

THE QUESTION OF THE MALVINAS ISLANDS

TERRITORIAL INTEGRITY AND PEACEFUL RESOLUTION OF DISPUTES

Santiago Cafiero

THE year 2023 marks the 190th Anniversary of the illegal occupation of the Malvinas, South Georgias and the South Sandwich Islands, and the surrounding maritime areas—all integral parts of Argentine territory—by the United Kingdom. This is a clear violation of the territorial integrity of my country to which it has never consented. The continuation of this illegal occupation also represents a challenge for the international community, given the fact that the UN General Assembly has established that the resumption of negotiations is the means to achieve a just and lasting solution to this colonial question that is currently pending resolution.

In view of the main topic of this issue of this prestigious journal, I consider this a good opportunity to present this question and to elaborate on it in detail.

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Argentina has maintained a consistent stance in its opposition to the acquisition of territories by force and attempts to instrumentalize the self-determination principle to justify secession. Consequently, Argentina has not recognized the unilateral declaration of independence of “Kosovo” and expressed this position during the advisory opinion process at the International Court of Justice.

The delicate current context, marked by the conflict in Ukraine, once again highlights the importance of respecting the principles of international law enshrined in the Charter of the United Nations, such as the peaceful settlement of international controversies and the principle of territorial integrity.



Photo: Guilver Image

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In this essay, I would first and foremost like to review the historical background of the question of the Malvinas Islands that sustain the Argentine sovereign rights based on the principle of *uti possidetis iuris* of 1810. Second, this essay reconstructs the characterization of the question by the United Nations in 1965, and the process of bilateral negotiations that have taken place since 1966 as a consequence of the pronouncement of the UN General Assembly. The essay further explores the efforts that democratic governments of Argentina have made to resume negotiations, even in the face of the UK's refusal to seek a definitive resolution to the dispute and its policy of unilateral acts.

Finally, the essay addresses the imperative to return to negotiations in the manner they were conducted for more than 16 years between 1966 and 1982, thus adjusting the conduct of both parties with the commitment of the international community to settle disputes by peaceful means.

HISTORICAL BACKGROUND

The Malvinas Islands—located less than 500 kilometers from the coast of Patagonia and more than 12,700 kilometers away from the UK—had been part of the area under the jurisdiction of Spain since the entry into force of the first international treaties that

delimited the “New World”—such as the Pontifical Bulls and the Treaty of Tordesillas of 1494. In other words, since the time shortly after the arrival of Christopher Columbus in the Americas.

In the eighteenth century, Britain and France’s ambition was to have an establishment strategically located in front of the Strait of Magellan. In 1764, France formed the establishment of “Port Louis” on Isla Soledad, but Spain opposed it and obtained the recognition by France of its right to the islands. France ordered the handover of the establishment to the Spanish authorities, and since then, there were Spanish governors residing in the Islands, dependent on Buenos Aires.

In 1765, a British expedition clandestinely landed in the archipelago and raised a fort on an island located west of Gran Malvina. Spain protested insistently, and in 1770, expelled its occupants. The matter was settled through a bilateral agreement signed in 1771, which consisted of a Declaration by means of which Spain returned “Port Egmont” to the British to save

the honor of the British King. This expressly reserved Spain’s sovereignty rights over the totality of the Malvinas Islands, and included an acceptance of the Declaration in which Great Britain kept silent about the Spanish reservation of rights. In 1790, with the signing of the treaty of San Lorenzo de El

Escorial, Great Britain committed itself not to establish any settlement on the eastern or western coasts of South America, or on the adjacent islands already occupied by Spain—as was the case with the Malvinas.

Since then, a total of 32 Spanish governors succeeded each other in the Malvinas Islands, until 1811, when the garrison of Puerto Soledad was called upon from Mon-

tevideo to defend the monarchy due to the recently launched War of Independence. In the framework of this conflict, the first independent governments of the United Provinces (the name initially given to the new Argentine state) accounted for the Malvinas Islands in various administrative acts, considering them an integral part of their territory inherited from Spain through succession of states based on the principle *utis possidetis juris* of 1810.

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From then on, successive Argentine governments carried out various acts demonstrating their sovereignty over the Malvinas Islands, including the designation of governors, legislation on fisheries resources, and the granting of territorial concessions. In this context, the development of Puerto Soledad took place, whose inhabitants were engaged in livestock breeding, hunting of sea lions, and the provision of services to ships that docked in the port. There was no protest by the United Kingdom, which made no claims to the Malvinas Islands during the process of the recognition of the Argentine state—which culminated in the signing of the 1825 Treaty of Friendship, Commerce and Navigation.

On June 10th, 1829, the Argentine government promulgated a decree creating the Political and Military Command of the Malvinas. After more than half a century of silence, during which Spanish and Argentine administrations alternated control of the Malvinas Islands without opposition, the UK protested the decree in November 1829 as part of its initiative to revive strategic interests in the South Atlantic.

On January 3rd, 1833, a corvette from the British Royal Navy, supported by another warship located in the area, threatened the use of superior force and demanded the surrender and handover of Puerto Soledad. After the expulsion of the

Argentine authorities, the commander of the British ship left one of the inhabitants of Puerto Soledad in charge of the flag and set sail for his base.

The Argentine government never consented to this breach of its territorial integrity, and throughout the subsequent 190 years, it has consistently reaffirmed its legitimate rights over the territory and claimed to fully exercise its sovereignty over the Islands. Except for the brief period of negotiations described in the passages that follow, the Argentine claim strug-

gled for decades with the refusal of the UK to bilaterally address the question of sovereignty over the islands.

THE QUESTION OF THE MALVINAS ISLANDS & DECOLONIZATION

The order that emerged after World War II, enshrined in the Charter of the United Nations, offered new opportunities for the solution of the

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Argentine-UK controversy. The Charter entailed, among other fundamental principles of international law, the obligation of states to settle their disputes by peaceful means and renounce the use of force against the political independence and territorial integrity of another state.

In this context, the process of decolonization took on a new impetus, mainly as a result of the work of the UN General Assembly, which adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples in 1960 (Resolution 1514 (XX)). This declaration proclaimed

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“the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations,” enshrining two fundamental principles that should guide the process of decolonization: the self-determination of peoples and the territorial integrity. In this framework, the sixth paragraph of the resolution states that “any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.” This limitation to the principle of self-determination implies that it should not be

applied to the detriment of the territorial integrity of states.

In 1946, the United Kingdom—which recognized the colonial situation of the Malvinas Islands—had inscribed the Islands as one of the UN’s Non-Self-Governing territories.

Argentina seized the opportunity to formulate a reservation reaffirming its rights over the territory and rejecting the application of the principle of self-determination to the case. Until 1964, the UN’s consideration of the question of the Malvinas Islands was characterized by the exchange of positions between Argentina and the

UK in the Fourth Committee, which was the salient feature of the process. That same year, the Special Committee concerning the implementation of resolution 1514 (XV) examined the matter for the first time and submitted recommendations to the General Assembly.

Therefore, on December 16th, 1965, the General Assembly adopted Resolution 2065 (XX), in which “[n]oting the existence of a dispute between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the said islands,” “[i]nvites the Governments

of Argentina and the United Kingdom of Great Britain and Northern Ireland to proceed without delay with the negotiations recommended by the Special Committee [...] with a view to finding a peaceful solution to the problem, bearing in mind the provisions and objectives of the Charter of the United Nations and of the General Assembly the resolution 1514 (XV) and the interests of the population of the Malvinas Islands.”

In this manner, the international community recognized the existence of a sovereignty dispute pertaining to the question of the Malvinas Islands, specified its bilateral nature between Argentina and the UK, and established that an arrangement should be found by peaceful means through negotiation. Moreover, by making explicit reference to the interests of the inhabitants of the territory—and not to their desires—the principle of self-determination of peoples is therefore considered irrelevant for the case.

This characterization of the dispute by the General Assembly—reaffirmed in the resolutions that followed—recognizes the specificity of the Question of the Malvinas Islands, which comes from the fact

that part of the territory of an independent state (the Argentine Republic) was usurped by an act of force perpetrated by the United Kingdom in 1833.

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a view to preserving the “British character” of the population of the islands and making it difficult for Argentines from the mainland to settle. This is to say, if there is a colonial situation but not a colonized population, this means that there is no “people” with right to self-determination under international law.

In addition, the General Assembly rejected the two draft amendments submitted by the UK with the aim of linking the principle of self-determination with the question of the Malvinas Islands.

Those that settled in the Malvinas Islands as a result of the UK’s colonization policy since 1833, much like their descendants, were not subjected, dominated, or exploited by a colonial power, which is the decolonization requirement, as defined by resolution 1514 (XV). On the contrary, in 1833, in addition to the expulsion of the legitimate Argentine authorities from the Malvinas Islands, the UK implemented measures to favor the settlement of subjects of the Crown with

The General Assembly understood that applying the principle of self-determination to this case would imply the “disruption of the national unity and territorial integrity” of Argentina, contradicting the provision of the sixth paragraph of resolution 1514 (XV). Namely, the principle should not be

used to justify the occupation of a part of the territory of an independent state with the aim of separating it from the rest of the territory.

After the adoption of Resolution 2065 (XX) by the General

Assembly, a new stage began that lasted for more than a decade and a half. At this stage, the UK agreed to move forward with Argentina toward a process of bilateral negotiations, which was formally communicated by both governments to the Secretary-General (documents A/6261 and A/6262). During this period, both countries analyzed various proposals for the solution of the dispute, such as transferring sovereignty to Argentina, joint administration, or implementing a leaseback arrangement. The parties considered alternatives for resolving the dispute, including transferring sovereignty to Argentina and establishing safeguards that would take into account the peculiarities of the inhabitants, preserve their way of life, and protect their interests—all in compliance with relevant General Assembly resolutions.

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Likewise, in this context, Argentina and the UK adopted a set of practical measures to facilitate the movement of persons and goods between the Argentine mainland and the Malvinas Islands. This was done with the aim of promoting the establishment of cultural, social, and economic

ties. In this respect, the Argentine government built a temporary airfield in the Malvinas Islands and the company “Líneas Aéreas del Estado” provided an air service between the Islands and mainland Argentina. Scholarships

were also granted to the islanders to study on the mainland, Spanish teachers were sent to the islands, while postal, telegraphic, and telephone communications were established. Furthermore, with the establishment of YPF, the Argentine state oil company, the islands were regularly supplied with fuel. This great effort by Argentina to facilitate communication with the Islands served to mitigate the isolation of its inhabitants and was recognized by the UK.

These efforts, accompanied by the unwavering will of the Argentine government to move towards a definitive solution of the dispute, could not yield results because of London’s strong lobbying, which opposed any agreement.

DEMOCRATIC ARGENTINA AND THE EFFORT TO RESUME NEGOTIATIONS

Unlike Argentina’s, the British position has been changing over time, often contradicting its past behavior. Once the bilateral talks on sovereignty were interrupted, the UK changed its position. Since then, London has been conditioning the resumption of negotiations on the consent of the Islands’ inhabitants, disregarding what was established by the General Assembly.

This change has no basis in international law. Military victories do not grant rights and the 1982 conflict did not alter the nature of the sovereignty dispute between Argentina and the UK, which continues to this day. This was recognized by the General Assembly a few months after the end of the conflict, in November 1982, in its resolution 37/9, in which it reiterated the validity of the resolutions that were adopted since 1965 and called the parties to resume sovereignty negotiations. One should bear in mind that in April 1982, during the hostilities in the South Atlantic, Argentina was ruled by an illegal and illegitimate military junta, which acted behind the back of the Argentine people and departed from

Since 1983, all efforts to resolve the sovereignty dispute in accordance with the Charter of the United Nations and relevant resolutions of the General Assembly have been driven by Argentina.

Argentina’s traditional commitment to the principle of peaceful settlement of international disputes.

Since then, the Argentine Republic has consolidated itself as a democracy in which the military forces are subject to civil control. Argentina is a country

committed to regional integration and peaceful settlement of disputes—principles that are an integral part of the country’s democratic pact.

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Charter of the United Nations and relevant resolutions of the General Assembly have been driven by Argentina. For Argentina, this commitment to the peaceful resolution of the bilateral dispute has had a constitutional hierarchy since 1994. In that year, the Argentine Republic added the First Transitory clause to its National Constitution, which reads as follows: “The Argentine Nation ratifies its legitimate and imprescriptible sovereignty over the Islas Malvinas, South Georgias and the South Sandwich Islands, and the surrounding maritime areas, as being an integral part of its national territory. The recovery of these territories and the full exercise of sovereignty, respecting the way of life of their inhabitants and

in accordance with the principles of International Law, constitutes a permanent and unrenounceable goal of the Argentine people.”

THE UK’S PERSISTENT REJECTION OF NEGOTIATIONS

On numerous occasions my government has invited the United Kingdom to resume negotiations and put an end to the dispute. The most recent example of this was during my meeting with the UK Foreign Secretary James Cleverly in New Delhi on the margins of a G20 Summit. On that occasion, I proposed a renewed bilateral agenda on the South Atlantic with the objective of complying with the mandate of relevant General Assembly resolutions on the Malvinas question. In order to achieve this objective, I proposed to the UK Government to establish a formal process of negotiations based on good faith—one that would be transparent in addressing the issues of mutual interest and that would take place on a periodic basis. Among these issues would be the resumption of sovereignty negotiations, the connectivity of the islands with mainland Argentina, practical measures to guarantee the interests and the way of life of the inhabitants of the islands, the conservation of natural resources,

and the demilitarization of areas under dispute. To that end, I invited the UK Foreign Secretary to have our first bilateral meeting in New York within two months, at the latest.

Unfortunately, as on previous occasions, the United Kingdom rejected Argentina’s attempt to resume negotiations.

However, Argentina’s invitation remains open.

Nevertheless, not only does the UK continue to be unaware of its obligation to engage in good faith negotiations with Argentina, but it also conducts itself in the South Atlantic as if the sovereignty dispute

no longer exists. Additionally, the UK persistently takes unilateral actions in direct contradiction to General Assembly Resolution 31/49, which urges both parties to refrain from such actions in the disputed area until a definitive solution is reached.

The British colonial government unilaterally grants fishing licenses in the areas surrounding the Malvinas Islands. Moreover, in 2021, the UK announced that it would extend these unilateral licenses for 25 more years from 2031. This makes it impossible to maintain a bilateral cooperation scheme on the conservation of fishing resources.

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Moreover, the United Kingdom is proceeding with its illegitimate exploration and exploitation of hydrocarbon resources in the disputed area. In response to these unilateral actions, the Argentine government will take all the necessary legal actions to protect the non-renewable resources that belong to the entire Argentine people.

On military issues, the United Kingdom continues to behave as though the conflict took place yesterday. London maintains an unjustified and disproportionate military presence on the Islands, regularly carrying out maneuvers and exercises, which include firing missiles. Argentina has vigorously protested these actions.

Recently, the United Kingdom has escalated the situation even further by deploying a contingent of the so-called “Security Forces of Kosovo” to the Malvinas Islands. This constitutes a direct engagement of actors from outside the region, who are not parties to the sovereignty dispute over the Malvinas. Such an action is not only contrary to resolution 31/49 mentioned above, but also contradicts General Assembly resolution 41/11 (“Zone of Peace and Co-operation of the South Atlantic”). The resolution, among other provisions,

calls upon all states of all other regions—particularly the militarily significant ones—to scrupulously respect the South Atlantic region as a zone of peace and cooperation. This specifically pertains to reducing, and eventually eliminating, their military presence in the region. In its communiqué issued on December 8th, 2022, the Community of Latin American

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and Caribbean States has condemned the intention of the United Kingdom to incorporate personnel of the so-called “Security Forces of Kosovo” into the British infantry units deployed in the Malvinas Islands.

Additionally, the participation of the so-called “Security Forces of Kosovo” is contrary to the principles agreed upon by the UN Security Council for a political solution to the Kosovo crisis -Resolution 1244 (1999)-. Further, this does not contribute to trust-building between Belgrade and Priština at a time when the EU is making an effort to reach a solution to the issue.

The UK is thus pursuing a policy of *fait accompli* in the South Atlantic, while conditioning a resumption of negotiations on the consent of the inhabitants of the Malvinas. In so doing, London ignores the UN’s characterization of the Question of the Malvinas

Islands as a bilateral dispute to which the principle of self-determination does not apply.

This attitude of the British government also shows its lack of adherence to some fundamental norms of international law, such as the principle of territorial integrity of states and settling international disputes by peaceful means—which it interprets in a biased manner. With such an approach, the UK seeks to continue its illegal occupation of a part of Argentine territory without engaging in good faith negotiations with Argentina in finding a peaceful solution to the sovereignty dispute.

Despite the repeated rejections by the UK, Argentina will continue to search for a solution to the sovereignty dispute pursuant to article 2.3 of the Charter of the United Nations. In this framework, Argentina has periodically renewed its interest in the mission of good offices entrusted to the UN Secretary-General by Resolution 37/9 of the General Assembly in 1982. Argentina has repeatedly demonstrated its willingness to consider new and innovative proposals to allow the Secretary-General to fulfill his mission.

Argentina does not stand alone in its request to resume negotiations with the UK in order to enforce its rights. On the contrary, this is the dominant opinion of the international community, as has been reflected in the resolutions of the General Assembly and its Special Committee on Decolonization. The same

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is true of the regular pronouncements of the Organization of American States, the Group of 77 and China, the Community of Latin American and Caribbean States, MERCOSUR, the Central American Integration System, and the Iberoamerican Summit, among other regional and international forums.

CONCLUSION

Even after 190 years of the UK’s illegal occupation, the question of the Malvinas Islands continues to be a colonial situation pending resolution.

I would like to recall what was expressed by the President of the Argentine Republic Alberto Fernández before the National Congress at the inauguration ceremony on December 10th, 2019:

We reaffirm our firmest commitment to compliance with the first transitory clause of the National Constitution, and we will work tirelessly to strengthen the

legitimate and imprescriptible claim for sovereignty over the Malvinas, South Georgias and the South Sandwich Islands and the surrounding maritime areas. We will do it with the certainty that the peoples of Latin America and the World are with us and convinced that the only possible path is peace and diplomacy.

On the other hand, the current international context marked by the conflict in Ukraine once again highlights the importance of respecting the territorial integrity of states and the peaceful settlement of disputes as the cornerstone of the post-1945 international system.

The peaceful settlement of disputes should not be understood as a mere abstention from the use of force, but rather as an active engagement of the parties in good faith with the aim of settling unresolved disputes. In the case of illegally occupied territories, peaceful

settlements should not be equated with maintaining the status quo. The parties to the dispute must comply with their international obligation to negotiate or find other means to reach peaceful and definitive solutions to their differences.

Argentina firmly adheres to this

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interpretation, the only one possible among nations respectful of international law and with a pacifist vocation. And for this reason, it will continue to carry out determined efforts to resume negotiations with the United Kingdom regarding sovereignty over the Malvinas, South Georgias

and the South Sandwich Islands, and the surrounding maritime areas.

The persistence of colonialism in the twenty-first century is unacceptable. The United Kingdom must align itself with the international community and agree to negotiate with Argentina on the merits of the dispute. ●