as 'usucaption'<sup>9</sup> consisting of their de facto possession and occupation since the year 1833. This matter had never been tested in the ICJ but the view seemed to be supported by majority opinion among international lawyers.<sup>10</sup> If the matter was put before the Court its judgement would in itself be an important precedent.

Having repossessed Port Egmont in 1832 and occupied Port Louis in 1833, the British claim could be based on open, continuous, effective, and peaceful occupation. It might be the case that as Britain commenced its occupation its claim was based on expectancy. Eventually it had stayed long enough to 'perfect its title', as encapsulated in the formal declaration of the Falkland Islands as a Crown colony on 11 April 1843, coupled with the appointment of a Governor in June of that year. Uninterrupted British rule on the Islands thereafter made a good case that the British title to the Islands was vested.

There were still problems. It was hard to escape completely from the issue of the legality of the seizure of 1833. The weaker Britain's pre-1833 claim the weaker it was post-1833. At the very least the greater the doubt surrounding the competing Argentine claim, the more credibility could be attached over time to prescription. Could the original owner's title be annulled if the current occupant took possession of land that was not *res nullius* and if the original power continued to object? As time passed the British case was