

# **The Falkland/Malvinas Islands Dispute: Sovereignty and International Law Perspectives**

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## **Abstract**

The research addresses the ongoing dispute between Argentina and the United Kingdom over the sovereignty of the Falkland/Malvinas Islands. The central issue lies in the overlap between principles of public international law, such as respecting territorial sovereignty, the principle of the right of peoples to self-determination, and the concept of occupation, set against a historical reality filled with significant events and conflicting interests. The main objective of this study is to present the legal frameworks and deduce potential solutions to the conflict.

The scope of this research focuses on the chronological historical presentation of events and the legal analysis of the perspectives and demands of the conflicting parties, using a methodology based on comparing legal texts, treaties, judicial rulings, and scholarly opinions in order to provide a balanced presentation that allows for a broader and deeper understanding of the dispute.

The main results highlight the complexities of applying legal principles, particularly in the intersection of historical claims and modern interpretations of sovereignty. The study recommends relying on legal references and engaging in an effective diplomatic dynamic that allows for the formulation of solutions based on mutual concessions. It also suggests necessary reforms in the decision-making mechanisms of the United Nations to reduce the influence of major powers. Additionally, it proposes the option of adopting shared sovereignty as a potential solution that preserves both historical rights and the rights of the population.

## Introduction

Regional conflicts may persist for decades, or even a century or more. Some of these conflicts do not end even after a decisive war, as military defeat does not deter the losing party from abandoning its claims, despite the consequences of ongoing tension and the threat of a new war. There are many examples of such regional conflicts, including Taiwan, Palestine-Israel, and the Falkland/Malvinas Islands. In these disputes, negotiation solutions have not been able to bring the parties closer or resolve the conflict. In all of these disputes, the parties claimed historical ownership, rejecting any compromise regarding the sovereignty of the disputed territory.

In the conflict over sovereignty of the Falkland/Malvinas Islands, Britain claimed its right to self-defense in response to Argentina's invasion of the islands in 1982, which sought to restore sovereignty by force after diplomatic efforts failed. Argentina considers the islands part of its territory. The war ended around four decades ago, but the end of the war does not truly mean the end of the crisis. The ongoing dispute between the two countries over the Falkland/Malvinas Islands in the southwest Atlantic still continues today, 42 years after the war ended, and nearly 200 years after it began.

A leaked memo in July 2023 revealed the extensive efforts made by the UK government and its diplomats to prevent the European Union from signing a declaration with Latin American countries that explicitly referred to the "Malvinas Islands," the Argentine name for the Falkland Islands, according to a report by the American magazine *Politico*<sup>1</sup>.

The longing of the Argentine people to reclaim the islands is reflected in their repeated raising of the issue as one of anti-imperialism. Former President Cristina Kirchner launched a sharp attack on Britain, describing it as a "blatant colonial power on the way to extinction"<sup>2</sup>. On the British side, leaders view the issue as a matter of self-determination. The *Los Angeles Times* reported that the vast majority of Falkland Islanders want to remain a part of Britain, which has granted them self-government and military protection.

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<sup>1</sup> - الشرق نيوز (، 21 تموز 2023)، "الخلاف يتجدد بين بريطانيا والأرجنتين بشأن تسمية جزر الفوكلاند"، <https://asharq.com/reports/52249>، تاريخ زيارة الموقع: 18/12/2024.

<sup>2</sup> - الجزيرة (18/2/2012)، "ما سرّ الصراع على جزر فوكلاند؟"، 1 عن لوس أنجلوس تايمز، <https://www.aljazeera.net/news/presstour/>، تاريخ زيارة الموقع: 2024\12\22.

In addition to the claims of both countries to the islands, there is an economic and strategic reason that makes both of them cling to it. The geographical location of the islands in the South Atlantic provides Britain with a strategic observation point in the region, as well as a potential launch point for military or naval operations in the Atlantic. The islands have long been considered part of British maritime security, as they serve as a buffer zone between the Atlantic Ocean and the Southern Ocean. The islands also have significant economic value due to their natural resources (important fisheries) and potential oil reserves in their territorial waters.

In light of the ongoing dispute between the United Kingdom and Argentina over sovereignty over the Falkland/Malvinas Islands, and considering the complex historical events and the conflicting legal interests, the intersection of principles of public international law becomes evident. These include the principle of respect for territorial sovereignty, the principle of the right of peoples to self-determination, and the concept of effective occupation of contested territories. **How does public international law balance these principles? And to what extent is it effective in achieving justice, and who, consequently, holds the legitimate political sovereignty over the islands?**

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We relied on the historical and analytical methodology to address this issue. It was necessary for us to recount the historical facts and events. In the first chapter, we presented the legitimacy of the claims of the two parties to the dispute (British and Argentine), and in the second chapter, we discussed the principles of international law and their connection to the concept and legitimacy of sovereignty over a particular territory.

## **Chapter One: The Falkland/Malvinas Islands Between Historical Events and the Claims of the Parties:**

The dispute over the islands did not arise out of nowhere; several events contributed to the outbreak and continuation of this dispute up until today. In the first section, we will address the historical events that the Falkland/Malvinas Islands have gone through in order to clarify the roots and causes of the conflict. We will dedicate the second section to explaining the claims of the two parties involved in the dispute.

## **Section One: The Falkland/Malvinas Islands: Many Have Passed Through Here:**

In this section, we will first determine the location of the islands and then recount the historical facts and events that followed, particularly regarding the precedence of discovery, the dispute over sovereignty, and the outbreak of the war.

### **Subsection One: Location and Precedence of Discovery:**

#### **First – The location:**

An archipelago consisting of more than two hundred islands, covering an area of 12,170 square kilometers<sup>3</sup>, located 480 kilometers from the southern Argentine coast, with a coastline estimated at 1,300 kilometers. The capital of the archipelago is Stanley, located on East Falkland. The archipelago consists of two large islands, East Falkland and West Falkland, with many mountain ranges reaching up to 700 meters above sea level, in addition to 776 small islands scattered around them. The islands enjoy a form of self-governance as a British Overseas Territory<sup>4</sup>. They are known by various names, including "Malvinas" and "Malvinas Islands," and the Falkland Islands. Along with French Guiana, these are the only regions in South America under the sovereignty of European countries. The islands are considered a British Overseas Territory, governed by a local government with full powers, while the UK manages diplomatic relations with the outside world and retains, under the law, its right to "protect the interests of the United Kingdom in the region and ensure its proper governance."

The Falkland/Malvinas Islands are characterized by rugged mountainous terrain with a few plains, the most significant of which is the vast, low-lying "La Piona" in East Falkland. The population is estimated at 3,470 people<sup>5</sup>, most of whom are of British descent, along with small groups from other nationalities, such as Argentine, French, Gibraltar, and Scandinavian countries. Although the islands are geographically closer to Argentina than to Britain (which is approximately 12,865 kilometers away), their residents speak English and consider themselves British.

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<sup>3</sup>- Worldometer, Falkland Islands Population (LIVE), <https://www.worldometers.info/world-population/falkland-islands-malvinas-population/>, Accessed January 9,2025.

<sup>4</sup> - الجزيرة (2015\11\28). "جزر الفوكلاند.. بؤرة صراع أرجنتيني بريطاني"، <https://www.aljazeera.net/encyclopedia/2015/11/28/>، تاريخ زيارة الموقع: 2025\11\9.

<sup>5</sup> - Worldometer, Op. cit.

## Second - Precedence of Discovery:

Historians disagree on the discovery of the Falkland Islands. British sources attribute it to Captain "John Davis," who supposedly discovered it by accident in 1592 when severe storms drove his ship, "Desire," toward the islands. Other sources attribute the discovery to the Portuguese explorer Vespucci in Ferdinand Magellan's cre, who is said to have discovered them during his voyage in 1520, although he did not land on the islands. Another opinion holds that the true discoverer was Captain "John Strong," an English sailor who reached the islands in 1690 and named them the "Falkland".<sup>6</sup>

It is established that the first person to establish a settlement on the Falkland Islands was the Frenchman "Louis de Bougainville," who arrived in 1764 and founded the first colony on the island, which included a small fort overlooking the entrance to the harbor he named "Port Louis." The French had discovered the islands during their voyages between "Saint-Malo" and "Rio de la Plata," naming them the "Malouines," which the Spanish later adapted to "Las Islas Malvinas."<sup>7</sup> The following year, after the French colony was established, the British returned when Captain "John Byron" arrived on an exploratory mission, and he established the first British settlement on "Saunders Island," north of West Falkland/Malvinas Island, naming the harbor "Port Egmont." Before leaving the islands, "Byron" left a small British garrison stationed there<sup>8</sup>.

The situation remained unchanged for two years until both the French and British colonies discovered each other. In one of the voyages undertaken by British colony ships around the islands, the presence of the French colony was discovered, and its inhabitants were ordered to leave the islands on the grounds that they were British possessions. A dispute then broke out between the colonizers regarding the rightful ownership of the islands.

## **Subsection Two: Dispute over Sovereignty:**

The dispute over the sovereignty of the islands is rooted in several historical, geographical, and political factors, which present a dilemma for researchers in studying which party holds the right to sovereignty over the islands. We will outline

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<sup>6</sup> - Freedman, L. (2005). **The Official History of the Falklands Campaign**, Volume I: The Origins of the Falklands War, Oxon: Routledge, p. 3.

<sup>7</sup> - الساحلي يوسف علي، (20 يناير 2014). "حرب الفوكلاند"، <http://www.almusalh.ly/index.php/ar/ground/34-arabic/history/356-vol-18-80>، تاريخ زيارة الموقع: 2025\1\9.

<sup>8</sup> - يوسف على الساحلي، المرجع السابق.

these factors, which will later be analyzed from the perspective of public international law.

### First - Britain, France, Spain: "Sovereignty Belongs to Us":

After the French-British dispute over the islands emerged, Spain appeared on the scene as a third party in the conflict, declaring to both the French and British sides that the entire region was Spanish territory and demanding that they vacate the islands. In 1767, the French ceded their colony to Spain in exchange for financial compensation and left the islands<sup>9</sup>. The Spanish then changed the name of its port from "Port Louis" to "Puerto de la Soledad"<sup>10</sup>. Four years later, Spain managed to expel the British from "Port Egmont." Due to Britain's inability at the time to take military action against Spain, which controlled South America, Britain entered into negotiations with the Spanish government to obtain approval for British presence on the Falkland Islands<sup>11</sup>.

At the end of the negotiations, the British were granted the necessary approval. However, the British government could not maintain its colony at "Port Egmont" for long after returning there, due to its inability to continue funding its garrison, especially after the outbreak of the revolution in its North American colonies and its focus on suppressing that revolution. For this reason, the British government issued orders in 1774 to withdraw its garrison from "Port Egmont"<sup>12</sup>.

Stability prevailed in the Falkland area for 32 years, but in 1806, when Spain came under Napoleon's control, Britain began attacking Spanish rule in Buenos Aires. This period saw the deterioration of the islands' situation, which descended into chaos, especially after the departure of the Spanish governor without leaving a successor, causing increased disorder and instability<sup>13</sup>.

In 1816, following Argentina's independence from Spain, Argentina declared its sovereignty over the Falkland Islands, renaming them "Las Malvinas" and

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<sup>9</sup> - Pascoe, G. (2022), **Falklands Facts and Fallacies: The Falkland Islands in History and International Law**, Grosvenor House Publishing, p. 6.

<sup>10</sup> - Calvert, P. (2016). **The Falklands crisis: the rights and the wrongs**, Bloomsbury Academy, pp. 5-6.

<sup>11</sup> - يوسف علي الساحلي، مرجع سابق.

<sup>12</sup> - Julius Goebel, J. (1982). **The Struggle for the Falkland Islands**, Bucks: Hazell Watson & Viney, Ltd, p. 409.

<sup>13</sup> - يوسف علي الساحلي، مرجع سابق.

asserting that all the islands fell under its sovereignty, as it considered itself the sole heir to the Spanish colonies in the region<sup>14</sup>.

At that time, no one objected to Argentina's claim to the islands as part of its rights. Several years passed under this status before Argentina made a serious attempt to assert its sovereignty over the islands. In 1829, Argentina appointed a governor for the islands and granted him broad powers. This action led Argentina into conflict with the United States in 1831, after three American ships defied the orders of the island's governor, Vernet, by not recognizing his authority over the region and fishing without his permission, the matter that nearly ignited a war between the two countries<sup>15</sup>.

The Argentine government was furious about the incident and demanded compensation from the United States for the damage caused to its property on the island, but the United States disregarded these demands, which the Argentine government continued to pursue.

Argentina's weakened state led Britain to seek to regain control of the islands. Captain John Anslow, commanding the British warship "Clio," was tasked with the mission of restoring control. In 1833, the British warship arrived at the islands, and the small Argentine garrison of fifty soldiers offered no resistance. Thus, the British flag was raised once again over the Falkland Islands<sup>16</sup>. The Argentinians were angered, protested to the British government, and demanded the immediate evacuation of British forces from the islands. Britain did not respond to Argentina's protest until six months later, with a response affirming that the Falkland Islands were British possessions and that Argentina had no right to object. As a result, the islands continued to be governed by a small local government appointed and overseen by the British government.

### Second - Escalation and the Outbreak of War:

During World War II, Britain used Stanley Harbor on the islands' coast as a naval base for its fleet in the South Atlantic and established an advanced wireless communication center on the islands. Meanwhile, Argentina continued to demand the return of the islands and managed to gain support from the Latin American countries' conference held in Havana in 1940, where the participating nations

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<sup>14</sup> -Freedman, L. Op. cit, pp. 5-6.

<sup>15</sup> - يوسف علي الساحلي، مرجع سابق.

<sup>16</sup> - Goebel, J. Op. cit. p. 455.

recognized Argentina's right to reclaim the islands. In response, Britain strongly rejected the final statement of the conference and referred the matter to the International Court of Justice in The Hague<sup>17</sup>. In March 1947, the court declined to hear the case due to opposition from both Chile and Argentina.

The issue was raised again in 1958 before the UN General Assembly, but Britain strongly objected, arguing that the matter fell under the jurisdiction of the International Court of Justice. In 1959, Britain, Argentina, and Chile reached an agreement to make the region south of the 60th parallel south a demilitarized zone, which also prohibited the movement of warships south of that line.

In 1964, Argentina and Chile conducted naval maneuvers in the Falkland Islands area, which led to protests from the British government. The issue was presented again to the UN General Assembly, and on September 21, 1964, the organization passed a resolution recommending direct negotiations between the British and Argentine governments, considering the respect for the inhabitants' opinions and their right to self-determination<sup>18</sup>. In 1971, negotiations began between Britain and Argentina in Buenos Aires with the aim of reaching a solution that would satisfy both sides. Both countries agreed on a formula that linked the islands with Argentina and reached an agreement for the gradual integration of the islanders with Argentina, including the establishment of maritime and air transportation lines, postal and telecommunication services, and medical and cultural services<sup>19</sup>.

However, Britain set a condition for the completion of this agreement: the consent of the islanders, which eventually led to renewed tensions between the two nations. The situation continued to deteriorate until it reached its peak in 1975 under the Perón government, when Britain turned its attention to the islands following signs of potential oil reserves<sup>20</sup>. The matter led to diplomatic tension, after which Britain secretly sent a naval force to the region to secure the islands in anticipation of any attempt by the Argentine government to seize them by force.

In November 1980, the British Foreign Minister proposed to the Argentine government that Britain would recognize Argentina's sovereignty over the islands in exchange for Argentina relinquishing control for ninety years. Argentina accepted this proposal, but it was ultimately aborted. The situation grew even more strained, especially after General Leopoldo Galtieri took power and declared that Argentina

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<sup>17</sup> - Freedman, L. Op. cit., p. 11.

<sup>18</sup> - Freedman, L, Ibidem, pp. 16-17.

<sup>20</sup> - Freedman, L. Op. cit., p. 14-15.

<sup>19</sup> - يوسف علي الساحلي، مرجع سابق.



would not accept any part of its territory being occupied. Thus, the situation deteriorated once again<sup>21</sup>.

After several international and regional political shifts, war broke out between the two countries on April 2, 1982, when Argentina, under General Galtieri, launched a military invasion of the islands to reclaim its sovereignty. Britain responded with its naval and air fleets in a war that ended with a British victory on June 14, 1982, after the deaths of 750 Argentine military personnel and 250 British military personnel<sup>22</sup>.

After this historical account of the dispute over the rightful exercise of sovereignty over the islands by both the British and Argentine sides, we must now examine the claims of each side based on public international law.

## **Section Two: Claims of the Disputing Parties:**

Both parties to the dispute base their claims on legal arguments through which they assert their sovereignty over the Falkland/Malvinas Islands. We will present the Argentine arguments in the first paragraph, followed by the British arguments in the second paragraph.

### **Subsection One: Argentine Claims:**

Argentina claims its right to exercise sovereignty over the islands based on the following points:

#### **First - As the successor of Spain to the islands:**

Spain claims priority of discovery, as it was the first to discover the islands, relying on a map that depicted the southern tip of America for the first time, based on hydrographic and geographic information provided by Elcano and his companions, a Spanish cartographer. This map was created in 1523 and shows the islands in front of the Argentine shores, though without any designation.

1. Based on the Tordesillas Agreement of 1494 between Spain and Portugal, which revised the line defined by Pope Alexander VI in 1493, stating that "all newly discovered lands to the east to be Portuguese and to the west to be Spanish"<sup>23</sup>.

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<sup>21</sup> - Freedman, L. Ibidem, p. 1.

<sup>22</sup> - يوسف علي الساحلي، مرجع سابق.

<sup>23</sup> - Calvert, P. Op. cit, pp. 2-3.

2. Based on the Utrecht Agreement of 1713, which also gave Spain control over its overseas territories in the Americas.<sup>24</sup>
3. Based on the permission requested by the British from the Spanish to visit the islands. In 1749, Britain requested permission from Spain to visit the islands, which was denied<sup>25</sup>. This denial signified the recognition of Spain's sovereignty and ownership of the islands, otherwise, Britain would not have needed to request permission.
4. Based on the French ceding of the islands to Spain in 1767, who originally established the first colony on the island in 1764. The French colony, named "Port Louis" on East Falkland, called the islands "île Malouines"<sup>26</sup>. After the French colony's settlement, a British one was established in 1765, named "Port Egmont"<sup>27</sup>. In 1766, the two settlers found each other, and Spain considered the creation of British and French colonies on the islands a breach of the Utrecht Agreement, complaining to France and negotiating for the transfer of rights to Spain. France relinquished its claim in 1767 in return for an indemnity of £24,000, and the name of Port Louis was changed to Puerto Soledad<sup>28</sup>.
5. Based on Spain's effective sovereignty over the islands from the transfer until 1811. The Spanish presence lasted until the collapse of the Spanish Empire in South America. In 1811, the small Spanish garrison at Soledad was withdrawn, leaving the islands uninhabited once again<sup>29</sup>. Before leaving, Spain left a plaque asserting their rights to the Falklands:

"This island, with its ports, buildings, units and contents, belongs to the Sovereignty of Sr. D. Fernando VII, King of Spain and the Indies, Soledad of Malvinas, 7th February 1811." Governor Paul Guillén<sup>30</sup>.

6. Based on the principle of *Uti Possidetis*: The final separation between Buenos Aires and Spain was marked by the revolution of May 1810, and six years later, the United Provinces of the River Plate declared independence in 1816<sup>31</sup>. The

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<sup>24</sup> - Max Hastings, M. and Jenkins, S. (1983) **The Battle for the Falklands**, Harlow: Hollen Street Press, p. 2.

<sup>25</sup> - J. M. Lindsey, "Conquest: A legal and Historical analysis of the root of United Kingdom Title in the Falkland Islands", Texas International Journal, 18 (11), 1983.

<sup>26</sup> - Pascoe, G. Op. cit., p. 6.

<sup>27</sup> - Goebel J. Op. cit., p. 232.

<sup>28</sup> - Calvert, P. Op. cit, pp. 5-6.

<sup>29</sup> - Calvert, P. Ibidem, p. 6.

<sup>30</sup> - María Ruda, J. (1964). "Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples", <https://falklandstimeline.wordpress.com/wp-content/uploads/2012/02/dr-rudas-speech-to-the-decolonization-committee-1964-annotated.pdf>, Accessed January 25, 2025, as noted in the footnote on page 4.

<sup>31</sup> - Freedman, L. Op. cit., pp. 5-6.

United Provinces became Argentina and claimed the territorial rights inherited from Spain<sup>32</sup>.

#### Second - Exercise of Argentine sovereignty over the islands after independence:

In 1825, the United Provinces and Britain signed the "Treaty of Friendship, Commerce, and Navigation," in which Britain recognized the 1816 Declaration of Independence. The Treaty is significant in that it does not mention any territorial dispute between the two nations. In 1829, Buenos Aires appointed Vernet as Governor of the Malvinas, who seized three American vessels fishing in Falklands' waters. In 1832, Buenos Aires sent Mestivier to the Falklands as a new commander, but he was killed by his own soldiers<sup>33</sup>.

#### Third - The Unlawful British seizure of the islands in 1833:

In January 1833, while Argentine commander Pinedo was attempting to restore order, Captain Onslow arrived in East Falkland "to take possession in the name of his Britannic Majesty"<sup>34</sup>. The Argentine military garrison was expelled, but the small civilian population on the islands was encouraged to stay<sup>35</sup>.

#### Fourth - The Argentine objection to British occupation since 1833 to the present:

Argentina formally protested to Britain after the occupation, but the British response was that their rights to the Falklands were "founded upon original discovery and subsequent occupation"<sup>36</sup>. After diplomatic relations resumed in 1990, Argentina continued to assert its claim over the archipelago.

Argentine Foreign Minister Jorge Taiana criticized Britain for rejecting international calls for dialogue, saying that "the lack of progress should be a source of concern for the United Nations," and objected to the British military presence on

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<sup>32</sup> - Freedman, L. Ibidem.

<sup>33</sup> - Rodriguez, C. (Nov 11 2016), "The Sovereignty Dispute Over the Falkland Islands", <https://www.e-ir.info/2016/11/11/the-sovereignty-dispute-over-the-falkland-islands/>, Accessed January 23, 2025, p. 4.

<sup>34</sup> - Goebel, J. Op. cit. p. 455.

<sup>35</sup> - GA/COL/3225 (21 June 2011), Special Committee on Decolonization Adopts Draft on Falkland Islands (Malvinas), Requesting Argentina, United Kingdom to Resume Talks as Soon as Possible, <https://press.un.org/en/2011/gacol3225.doc.htm>, accessed January 29, 2025.

<sup>36</sup> - Goebel, J. Op. cit. p. 163.

the islands<sup>37</sup>. Argentina took the issue to the UN Security Council, which urged the two disputing countries to reach a mutually agreeable solution. However, tension returned to the forefront after Britain held a popular referendum for the island's residents in 2013, which Argentina considered illegitimate, stating that it would ignore it. Argentina's Ambassador in London, Alicia Castro, described the referendum as "a maneuver of no legal value that the United Nations did not invite".<sup>38</sup>

### **Subsection Tow: The British claims:**

In contrast to the Argentine arguments, Britain relies on the following arguments to establish its sovereignty over the islands:

#### **First - Priority of discovery:**

Britain claims that Captain John Davis was the first to discover the ships in 1592, as we have previously mentioned. And the first undisputed landing on the Falklands, as well as the first sailing across the channel that divides the two main islands, was made by the English sailor Strong<sup>39</sup>.

#### **Second - Occupation of the islands in 1765, and between 1766 and 1774, withdrawal without the intention to relinquish sovereignty:**

The British settlement left Port Egmont in 1774 due to economic measures and did not return until 1833<sup>40</sup>. The British did not leave the island before leaving the following inscription:

“Be it known to all nations that the Falkland Islands, with this fort, the storehouses, wharfs, harbors, bays, and creeks thereunto belonging, are the sole right

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<sup>37</sup> - الجزيرة (2006/6/16). الأرجنتين تجدد دعوة بريطانيا لمحاادثات حول جزر فوكلاند، <https://www.aljazeera.net/news/international> تاريخ زيارة الموقع: 2025\1\26.

<sup>38</sup> - الأنباء (2013/3/13). "أشخاص يرفضون.. و99.8% من سكان فوكلاند يؤيدون البقاء ضمن السيادة البريطانية"، لندن - أ.ف.ب، <https://www.alanba.com.kw/ar/arabic-international-news/366789/13-03-2013>

<sup>39</sup> - Strange, I. (Nov 11 2016). The Falkland Islands, Devon: Redwood Burn Limited cited in Carlos Rodriguez, "The Sovereignty Dispute Over the Falkland Islands", <https://www.e-ir.info/2016/11/11/the-sovereignty-dispute-over-the-falkland-islands/>, Accessed January 20, 2025, p. 3.

<sup>40</sup> - Goebel, J. Op. cit. p. 409.

and property of His Most Sacred Majesty George the Third, King of Great Britain, France and Ireland.”<sup>41</sup>

### Third - Exercise of effective sovereignty since 1833:

The British government, after accepting that events prior to 1833 were not as supportive to British claims as originally thought, concluded that “one hundred years’ possession, whether disputed or not, should find a perfectly sound title to sovereignty in international law”<sup>42</sup>.

Britain has not abandoned its pursuit of extending its authority over the islands and continuing its control over them. The Governor of the Islands, Alison Blake, stated in early 2025 that British authorities, following the agreements to transfer sovereignty of the Chagos Archipelago to Mauritius, reiterated their intention not to relinquish control over the Falkland Islands. In response to the Argentine president's statement in his quest to reclaim the islands, London declared that it does not plan to revisit the issue of ownership of the islands, while the Falkland Islands themselves insisted that they will remain part of Britain<sup>43</sup>.

### Fourth - Argentina’s abandonment of its sovereignty claims.

### Fifth - Right to self-determination:

Britain’s claim is based on the March 2013 referendum, where 99.8% of the population voted to remain under British sovereignty. This demand is grounded in legal concepts developed after the principle of priority of discovery and the exercise of actual sovereignty over a specific territory. Britain approaches its claim from a human rights perspective to enhance and solidify its sovereignty over the islands, as it is a legal and moral reason to support its demands. "The sole legitimate source of political authority is success in regular, fair, and competitive elections"<sup>44</sup>. Thus, no political authority is legitimate unless it derives its legitimacy from democracy, and the island’s inhabitants, who are largely British citizens, expressed their desire to

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<sup>41</sup> - Goebel, J. Ibidem, p 140.

<sup>42</sup> - P. J. Beck, (1988). The Falkland Islands as an international problem, New York: Routledge, p. 53, cited in Rodriguez, C. Op. cit, p. 6.

<sup>43</sup> - RT بالعربية (4 تشرين الأول، 2024). "بعد أرخبيل تشاغوس لموريشيوس الأرجنتين تعزز إعادة جزر فوكلاند"، تاريخ زيارة الموقع: 2025\1\26، <https://arabic.rt.com/world/1606688>

<sup>44</sup> - Heywood, A. (2011). **Global Politics**, Hampshire: Palgrave MacMillan, p. 113.

remain under British sovereignty. In doing so, they exercised their right to self-determination and expressed their will to choose British sovereignty.

After this historical account, we must present the concept of sovereignty and the right to exercise it, as well as the principle of the right to self-determination and how it applies to the case of the Falkland/Malvinas Islands.

## **Chapter Two: Right to sovereignty over the Falkland Islands**

Calvert\* indicate that “The Falklands crisis is first and foremost a dispute about sovereignty. Sovereignty is the fundamental concept on which the entire world order of the twentieth century is based. The crisis therefore has called into question the whole structure of that system<sup>45</sup>. However, sovereignty is not the only legal principle governing the dispute over the islands. In the first section, we will aim to define the legal principles related to this conflict, and in the second section, we will examine the extent to which the claims of both parties to the dispute align with these principles.

### **Section One: Principles of international law governing the dispute over the Falkland/Malvinas Islands:**

Independence is both a condition and a criterion for sovereignty, simultaneously. Once sovereignty is recognized for a group that possesses, in addition, the qualities of a state entity, it plays its role as a guarantor of independence, which forms a purely legal status, and sovereignty completes the process of its legal formation<sup>46</sup>. Sovereignty guarantees independence because when it is recognized for the entity of a state, it immediately imposes an obligation on other states to act toward it, specifically requiring them to refrain from interfering, whether in the management of the new sovereign state’s international relations or in its internal affairs.<sup>47</sup>

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\* Peter Calvert was Emeritus Professor of Comparative and International Politics at the University of Southampton, UK. A political scientist, writer, and educator, Calvert began his career as a regular British Army enlistment with the Intelligence Corps before moving to academia as a teaching fellow at the University of Michigan, Ann Arbor.

<sup>45</sup> - Calvert, P. Op. cit, p. 1.

<sup>46</sup> - بيار-ماري دوبيوي، (2008). القانون الدولي العام، ترجمة محمد عرب صاصيلا، سليم حداد، مجد المؤسسة الجامعية للدراسات والنشر والتوزيع، بيروت، ط. 1، ص. 41.

<sup>47</sup> - بيار-ماري دوبيوي، المرجع أعلاه، ص. 42.

It is accepted that sovereignty cannot be recognized for every human group. Only those that are independent, free from submission in the international system, possess this attribute. However, the assessment of this independence does not apply to just any group but to organized groups within a specific space. This is generally referred to by the theory of the three elements constituting a state, which assumes the actual legal existence of a population, territory, and government<sup>48</sup>.

Since the subject of our present research is the Falkland/Malvinas Islands, which, in principle, were a 'territory without a sovereign, we will proceed to clarify the spatial foundation of sovereignty, that is, the territory, where we define its identity and how it is acquired. We will then proceed to determine the role played by the principle of the right of peoples to self-determination in determining the authority over a given territory.

### **Subsection One – Territorial identity and How it is Acquired:**

#### **First - Identity of the Territory:**<sup>49</sup>

The territory, which "records the points of sovereignty" forms the material basis upon which the government can exercise its authority. It is directly linked to the population, who settle within its boundaries. However, despite the fundamental nature of territory for the state, we cannot adopt the theory defended by France, particularly by "Hauriou" and "Carre de Magberg," which posits the idea of the territory of the subject, "Le territoire sujet", also called the "body of the state." Practical experience demonstrates that a state can undergo changes in the outward appearance of its territory without leading to the loss of its identity. Likewise, we cannot adopt the theory of "territory as the object", which simply views the territory as the property of the state. This concept, inherited from a monarchical view of the state, no longer aligns with the reality of the authority exercised over activities and people within its borders, despite its fundamental nature."

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<sup>48</sup> - بيار-ماري دوبوي، المرجع السابق، ص. 43-42.

<sup>49</sup> - بيار-ماري دوبوي، المرجع السابق، ص. 45.

## Second - Acquisition of Territory:<sup>50</sup>

### 1. Territory and Territorial Status:

Instead of being traditional, the acquisition of territory is considered inappropriate. In fact, it is more accurate to speak of the acquisition of the status through which sovereignty is exercised over a specific territory. In order for a state to exercise its authority over a territory, it must have a relationship with it akin to the concept of ownership, similar to how a private individual owns property. This status can result from a factual event, such as occupation, or from a legal act, such as a treaty of cession.

Traditionally, two categories of territorial status are distinguished, based on the method of acquisition: an original method (such as occupation or annexation) and a derivative method (such as succession, cession, and transfer). The original status is obtained by converting a space previously "without a master" (*Terra nullius*) into a territory associated with a specific state. The derivative status, on the other hand, results from the transfer of part of a state's territory to another state.

### 2. Acquisition of Original Status:

#### 2 – a. Historical Development:

There has always been a "territorial obsession" driving states throughout history. To enhance their power, states have constantly sought to expand the regions over which they could exert control. International law has been deeply marked by the expansionist tendencies of Western states, particularly during the era of the "great discoveries" (the 15th and 16th centuries), and later, more intensely, during the colonial expansion of the 19th and early 20th centuries. The concept of "terra nullius" crafted by these states often served as a denial of the rights of indigenous populations, as well as the international identity of the social organizations encountered by various waves of colonizers.

Over time, ideas and legal procedures evolved. The intervention of the Holy See in the 15th century was decisive in assigning territories to Spain and Portugal along a specific line drawn by Pope Alexander VI in 1493 under the Bull *Inter Caetera*. From the 16th century onwards, there were concerted efforts to develop rules governing the acquisition of sovereignty over regions regarded as "without a master." The principle of discovery had a major influence during this period. Later,

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<sup>50</sup> - بيار-ماري دوبوي، المرجع أعلاه، ص. 46-52.



Grotius and his followers in the 17th century applied the two elements of acquisition from Roman law - *animus* (intent to acquire) and *corpus* (actual possession) - to territorial acquisition.

In the late 19th century, as the competition between Western European states for colonial conquest reached its peak, the Berlin Conference of 1885 adopted general rules that still apply today under positive law.

## 2 – b. Contemporary Legal Status:

Contemporary international law emphasizes the effectiveness of occupation as a condition for establishing territorial status. In other words, a state cannot claim to possess such status unless it exercises exclusive authority over the relevant territory in practice. This exercise must be reflected not only through the enactment of mandatory legal rules but also through their actual application.

However, case law has judged the actual conditions for the administration of a territory in a relative manner, always taking into account the natural characteristics of the area in question. For example, the Permanent Court of International Justice in the 1933 judgment in the Eastern Greenland case ruled that, for Denmark to assert its sovereignty over Greenland against Norway's later claims, it was sufficient to demonstrate even incidental exercise of sovereignty, given the inhospitable nature of the area. Similarly, in the 2002 judgment on the dispute between Indonesia and Malaysia over the sovereignty of the small and uninhabited Pulau Ligitan and Pulau Sipadan, the court observed that limited activities generally sufficed to establish sovereignty, given the limited importance of the islands at the time. In contrast, the requirements for establishing sovereignty in the case of the Minquiers and Ecrehos dispute were much higher, given the ease of access to the contested territories. That being said, in some cases, flexibility has been noted in the requirement of effectiveness, due to ideological factors. For instance, the United Nations Declaration on the Granting of Independence to Colonial Territories (UN General Assembly Resolution 1514/GTDIP – XV, N°4) affirmed that "lack of preparedness in political, economic, and social areas should not be used as an excuse to delay independence." This led to the promotion of "quasi-states," whose existence is legally more illusory than materially substantial<sup>51</sup>.

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<sup>51</sup> - J. Verhover, L'Etat et l'ordre juridique international, RGDIP, 1978/3, p. 752, et J.D. Mouton, L'Etat selon le droit international : diversité et unité, in L'Etat souverain à l'aube du XXI<sup>e</sup> siècle, Colloque de Nancy, SFDI, 1993, Paris, Pedone, p. 81-88, 48. عن بيار-ماري دوبيوي، مرجع سابق، ص. 48.

In modern practice, however, when a state shows signs of weakness due to internal instability, the international community, especially through the United Nations Security Council, acts to restore effective control over the affected territory, demonstrating the international attachment to the idea that every territory must be under effective authority, and that only a sovereign state can possess legal title to it<sup>52</sup>.

## 2 - c. Unilateral Actions by Claiming States and Reactions from Other States:

Any act of possession that demonstrates a state's intention to act as the sovereign authority over a defined area may provoke reactions from other states, either by asserting jurisdiction over the same space or by claiming that it cannot be seized by any one state. In the absence of such objections, it is generally accepted that other states have acquiesced to the territorial claims of the asserting state. This is especially what allowed the International Court of Justice to affirm the validity of Norway's 1869 territorial waters demarcation against Britain.

A critical question in this context is whether the acquisition of territory through the unlawful use of force, can be challenged by other states due to the effectiveness of the authority exercised by the occupier. In other words, does the effectiveness of control in such cases outweigh the illegality of the acquisition?

The International Court of Justice's position on this matter has been consistent. In a 1985 ruling in the Burkina Faso-Mali border dispute, the Court stated that in cases of conflict between legal status and effectiveness, the legal status should prevail<sup>53</sup>.

## Three - Acquisition of Derivative Status:<sup>54</sup>

### 3 - a. Treaty-Based Grounds:

When it comes to acquiring territorial status over an area previously belonging to another state, the usual methods of acquisition are contractual in nature. This is particularly true in cases of cession, where one state relinquishes its rights and status over a specific territory in favor of another state. Cession clauses are often found in peace treaties, such as the 1871 Treaty of Frankfurt (where France ceded Alsace-Lorraine to Germany) and the 1919 Treaty of Versailles (where Germany returned

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<sup>52</sup> - بيار-ماري دوبوي، المرجع السابق، ص. 48، بتصرف.

<sup>53</sup> - بيار-ماري دوبوي، المرجع السابق، ص. 52.

<sup>54</sup> - بيار-ماري دوبوي، المرجع السابق، ص. 52 - 54.

Alsace-Lorraine to France, article 51). Historically, during times when territorial concepts were more heavily influenced by hereditary rights, such transfers often took the form of sales, such as when France sold Louisiana to the United States in 1803 for 60 million francs<sup>55</sup>. France also ceded the Falkland Islands (Malvinas) to Spain in 1766 in exchange for material compensation, as previously mentioned in the present era, however, territorial transfers cannot be imagined without consulting the concerned populations.

### 3 - b. Non-Treaty-Based Methods:

While historically the use of force, particularly through war, was not prohibited under international law, and thus invasion was a common method of territorial acquisition, modern law has clearly prohibited such actions.

This is emphasized in the 1928 Kellogg-Briand Pact and reaffirmed by Article 2(4) of the United Nations Charter, which prohibits the threat or use of force in international relations. International law also declares that territorial acquisition through force, such as through war, will not be recognized as legal.<sup>56</sup>

After presenting the international legal principles governing the acquisition of territory, it is necessary to examine the claims of both parties in the dispute in order to assess their legality. This is essential for determining which state holds sovereignty over the islands.

### **Subsection Two – Right to Self-Determination:**

The right of peoples to self-determination is considered one of the most fundamental principles of international law. Article 1, paragraph 2, states that one of the objectives of the United Nations is "to develop friendly relations among nations based on the principle of equal rights and the self-determination of peoples." However, many issues related to the precise definition of the holders of this right, its content, and its non-application in cases deviating from the principles for recognizing it - such as in cases of colonialism - remain unclear and ambiguous.

This principle developed through General Assembly resolutions, which contributed to clarifying the content of this right and defining the rights of peoples and national minorities. This is what needs to be clarified in order to verify the

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<sup>55</sup> - بيار-ماري دوبوي، المرجع أعلاه، ص. 52-53.

<sup>56</sup> - بيار-ماري دوبوي، المرجع السابق، ص. 53.

legitimacy of the British claim. The majority of the resolutions issued by the United Nations on the right to self-determination, especially paragraph 2 of Resolution 2625 (XXV), reaffirm the location of the principle of peoples' self-determination in relation to other core principles of the United Nations Charter, especially promoting peace and security, fundamental human rights, and global cooperation<sup>57</sup>.

#### First - On the Issue of Decolonization:

The free determination of destiny, as affirmed by paragraph 2 of Resolution 1514, grants non-self-governing peoples or those under trusteeship the right to achieve independence, the right to freely choose their political system, and the conditions for their economic, social, and cultural development<sup>58</sup>.

As for the means of achieving independence, United Nations has, on several occasions, recognized the legitimacy of the struggle for national liberation, including the use of armed force by peoples<sup>59</sup>.

#### Second - On the Obligations of States:

The text indicates the obligations imposed on states, particularly in Resolution 2625. It requires states managing certain territories to swiftly end their colonial control, taking into account, according to the proper procedures, the will expressed by the concerned peoples. Furthermore, all states have the duty to encourage the free attainment of independence for peoples under colonial control<sup>60</sup>.

#### Third - On the Rights of Peoples and National Minorities:

Subsequent events following the dissolution of the former Soviet Union and the Socialist Federal Republic of Yugoslavia highlighted the challenges of determining an international legal framework for ethnic, religious, cultural, and linguistic minorities. The arbitration committee formed within the framework of the European Peace Conference on Yugoslavia sought to find useful solutions, particularly in its first three opinions. These opinions emphasize the existence of a new concept regarding the rights of some minority groups. The right to independence remains limited to peoples under colonial control, while minority groups may seek

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<sup>57</sup> - بيار- ماري دوبيوي، المرجع سابق، ص. 159.

<sup>58</sup> - بيار- ماري دوبيوي، مرجع سابق، ص. 162.

<sup>59</sup> - بيار- ماري دوبيوي، المرجع السابق، ص. 162.

<sup>60</sup> - بيار- ماري دوبيوي، المرجع أعلاه، ص. 162.

recognition of their right to cultural independence, as well as a set of collective rights<sup>61</sup>.

The distinction between the right of peoples and the principle of self-determination outside of cases of colonial control is clear in international law. All the rights of these minorities are respected, but not every group has the right to claim self-determination. International recognition by the relevant bodies is necessary.

After presenting the legal principles upheld by international law regarding the acquisition of sovereignty over a particular territory or the right to self-determination, it is necessary to clarify the applicability of these rules to the Falkland/Malvinas Islands.

## **Section Two: Who has sovereignty over the Falkland Islands (Malvinas)?**

We will proceed to address each claim made by both parties in the dispute, starting with the Argentine arguments in the first paragraph, followed by the British arguments in the second paragraph.

### **Subsection One - The Argentine Claims from the Perspective of Public International Law:**

#### **First - Inheritance of sovereignty from Spain:**

To prove Argentina's inheritance of sovereignty from Spain, it is necessary first to prove Spain's sovereignty over the region. Spain relied on the following points to establish its sovereignty:

1. Priority of discovery: Goebel\* mentions that "upon more than one occasion when the title to the islands was under discussion, the right to occupy and possess was grounded upon the allegation of discovery"<sup>62</sup>. However, as previously mentioned, the priority of discovery is a factor that cannot be considered alone to grant a state sovereignty over an "ownerless" territory. In the 17th century, the principle of territorial acquisition emerged with two elements: the psychological and the material, i.e., the intention to acquire and the realization of this intention through physical possession. This is evidenced by historical events, such as the

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<sup>61</sup> - بيار- ماري دوبيوي، المرجع السابق، ص. 163.

\* Julius Ludwig Goebel, Jr. (December 3, 1892 – August 4, 1973) was an American legal historian who taught at the Columbia University School of Law from 1925 until his retirement in 1961.

<sup>62</sup> - Goebel, J. Op.cit, p.2.

British request for permission to visit the islands or the appointment of Spanish governors on the island.

2. France's cession of the islands: France, after being requested by Spain to evacuate the islands, agreed and ceded the islands in exchange for financial compensation. Therefore, given that the territory was "ownerless," sovereignty is attributed to the first state to exercise it over the territory, and at that time, it was French land that was ceded to Spain. The cession during that period was typically through sale, as the prevailing concepts toward territories were hereditary, and the cession was considered an independent legal title to acquire or establish sovereignty over the disputed islands.

3. Spain's exercise of effective sovereignty over the islands from the time of the cession until 1811. As mentioned earlier, international law gives precedence to legal ownership over actual possession as the basis for sovereignty. Historical facts indicate that Spain exercised its sovereignty over the islands without objection from any other state, and the other powers recognized this sovereignty. This is known as the historical reinforcement of the right. During this period, 13 Spanish governors ruled the islands, which is considered a manifestation of sovereignty.

#### Second - Argentina's exercise of sovereignty over the islands after its independence:

After Argentina gained independence from Spain, the country inherited that jurisdiction and maintained it by appointing governors with a small military garrison from 1820<sup>63</sup> until the British occupation. This is evidence of Argentina exercising its sovereign powers over the islands immediately upon recognition of its sovereignty, without any objection from other states<sup>64</sup>.

It is indisputable that in 1848, at the Lima Congress, the Latin American countries existing at that time agreed to recognize the principle of *uti possidetis* in defining borders, taking into account the Spanish administrative borders of 1810. This decision inevitably recognized the changes made since then. Argentina claimed the territory of the former Buenos Aires viceroyalty.

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<sup>63</sup>- Edwards, R. (March 6, 2012). "Will no one listen to us Falkland Islanders?", <https://www.theguardian.com/commentisfree/2012/mar/06/no-one-listen-falkland-islanders>, accessed: January 24, 2025.

<sup>64</sup> - يوسف علي الساحلي، مرجع سابق.

Some British theorists object, arguing that Argentina did not exist at that time, i.e., in 1820, and that it was a collection of territories under Spanish control, which later formed the state of Argentina<sup>65</sup>. However, this argument can be refuted because the sovereignty exercised at that time stemmed from one of the regions that gained independence from Spanish colonial rule.

### Third - The Unlawful British Occupation in 1833:

The British occupation of the islands occurred at a time when the principles of traditional international law prevailed, with the use of force being one of its key principles.

Natural concepts surrounding force and its use have undergone successive developments. In customary international law, it was recognized that member states of the international community had the right to resort to war, as a fundamental and established right of sovereignty. Therefore, states could resort to war at any time and for any reason. The international applications of the theory of war during the 18th and 19th centuries led to the establishment of a general principle prohibiting the use of force in international relations<sup>66</sup>.

This general principle had several exceptions in traditional international law, including the right to self-defense, the state of necessity, the right to help oneself, the exercise of legal rights through force, and lawful intervention<sup>67</sup>.

The use of force in international relations, and armed force in particular, was considered one of the methods employed by states to protect their existence, and as a means to impose their viewpoint on other nations. International precedents show that force has been used to change or eliminate unacceptable or harmful situations, or to uphold a right that was feared to be ignored or not recognized. Additionally, force was resorted to as a means of settling international disputes. The justification for using force was often viewed as a manifestation of complete sovereignty, given the significant risks associated with the use of force. As a result, legal scholars and states have long sought to limit and avoid its use, through mutual agreements that included a variety of regulations and restrictions.

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<sup>65</sup> -Peter Calvert, Op. cit. p. 411.

<sup>66</sup> - صالح ويصا، (1976)، "مبررات استخدام القوة في القانون الدولي التقليدي"، المجلة المصرية للقانون الدولي، عدد 32، القاهرة، ص. 128. من مرزق عبد القادر، (2012/2011)، استخدام القوة في إطار القانون الدولي الإنساني، مذكرة لنيل شهادة الماجستير في إطار القانون الدولي والعلاقات الدولية، ص. 6.

<sup>67</sup> - مرزق عبد القادر، المرجع السابق، ص. 6.

Therefore, while the use of force by Britain in 1833 did not fundamentally violate the principles of traditional international law, however it was not an absolute right. It had to be accompanied by the aforementioned circumstances to gain legitimacy, which did not occur in this case. This makes the occupation a form of colonialism that Britain practiced, aiming to extend its control over the Atlantic Ocean due to the strategic importance of the islands' location.

#### Fourth - Argentina's objection to the British occupation of the islands since 1833:

Argentina has never ceased claiming its sovereignty over the islands. It has adopted escalating steps, starting with diplomatic pressure through submitting complaints to Britain or the United Nations, followed by resorting to force to reclaim the islands in 1982, continuing to file complaints with the United Nations, in addition to seeking international support for its cause.

After studying Argentina's arguments from the perspective of public international law, are the British arguments more appropriate and legal?

### **Subsection Two - The British claims from the perspective of public international law:**

Britain, in turn, bases its claims on points supported by international law:

#### First - Priority of discovery:

Britain claims priority of discovery of the islands; however, this claim has been disproven as it came nearly seventy years after the first discovery of the islands (1520), in 1592. Even assuming the validity of this claim, and if we were to rely on the priority of discovery as a legal basis, it would, from the perspective of public international law, lack the legal status required to establish sovereignty over a "terra nullius" (land without a sovereign). International law does not recognize priority of discovery as the sole basis for sovereignty, but instead gives importance to the first to establish a colony on the land and exercise effective sovereignty over it.

#### Second- The occupation of the islands in 1765 and between 1766 and 1774, and the withdrawal without the intention to relinquish sovereignty:

International jurisprudence does not give significant weight to claims based on ancient historical rights, as long as the continuity of such rights has been interrupted by the control of other powers over the claimed territory. This means that it is impossible for either party in a dispute to rely on this argument, as it has been



disrupted by the control of various colonial powers. The Argentine right, based on the idea of inheritance and then historical reinforcement, is clear.

It is also important to mention the 1771 agreement between Britain and Spain, under which Spain reserved its right to sovereignty over the islands. In 1774, the only presence on the islands was Spanish, and they destroyed the British buildings in the "Port Edmund" area, without any objection from Britain<sup>68</sup>.

### Three - The exercise of effective sovereignty since 1833:

Reisman\* argues that "stolen or not, the islands became British according to the prevailing international law," suggesting that force was a legal way to acquire title to a territory in 1833<sup>69</sup>. However, the judgment issued by the International Court of Justice on October 10, 2002, between Cameroon and Nigeria, regarding the dispute between them over their land and maritime boundaries, allows us to observe the clear priority given to legal status. This status can allow one of the countries to prevail over the activities claimed by the other party<sup>70</sup>. The Court preferred recognizing the validity of Cameroon's legal status, which was based on prior and subsequent treaties from the colonial period, over the activities Nigeria relied on, which gradually occupied the Bakassi Peninsula and carried out activities generally acknowledged as expressions of sovereignty (such as establishing schools and health facilities). Thus, the Court clearly rejected the theory of historical title based on activities that opposed the sovereignty granted by valid international legal instruments<sup>71</sup>.

Therefore, the possession and exercise of sovereignty since 1833 do not rely on a legal basis; rather, they are based on the expulsion of Argentine authorities, by the use of force from a dominant power, Britain, against a newly formed country. This show of power, which the Argentine government immediately protested, is the root of the entire issue and the reason the British people have lived on the island for more than 190 years. The British occupation led to a colony that prevented the development of the Argentine population.

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<sup>68</sup> - Kohen, M. Discussion Panel on The Sovereignty Dispute over the Falklands/Malvinas: Competing Claims and Pros, Video, YouTube: <https://www.youtube.com/watch?v=hQSkZzCyEAE>, Accessed January 23, 2025.

\* W. Michael Reisman is Myres McDougal Professor Emeritus of Law at the Yale Law School where he has been on the Faculty since 1965

<sup>69</sup> - Reisman, M. W. (1983). "The Struggle for the Falkland Islands" Faculty of Scholarship Series, 93 vol. 2, p. 304.

<sup>70</sup> - P. d'Argent, (2002). Des frontières et des peuples: L'affaire de la frontière terrestre et maritime entre le Cameroun et le Nigeria, Arret sur le fond, AFDI, p. 281-321. ص. 51. مرجع سابق، عن بيار-ماري دوبوي،

<sup>71</sup> - Edwards, R. Op. cit.

The effective exercise of sovereignty over a particular territory can be considered a weighty factor that can be used in favor of one party in a dispute if the evidence held by both parties is equal. Furthermore, it is a presumption that can be rebutted. This presumption must be supported by a legal presumption that proves the right for the claiming party. Time alone does not grant sovereignty over a particular territory, as evidenced by many United Nations decisions regarding the Palestinian issue.

#### Four - Argentina's renouncement of its sovereignty claim:

The International Court of Justice explicitly stated in its ruling on May 23, 2008, in the case brought by Malaysia against Singapore, that renunciation of sovereignty cannot be implied but must be clear and explicit, due to the significance of sovereignty<sup>72</sup>. In the case of the Falkland Islands, there has been no renunciation of sovereignty, neither implied nor explicit.

#### Fifth - As for the British claim regarding the right of the Falkland Islanders to self-determination:

Based on the legal discussion concerning the right to self-determination, it becomes clear that the Falkland Islanders do not have a legitimate claim to this right. However, we will proceed to clarify whether it is possible to recognize the existence of a "Falkland people."

Since the right of peoples is specifically designed to be exercised against a state, which is often rejected by one of the peoples, the concept of "people" cannot be reduced to the concept of "population" in the traditional sense in international law, nor to that of a minority. Traditionally, there has been agreement to distinguish between two models of verification criteria: the first is objective, consisting of ethnic, cultural, linguistic, and geographical elements, and the second is subjective, characterized by the will of a specific group of people to live together in a shared community<sup>73</sup>.

However, practical practice takes a completely different direction. The recognition by the international community of a people's right to self-determination is commonly carried out through a vote expressed within the organs of global and regional organizations, primarily in the General Assembly<sup>74</sup>.

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<sup>72</sup> - موجز الأحكام والفتاوى والأوامر الصادرة عن محكمة العدل الدولية 2008-2012، الأمم المتحدة، نيويورك 2015، ص. 13-1.

<sup>73</sup> - بيار - ماري دوبيوي، المرجع أعلاه، ص. 166.

<sup>74</sup> - بيار - ماري دوبيوي، المرجع السابق، ص. 166.

Kohen\*, in a discussion on the sovereignty dispute over the Falkland Islands, points out that the United Nations is the body that determines whether a territory is a non-self-governing territory subject to decolonization or not<sup>75</sup>. This was confirmed in Resolution No. 2065 (XX) issued on December 16, 1965, titled "The Falkland Islands (Malvinas) Question." The resolution stressed the need to end colonialism in all its forms, with the Falkland Islands/Malvinas being one of its manifestations. The resolution requested both parties in the dispute to engage in negotiations for a resolution, considering the interests of the inhabitants<sup>76</sup>.

Based on the above, the United Nations has never recognized the existence of a "Falkland people." The current inhabitants were planted on an isolated land after the original population was expelled, while the occupying power refuses to discuss the issue of the dispute. These inhabitants are primarily military personnel and their families. Therefore, based on several studies, it can be concluded that the islanders today do not have a natural population growth and rely heavily on the immigration policies set by the United Kingdom<sup>77</sup>.

### **Conclusion:**

The dispute over the sovereignty of the Falkland/Malvinas Islands is based on several complex principles, including the right of peoples to self-determination, territorial integrity, and the legal legitimacy of historical claims. Britain has relied on the principle of the Falkland Islanders' right to choose their rulers and the lifestyle they wish to lead, considering it a sacred right, while Argentina grounds its position on the sanctity of the territory itself.

Based on the principles of international law, and taking into account the absence of a distinct "Falkland people", Argentina's claims are more consistent with legal principles. However, these claims remain impossible to realize due to Britain's political and military influence. Despite the clarity of legal texts, power remains the only active and decisive factor in establishing a stable situation that is undermined by Argentina's inability to reclaim the islands on one hand, and the influence Britain has on the other to establish an irreversible status quo. Consequently, the dispute

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<sup>75</sup> - Marcelo G. Kohen, Op. cit.

<sup>76</sup> - UN Resolution No 2065 (XX) ( December 16, 1965), Question of the Falkland Islands (Malvinas), A/RES/2065 (XX), Online [https://treaties.un.org/doc/source/docs/A\\_RES\\_2065-Eng.pdf](https://treaties.un.org/doc/source/docs/A_RES_2065-Eng.pdf), Accessed January 27, 2025.

<sup>77</sup> - Kohen, M. Op. cit.

remains unresolved until both parties find the best means to achieve political and legal justice.

This highlights the importance of the continuous call by the United Nations to address the issue through negotiations, emphasizing the need to consider the interests of the island's inhabitants. It should be noted that international law does not support recognizing the "Falkland people" as a people entitled to self-determination. The current population largely consists of settlers whose presence was facilitated and supported by a colonial power.

In light of these considerations, public international law supports the argument that a fair and legal resolution of the Falkland/Malvinas dispute requires further negotiations between the concerned parties, respecting Argentina's legal rights in its territorial claims and the interests of the island's inhabitants.

The roots of the Falkland/Malvinas Islands dispute date back to the Middle Ages, when God was seen as the source of all authority. The shift from absolute papal authority to the divine right granted to kings marked the beginning of a change in the system, which led to the Peace Treaty of Westphalia in 1648, recognizing "the right of each sovereign prince to determine the internal elements of his state". This marked the birth of the international system, where geographical units were defined to interact freely with one another, away from any supreme governing authority. With each shift in the balance of power, new treaties were signed to reflect this change, thus reorganizing territorial claims in line with the changing balance of global power. Thus the development of the world order has been a continuous process, newer ideas and interpretations being added to the older ones without necessarily displacing them completely. Thus International law is constantly evolving, and international legal principles are largely reinforced through the political will of states and the international community.

Based on the analysis of the relevant international legal principles, this study suggests that:

- Both parties to the conflict should benefit from peaceful mechanisms and diplomatic channels in resolving disputes, such as arbitration, negotiation, or resorting to the International Court of Justice, with the aim of finding more sustainable solutions that take into account historical evidence, sovereign rights, and the rights of populations.
- Commitment to international law and the principles of the United Nations related to sovereignty, territorial integrity, and the end of colonization.

- Efforts to find innovative solutions, such as adopting a model of “shared sovereignty”, as is the case in the South Tyrol region, which could enhance economic partnership and cooperation between the parties in managing maritime and oil resources.
- Strengthening the independence of the United Nations Secretariat from the political influences of member states.
- Reforming the Security Council to ensure more equitable representation, preventing the marginalization of the interests of non-represented countries in the Council, and working towards the abolition or reworking of the veto mechanism within the Council.

Therefore, will the United Nations remain a playground for power balances? And, therefore, unable to produce sustainable solutions free from political influences? Opening the field for proposals like those suggested by U.S. President Donald Trump, such as buying Gaza and relocating Palestinians to neighboring countries as a suitable solution for the Israeli-Palestinian conflict. Or his statement regarding his desire to purchase Greenland, annex Canada, and acquire the Panama Canal for the United States. In light of this reality, is there any possibility of creating a new system outside of these balances and influences?

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