
The Falklands/Malvinas: A New Framework for Dealing with the Anglo-Argentine Sovereignty Dispute

ROBERTO LAVER

The sovereignty dispute over the Falklands/Malvinas islands¹ did not go away after the Falklands War,² but the issue has remained off the agenda of any official negotiations between Britain and Argentina. Although Argentina has continued to press its claim, Britain, which had been prepared to negotiate the sovereignty of the islands in the 1960s and 1970s,³ has firmly refused to do so since 1982.

After the war, starting with the last military administration and continuing with the government of Raul Ricardo Alfonsin, the position of Argentina was that no diplomatic relationship would be resumed with Britain unless the sovereignty issue was on the table. For its part, Britain, under the Thatcher government, was ready to reopen relations with Argentina and agree with Argentina on practical measures of cooperation regarding the islands, but it firmly refused to discuss the issue of sovereignty and reaffirmed its support for the islanders' right to self-determination. The result was almost nine years of stalemate.

In 1989, the newly elected government of President Carlos Menem changed Argentina's approach in relation to Britain and the islanders. Diplomatic relations were resumed, and cooperation mechanisms were agreed to with respect to the islands' security and economic development, while the issue of sovereignty was set aside under the so-called "umbrella policy," revived from the 1970s.⁴

Menem's hope that this new approach would eventually open the way to a political settlement did not materialize. Islanders have firmly opposed any accommodation on the sovereignty claims made by Argentina. They simply desire that

ROBERTO LAVER IS ADJUNCT PROFESSOR OF INTERNATIONAL LAW AT THE FLETCHER SCHOOL OF LAW AND DIPLOMACY, AND ATTORNEY WITH THE LAW FIRM GOULSTON AND STORES IN BOSTON, MA. HE IS FORMER SENIOR COUNSEL FOR THE LATIN AMERICAN LEGAL DIVISION AT THE WORLD BANK. THIS ARTICLE IS A TREATMENT OF TWO CHAPTERS OF HIS NEW BOOK, *The Falklands/Malvinas Case: Breaking the Deadlock in the Anglo-Argentine Sovereignty Dispute*, PUBLISHED BY KLUWER LAW INTERNATIONAL THIS YEAR.

Argentina drop its claim. Although the British government has shown interest in furthering Argentine-islander cooperation, especially in the economic sphere, Britain has reaffirmed its commitment to respect the wishes of the islanders on sovereignty.

It is pretty clear that this sovereignty dispute will remain very much alive. Argentina will not drop its claim, and the islanders and Britain will not accept any change in the political status of the islands unless the islanders consent. There will be no progress towards a final and peaceful settlement unless a new approach is adopted regarding the nature of the dispute and its participants. This article suggests a new framework for dealing with the problem under which the Argentina-islanders relationship is privileged without political pre-conditions, narrow partisan interests, or untimely and unwelcome political pressures. The suggested framework is preceded by a close analysis of the post-1982 events, including the socio-economic and political development in the islands and the failed attempts to reach a political solution.

JUNE 1982—JUNE 1989

ARGENTINA AND BRITAIN STAND FIRM

Only a few days after the surrender of its troops at Port Stanley, Argentina reasserted its claim to the Falklands/Malvinas at the United Nations. On June 22, 1982, in an extraordinary session of the General Assembly on disarmament, it took the occasion to affirm that “the dispute would continue to be alive until full sovereignty over the islands was restored to Argentina,”⁵ and to reiterate its position on the non-applicability of the right to self-determination to the islanders.

In 1983, the first presidential elections since the military takeover of March 1976 resulted in the election of Raul Ricardo Alfonsin, of the Radical Party, as president of Argentina. The Alfonsin administration remained committed to a firm posture toward Britain regarding the islands: there would be no normalization of diplomatic relations unless Britain was willing to discuss the sovereignty issue. But Prime Minister Thatcher refused to enter into talks about sovereignty. Talks on practical issues—the formal cessation of hostilities, the resumption of diplomatic relations, the removal of the military protection zone, the management of fisheries, freedom for relatives on both sides to visit war graves—were encouraged, but for the British government the political status of the islands was non-negotiable. With the parties’ positions so entrenched, little progress was achieved in terms of bilateral relations. As one author has put it, there existed in the Alfonsin period “a sort of Anglo-Argentine non-relationship.”⁶

BRITAIN SUPPORTS THE DEVELOPMENT OF THE ISLANDS

The fisheries. While Argentine-British relations remained stagnant, Britain turned away from neglecting the islands to actively supporting their economic,

social, and political development. The Shackleton report⁷ had shown in 1976 that the enormous potential of the area's fisheries was capable of underpinning the future economic viability of the islands. Unfortunately, the sovereignty dispute had since turned this potentially rich fishing zone into a maritime area free of any regulation. In the context of increased fishing activity, and amid fears of the danger of over-exploitation, Britain began efforts in early 1985 to establish a multilateral management regime, preferably under the auspices of the Food and Agriculture Organization (FAO).

In November 1985, the FAO initiated a technical study of the fisheries, with both Britain and Argentina providing information. Progress, however, was slow, and Britain began negotiating voluntary restraint agreements in 1986. In the absence of any consideration of the sovereignty issue, the Argentine government was not willing to fully cooperate. Surveillance of fishing activities became more intense, resulting in Argentina sinking a Taiwanese ship in May 1986; Argentine authorities blamed the incident in part on the Falklands Islands Protection Zone (FIPZ) established by Britain following the Falklands War,⁸ while Britain viewed the Argentine action as an affirmation of its sovereignty claim by force. Furthermore, in July 1986, the Argentine government signed bilateral fishing agreements with the Soviet Union and Bulgaria, thus preempting any multilateral approach to the management of fisheries.

On October 29, 1986, in the face of increased pressure from the islanders and in view of bilateral agreements signed by Argentina, Britain declared the Falkland Inner Conservation and Management Zone (FICZ), which regulated fishing within a radius of 150 miles of the islands and levied license fees on fisheries within that limit. Argentina strongly objected to Britain's declaration of the FICZ. At the United Nations, Argentina complained that the declaration "could make the solution of our bilateral problems more difficult still" and "did not contribute to easing tensions in the area."⁹ The Organization of American States (OAS) and the nonaligned movement supported the Argentine position. Moreover, the Inter-American Legal Committee, in an opinion issued in February 1987, described the declaration of the FICZ as illegal and in violation of international law.¹⁰

In spite of such disagreements, some attempts were made by the United States government to facilitate an Anglo-Argentine discussion on fishery topics. Unfortunately, not much progress was achieved during the Alfonsín administration. Still, income from the fisheries tripled the GNP of the islands between 1985 and 1987.

Social and political developments. The economic growth of the islands during this period was paralleled by substantial improvements in social services and infrastructure. Medical facilities and services were made more accessible and of much higher quality than before. New educational facilities were also provided, and more children were able to receive primary and secondary education. Roads were

renewed and repaired, housing stock was substantially increased, and the Falkland Islands government implemented a program to subsidize the purchase of land and the building of houses. Most importantly, a program of land distribution was carried out, and "large farms owned by absentee landowners are no more. They were subdivided and are now owner-occupied and owner-worked."¹¹

The islands have also undergone political changes. In fact, islander's "internal" self-determination, or "democratic internal self-government," as one islander testified before the United Nations,¹² has been strengthened. Constitutional changes in 1985 afforded the islanders greater participation in the political life of the community. At present, all members of the Legislative Council and the Executive Council are elected. Islanders' ties to Britain grew stronger as a result of the war and the subsequent economic, social, and political changes. In their own words:

The British offer us the protection that enables us to realize our own dream. For us they are not a colonial power, an imperialistic power; they are our friends and we are more than grateful to them for protecting our rights, at such sacrifices to themselves, as they have done in the past months.¹³

It is high time that this Committee advised Argentina to face the realities of the times we live in. The Falkland Islanders are happy to be British citizens in the Falkland Islands.¹⁴

The Falkland Islanders do not want closer ties with Argentina. We are well content to be British citizens and to uphold our allegiance to Her Majesty the Queen and Her Government.¹⁵

The issue of self-determination. After the Falklands War, islanders became more active in advocating self-determination and rejecting any change in the political status of the islands. The United Nations, however, has not recognized that the islanders have a right of self-determination. Islanders' representatives have regularly attended the annual hearings of the United Nations decolonization committee since 1982. At these hearings, the venue for most of the islander comments quoted in this article, it is now their representatives, and not British officials, that defend their right to self-determination. For the most part, islanders deny any merit to the Argentine position, express concern that any political association with Argentina would adversely affect their way of life, and state their firm support for maintaining the Falklands/Malvinas as British territory.

With regard to Argentina's claim to sovereignty over the islands, it has been characterized as a "pseudo-claim," "anachronistic," and "archaic,"¹⁶ consisting of "unjustified colonialist ambitions...which tells us more about Argentina's problems of identity and self-image than about its right to take over our land."¹⁷ Moreover, islanders stress that the "issue is not territory but the way of life and

political freedom of a people”¹⁸ and that “Argentina cannot turn back and rewrite the pages of history.”¹⁹

A major fear expressed by many islanders is that a political association with Argentina would extinguish their identity. Islanders claim that they have “their own law, customs, and way of life chosen by [them]”²⁰ and that an association with Argentina would jeopardize this identity. Such apprehension towards Argentina was already present before the war but has deepened ever since, as reflected in statements like these:

We cannot and will not entertain any form of relationship with a neighbor that wishes to extinguish our identity and absorb us.²¹

For Argentina, the problem is not that the Falkland Islands is a colony, but that we are not a colony of Argentina... We are British, we feel British.²²

The only colonialism of which we are aware is that which the Argentines sought to impose on us—to subjugate us by force, to tell us how we should act, to accept their culture, their language, and their national traditions.²³

Dissenting voices. Not all islanders, however, share the anti-Argentine sentiment of the speakers quoted above. There are some, particularly former islanders now living in the mainland, who feel that these opinions are not unanimous in the islands. They have argued at the U.N. that a unilateral insistence on the primacy of the “wishes of the islanders” has simply advanced the interests of a ruling minority, questioning just whose wishes are really served by the stress on self-determination. One of these dissenters argued that two groups coexist in the islands, the “real Islanders,” who were willing, before the war, to accept some accommodation with Argentina, and those British subjects who have close links to British interests and advocate the status quo.²⁴ According to another, the people of the islands had little or no knowledge, before the war, of the ongoing negotiations under the framework of the U.N. and it was the Falklands lobby that frustrated any settlement with Argentina.²⁵ Moreover, he added, the real objective of the Falklands lobby was to protect the monopolistic interests of the Falkland Islands Company (FIC).²⁶

JULY 1989–DECEMBER 1999

ARGENTINA AND BRITAIN REESTABLISH DIPLOMATIC RELATIONS

In his inaugural speech in July 1989, newly elected Argentine President Carlos Menem pledged to devote his efforts and energies to the cause of the recovery of the Malvinas, South Georgia, and the South Sandwich Islands, but shortly thereafter he proposed talks with Britain to normalize relations while leaving the sovereignty issue aside. In August 1989, representatives from Argentina

and Britain met in New York and agreed on an agenda for further talks under the formula of a "sovereignty umbrella" to protect each side's position. According to a joint communiqué, issues to be discussed included:

- Establishing increased confidence between the parties in order to avoid military incidents;
- Improved commercial and financial relations;
- Better communication and transportation links by air and sea;
- An agreement to conserve the fisheries stock in the region and to establish the basis for future cooperation in the fishing industry;
- Future contacts between the islands and the continent, including cultural, scientific, and athletic relations; and
- Other bilateral issues.²⁷

In October 1989 British and Argentine representatives met again in Madrid. At this meeting both parties agreed on the formula for interpreting the "sovereignty umbrella" metaphor. The result reads as follows:

No act or activity that the Republic of Argentina, the United Kingdom or any third parties carried out as a consequence of and in the execution of that which is agreed upon in the present meeting or in any subsequent meeting, can constitute the basis for confirming, supporting, or denying the rights of the Argentine Republic or the United Kingdom relating to the sovereignty or territorial and maritime jurisdiction over the Malvinas and South Georgia and South Sandwich Islands and the surrounding maritime areas.²⁸

The two nations also agreed to fully respect the principles of the U.N. Charter, formally cease hostilities, reestablish consular relations, remove remaining discriminatory economic measures (Argentina), form working groups on fisheries, establish confidence-building measures, and resume air services between Britain and Argentina.

At a second meeting in Madrid, in February 1990, Argentina and Britain reestablished full diplomatic relations and accepted reports from the working groups formed the year before. They also reached agreement on a range of confidence-building measures and the lifting of the Falkland Islands Protection Zone, effective March 31 of the same year. In addition, the parties established a "Working Group on South Atlantic Affairs" to include the military and fishing working groups.

As one commentator has observed, a new stage in the Falklands controversy had begun and "mutual trust was being reestablished, thus improving the climate for new understandings."²⁹ But President Menem realized at the outset that no progress would be made by insisting that sovereignty be placed on the agenda. Indeed, Prime Minister Thatcher remained firm in her rejection of a

change in sovereignty for the islands. Britain would promote communication and cooperation between Argentina and the islanders and reaffirm the right to self-determination of the islanders, even while recognizing that the U.N. did not accept its position.³⁰

Britain wished to create “an atmosphere of stability and cooperation” without any change in the political status of the islands. In the British government’s view, the war “marked the definitive reassertion of British sovereignty over the Falklands”³¹ and Argentina would have to “live with the consequences of the conflict.”³² Britain was committed to retaining the Falklands/Malvinas, respecting as “paramount” the wishes of the islanders, and defending the islands under the so-called Fortress Falklands policy. “I want to make one thing clear,” Thatcher announced. “I am not negotiating the sovereignty of the Falkland Islands with anyone. They are British.”³³ To the islanders she stated:

I want a stable and friendly relationship with Argentina. I am in no doubt that would be in all our interests and especially yours in the Falkland Islands. So, after thirteen years, I thought it was right to resume contact at the highest levels, *but that does not and will not change your right to be governed under the flag of your own choosing.*³⁴ (emphasis added)

ARGENTINA MAKES ITS CASE

By setting the sovereignty issue aside and cooperating, or at least not interfering, in economic and other practical matters, the Menem government hoped to reach some sort of political settlement. Early on, the new Argentine administration realized that relations needed to be improved not only with London but also, and most importantly, with the islanders, because it had become clear that Britain would not move an inch on sovereignty unless the islanders agreed.

Speaking for Argentina at the U.N., Foreign Minister Di Tella acknowledged that, “No one can sensibly fail to recognize the important *de facto* role that the islanders have to play in this question. It is common knowledge that their opinions have a profound influence on the British position. There is no way in which we can begin to resolve the question without taking this reality into account.”³⁵

In what became known as “the policy of seduction,” the Menem government, working especially through Di Tella, went out of its way to please the islanders. Countless goodwill gestures were made. In an initial one, Argentina offered to assume the costs of removing the mines laid by its armed forces in 1982.³⁶ Di Tella also wrote letters to islanders, sent them Christmas gifts, and made several speeches to them on radio and television.

The Argentine government was convinced that a lack of communication between the islands and the mainland had contributed to the isolationist attitude

of the islanders, and so the restoration of modes of communication became one of their primary objectives.³⁷ To this end, Argentina authorized a Chilean airline to operate regular flights between Port Stanley and southern points in Chile. Also, Di Tella held some informal personal meetings with young islanders in London and with an island councilor in Montevideo, Uruguay. But with a few exceptions, Argentines were not generally allowed to travel to the islands.³⁸

As Di Tella told the U.N., "The lack of direct links with the Malvinas impedes human contacts, trade and tourism...and has slowed down the economic and cultural development of the South Atlantic. The lack of relation between the two areas is inconceivable in today's world."³⁹ Ultimately, of course, the Argentine authorities hoped that increased interaction with the mainland would soften islanders' attitudes and that they "would one day change their minds on the substantive question."⁴⁰ However, in spite of the Menem administration's efforts, contact between residents of the islands and Argentina was very limited for most of its tenure.

The Menem administration also made other public efforts to persuade the islanders that they should be less fearful and inflexible toward Argentina. Special emphasis was put on a firm commitment by the Argentine government to a peaceful resolution of the dispute, a more open and flexible attitude towards the concept of sovereignty, a renewed commitment to respect the way of life of the islanders, and the achievement of a more democratic and prosperous Argentina. Argentine officials at the highest level lamented the use of force by the Argentine government in 1982. Di Tella himself told islanders that the current Argentine government was well aware of their fears: "The 1982 conflict happened, and no one can change that. But it ought not to have happened and it will never happen again. This is our firm commitment."⁴¹ In addition, Argentina's new Constitution of 1994 included a specific provision renouncing force as a method to settle the dispute.

Argentina also moved towards a more flexible and nonexclusive notion of sovereignty. In 1995, the minister of foreign affairs told the U.N. decolonization committee that:

Differences remain concerning the...question of sovereignty... We associate sovereignty with the land, whereas they emphasize the people, their way of life, and their political culture. No doubt, there is a problem here that underlies the whole essence of the debate, but...*as long as we are prepared at least to engage in civilized discussions of the subject*, Islanders, the British and Argentines will probably gain a better vantage point from which to overcome the obstacles to a solution.⁴² (emphasis added)

The Argentine government argued that it was prepared to approach the sovereignty question from a modern position without "any *a priori* conditions from either party."⁴³

As it had done in the pre-war era, the Argentine government stressed the importance of the interests of the islanders and its readiness to provide safeguards to protect these interests. Argentina, it was again declared, was determined to guarantee total respect for the way of life, culture, habits, and institutions of the Falklanders.⁴⁴ As evidence, the government reminded the islanders of Argentina's great cultural diversity and that its laws had always preserved and guaranteed this heritage.⁴⁵ Reference was made to the many communities, such as those of Welsh settlers and German farmers, that had prospered while retaining common traits that distinguished them both in Argentina and abroad.⁴⁶ It was also pointed out that the ancestors of many Argentines had emigrated from the United Kingdom, and quite a few had moved to the Argentine mainland from the Falklands/Malvinas. British culture, Argentine officials stressed, had had a deeper impact on Argentine society than the actual numbers of British immigrants could account for.⁴⁷

They also emphasized that the residents of the islands would enjoy greater autonomy under Argentina. The Argentine constitution provides for the provincial states to issue their own constitutions and laws in accordance with their own needs and traditions. Provincial courts and justice departments assure that the people of each province control the administration of their own laws. As one former islander said, "The Argentine Constitution calls for a greater degree of self-determination for its member provinces, providing for the free election of the state provincial governors and the right to dictate their own constitution in much greater independence in comparison to what the British system can allow."⁴⁸

"Not only do we not want the Islanders to change their way of life, but we see the island community as being impressive for its many virtues,"⁴⁹ Di Tella stated at the U.N., and therefore "a change in the exercise of sovereignty would be unlikely to affect the daily life of the islands; nor would it do away with the devotion to the Queen and the Crown that the islanders have exhibited."⁵⁰

In support of its position, the Argentine government invited several descendants of former islanders now residing in Argentina to appear before the U.N. decolonization committee and speak about their experiences as members of a British minority in Argentina:

We prospered in Patagonia with all happiness, in a framework of friendship and total respect for our way of life and traditions, whatever the political situation at the time.⁵¹

What are the prospects for a community of British origin when it is incorporated into the Argentine Republic? Based on the testimony of our experiences throughout the years...the customs of my forefathers have not been lost. Their traditional festival, the *eisteddfod*, is the most important annual event in the province, and people from all parts of Argentina participate in it. The Welsh language continues to be spoken. Linguists from Great Britain and Argentina

have traveled to the Province of Chubut to study this important cultural phenomenon.⁵²

NEW INITIATIVES

In spite of all of Di Tella's "seductive" efforts, the majority of islanders remained firmly opposed to any political settlement with Argentina. In 1995, as President Menem entered into his second term, elements within his government were growing impatient. Perhaps as a way to put pressure on the other parties, Menem promised his countrymen to have an Argentine flag in the islands by the year 2000. Meanwhile, efforts intensified in the search for an opening to a political settlement, particularly with the advent of the new Labor government in Britain in 1997. The last two years of the Menem government witnessed a flurry of new initiatives and proposals at both the private (with quasi-official endorsement in some cases) and official levels.

A first initiative came in early 1997 from the South Atlantic Council (SAC), a lobby group favoring an Anglo-Argentine settlement.⁵³ The SAC initiative—which was discussed with Tony Lloyd, the new minister of state at Britain's Foreign and Commonwealth Office, and presented to the Argentine embassy in London and the Falkland Islands Association—included the following main points:

- The moment, fifteen years after the war, is propitious for negotiations to explore, in a creative and cooperative manner, ways of moving toward new political and legal arrangements. The SAC believes that a permanent solution, acceptable to all parties, is possible.
- There are various reasons that a solution is desirable from the British side.
- The SAC outlines many options for developing the necessary understanding of the needs and wishes of the various parties, and identifying the possibilities for mutual accommodation, but it does not endorse any particular option.
- A simple, orthodox view of sovereignty does not offer a plausible solution, but some form of permanent cooperative arrangements between Britain and Argentina, combined with assured self-government for the islanders, is most likely to succeed.⁵⁴

In November 1997, the Falkland Islands Association, with the support of the recently elected Legislative Council of the Falkland Islands, issued a negative response to the SAC initiative.⁵⁵ The Association basically declared there was no need to contemplate any change in the status quo and that British-Argentine relations could improve without having any bearing upon British sovereignty over the islands. It rejected calls to reopen negotiations on the sovereignty issue, insisted upon the islanders' right to self-determination, and called upon Argentina to drop

its claim. Finally, the response insisted that a permanent peaceful settlement has to be acceptable to the islanders, which, they said, required the Argentine government to formally renounce its claim and the British government to preserve the status quo until it does.

The SAC initiative was followed by a new and more concrete proposal in early 1998. An Argentine national, Conrado Bullrich, and a British national, Alastair Forsyth, published in *Penguin News*, the local paper of the islands, basic elements for a final settlement.⁵⁶ They argued that the current situation was unacceptable for both Britain and Argentina. For Britain, the reasons included the disproportionate number of troops required to defend the islands (between 1,000 and 2,000 servicemen to defend approximately 2,000 islanders); the fact that they were defending against an important trade and investment partner of Britain; the inordinate amount spent per year on defense costs (81 million pounds in direct defense costs plus more in indirect costs); that the islanders, though enjoying an income per capita double that of Britain, paid no taxes to the Crown and received a subsidy for defense costs; and that the conservation of fisheries stocks was impeded by the dispute. For Argentina, they argued that an indefinite extension of the 1989 sovereignty umbrella was simply politically unacceptable.

The draft proposal that followed included the following elements:

- The islanders would enjoy full autonomy in internal affairs, that is to say, in everything except defense and foreign affairs;
- That autonomy would include the right to choose language, law, currency, system of education, and tourist and immigration policy, provided only that the latter was nondiscriminatory;
- The present constitution of the islands would be maintained, with the exception that the governor of the islands would be elected by the islanders;
- The islanders would have the right to hold both British and Argentine passports;
- By treaty, Britain and Argentina would jointly undertake to permanently guarantee the islands' autonomy, democratic system of government, territorial integrity, and marine boundaries. (The two governments and their armed services would create the mechanics of this guaranteed protection; all sea rescue and oil rig and fishery protection would all be part of the remit; there would be no need for any Argentine military on the islands except perhaps for a two- or three-person liaison team to ensure efficient cooperation; and prime responsibility for defense would remain with a scaled-down British force at Mount Pleasant);
- The agreement would be understood as settlement of the dispute, and Britain, Argentina, and the islands would act henceforth as though the claim had been waived;

- Through some commonsense financial arrangement, Britain and Argentina would be compensated for their defense and foreign relations undertakings, to the extent the islands had the funds to do so;
- A three-person tripartite commission would be established (one person, one vote) to oversee implementation of the agreement, with the requirement to report on progress to all three governments. The Falkland Islands representative could be the future elected governor of the islands. The commission would meet in Stanley or in each of the three territories in turn;
- Flags could be left out of it, but it would seem reasonable to allow each commissioner to fly his own flag;
- The terms of the agreement would be reported to the U.N. as constituting settlement of the dispute;

While the Argentine foreign minister found the Forsyth/Bullrich proposal to be an “interesting” one,⁵⁷ islanders in general appear to have reacted quite strongly against it. The *Penguin News* itself characterized the proposal as suggesting “joint British/Argentine sovereignty of the islands with semi-autonomy for islanders.”⁵⁸ Councilors found the agreement “rather wooly,” “not particularly attractive,” “the kind of thing that has been produced over the years by people with a superficial understanding of the problem.”⁵⁹ In a letter published in the *Penguin News* of May 29, 1998, one islander responded:

I object to foreigners suggesting what we should, or should not, do. This is our country by birthright and it is up to us to choose how it is run. We would not attempt to dictate to Argentina, nor indeed Britain, how they should run their countries... The simple and easy answer to the whole issue is for Argentina to give up their erroneous and antiquated claim and then we can all live in peace. How loud do we have to shout it? “WE WISH TO REMAIN BRITISH.” Is there anybody out there?⁶⁰

Other islanders expressed fear that any agreement along the lines of the Forsyth/Bullrich proposal would be the beginning rather than the end of Argentine “intrusion.” As one councilor stated:

We must always be willing to consider any proposals which would remove the Argentine claim to our Islands, but previous experience has shown that some Argentine officials see any willingness to negotiate a settlement as a tacit acceptance of their claim. We need to be certain that any proposal is a serious effort to remove the Argentine claim and not just a pretext to get us at the conference table.⁶¹

An announcement that island councilors would meet with Forsyth and Bullrich caused further controversy. Many islanders were angry that the councilors

had agreed to the visit and hoped that it would not happen again,⁶² but on May 20, 1998, the two authors met with the councilors and the public to discuss their proposal.

The *Penguin News* later reported that most islanders disagreed with the proposal and that the meeting was “a stalemate.”⁶³ As one islander said, “We’ve got what we want, self-determination—and yet you expect us to give opinions on something which doesn’t suit us at all—it involves giving away something we’ve already got.”⁶⁴ Others were skeptical that such a proposal would satisfy Argentina’s ambitions and argued that if Argentina agreed to such a deal “it would only satisfy them for a limited amount of time before the treaty was used to advance their claim.”⁶⁵

Underlying the rejection by islanders of the reopening of any discussions about sovereignty is a continued and profound distrust of Argentina. “President Menem’s government has been beset with political setbacks, unemployment, corruption in high places, harassment of journalists, public lack of confidence in the forces of law and order and the judiciary,” the Falkland Islands Association commented in the *Falkland Islands Newsletter*.⁶⁶

The islanders’ wishes have continued to receive strong support from the Labor administration in Britain. The new British government reaffirmed Britain’s sovereignty over the territories it calls the Falkland Islands and self-determination for the Falklanders. In a New Year’s broadcast on BBC Radio in 1998, the new foreign secretary, Robin Cook, declared:

We have made it perfectly clear that the wishes of the Falkland Islanders are what count. They do not want shared sovereignty and in those circumstances there is no question of us agreeing to shared sovereignty...There is no question of us agreeing to any settlement on the islands that does not respect the Islanders’ views. They are the people who live there after all and we are a democratic nation and we have to respect the democratic wishes of the people who are there. We want a settlement that will suit their future and one in which they will be confident.⁶⁷

Perhaps as a result of the reaction to the initiatives described above on the part of the islanders and the British, Argentina proposed a sovereignty freeze, including the following points:

- An extension of the current sovereignty umbrella for another twenty years;
- Talks on sovereignty on the first day after the twenty-year extension;
- The flying of two flags (Britain and Argentina) or even three flags (Britain, Argentina, and United Nations, or the colors of the islands); and
- Closer links, trade, and communications between the islands and the mainland, including a lifting of the ban to Argentine visitors.

The sovereignty freeze proposal was promptly rejected by the islands councilors. Councilor Summers stated that the proposal put forward by the Argentine foreign minister had “nothing in it...in terms of its content that we haven’t heard before,”⁶⁸ adding that the councilors were not prepared to consider such a concept because of Argentina’s current threatening attitude, even though it “might have some intrinsic merit somewhere along the line.”⁶⁹ In this statement, Summers was referring to the threat of economic sanctions on fishing vessels operating without Argentine consent and an alleged conspiracy to deny air links with the continent (these had been suspended at the time for reasons related to the Pinochet affair) unless they stopped in Argentina. Councilors also expressed that a freeze would only be acceptable if at the end of the freeze period there were a binding plebiscite.

In January 1999, the Argentine government carried out an aggressive diplomatic offensive to reopen negotiations on sovereignty. The Falklands/Malvinas issue was considered by U.S. President Bill Clinton, his secretary of state, Madeleine Albright, U.N. Secretary-General Kofi Annan, and the British foreign secretary, Robin Cook. In the midst of this diplomatic blitz, a new proposal was presented to the islanders by Nicholas Tozer, an Anglo-Argentine journalist.⁷⁰ Though Di Tella stated that that the concepts involved did not originate in Argentina, it appears that this proposal had the clearance of the Argentine foreign ministry. Tozer’s proposal, termed a “bundle of ideas” in press reports, included the following elements:

- Recovery of Argentine territory: the Argentine cemetery at Darwin would be declared Argentine territory under the name “Malvinas;”
- An Argentine representative would be appointed to the “Malvinas” territory, and the Argentine flag would fly;
- Argentina would drop its claim internationally and constitutionally;
- There would be continuing Falklands self-government;
- Argentina would promote the Falklands to be host of the Antarctic Treaty secretariat.

As with prior initiatives, the islanders were highly negative in their opinions, and had the opportunity to voice their views at a public meeting in January 1999. Press reports indicated that islanders deemed the proposal laughable. They failed to see the rationale of an Argentine territory consisting of a cemetery with a representative. A consulate was deemed as more appropriate for an Argentine presence.⁷¹

THE SOVEREIGNTY ISSUE AND THE FUTURE OF COOPERATION

Argentina and Britain have always recognized the importance of cooperation in the Falklands region. The 1976 Shackleton report made it clear that there

could be no major economic development of the islands and their dependencies without pragmatic cooperation in the area, particularly in the development of fisheries and oil resources.⁷²

Successive British governments have also recognized that the long-term interests of the islanders lie in practical forms of association with the Argentine mainland. A number of practical agreements advantageous to the islanders, Argentina, and Britain were concluded in the 1970s, including improved communications by air with Argentina and the construction by Argentina of a temporary airstrip, the establishment of an integrated postal service, and supply of fuel by YPF, the then Argentine national oil company. These agreements also allowed islanders to have better access to mainland health and education services.

Postwar events, particularly in the areas of fisheries and oil exploration, have reaffirmed the critical importance of Argentine cooperation. In recognition of this reality, a member of Parliament stated in 1995:

Discussions and negotiations must be held with Argentina. The Falkland islanders recognize their geographical location and their need for economic and political relations with their neighbors. The islanders need to talk to Argentina about fish stocks, conservation, possible oil explorations, and economic cooperation in the region.⁷³

Prime Minister Thatcher stressed this same point in a 1995 address to the islanders, stating:

*A more sensible relationship should produce benefits for all concerned and that has certainly been true over oil exploration...For similar reasons, I would like to see closer cooperation with Argentina over fisheries. The fishing industry is vital to your economy...However, there remains one aspect which seems particularly at odds with the developments I mentioned above: a lack of direct trade, communication, and transport links between the islands and the mainland.*⁷⁴ (emphasis added)

Though progress has been made since 1990, cooperation remains limited and fragile because of the unresolved political issue. Britain and the islanders wish cooperation without any change in political status of the Falklands/Malvinas, and Argentina is willing to cooperate but also expects, sooner or later, to see progress on the question of sovereignty. As we have seen, when Britain and Argentina reached an agreement in November 1990 on fisheries, the two governments agreed to open the way for cooperation in this field on an ad hoc basis, by means of the establishment of the so-called South Atlantic Fisheries Commission and the temporary prohibition of commercial fishing of vessels of any flag in the maritime area defined in the same agreement.⁷⁵ Both countries agreed to exercise joint control and supervision of fishing vessels, and a new zone under the name of the

Falklands Outer Conservation Zone (FOCZ) was agreed upon. This new zone extends over 200,000 square kilometers in a semicircle north, east, and south of the FICZ and is administered by the Falkland Islands government.

Yet cooperation on fisheries has not been always smooth. In several instances Argentina has taken unilateral measures to reassert its sovereignty claim with potential harm to the economy of the islands. In 1992, for example, Argentina offered licenses to foreign vessels at a lower fee than that charged by the Falklands government, as well as a seven-month fishing season as compared to the three-month season offered by islands authorities.

In early 1998, Argentina enacted Fishery Law 24922,⁷⁶ which granted the Argentine provinces jurisdiction for a distance of up to twelve nautical miles from the maritime baseline over the living marine resources that could be found in said area. Argentina also offered more favorable terms than the Falkland Islands government for the fishing of squid. As a result, about thirty vessels refused to submit the 10 percent deposit required by the government of the Falkland Islands to secure a fishing license for illex squid in December of 1998.⁷⁷ This has represented a loss of revenue of at least £3 million for the islands, which meant that some planned capital projects had to be abandoned.

In another move to attract Far Eastern fishing companies, the Argentine government also lifted stipulations that required all vessel maintenance to be carried out in Argentine ports and that 50 percent of a ship's crew consist of Argentine nationals. The Falklands Islands government soon expressed anger and frustration over what it termed Argentina's attempts to destabilize the islands' economy.⁷⁸

In the area of oil resources, the situation is even more complicated than it is in the fisheries sector. It has taken several years, and numerous incidents, for Britain and Argentina to reach some sort of preliminary understanding on oil exploration activities. In late 1991, Argentina and Britain simultaneously announced the enactment of continental shelf legislation. Britain's proclamation provided for the exercise of its rights over the sea and subsoil of the continental shelf around the Falklands/Malvinas and permitted seismic surveying. Argentina's law established that from the baseline it fixed, maritime spaces would be measured comprising territorial sea, contiguous zone, exclusive zone, and continental shelf.⁷⁹ Shortly after these unilateral pronouncements, delegations from both countries met in London, and a high-level group was established to explore means of cooperation.

In late 1992, Britain authorized oil exploration around the islands and the Falkland Islands Legislative Council passed a bill permitting licensed surveys of the continental shelf. Argentina responded by reiterating its sovereignty claim, making it clear that it did not accept or acquiesce to British sovereignty over the Falklands/Malvinas, nor did it agree that Britain had a right to invite companies to undertake surveys in the islands' territorial waters.⁸⁰ Initial seismic studies were

conducted in 1993 in an area extending two hundred nautical miles from the islands. Seismic data indicated that crude reserves in the South Atlantic surrounding the Falklands/Malvinas could exceed Britain's North Sea reserves by more than 50 percent.

In September 1995 an agreement was reached in New York between Britain and Argentina concerning cooperation over offshore activities in the southwest Atlantic. The agreement, based on those reached at Madrid on February 15, 1990, preserves the sovereignty positions of both sides and sets up a joint commission to oversee some functions of mutual interest and the management of a special cooperation area (SCA) lying to the southwest of the islands.⁸¹ The joint commission and a subcommittee on technical issues formed later have been meeting since 1996, but no licensing round has yet been approved.

After the above agreement was signed, on October 28, 1995, the Falkland Islands government launched a licensing round in areas north and south of the islands and separate from the SCA. Exploratory drilling was carried out in six wells throughout 1998. After evaluating the data, the British Geological Survey (BGS) reported that it showed the six wells to be "dry" but that live oil was returned to the surface from one well and quantities of natural gas were found in another. The BGS added that geochemical analysis of the data indicated that the North Falkland Basin has rich organic source rock present. Some of this source rock is not mature but the lower sections of the rock are considered capable of generating oil. Recent calculations by the British Geological Survey (BGS) and Shell show that the organic-rich source rock found in the region has probably formed up to 60 billion barrels of oil within the North Falkland Basin.⁸²

The exploration activities described above caused adverse reaction in Argentina. In April 1998, coinciding with the arrival of the *Borgny Dolphin* rig in Falkland waters, the Argentine Senate passed a bill proposed by Senator Eduardo Menem, brother of the former president, providing for sanctions against any company, whether Argentine or foreign, that undertakes oil and gas exploration or exploitation activities in the Falklands/Malvinas without the prior consent of the Argentine government. A similar bill had been approved by the Senate in 1995 but lapsed because of inactivity by the Chamber of Deputies. These sanctions include substantial fines, cancellation of contracts with the Argentine government, and a prohibition on doing business in Argentina.⁸³

PEOPLE VERSUS FLAGS

President Menem ended his tenure in December 1999 without having seen the Argentine flag waving on the islands, but during his last months in office the ban on travel to the islands by Argentine nationals was lifted. Although efforts to open lines of direct communication and dialogue between islanders and

Argentines date back to the Thatcher administration, disagreement on the conditions under which such opening should take place had blocked progress.

In 1999 an unpredictable event occurred that proved to be a catalyst for change. As a result of Augusto Pinochet's arrest in London in late 1998, the Chilean government, among other retaliatory measures, obtained a suspension of flights by the Chilean airline LAN Chile between the mainland and the Falklands/Malvinas. No one could predict how long this suspension was likely to remain in effect, and in the meantime there was no way air flights between the islands and the mainland could be resumed unless the Argentine government consented. Faced with impending isolation and the need to ensure greater mutual cooperation on fishery management and conservation, island councilors and Argentine officials sat down together at the negotiating table for the first time.

After a series of arduous meetings between island councilors, Argentine representatives, and British officials, an agreement was signed on July 14, 1999, on a package of measures aimed at building confidence and reducing tension between the Falklands/Malvinas and Argentina.

The agreement consists of two main documents, a joint statement, and a side letter.⁸⁴ The main elements of the agreement were as follows:

- Holders of Argentine passports will have the same rights of access to the islands as any other foreign national, without discrimination, thus ending a ban introduced in 1982;
- Flights by LAN Chile between the Falklands and South America can resume;
- Both sides have a common interest in the management and conservation of the rich fisheries stocks of the South Atlantic. As such, they agree to enhance cooperation on conservation and coordinate a program against poaching, to be put in place by October 9, 1999;
- As a symbolic gesture of reconciliation, the Falkland Islands government will give permission for a memorial in the Argentine cemetery for those Argentine servicemen who lost their lives in 1982. For its part, the government of Argentina will review the Spanish place names for locations in the Falkland Islands, which were imposed by decree by President Galtieri.

The agreement was presented by all sides as a historic moment in the relations among Britain, Argentina, and the islands. The Argentine minister of foreign affairs, Guido Di Tella, called the agreement "evidence of the beginning of an element of trust" and stated, "There are no winners or losers, we are all winning, we are all enhancing the possibilities that the South Atlantic offers us."⁸⁵ Island councilors expressed satisfaction at having obtained "what is in all circumstances a good deal for the Falkland Islands."⁸⁶

However, the agreement was highly controversial among islanders: one councilor expressed opposition to its signing, and those in favor of the agreement were

accused of breaking their promises to the electorate by not having consulted with their constituents before signing it.⁸⁷ Many islanders took the position that no access should be allowed to Argentines unless Argentina dropped its sovereignty claim, and, echoing the objection of the only dissident councilor, they maintained that the agreement offered very little to the islands and everything to Argentina.

Controversy also extended to the provisions of the agreement relating to the fisheries. After a subsequent series of meetings in Madrid to discuss the specifics of the joint statement of July 14, most island councilors said that they were satisfied that the provisions agreed upon fulfilled the purpose of the joint statement and that mutually beneficial economic and conservation objectives would be met.⁸⁸

As of the end of 1999, however, critics were maintaining their opposition to the fisheries agreement and hard-liners had requested a suspension of the provision allowing Argentines to visit the islands. Councilor Norma Edwards, in a more cautious tone, said that she was pleased with the progress made on fisheries but wanted to see a long-term fisheries agreement signed before Argentina's voters went to the polls in December.⁸⁹

THE NEW ARGENTINE ADMINISTRATION

In December 1999, President Fernando de la Rúa was sworn into office. The new administration has adopted a harder line towards the Falklands/Malvinas dispute, and particularly towards the islanders. In his first speech before the United Nations decolonization committee, Argentina's new foreign minister, Adalberto Rodríguez Giavarini, qualified the agreements signed by the Menem administration as being "of a provisional nature," criticized the absence of sovereignty negotiations,⁹⁰ and urged Britain to resume bilateral negotiations on sovereignty.⁹¹ Islander representative John Birmingham reacted to the foreign minister's performance as "out of step with the reality of the situation," adding, "He's playing the same old tune that I thought had passed us by."⁹² Other islands representatives went on to reiterate their position on self-determination, adding that "peoples are not chattels to be owned or traded against their will: Argentina cannot reinvent the colonial past."⁹³ More recently, the Argentine Government refused to hold direct discussions with the islanders on fisheries conservation.

A NEW FRAMEWORK

I am convinced that the Falklands/Malvinas dispute will persist unless all parties find a negotiated solution that accommodates the interests and needs of each one of them. I do not expect any of the parties to change their fundamental legal positions. Argentina will not renounce its claim (as the islanders wish), and

Britain and the islanders will continue to vehemently affirm the islanders' right to self-determination (in spite of Argentina and the United Nations). Furthermore, I do not expect the parties to agree to an adjudicatory resolution of the dispute. Finally, Britain does not face the political and economic realities and pressures that were operative in the case of Hong Kong, where the transfer of sovereignty was not conditioned on the wishes of the inhabitants of the territories in question.

I believe that a solution is possible, but that it will require a fundamental change in how the dispute is viewed by all parties—a turn from a narrow, intransigent, and legalistic mode to a broader and more practical one in which progress in dealing with the dispute is measured under new parameters and targets.

What the evidence is showing is that the bottom-line issues are the traditional inability or unwillingness of Argentina to deal with the islanders as an independent party and the lack of confidence among the islanders, who perceive the Argentine claim as a forced integration, a threat to their freedoms and way of life. Unless this dual problem is recognized and addressed, there will be no solution.

The new Argentine administration must build on past successes and learn from past failures. In spite of all its shortcomings, the previous administration did the right thing in attempting to establish a direct relationship with the islanders. But a lasting and strong relationship cannot be about “seducing” islanders to become Argentines while pressuring them to sign off on some type of political deal within the term of office of the sitting president. In fact, future efforts must be aimed at helping Argentines and islanders understand and respect each other's concerns, and gradually deepening their level of cooperation and association for their mutual benefit. This is a process that must take place at its own time and pace; it should be neither forced nor unreasonably opposed.

It is a narrow and mistaken view to say that no progress was made during the last ten years in reaching a solution on the sovereignty issue. While controversy and difficulties surely remain, the agreement of July 14, 1999 represents an essential step toward the development of a relationship of trust between islanders and Argentines. The stage is set for all parties to engage in a constructive and meaningful dialogue towards a peaceful settlement.

Consistent with my understanding of the nature of the Falklands/Malvinas problem today, I propose no new formulas to deal with the sovereignty dispute. Rather, I suggest guiding principles by which all parties may approach that problem together.

1. The Falklands/Malvinas dispute is broader than a question of title to territory between Argentina and Britain; it is also about a community—the islanders—that perceives Argentine sovereignty as a threat to its identity, freedoms, and way of life.

It is perfectly clear that Britain and Argentina disagree as to the legal title over the islands. The international community has recognized that the islands are

a disputed territory. However, these islands are inhabited by a community that wishes no political association with Argentina, and it is simply unrealistic to expect that Britain will force the islanders to accept Argentine sovereignty. Therefore it is pointless for Argentina to address the dispute within an exclusively bilateral framework. It is also pointless to argue again and again the merits of the Argentine legal case, as Britain and Argentina are not in the midst of an adjudication process. This is a negotiation process—one in which the islanders' future is the central point to be addressed.

Presently the islanders do not want a future that is politically linked to Argentina. The problem lies in the concerns of the average islander, who is mindful of both British neglect in the past and the Argentine invasion of 1982, and who fears (whether these fears are well founded or not) that with any change of sovereignty over the islands his or her way of life will be lost to an Argentine "takeover." We recall that during testimony before a United Nations special committee, one member of the Falkland Islands Legislative Council spoke of their "way of life" as including local control over the following:

- The making and enforcement of laws, and local courts;
- The ownership of property, with property rights governed by local law;
- Immigration policy;
- The scheduling of airline flights to the islands;
- Taxation: what taxes shall be levied and "what we spend our money on;"
- Education;
- The decision as to whom the islanders owe allegiance;
- Control over the islands' own resources;
- Any future decision on whether to become an independent country.⁹⁴

It is true that islanders do not currently enjoy the degree of autonomy reflected in the above definition of their "way of life." The Falklands/Malvinas are subordinated to the British crown in many ways, including the selection and appointment of the governor, the final approval of laws, the selection of judges, and the operation of the courts. However, today more than ever, the islanders see themselves as a distinct community, have greater control over their affairs, and perceive any association with Argentina as a threat to their new sense of identity and control.

2. Legal guarantees and safeguards by Argentina to protect and preserve the islander's way of life are necessary but not sufficient to change islanders' views.

It is fair to say that Argentine governments have not entirely ignored or neglected the distinct culture of the islanders. Starting in the 1960s, the proposals discussed between Argentine and British officials always provided legal safeguards to protect that culture. Indeed, the latest proposals appear to afford a high

degree of autonomy for the islanders. Furthermore, protection of the islanders' way of life is now embedded in the 1994 Argentine constitution.⁹⁵

It seems more than likely that Argentina would now be prepared to sign an agreement with Britain whereby the islanders would enjoy a "super-autonomous" status. But for the majority of the islanders the best legal safeguards and guarantees are not enough. They simply do not believe they will be honored.

If Argentina were willing to accept something less, much less, than full sovereignty, one might argue that such fears are misplaced. An Andorra-type scheme, or even a leaseback with a long lease period and backed by international guarantees, should reasonably assure islanders that their freedoms and security would be preserved. In fact, had leaseback been negotiated before 1982, it is very likely that the islanders would have experienced little, if any, change in their lifestyle⁹⁶—and of course, the 1982 war, with all its tragic waste of lives, treasure, and trust, would never have occurred.

Today the real issue in question is the islanders' confidence, or lack thereof, in Argentina's promise that their "way of life" will be respected. It is the islanders' attitude towards Argentina that is now at the heart of the Falklands/Malvinas question, and Argentina's political leadership must realize and accept that herein lies the challenge as well as the opportunity.

3. There will be no progress towards a solution unless Argentina accepts that the islanders are a party distinct from Britain with separate and legitimate interests concerning the future of the islands and whose wishes must be respected.

Whether Argentina likes it or not, the islanders will not go away and their identity as a community is stronger than ever. With Britain's acquiescence, the islanders have taken center stage in the dispute. British government representatives have declared that they "have not taken the line that this is British sovereign territory for ever and a day—it need not be—some other form of government could be preferred by the islanders."⁹⁷

Contrary to the practices of the 1960s and 1970s, there should be no talks about the future of the islands over the islanders' heads. Direct engagement with the islanders is taken by some as amounting to the same thing as allowing the islanders to decide on the legal ownership of the islands, whereas the United Nations, they argue, has accepted that this is a sovereignty dispute between nation-states to be left to Britain and Argentina. In my opinion, this is a narrow view that misses the fundamental point. Of course Britain and Argentina must find a satisfactory settlement to their dispute over title to the Falklands/Malvinas, but the residents of the islands are a party—the main party—to any discussion on ways of protecting and ensuring their way of life. Whether we call their concerns "wishes" or "interests" is irrelevant. The islanders themselves are those who will mainly be affected by any proposed settlement. It is they who will have to

live with its consequences. They must be confident that their way of life will be respected, their institutions safeguarded, their economic future secured.

In my opinion, if it is truly interested in a just and lasting settlement of the dispute, Argentina should shelve its legal claim of sovereignty and drop its emphasis on the distinction between the “interests” and the “wishes” of the islanders.

4. There will be no progress towards a solution of the dispute unless islanders accept that there is a problem that needs to be resolved, and that open engagement with Argentina is the only way to solve the problem.

Whether the islanders like it or not, Argentina will not go away and will not renounce its sovereignty claim. Just as the political status of the Falklands/Malvinas is not simply a British-Argentine dispute, it is also not a British-islanders matter, without the involvement of Argentina. But the way that islanders perceive and deal with the Argentine claim will need to change over time. Isolation and intransigence on the side of the islanders will make matters worse, reinforcing the Argentine sentiment of being left out, of not being recognized.

Presently islanders do not wish Argentine rule or control but they should be ready to at least consider means of further cooperation and association with Argentina that do not imply being under Argentine rule. It serves no purpose to stress the “wishes” of the islanders as an extremist position that completely ignores Argentina as a legitimate party with legitimate interests. Islanders must understand that in the long term their “way of life” will be affected for the worse, not the better, by keeping Argentina completely out.

Establishing an open and direct dialogue between Argentina and the residents of the Falklands/Malvinas is no easy proposition. But all parties should recognize that an intransigent position—whether assumed by the Falklands lobby, the British government, the islanders, or the political leadership in Argentina—is the worst course of action.

With the agreement of July 14, 1999, islanders have already taken a significant step toward breaking their isolation from the mainland and moderating their intransigence toward Argentina. A key provision of that agreement is that Argentines are now able, at the initiative of the islanders, to visit the Falklands/Malvinas and directly experience the distinctiveness of the island community. Leaving aside the circumstances, this is a contact that the islanders themselves have agreed to reestablish at their own time and pace, and we have reason to hope that along with the other provisions of the July 14 agreement it represents the initiation of a dialogue that will reduce the sense of threat and resulting distrust that islanders feel toward Argentina.

5. A lasting solution requires from Argentina a long-term policy with strong political consensus, not one dictated by short-term partisan interests with unrealistic expectations.

Ironically, though islanders remain strongly opposed to any change in sovereignty, today the majority are more open to changes in their relationship with Argentina than they have been at any time in the recent past. Only a few years ago they were strongly opposed to any contacts with Argentina unless the Argentine government dropped its sovereignty claim. With great political courage, members of the islands' legislative council signed the milestone agreement of July 1999.

The challenge is to change the risk/benefit ratio for the islanders: they must perceive that the "price" of any agreement with Argentina is worth paying in relation to the benefits they will receive. To now say to the islanders that no further cooperation on fisheries, oil, or any other matters will be forthcoming unless they consent to a change in sovereignty is the wrong approach.

What Argentina needs is a long-term policy for dealing with the dispute—one not dictated by the narrow partisan interests of each government in office but rather one that is endorsed by the major political forces. The officials of virtually every Argentine government in the twentieth century have wanted to "recover the Malvinas" before their terms in office have expired. But this all-or-nothing approach has proved a failure. It simply misses the fundamental point that the dispute is about issues of confidence, trust, and relationship that have their own dynamics and pace.

In the early 1970s, the original "hearts and minds" policy gave way quickly to a "carrots and sticks" approach. In the 1990s, President Menem engaged in a contradictory policy of openness to the islanders while promising and pressuring for an Argentine flag in the islands by 2000. Unfortunately the so-called policy of seduction is judged by many on the basis of its failure to deliver a "sovereignty paper solution" (something, I may add, that Menem brought upon himself) rather than on its effectiveness in beginning to build a genuine relationship with the islanders.

6. The pace of progress toward a solution depends on the quality of the relationship between Argentina and the islanders.

Building islanders' confidence that their way of life will be respected by Argentina is the point of departure for any further arrangements, and this will occur only through the development of an honest, open, and non-threatening relationship—a mutually beneficial relationship that is mature and free from pressures, threats, and trivialism. Only if Argentina engages the islanders as equals, not trespassers, artificial settlers, or objects of seduction will the islanders see Argentina in a different light.

The islanders must "own" their relationship with Argentina and not feel that it is something imposed on them by Britain in hopes of getting rid of the trouble and expense of supporting them, or by Argentina in hopes of taking them over.

Above all, this relationship must develop in a climate free from pressures or threats regarding the sovereignty issue. Promises (or threats) that the Argentine flag will fly over the islands by such-and-such a year, or an insistence on discussing sovereignty over the islands with Britain at this time, will only be counterproductive.

7. Progress towards a lasting solution will be gradual. Stability and confidence in each step is essential to the next step.

The way to move forward is to gradually build steps that bring all parties closer to the satisfaction of their legitimate interests. For Argentina it is critical to accept that no progress will be made unless islanders feel confident that the Argentine claim is not about control and intrusion on their way of life, something they do not feel at present. Islanders must gain confidence about the maintenance of their ethnic identity despite growing contacts with Argentina. For islanders it is critical not to expect Argentina to drop its claim, but to influence the way Argentina views them, as a distinct community that wishes to preserve its freedoms and way of life.

Taking a broad view of the problem, progress towards a solution should be seen in stages. It is foolish for Argentina to see progress only if there are "formal negotiations" with Britain on sovereignty. In a first stage, the parties should focus on areas of mutual benefit that are less threatening to the deepest concerns expressed by the islanders. Fisheries management and conservation is one such area. As we have seen, it is critical for the islanders and Argentina to ensure a stable level of cooperation from Argentina in the conservation of stocks, particularly the illex squid. Cooperation should be further intensified through a long-term agreement dealing with relative stability and anti-poaching measures. Such a long-term agreement could provide for greater sharing of the benefits without detriment to the administration of the licensing system by the islanders. It is not in Argentina's interest to cause, or threaten to cause, economic hardship on the islanders as a means to pressure them into an agreement they are not ready for. In parallel, it is also crucial for the islanders, and Britain, to be willing to grant Argentina greater recognition and benefits in the exploitation of maritime resources, which would increase mutual respect and legitimacy without detriment to the islanders' control of the exploitation of such resources.

Granted an open mind on both sides, there are many ways in which Argentina and the islanders might further their cooperation and common interests. In the area of fisheries and oil resources, they could make arrangements that provide more joint consultation on future economic activities and greater sharing of costs and benefits.

As mutual cooperation and respect increases, there will be a two-way effect, with islanders being less suspicious of the Argentine claim and Argentina more aware and respectful of the islanders' identity and wishes. In a second stage,

Britain and Argentina could agree to demilitarize the area, bringing about not only a significant economic gain (for Britain) but also a tremendous achievement in the degree of trust and respect between Argentina and the islanders. For this to happen, islanders must be convinced that Argentina is not driven by territorial ambitions and the goal of taking over their homeland, and confident that their wishes will be respected. With demilitarization, or in a third stage after there is a good track record of cooperation, there could be an agreement to formalize a political association between Argentina and Britain with respect to the islands (whether leaseback, condominium, or other) which the islanders would be more ready to accept given the change in perceptions and attitudes on all sides that would result from a process of mutual respect and legitimacy.

TOWARD A LASTING SOLUTION

Based on the evidence, I believe that we are already in a first stage in the process I have outlined above. In my view, formal negotiations between Britain and Argentina over sovereignty are not the measurement of progress towards a solution in this dispute. Such an expectation will only perpetuate the problem. Rather, the gradual increase in contacts, cooperation, and trust between the islanders and Argentines should be the mark of progress.

For the islanders, the opening of contacts with Argentina was a huge and most difficult step to take. It would be tragic if the new Argentine government missed this broader perspective. The wrong thing to do would be to end or slow down the process of closeness with the islanders, to ignore or dismiss the importance of this step in the eyes of the islanders. Rather, that process must be intensified and made more credible, with a broader support and legitimacy among the ranks of Argentina's political leadership.

My recommendations are not aimed at reaching an ideal stage of trust between islanders and Argentina, but rather at improving relations to an extent that will allow, at one unforeseen point in time, a final and lasting settlement. Even if the climate improves, strong safeguards may be required for any type of settlement. Impartial nations might be enlisted as guarantors to oversee compliance with the terms and conditions of any future agreement. As an even stronger protection, islanders might enjoy the right to "opt out" of any agreed association in the event that the Argentine government failed to protect the islanders' guaranteed rights.

In the final analysis, however, the critical thing is that a genuine relationship of trust be established wherein the residents of the Falklands/Malvinas perceive that the Argentine nation and people have no interest in changing their way of life or taking over their territory, economy, or local political institutions. This will happen only with time and a positive environment.

This recommendation of a gradual approach represents the recognition of a simple but crucial fact: at present there is no urgency, for the British or the Falkland Islands government, to reach any final political settlement with Argentina. Nevertheless, there are incentives to move in such direction.

First, a political solution to the dispute would eliminate the possibility of renewed fighting over the islands and allow for the reduction of defense expenditures. The islands no longer possess much strategic value for Britain, for whom such "overextended overseas commitments are no longer feasible."⁹⁸ Second, a political settlement would also create and/or solidify conditions for mutual economic stability and prosperity. Third, a political settlement would remove an unresolved issue—and potential embarrassment—from Britain's agenda at the United Nations. Even after the 1982 war, the U.N. has maintained that the dispute should be solved through negotiations. In Britain, members of all political parties have called for negotiations on all aspects of the dispute,⁹⁹ and public opinion has been favorable.

It is time for Argentina to shelve the sovereignty claim, not simply by reinstating the "umbrella" policy but also by refraining from political demagoguery and pressure regarding the ownership of the islands. The islanders fear and distrust Argentina: Why then aggravate the problem? Argentina needs a state policy, not simply a government policy, to address their concerns, one upon which all its political parties agree to act in good faith.

For their part, islanders must continue in their opening up to Argentina, and not remain isolated and inflexible. If they do so, Argentine visitors will learn about their cultural distinctiveness and they will have more influence on the way Argentina views the islands. This will allow for closer cooperation and association, especially in regard to offshore resources, to develop naturally, at its own pace. As a more positive relationship develops, devoid of political threats and pressures on all sides, the time will come—in ten or twenty or fifty years—when a political solution will be possible.

What is essential is for political leadership on all sides, learning from the past failures and tragedies, to create, and maintain the right environment for strengthening ties between Argentina and the islanders. With Britain leaving the door open to some other political status for the Falklands/Malvinas if the islanders so prefer, it will be up to the Argentines and the islanders to come to a new understanding on a *modus vivendi*. Hopefully the day is closer when the governments of Britain, the islands, and Argentina will devise a mutually acceptable arrangement to settle the dispute and bring lasting peace and cooperation to the South Atlantic. They owe this to the future and to the memory of all of those who died in the tragic conflict of 1982. ■

NOTES

- 1 The islands are named Falkland Islands by the British and Islas Malvinas by the Argentines. Throughout this article the islands in question will be referred to either as "the Falkland Islands (Malvinas)," following the practice adopted in 1964 by the U.N. Special Committee on the situation with regard to the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (see 19 U.N. GAOR Annex 8, Agenda Item 21, addendum item part 1), at 439, U.N. Doc. A/5800/Rev. 1 (1964-65))— or as "the Falklands/Malvinas," for short. Places in the islands will be referred to according to the names given by those living in the islands.
- 2 On April 2, 1982 the Argentine Government took the Falklands/Malvinas by force and, after 73 days of military conflict with Britain, surrendered on June 14, 1982. For further reference on the Falklands/Malvinas war see Hastings and Jenkins, *The Battle for the Falklands* (1983); Freedman and Gamba-Stonehouse, *Signals of War: the Falklands Conflict of 1982* (1990); Cardoso, Kirschbaum, and van der Kooy, *Malvinas: La Trama Secreta* (1983); and Thornton, *The Falklands Sting: Reagan, Thatcher, and Argentina's Bomb* (1998).
- 3 The Falklands/Malvinas is a non-self governing territory under the decolonization framework of the United Nations. In 1965, the U.N. General Assembly issued its resolution 2065 inviting the governments of Britain and Argentina to initiate negotiations to reach a peaceful settlement of their dispute over the sovereignty of the Falklands/Malvinas, South Georgias, and South Sandwich islands. See G.A. Res. 2065, 20 U.N. GAOR Supp. (No. 14), at 57, U.N. Doc. A/6014 (1965). Starting in 1966, and over a period of 17 years, both governments sought to resolve their differences without success. In 1968, negotiators on both sides reached a memorandum of understanding for the eventual transfer of sovereignty over the islands to Argentina but the deal was opposed by the British Parliament. In 1980 the British Foreign Office favored discussions with Argentina on a leaseback proposal but this was rejected by the islanders. For further reference on the negotiations during this period see Beck, *The Falkland Islands as an International Problem* (1988), 96-132; F. Hoffman and O. H. Hoffman, *Sovereignty in Dispute: The Falklands/Malvinas, 1493-1982* (Colorado: 1984), 102-151; and Roberto Laver, *The Falklands/Malvinas Case: Breaking the Deadlock in the Anglo-Argentine Sovereignty Dispute*, (Kluwer Law International, 2001), 125-143. After the war, the United Nations General Assembly has continued to call on Argentina and Britain to negotiate a peaceful resolution to the sovereignty dispute.
- 4 After the failed attempt in 1968 to reach a sovereignty agreement, Argentina agreed in 1971 on a policy of cooperation and assistance towards the islanders hoping to persuade them to accept a transfer of sovereignty.
- 5 See Consejo Argentino para las Relaciones Internacionales, *Malvinas, Georgias, y Sandwich del Sur: Diplomacia Argentina en Naciones Unidas* (hereinafter CARD), Vol. 2 (1984): 28.
- 6 Beck, 172.
- 7 In 1975 the British Government commissioned a study under the leadership of Lord Shackleton on the economic viability of the islands. The final report was issued in May 1976.
- 8 Forty days after the surrender by the Argentine forces, on July 23, 1982, the United Kingdom declared a protection zone with a 150 nautical mile radius around the Falkland Islands. The Falkland Islands Protection Zone (FIPZ) was created with the purpose of preventing any Argentine warship or military aircraft from entering such zone.
- 9 U.N. Doc. A/AC.109/PV.1327, 49-50.
- 10 Angel Olivieri Lopez, *Malvinas: La Clave del Enigma* (Buenos Aires: Grupo Editor Latinoamericano, 1992), 90. For further reference, see Bisbal, "Fisheries Management on the Patagonia Shelf," *Marine Policy* (1993): 213.
- 11 Statement by islander Mrs. Norma Edwards (member of the Legislative Council) in U.N. Doc. A/AC.109/PV.1446: 15. Another Islander remarked at the proceedings of the U.N. decolonization committee that, after 100 years of work on a sheep farm owned by an absentee landlord, his family was able to register a company and purchase the 200,000 acre farm and added that "(t)oday my brother and I are very optimistic about the future of agriculture in the Falklands." Statement by Mr. Robin Lee in U.N. Doc. A/AC.109/PV.1339: 11.
- 12 Statement by Mr. John Cheek, U.N. Doc. A/AC.109/PV.1238: 62.
- 13 Statement by Mr. John Cheek, U.N. Doc. A/AC.109/PV.1223: 31.
- 14 Statement by Mrs. Norma Edwards, U.N. Doc. A/AC.109/PV.1446: 17.
- 15 Statement by Mrs. Norma Edwards, U.N. Doc. A/AC.109/PV.1387: 52.
- 16 Statement by Mr. Eric Miller Goss, U.N. Doc. A/AC.109/PV.1446: 14.
- 17 Ibid.
- 18 Statement by Mr. John Cheek, U.N. Doc. A/AC.109/PV.1285: 13-15.
- 19 Ibid.
- 20 Statement by Mr. John Cheek, U.N. Doc. A/AC.109/PV.1285: 12.
- 21 Statement by Mr. T.J. Peck, U.N. Doc. A/AC.109/PV.1420: 57.

-
- 22 Statement by Mr. T.J. Peck, U.N. Doc. A/AC.109/PV.1420: 52-53.
 23 Statement by Mr. John Cheek, U.N. Doc. A/AC.109/PV.1223: 27.
 24 Statement by Mr. Derek William Rozee, U.N. Doc. A/AC.109/PV.1238: 64-65.
 25 Statement by Mr. Alexander Betts, U.N. Doc. A/AC.109/PV.1238: 67-70.
 26 *Ibid.*, and U.N. Doc. A/AC.109/PV.1285: 17. The dominant role of the FIC in the economy of the islands has been pervasive for most of the life of the British colony. *Newsweek*, in May 3, 1982, 68, styled the Falkland Islands Company as a "privately owned monopoly enforced by the British Government." At that time it owned 43 percent of the land, an equivalent proportion of the sheep, warehouses, and ships, and employed 80 percent of non-government employees in the islands. It was the sole agent for sale of the wool crop—hence the territory's development has paralleled the growth of "the Company." For details about FIC's current operations, see <http://www.the-falkland-islands-co.com>.
 27 U.N. Doc. A/AC.109/1198: 5.
 28 *Ibid.*
 29 Olivieri Lopez, 109.
 30 The British delegate regretted that Argentina turned the debate into a bilateral dispute about land and not people. But he also regretted that the Decolonization Committee and the General Assembly adopted resolutions "that have failed even to mention the right of self-determination of the Falkland Islanders" and "... have also prejudged the outcome of negotiations in Argentina's favor." U.N. Doc. A/AC.109/PV.1261: 13.
 31 David Thomas, "The View from Whitehall," in W. Smith, ed., *Toward Resolution? The Falklands/Malvinas Dispute*, (1991), 33.
 32 Beck, 140.
 33 Little and Mitchell, 57.
 34 U.N. Doc. A/AC.109/2048: 4.
 35 U.N. Doc. A/AC.109/PV.1420: 67.
 36 The Argentine government has stated that this was an ex-gratia offer and did not imply acceptance of any responsibility. U.N. Doc. A/AC.109/2048: 7.
 37 U.N. Doc. A/AC.109/2048: 18.
 38 The only Argentines to travel there have been next-of-kin of war victims and journalists. There have been Argentines who have traveled on the basis of a foreign passport.
 39 U.N. Doc. A/AC.109/2083: 10.
 40 U.N. Doc. A/AC.109/1198: 6.
 41 U.N. Doc. A/AC.109/PV.1420: 68.
 42 U.N. Doc. A/AC.109/PV.1446: 25.
 43 U.N. Doc. A/AC.109/2048: 23.
 44 *Ibid.*, 22.
 45 U.N. Doc. A/AC.109/2083: 10.
 46 U.N. Doc. A/AC.109/PV.1446: 25.
 47 *Ibid.*
 48 Statement by Mr. Alexander Betts, U.N. Doc. A/AC.109/PV.1285: 16.
 49 U.N. Doc. A/AC.109/PV.1420: 71.
 50 *Ibid.*, 72.
 51 Statement by Mrs. Bertrand de Jamieson, U.N. Doc. A/AC.109/PV.1327: 41.
 52 Statement by Mr. Raul Milton MacBurney, U.N. Doc. A/AC.109/PV.1285: 21.
 53 The South Atlantic Council is one of the lobbies concerned with the Falklands/Malvinas case. Formed in late 1983, it resulted from a "workshop" on the conflict held at the University of Maryland in September 1983 (two more workshops were held in 1984 and 1985). For further reference, see Little and Mitchell, 3-9, 64-65.
 54 "Contrasting Approaches to Relations Between the Falklands, Britain, and Argentina," South Atlantic Council Occasional Papers, No. 9 (February 1998): 2-4.
 55 *Ibid.*, 9-14.
 56 *Penguin News*, March 6, 1998, 10.
 57 *Ibid.*, 1.
 58 *Ibid.*
 59 *Ibid.*
 60 Statement by Mr. Robin Goodwin, *Penguin News*, May 29, 1998, 3.
 61 Statement by Mr. Richard Cockwell, *Penguin News*, March 6, 1998, 1.
 62 *Penguin News*, May 29, 1998, 3.
-

- 63 *Penguin News*, May 22, 1998, 1.
- 64 *Ibid.*, statement by Ms. Janet Robertson.
- 65 It should be noted that in July 1998, Bullrich and Forsyth published a revised version of their proposal, taking into account comments received during the consultation process. See the full text in the *Penguin News*, July 10, 1998.
- 66 Falkland Islands Newsletter, March 14, 1998. <http://sartma.com/newletter/40safe.htm>.
- 67 *Ibid.*
- 68 *Penguin News*, December 25, 1998, 1.
- 69 *Ibid.*
- 70 *Penguin News*, January 22, 1999.
- 71 Falkland Islands News Network. <http://www.sartma.com/story.cfm?id=175>.
- 72 Olivieri Lopez, 87.
- 73 U.N. Doc. A/AC.109/PV.1446: 21.
- 74 U.N. Doc. A/AC.109/2048: 4-5.
- 75 The prohibition was lifted for licensed vessels from the Falkland Islands (Malvinas) as of January 1994.
- 76 Ley de Pesca, 24.922.
- 77 *Penguin News*, December 4, 1998, 1.
- 78 *Ibid.*
- 79 U.N. Doc. A/AC.109/1198: 14.
- 80 *Ibid.*
- 81 Argentine representatives stated that it was also verbally agreed in New York that the Argentine government would be entitled to collect a 3 percent royalty, in case any oil were found in the Islands. An amendment of Argentine Hydrocarbons Law No. 17,319 would be necessary in order to enable the Argentine government to collect the royalty. Section 59 of Law 17,319, provides that in no case a reduction in the payment of royalties would be authorized beyond a minimum of 5 percent of the liquid hydrocarbons extracted, computed at the wellhead.
- 82 <http://www.falklands.gov.fk/9ak.htm>.
- 83 Another bill, submitted by the executive branch, also a revival of an earlier proposal, was the amendment to the Hydrocarbon Law allowing for a 3 percent royalty to be charged to the companies for any oil exploited in Argentine waters.
- 84 For the full text of the joint statement and side letter see <http://www.falklands.gov.fk/jointstatement.htm> and the same site at [/exchange-of-letters.htm](http://www.falklands.gov.fk/exchange-of-letters.htm). See also *Penguin News*, July 16, 1999. See transcript of press conference by Argentine Foreign Minister Guido Di Tella and British Foreign Secretary Robin Cook, at <http://www.fco.gov.uk/news/newstext.asp?2643>.
- 85 <http://www.fco.gov.uk/news/newstext.asp?2643>.
- 86 *Penguin News*, July 16, 1999, 1.
- 87 *Penguin News*, July 23, 1999, 1. On July 19, 1999, a public meeting was held at Town Hall in Stanley, at which councilors explained the rationale of the July 14 agreement. For a transcript of the meeting, see Falkland Islands News Network. <http://www.sartme.com/story.cfm?id=458,460,464>.
- 88 On October 8, 1999, a joint statement on fisheries cooperation in the Falklands/Malvinas was signed between the British and Argentine governments. See *Mercosur News*, October 8, 1999. http://www.falkland-malvinas.com/noticias/noticia_en_malvinas.htm?id=246 and 247. On October 16, 1999, the first commercial flight since the hostilities occurred without disruption, flying to the islands directly from the Argentine mainland. Councilors warned, however, that flights would be suspended if Argentina failed to cooperate on fisheries. See *Penguin News*, October 15, 1999; *Mercosur News*, October 16, 1999, and October 21, 1999. http://www.falklands-malvinas.com/noticias/noticia_en_malvinas.htm?id=261,270.
- 89 *Ibid.*
- 90 *Penguin News*, July 14, 2000.
- 91 *Ibid.*
- 92 *Ibid.*
- 93 *Ibid.*
- 94 Statement by Mr. T. J. Peck, U.N. Doc. A/AC.109/PV.1420: 54-55.
- 95 First transitory provision of the 1994 Constitution.
- 96 Kinney, *National Interest/National Honor: The Diplomacy of the Falkland Crisis* (1989), 41.
- 97 Little and Mitchell, 141.
- 98 Olivieri Lopez, 100.
- 99 Little and Mitchell, 55, 59, 60; Smith, 73-74.
-