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Falkland Islands: Will the Real Owner Please Stand Up

Brian M. Mueller

The Falkland Islands: Will the Real Owner Please Stand Up

During 1982, 835 people were killed and 1660 wounded during a heated military confrontation between Argentina and Great Britain.[1] The dispute centered on a small island group in the South Atlantic, known to the English as the Falkland Islands[2] and to the Argentines as Las Malvinas.[3] This violence represents the latest chapter in a continuing argument, dating back to the eighteenth century, over which country has right and title to the islands. At first glance, however, the islands present an unlikely object for prompting both Argentina and Great Britain into committing such large amounts of money and equipment to defend their claims.[4]

The 4,618 square miles of land that make up the Falkland Archipelago consist of two main islands, East and West Falkland, and well over 200 smaller islands and islets.[5] Approximately 900 people live in Port Stanley, the government center and only town on East

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1 Argentina reported 577 dead and 883 wounded. N.Y. Times, July 3, 1982, at 2, col. 4. Great Britain reported 258 casualties, including 18 British civilians and 3 Falkland Islanders, and 777 wounded. N.Y. Times, July 7, 1982, at A2, col. 3.

2 In 1690, a British captain named the islands after Lord Lucius Falkland, then Treasurer of the Navy. G. PENDLE, ARGENTINA 163 (2d ed. 1961).

3 Between 1698 and 1712, most visitors to the Falklands were French sailors involved in South American trade. They named the islands *Iles Malouines* after St. Malo, the French seaport. The Spanish later adapted this name into Malvinas. V.F. BOYSON, THE FALKLAND ISLANDS 32-33 (1924). Hereafter, this note will refer to the islands as the Falkland Islands.

4 It cost Argentina $19 million a day to finance the spring warfare. Such expenditures prove costly to a country which, before the conflict, had a $36 billion foreign debt, representing well over a third of the annual GNP. The $14 billion in loans due this year alone total 150% of expected export earnings. In order to finance the military operation, Argentina devalued the peso by 16.6% and imposed a 30% tax on gasoline. The $19 million a day expense bill did not include replacing the 15 helicopters, 27 jet fighters, 14 light aircraft, 5 naval vessels, and one submarine which Argentina lost during the fighting. *See* Halpin-Byrne, *Modern Warfare's Massive Price*, MACLEANS, May 31, 1982, at 26; Gall & de Souza, *Enough*, FORBES, June 21, 1982, at 33.

Great Britain had spent $560 million before she even began her assault on the islands. The final price tag for Britain could total $2.25 billion in order to pay for the military operation, replace the 7 naval vessels and 19 aircraft lost during the fighting, provide care for the 300 wounded soldiers still requiring treatment, and pay out survivor benefits for the British casualties. Great Britain faces an additional expense, estimated to be up to $720 million a year, in maintaining a permanent 3,000-troop garrison on the islands in order to deter any more Argentinian take-overs. *See id.*; S. Powele, *Falklands Aftermath: Shock of Defeat . . . and Burdens of Triumph*, U.S. NEWS AND WORLD REPORT, June 28, 1982, at 23.

5 Pettingell, *Natural History of an Unlikely Battlefield*, AUDOBON, July, 1982, at 52.

Falkland, while the remaining 900 residents live in or around 30 different settlements dispersed widely over the group's larger islands.[6] Most islanders raise sheep for a living, exporting wool, hides and tallow, but importing almost all commodities except meat.[7] The islands present a dreary, desolate landscape, totally barren of timber, other than the few trees introduced by settlers.[8] No known mineral or oil deposits exist.[9] Historically the Falklands have proven their strategic military worth,[10] yet that worth appears questionable today, especially after considering the cost required to adequately defend the islands.[11]

This note will not attempt to discern why each country chose to engage in the military action. Instead, this note will limit its discussion to the legal claims which each country asserts in its bid for the Falklands. Part I presents the historical facts. Part II discusses the appropriate international legal principles concerning territorial acquisition, and applies the facts to the principles to arrive at a conclusion. Who has the better claim? The evidence seems to indicate Great Britain, although Argentina's claim has some merit.

I. Historical Background

The Spanish, French, Portuguese, and English have all ad-

6 *See id.* at 57.

7 G. PENDLE, *supra* note 2, at 164.

8 *See* C. SKOTTSBERG, THE WILDS OF PATAGONIA 5-6 (1911). The Falklands have a cold, damp, and windy climate, with a mean temperature of 43 degrees F. and mean relative humidity of 84%. The almost incessant winds average 17 to 18 m.p.h. overall, while averaging between 23 and 38 m.p.h. two-thirds of the time. Hail and sleet occur two or three times a month, and snow falls in all months except January and February. Pettingill, *supra* note 5, at 52-55.

9 In July, 1974, TELAM, the Argentine government's official news agency reported oil existing on the continental shelf near the islands. TELAM claimed the Wall Street Journal as its informational source. The following January, Great Britain dispatched a scientific research vessel, H.M.S. *Shackleton*, to conduct tests on the continental shelf. Britain subsequently broke off the studies without finding any oil. Throughout the tests, Argentina had protested the vessel's presence and mission, once to the point of firing across the *Shackleton*'s bow when the vessel refused to submit to a demand for Argentine boarding and inspection. E. MILENKY, ARGENTINA'S FOREIGN POLICIES 139 (1978).

In 1975, Argentina passed a statute purporting to regulate oil exploration on the continental shelf surrounding the Falkland Islands, Antarctica, and the islands of the South Atlantic. *See* 2 ANTARCTICA AND INTERNATIONAL LAW 71-73 (Bush ed. 1982).

10 In 1914 and 1939, two British naval victories—the Battle of the Falklands and the Battle of the River Plate—were won by squadrons based on Port Stanley. *See* G. PENDLE, *supra* note 2, at 164. *See generally* B. PITT, REVENGE AT SEA (1960) (recounting the Battle of the Falklands).

11 *See* note 4 *supra*.

vanced claims to the discovery of the Falkland Islands.[12] Despite these various claims dating back to the early sixteenth century,[13] the islands remained deserted until 1764, when the French navigator Bougainville established Port Louis on East Falkland.[14] Spain protested against this colony as an encroachment upon Spanish possessions.[15] Spain based her claim to the islands upon the bulls of Pope Alexander VI, which, in 1493, purportedly gave Spain title to all discovered territory in the western half of the world.[16] After some negotiation, France ceded the settlement to Spain in 1767 in return for 618,108 livres.[17] The Spanish renamed the settlement Soledad.[18]

Meanwhile, in 1765, Great Britain established her own colony at Port Egmont, on West Falkland.[19] It took four years for the colonies on the two islands to come into contact.[20] Once apprised of Britain's presence, however, the Spanish government, seeking to maintain her claim over the islands and also regarding the settlement as a center for contraband trade, sent in troops to remove the British settlers.[21]

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12 H.S. FERNS, BRITAIN AND ARGENTINA IN THE NINETEENTH CENTURY 224 (1960).

13 Amerigo Vespucci brought back the first recorded sighting in 1501, though some historians claim he saw the Jason Islands. V.F. BOYSON, *supra* note 3, at 15.; J. ARCÉ, THE MALVINAS (OUR SNATCHED LITTLE ISLES) 14-16 (1951).

14 R. LEVENE, A HISTORY OF ARGENTINA 64 (1937). Factors against earlier colonization included the rigorous South Atlantic climate, the desire to find a direct passage westward to the Orient, and tales of shipwrecks and suffering brought back by early explorers in the region. *See* J. GOEBEL, THE STRUGGLE FOR THE FALKLAND ISLANDS 1 (1927).

15 F.A. KIRKPATRICK, A HISTORY OF THE ARGENTINE REPUBLIC 35 (1931).

16 *See* J. GOEBEL, *supra* note 14, at 49-50. The Pope's power to issue the bulls supposedly rested upon the "Donation of Constantine," which allegedly conveyed title to the islands of the world to Pope Sylvester and his successors, and upon the claim that the Pope, as God's deputy on earth, had the power to disburse the unoccupied lands as he saw fit. *Id. See generally* 2 J.H.W. VERZIJL, INTERNATIONAL LAW IN HISTORICAL PERSPECTIVE 308-38 (1969) (dicussing Papal bulls and the Pope's role in international law).

17 H.S. FERNS, *supra* note 12, at 225.

18 R. LEVENE, *supra* note 14.

19 *See* V. HARLOW, THE FOUNDING OF THE SECOND BRITISH EMPIRE 1763-1793 at 26 (1952). Great Britain had originally planned to send an expedition to the islands in 1748. Spain had protested. Although Britain had refused to accept the Spanish protest, the expedition never sailed. D. MARSHALL, EIGHTEENTH CENTURY ENGLAND 407 (1962). British interest in the Falklands fit into a policy developed after the Seven Years War to establish offshore commercial and military bases around Spanish and French territories. *See* V.H.H. GREEN, THE HANOVERIANS 1714-1815 at 311 (1948).

20 J. WATSON, THE REIGN OF GEORGE III 1760-1815 at 154 (1960). The Spanish finally discovered the British settlement by chance when a Spanish schooner came upon a British naval vessel commanded by Captain Hunt, Great Britain's representative in the Falklands. Each party warned the other away from the islands and asserted sovereignty over the area. V. HARLOW, *supra* note 19, at 30.

21 H.S. FERNS, *supra* note 12, at 7. Spain sent five frigates and 1,600 soldiers to dislodge the small English settlement. No actual violence occurred although a few shots were fired for form's sake. *See* 5 LORD MAHON, HISTORY OF ENGLAND 277 (3d ed. 1853).

Great Britain refused to acknowledge the Spanish claims, and was prepared to go to war until Spain, failing to gain support from France in the matter, restored British possession.[22] But in restoring possession, Spain expressly stated that continued British presence did not affect Spanish sovereignty over the islands.[23] Great Britain returned to Port Egmont in 1771.[24] After three years, the British withdrew from the colony, but not without leaving behind British flags and a leaden plate claiming the Falkland Islands as sole right and property of the King of Great Britain.[25]

After the British departure, Spain continued to maintain the colony at Soledad.[26] When the Napoleonic Wars began to drain the Spanish resources, Spain withdrew the settlers from the colony in 1811.[27] This withdrawal left the islands as a haven for the whale and seal fishermen in the area. The men had access not only to fresh water, but also to the cattle left behind by the settlers.[28] Nine years later, in 1820, an Argentine naval vessel arrived at Soledad to establish the islands as belonging to Argentina, a country now independent from Spain.[29] The ship's commander, Daniel Jewitt, raised the Argentine flag over the islands, proclaimed possession for Argentina, warned the fishing ships which were present of Argentina's sovereign rights, and sailed away.[30]

Despite Jewitt's visit, the Falklands remained uninhabited except for the visiting fishermen, who were mainly British and American.[31] Although Argentina appointed a governor for the islands in 1823,[32] the world in general seemed to have forgotten the Falkland Islands. But in 1828, Argentina granted a package of concession rights, including a twenty-year monopoly on seal hunting, to Louis Vernet, a man destined to bring the Falklands back into world

22 D. MARSHALL, *supra* note 19, at 407-09.

23 R. LEVENE, *supra* note 14, at 64.

24 5 LORD MAHON, *supra* note 21, at 282.

25 *Id.*

26 F.A. KIRKPATRICK, *supra* note 15, at 36 n.1.

27 *See* J. GOEBEL, *supra* note 14, at 433.

28 F.A. KIRKPATRICK, *supra* note 15, at 245. *See also* note 35 *infra*.

29 G. PENDLE, *supra* note 2, at 164. The push for Argentine independence had its beginnings in 1810, but began in earnest in 1816, lasting roughly four years. During the struggle, neither Spain nor Argentina paid much attention to the Falkland Islands. However, no other country made any attempt to acquire control over the islands during this period. *See* J. GOEBEL, *supra* note 14, at 432-33.

30 H.S. FERNS, *supra* note 12, at 225.

31 *Id.*

32 J. GOEBEL, *supra* note 14, at 434.

focus.[33]

The concessions were granted to Vernet on the condition he establish a colony.[34] Vernet had already spent three winters on the islands and was confident the islands could provide the resources necessary to sustain settlers.[35] But neither pioneer spirit nor patriotic loyalty motivated Vernet.[36] He saw the Falklands as his key to riches. If he could maintain order over the itinerant fisherman, he would force them either to stop at his ports to buy supplies, or to do without.[37] Most importantly, if he regulated the seal industry, Vernet could make substantial profits, either by licensing others to hunt, or by doing all the hunting himself.[38] But in order to achieve his objective, Vernet needed Argentine support.[39]

In addition to the Falkland concessions, Vernet secured an appointment as Governor over the islands, as well as Governor of the Shores of Patagonia.[40] Vernet issued official decrees against unauthorized fishing and seal hunting off the Falklands' coast, and requested a naval vessel to enforce his orders.[41] The Argentine government could not spare a warship, but issued its own decree proclaiming sovereignty over the islands, and prohibiting unlicensed fishing.[42] In November, 1831, Vernet began seizing American ships

33 The concessions included not only seal hunting, but also land and grazing rights, as well as other fishing rights. F.A. KIRKPATRICK, *supra* note 15, at 246.

34 J. GOEBEL, *supra* note 14, at 436.

35 Vernet believed the islands' pastures would sustain sheep and cattle in large numbers. He estimated that 15,000-20,000 wild cattle roamed the islands, descendents of cattle left behind by earlier settlers. The islands provided adequate fresh water, supplies, and peat for fuel. Previous settlers had grown potatoes and vegetables, and cereals were possible. *See* H.S. FERNS, *supra* note 12, at 226.

36 Vernet claimed no particular country. He was French by birth. He had lived for a time in Hamburg, Germany and did not travel to Buenos Aires until 1820. Although he was, at all times, legally acting under Argentine protection, Vernet made statements on several occasions that British rule over the Falklands would be perfectly acceptable to him. In fact, after Great Britain had reestablished occupation, Vernet applied to Britain to reinstate his economic and commercial rights. *See id.* at 225-27.

37 *Id.* at 226.

38 *Id.*

39 *Id.*

40 T. DAVIS JR.; CARLOS DE ALVEAR, MAN OF REVOLUTION 99 (1955).

41 *Id.*

42 The United States was not notified of the decree because the U.S. *chargé d'affaires*, John M. Forbes, died before he could dispatch the notice to Washington. *Id.* Great Britain did protest the decree through her Consul-General, Woodbine Parish. Parish declared the islands a British territory and promised to reoccupy them in due season. Although Argentina gave only a general response to Britain's protest, Vernet assured Parish that British subjects would have free access to the area. H.S. FERNS, *supra* note 12, at 227-28.

which had failed to comply with his orders.[43] Vernet's men captured two fishing schooners, the *Harriet* and the *Superior*, as well as a whaler named the *Breakwater*.[44] The *Breakwater*'s crew, however, overcame the guards, slipped out to sea, and notified the United States of the seizures.[45]

The U.S.S. *Lexington*, commanded by Captain Thomas Duncan, proceeded to the area to protect American citizens.[46] Duncan first sailed to Buenos Aires to meet with the Argentine government. He demanded that they either deliver Vernet to the United States on piracy and robbery charges, or arrest and punish him under Argentine law.[47] Francis Baylies, the newly arrived United States *chargé d'affairs* in Argentina, presented the official United States demands: freedom for American citizens to fish in the Falklands region, a right they had enjoyed for 50 years, and either restitution for the American vessels and property taken by Vernet, or their return.[48]

Duncan waited two days for a reply by Argentina.[49] The Argentine government not only refused to give up Vernet and indemnify the United States for his actions, they defended him and denounced American involvement.[50] Duncan then sailed to Soledad, captured the settlers, spiked the few small cannon, seized the commissary and supplies, burned the ammunition, and broke the small arms.[51] Argentina demanded reparations.[52] This entire affair strained relations between the United States and Argentina to the point that Baylies asked for his passport, causing a break in diplomatic relations which lasted eleven years.[53]

Duncan and the *Lexington* had basically destroyed the colony as

43 G. STUART, LATIN AMERICA AND THE UNITED STATES 353 (5th ed. 1955).

44 *See* W. ROBERTSON, HISPANIC-AMERICAN RELATIONS WITH THE UNITED STATES 171 (1923).

45 The *Harriet* was taken to Buenos Aires to allow the Argentine government an opportunity to fully review the situation. Vernet eventually allowed the *Superior* to leave on a seal hunting expedition off the coast of Chile. But before leaving, the *Superior*'s captain was required to pledge himself to return and abide by the judgment rendered on the *Harriet*. *Id.* As an incentive to come back to Soledad, Vernet retained all the *Superior*'s seal skins. T. DAVIS JR., *supra* note 40, at 102.

46 *See* 1 DIPLOMATIC CORRESPONDENCE OF THE UNITED STATES: INTER-AMERICAN AFFAIRS 1831-1860 at 12-13 (W. Manning ed. 1932) [hereinafter cited as DIPLOMATIC CORRESPONDENCE].

47 T. DAVIS JR., *supra* note 40, at 105.

48 *See* DIPLOMATIC CORRESPONDENCE, *supra* note 46, at 3-12 and 99-105.

49 T. DAVIS JR., *supra* note 40, at 105.

50 G. STUART, *supra* note 43, at 354.

51 T. DAVIS JR., *supra* note 40, at 106.

52 G. STUART, *supra* note 43, at 354.

53 *See* H.S. FERNS, *supra* note 12, at 229.

a community.[54] Argentina appointed a new governor over the Falklands and tried unsuccessfully, in December 1832, to establish a penal colony at Soledad.[55] Simultaneously, an English corvette, H.M.S. *Clio*, arrived at Soledad with orders to operate the islands as a British possession.[56] The *Clio* landed a party, struck the Argentine flag, and hoisted the British Union Jack.[57] Shortly after, the British established a permanent naval base.[58] Since then, Great Britain has continuously occupied and governed the Falkland Islands.[59]

Immediately after the British reestablished themselves, Argentina expressed great indignation at the British occupation. Claims and protests were exchanged between Don Manuel Moreno, the Argentine Minister in London, and Lord Palmerston, the British Foreign Secretary.[60] But due to the importance of British relations and the great influence which British merchants exerted in Buenos Aires,[61] the Argentine government limited itself to heated diplomatic

54 Duncan did allow those settlers who so wished to remain on the islands after he left. Approximately 50 chose to stay. The rest went on board the *Lexington* for a trip to Montevideo. T. DAVIS JR., *supra* note 40, at 106-07.

55 The convicts mutinied and killed Vernet's successor. The Argentine military escort who brought the party to the islands restored order in January, 1833. H.S. FERNS, *supra* note 12, at 230-31.

56 R. LEVENE, *supra* note 14, at 423.

57 F.A. KIRKPATRICK, *supra* note 15, at 249. When the *Clio* arrived at Soledad to assert British sovereignty, the sailors found twelve Argentines, two Britons, two Germans, one Frenchmen, and one Jamaican. H.S. FERNS, *supra* note 12, at 233.

58 For many years, the islands were deserted except for the small Royal Navy attachment, amounting to little more than a boat crew. *Id.*

59 C. FENWICK, INTERNATIONAL LAW 408 (4th ed. 1965). Britain did not repossess the Falklands due to any ambition for territorial expansion. Rather, she was interested in gaining bases and fueling rights to facilitate her naval and trading dominance. In the Latin American area, this interest centered on maintaining British trade rather than serving any military objective. *See* G. POPE ATKINS, LATIN AMERICA IN THE INTERNATIONAL POLITICAL SYSTEM 219 (1977).

60 Argentina claimed the islands through prior discovery by Spain and France, effective Spanish occupation, and Argentina's succession to those Spanish rights. Great Britain countered by asserting that another state could not exercise a right derived from Spain which Great Britain denied to Spain herself. *See* F.A. KIRKPATRICK, *supra* note 15, at 250.

61 Until World War II, Argentina and Great Britain had close trading ties. Between 1810 and 1946, one-tenth of all British investments went to Argentina. As a result, the British population in Buenos Aires exerted a heavy influence disproportionate to its size. In 1932, Great Britain afforded Argentine agricultural products equal treatment with imports from the British dominions. In return, Argentina gave British firms benevolent treatment and low tariffs for manufactured products. Since World War II, however, the economic relationship between Argentina and Great Britain has declined, due in large part to British membership in the European Economic Community. But in 1975, Great Britain was still Argentina's third most important foreign creditor, holding $871.6 million in outstanding loans. *See* E. MILENKY, *supra* note 9, at 136-38.

In 1838, Argentina needed British help to terminate a French naval blockade around

protests, rather than severing relations as it had done with the United States.[62] Gradually the controversy over the Falklands fell to the background and became an accepted part of British-Argentine relations.[63]

The Argentines, however, have never given up their claim to the Falklands. Since 1970, Great Britain and Argentina have entered into several series of talks aimed at resolving the dispute.[64] Successive Argentine governments have made recovering the Falklands a matter of national pride.[65] A reference to the Falklands has become a part of the President's annual message to the country.[66] Even after the latest military conflict, Argentina persists in her claims.[67] Who does own the Falklands?[68] In order to answer that question, we must

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Buenos Aires. Nothing was mentioned about the Falklands, and Argentina granted Great Britain several concessions concerning citizenship requirements and slave trading treaties to persuade Britain to mediate in the conflict between France and Argentina. *See* J. CADY, FOREIGN INTERVENTION IN THE RIO DE LA PLATA 1838-50, at 56-64 (1929).

62 Argentina also protested to the United States, claiming the British action breached the Monroe Doctrine, and demanded American intervention. United States Secretary of State Thomas F. Bayard, however, maintained that, since the British claim to the Falklands predated the Monroe Doctrine, the United States did not consider the Monroe Doctrine as having any application. A. BUSHNELL HART, THE MONROE DOCTRINE, AN INTERPRETATION 105-06 (1916).

63 H.S. FERNS, *supra* note 12, at 232.

64 While the talks have succeeded in opening up air and sea links to the mainland, Argentina has charged Great Britain with seeking to confine the talks to those particular areas while avoiding serious discussion as to transferring sovereignty. *See* ARGENTINA AND PERON 1970-75, at 28-29, 78, and 93 (L. Sobel ed. 1975).

65 *See* E. MILENKY, *supra* note 9, at 138. In December, 1974, Cronica, a Peronist newspaper, attempted to recruit an invasion force to recover the Falklands, but the government responded by closing the paper. *Id.* at 139.

66 *See* H.S. FERNS, *supra* note 12, at 232.

67 After Argentina had surrendered to the British forces, Argentine President Reynaldo Bignone stated, "We Argentines will not rest until we have recovered effective sovereignty over the islands." London Times, July 27, 1982, at 6, col. 5.

68 Legally distinct, yet closely linked to the Falkland Islands question is the area known as the Falkland Island Dependencies. The Dependencies lie south, southeast, and east of Cape Horn. Great Britain defined her interests in the area by Letters Patent in 1908 and 1917. The interest includes a large segment of the Antarctic mainland extending southwards to the South Pole, the Graham Land Peninsula, the South Shetland Islands, South Orkneys, South Sandwich Islands and South Georgia, an island some 800 miles east of the Falklands group. Argentina and Chile challenge Great Britain's claim to these territories.

In an effort to settle this dispute, Great Britain repeatedly invited Argentina and Chile to appear before the International Court of Justice at the Hague, but was consistently rebuffed. Great Britain finally made a direct application to the Hague in 1955. Argentina refused to accept the International Court's jurisdiction and passed a law declaring the Falkland Islands and their Dependencies a part of a new Argentine province.

On December 1, 1959, twelve countries, including Argentina, Great Britain and Chile, signed a thirty-year Antarctic treaty. The treaty suspended all territorial claims and disputes in the area, guaranteed free access to the area for scientific research, and set up an inspection

examine various international law principles.

II. International Law Principles

No one has established who first discovered the Falkland Islands.[69] But such a determination does not play an important role in evaluating British and Argentine claims. Even in the sixteenth century, discovery itself did not create title, but simply created a temporary inchoate title requiring some further appropriation.[70] Discovery alone, without any subsequent state act, cannot suffice to prove sovereignty.[71]

Title in international law is a relative concept.[72] Solving disputes involves balancing the relative claims made by both sides to determine which state has the better title.[73] These claims may rest on little more than mere discovery, or upon multiple foundations such as a treaty and occupation.

Jurists have traditionally set out five methods by which a state acquires sovereignty over a territory: accretion, cession, annexation or conquest, occupation, and prescription.[74] While the theory behind each category remains separate, most situations do not fit neatly into one slot.[75] The Falklands controversy is typical in this respect: it involves four of the five categories.[76]

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system to prevent any military activities. The area covered by this treaty includes the Falkland Island Dependencies, but not the Falkland Islands. G. PENDLE, *supra* note 2, at 165-68. *See also* 1956 I.C.J. Pleadings, Antarctica Cases (United Kingdom v. Argentina; United Kingdom v. Chile) (recounting British claims to the region.); 2 ANTARCTICA AND INTERNATIONAL LAW, *supra* note 9, at 5-11 (Argentina's reasons for not submitting the dispute to judicial settlement).

69 *See* text accompanying note 12 *supra*.

70 *See* J. GOEBEL, *supra* note 14, at 58, 69-73, and 89-117. "Inchoate title" represents a temporary right to exclude other states until the discovering state has had a reasonable time to establish an effective occupation. J. BRIERLY, THE LAW OF NATIONS 166 (6th ed. 1963).

Some writers take exception to the term "inchoate title." Determining title involves the relative strength of the state activity. Therefore, they argue, title may be "weak," since it rests on a small degree of state activity, but it is never "inchoate." I. BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 150 (3d ed. 1979).

71 Islands of Palmas case (Neth. v. U.S.), 2 R. Int'l Arb. Awards. 829, 846 (1928).

72 Schwarzenberger, *Title to Territory: Response to a Challenge*, INTERNATIONAL LAW IN THE TWENTIETH CENTURY 289, 290 (L. Gross ed. 1969).

73 *Id.*

74 1 D. O'CONNELL, INTERNATIONAL LAW 405 (1970).

75 *Id.*

76 The dispute between Great Britain and Argentina does not involve accretion. Accretion describes the increase of land through natural causes, such as an island rising up in a river or maritime belt. According to international law, a state enlarges its territory through new formations, *ipso facto* by accretion, without taking any special steps to extend its sovereignty. 1 G. SCHWARZENBERGER, INTERNATIONAL LAW 294-96 (3rd ed. 1957).

A. *Cession*

Cession involves formally transferring title and rights over territory from one state to another.[77] Historically, this method represents the most common way in which states acquire territory.[78] Generally, cession corresponds to transferring title by deed in private law.[79] The two states usually transfer the territory via a treaty which defines the territory and states any conditions attached to the transfer.[80] The cession becomes effective only after sovereignty has actually been transferred.[81] Unless the treaty provides otherwise, all individuals domiciled in the ceded territory automatically lose their old citizenship and gain citizenship status in the acquiring state.[82]

Cession can take several forms. The most common form is a treaty of sale.[83] Cession may also involve states exchanging territories,[84] or even making outright gifts.[85] No matter what form cession takes, however, the result remains the same: a state acquires new territory over which it asserts sovereignty.

Since cession involves transferring title from one state to another, the acquiring state has a derivative title.[86] As pointed out in the *Islands of Palmas* case, the transferor may not transfer more rights

77 1 OPPENHEIM'S INTERNATIONAL LAW 547 (H. Lauterpacht ed. 8th ed. 1967) [hereinafter cited as OPPENHEIM]. Unless both parties are states, the transaction falls outside public international law. Therefore, this discussion does not apply to cessions made by or to private parties, corporations, or native tribes. *Id.*

78 1 D. O'CONNELL, *supra* note 74, at 436.

79 C. FENWICK, *supra* note 59, at 422.

80 These conditions can include matters regarding the public debt, creating servitudes upon the territory in favor of the ceding state, or determining the inhabitants' citizenship. *See id.*

81 *See* Lighthouses in Crete and Samos (Fr. v. Greece), 4 World Court Reports 241, 249-51 (1937).

82 According to international law, a valid cession does not require consent by the inhabitants unless so provided in the national constitution. Modern practice dictates that states hold a plebiscite, or vote by the inhabitants, before entering into a cession treaty. However, such a custom does not rise to the level of legal compulsion and states may enter into cession treaties without regard to the inhabitants' wishes. P. CORBETT, LAW AND SOCIETY IN THE RELATIONS OF STATES 104-05 (1951).

83 G. VON GLAHN, LAW AMONG NATIONS 321 (4th ed. 1981). The United States used this method to acquire the Louisiana Purchase in 1803 and Alaska in 1867. *Id.*

84 In 1878, Romania ceded territory north of the Danube to Russia in exchange for territory south of the Danube. In 1890, Great Britain traded Helgoland island to Germany for territory adjoining German East Africa. C. FENWICK, *supra* note 59, at 423.

85 This gift can be part of a royal dowry, or a more modern gift, such as Great Britain donating a portion of a reef in Lake Erie to the United States on the condition that the United States construct and maintain a lighthouse on it. G. VON GLAHN, *supra* note 83, at 321-22.

86 D. GREIG, INTERNATIONAL LAW 129 (1970).

than she herself possessed.[87] Spain originally based her claim to the Falklands upon rights ceded to Spain by the bulls of Pope Alexander in 1493.[88] The Papal grants may have bound Spain and Portugal to their respective spheres of influence, but they had little effect upon other countries.[89] At best, the bulls granted a provisional or inchoate title to the territory which required further state action, such as effective occupation, before ripening into valid title.[90] Spain, without more, could not acquire a valid claim to territory based on rights derived from Pope Alexander's tenuous claims.[91]

Disregarding the Papal bulls' effect, a valid cession treaty did occur in 1767 when Spain purchased the Port Louis settlement from France.[92] After Spain paid France and took over governing and supplying the colony, she acquired the French rights to the islands dating back to 1764.[93] Those rights predated Britain's by one year, since Great Britain did not establish Port Egmont until 1765.[94] Therefore, in 1767, Spain held better relative title to the Falklands than Great Britain.[95]

According to Argentina, all Spanish rights over the Falklands became Argentine rights after Argentina won her independence from Spain.[96] If this is true, Argentina would have acquired Spain's claim to the Falklands, which predates Great Britain's claim by one year. The question thus becomes: did Argentina succeed to Spain's rights? Such succession can be found by applying a questionable doctrine known as *uti possedetis*, under which Spanish successor states in South and Central America adopted as their borders the administrative boundaries used during the former Spanish Empire.[97]

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87 Islands of Palmas case (Neth. v. U.S.), 2 R. Int'l Arb. Awards 829, 842 (1928).

88 *See* note 16 *supra* and accompanying text.

89 J. GOEBEL, *supra* note 14, at 321-22. Neither England nor France recognized the grants to Spain and Portugal. I. BROWNLIE, *supra* note 70, at 137 n.7.

90 I. BROWNLIE, *supra* note 70, at 137-38.

91 As Netherlands argued in the Islands of Palmas case, the United States is a living denial of Pope Alexander's grants. Islands of Palmas case, 2 R. Int'l. Arb. Awards (Neth. v. U.S.), 829, 847-48 (1928).

92 *See* text accompanying note 17 *supra*.

93 *See* text accompanying note 14 *supra*.

94 *See* text accompanying note 19 *supra*.

95 Theoretically, once Britain established Port Egmont, it could be said that Great Britain had title to West Falkland while Soledad gave Spain title to only East Falkland. However, no writers have chosen to treat each island individually, but instead view the islands as one unit. *See* note 134 *infra*. In any event, such a determination would have no bearing on this note's conclusion.

96 *See* note 60 *supra*.

97 1 D. O'CONNELL, *supra* note 74, at 426-27. This doctrine is much more political in nature than legal. The countries adopted *uti possedetis* in order to avoid gaps in sovereignty

Uti possedetis excludes Latin American countries from asserting title over any lands not within their colonial boundaries, and also denies recognition to any territorial titles which non-American states may wish to acquire on the American continent.[98] According to this doctrine, since the Falkland Islands were included in Argentina's administrative division during the Spanish Empire, Argentina, upon independence, acquired whatever rights Spain had to the islands. International law has not recognized *uti possedetis* as binding except between those Latin American countries expressly adopting the doctrine.[99] Therefore, because *uti possedetis* does not bind those not part of the agreement, it is not a valid basis for Argentine succession to Spanish rights. If anything, Argentina's entitlement to Spanish rights arises from Argentina's independence from and conquest over Spanish rule. In order to properly evaluate Argentina's claim of acquiring Spain's rights over the Falklands, the concept of annexation or conquest must be examined.

B. *Annexation or Conquest*

Conquest alone does not confer sovereignty on the conqueror.[100] The conquering state must first fulfill two conditions.[101] First, the conqueror must displace the previous sovereign in that territory to the extent that the previous state is unable to act, in any form, as that territory's sovereign.[102] Second, after firmly establishing the conquest, the conqueror establishes its own sovereignty by annexing the territory,[103] thus transforming the conquest into subjugation.[104] Therefore, the conqueror gains title through conquest followed by

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over the continent. Otherwise, the remote unexplored inland territory would have become *res nullius* and a rush of land grabbing would have ensued. *See id.*

98 *See* Schwarzenberger, *supra* note 72, at 299.

99 2 DIGEST OF INTERNATIONAL LAW 1086-88 (M. Whiteman ed. 1963) [hereinafter cited as WHITEMAN]. This principle does not produce satisfactory results since it disregards the concept of possession and depends primarily upon ill-defined and hard-to-prove Spanish boundaries. I. BROWNLIE, *supra* note 70, at 138. *Cf.* The Boundary Case betwen Bolivia and Peru, 11 R. Int'l Arb. Awards 133 (1909) (parties agreed to treat *uti possedetis* doctrine as binding).

100 OPPENHEIM, *supra* note 77, at 566-67.

101 1 D. O'CONNELL, *supra* note 74, at 435.

102 *Id.*

103 OPPENHEIM, *supra* note 77, at 567. Valid annexation requires no certain form. While states most commonly annex territory by proclamation, any form of expression by the conqueror to treat the territory as its own suffices as a valid annexation. 1 D. O'CONNELL, *supra* note 74, at 433-34.

104 OPPENHEIM, *supra* note 77, at 567.

subjugation, rather than by conquest alone.[105] The subjugated territory never becomes *res nullius*, but passes directly from the defeated state to the conqueror.[106]

Situations which involve conquest and transfer of sovereignty also involve determining the effect which the transfer may have on the international rights and duties possessed by the previous state. The concept of "succession" derives primarily from private law principles and thus is not easily applied to international situations.[107] Hugo Grotius first developed a general state succession theory, based on the Roman civil law, by which an heir became a substitute in law for the deceased and acquired the latter's assets, rights, and obligations.[108] Grotius's theory fell into disfavor in the nineteenth century because it failed to consider the political realities involved in such a transfer.[109] Currently, no general rule governs all cases in which succession takes place.[110] But actual state practice has produced a few guidelines.

Personality is the key to a state succession problem.[111] Succession can be *universal*, when one state completely absorbs another state's international personality, or it can be *partial*, when a state takes over a portion of territory formerly belonging to another state.[112] When either change in sovereignty occurs, the consequences vary according to the extent that the change affects the state's personality.[113] The basic distinction lies in separating rights and obligations personal to the state losing the sovereignty from the rights and

105 *Id.*

106 *Id.* A second school of thought believes the defeated state ceases to exist when the conqueror accomplishes the first condition, i.e. extinguishing the previous sovereignty by annihilating the enemy force, totally occupying the enemy state, and permanently destroying its government. At that point, the defeated state becomes *res nullius* and the victor may or may not choose to annex the territory. Either school of thought produces the same result in this case. *See* WHITEMAN, *supra* note 99, at 1112-13.

107 J. BRIERLY, *supra* note 70, at 152.

108 G. VON GLAHN, *supra* note 83, at 119.

109 *See* 1 D. O'CONNELL, *supra* note 74, at 367. Grotius's theory would have required the successor state to assume all previous debts and contracts, and honor all commerce and alliance treaties. *Id.* As a result, some writers disregarded Grotius's theory and viewed the successor state as acquiring the territory completely free from any preexisting rights or commitments. *See generally* A. KEITH, THE THEORY OF STATE SUCCESSION (1907).

110 OPPENHEIM, *supra* note 77, at 158.

111 1 D. O'CONNELL, STATE SUCCESSION IN MUNICIPAL LAW AND INTERNATIONAL LAW 3 (1967). Having an international personality means the entity has the power of independent action on the international plane. It can exercise certain rights and become subjected to certain duties on its own account. D. GREIG, *supra* note 86, at 73.

112 C. FENWICK, *supra* note 59, at 173.

113 *See* 1 D. O'CONNELL, *supra* note 111, at 3-4.

obligations local in nature, attached to the annexed territory.[114]

When Argentina asserted her independence and conquered the Spanish occupation forces, the situation involved a partial succession since Spain's international personality was not completely absorbed. Spain continued to possess her international rights and obligations, except to the extent those rights were localized to Argentina. As already noted, international law has not accepted *uti possedetis*.[115] Spain's rights to the Falklands were not localized to Argentina simply because Argentina and the Falkland Islands were within the same administrative boundary under the Spanish Empire. Conquest does not affect property belonging to a predecessor state which is not actually located in the conquered territory.[116] In order to claim that property, the successor state must use one of the five general categories for territorial acquisition.[117] Argentina did not succeed to Spain's rights to the Falklands through conquest. But Argentina did use one of the five general categories to acquire her own valid claim to the Falkland Islands. That method was effective occupation.

C. *Occupation*

Occupation establishes sovereignty over territory not under another state's authority.[118] In order for occupation to create title, the state must *effectively* occupy the territory.[119] The Permanent Court of International Justice, in the *Eastern Greeenland* case, stated that effective occupation requires two elements: (1) an intention or will to act as sovereign and (2) the actual exercise or display of sovereignty.[120]

A state's intention to act as sovereign, like any subjective element, is hard to prove.[121] As a result, the cases have necessarily em-

114 C. FENWICK, *supra* note 59, at 173-75. Most writers take this view, which represents an intermediate position between the "positivists," like Grotius and "negativists," like Keith. Grotius believed in complete succession to all previous rights and obligations, whereas Keith believed in absolutely no succession of rights or obligations. *See* O. UDOKANG, SUCCESSION OF NEW STATES TO INTERNATIONAL TREATIES 111 n.15 (1972).

115 *See* text accompanying note 99 *supra*.

116 1 D. O'CONNELL, *supra* note 111, at 207. Nor can Argentina claim the Falklands on a proximity or contiguity theory. A state cannot claim islands situated outside its territorial waters simply on the basis of contiguity. Lying over 400 miles from the mainland, the Falkland Islands do not come within the maritime territorial limits. *See* 1 A DIGEST OF INTERNATIONAL LAW 265-67 (J. Moore ed. 1906).

117 *See* text accompanying note 74 *supra*.

118 J. STARKE, AN INTRODUCTION TO INTERNATIONAL LAW 175 (7th ed. 1972).

119 *Id.*

120 Legal Status of Greenland (Den. v. Nor.), 3 World Court Reports 148, 171 (1933).

121 Some writers have labeled the state's subjective intent an "empty phantom." *See* J. BRIERLY, *supra* note 70, at 163 n.2.

phasized the objective facts manifesting sovereignty.[122] Due to the intent requirement, a state cannot claim effective occupation when a private citizen acts without authorization; when the territory's rightful sovereign consents to the state activity; or when the activity's primary nature does not manifest an exercise of sovereignty.[123] The state itself must demonstrate nothing less than a permanent intention to assume control.[124]

In determining the second element, what amounts to an actual exercise of sovereignty depends upon the remoteness of the territory, the physical geography, and whether or not the territory is inhabited.[125] Normally, such an exercise requires that the state establish an organization to enforce its laws and to administer the territory.[126] The state need not immediately establish complete sovereignty, but may exercise its control gradually.[127] Nevertheless, the state must take actual, not nominal possession, with the individual circumstances controlling the degree necessary.[128]

In Argentina's case, she gradually established her control over the Falklands, starting with Jewitt's visit in 1820[129] and continuing with appointing a governor for the islands in 1823.[130] By 1828, Argentina effectively occupied the Falkland Islands when she fulfilled the two requirements for effective occupation: intent and actual exercise. Argentina manifested intent by issuing decrees proclaiming sovereignty.[131] She established actual exercise of sovereignty when she re-colonized the islands at Soledad[132] and set up an island administration by naming Vernet as governor.[133] By 1828, Argentina had acquired rightful title to the islands through effective occupation.[134]

Great Britain could counter this claim by arguing that acquir-

122 *See* I. BROWNLIE, *supra* note 70, at 143.

123 *Id.* at 130-31.

124 J. STARKE, *supra* note 118, at 175.

125 1 G. SCHWARZENBERGER, *supra* note 76, at 298.

126 *See* Clipperton Island Arbitration (Mex. v. Fr.), 2 R. Int'l Arb. Awards 1105, 1110 (1931).

127 *See* Islands of Palmas case (Neth. v. U.S.), 2 R. Int'l Arb. Awards 829, 867 (1928).

128 Clipperton Island Arbitration (Mex. v. Fr.), 2 R. Int'l Arb. Awards 1105, 1110 (1931).

129 *See* text accompanying note 30 *supra*.

130 *See* text accompanying note 32 *supra*.

131 *See* text accompanying note 42 *supra*.

132 *See* text accompanying note 34 *supra*.

133 *See* text accompanying note 40 *supra*.

134 While Argentina's actual exercise of sovereignty centered primarily around Soledad and East Falkland, the effective occupation covered the islands as a whole. As Judge Huber pointed out in the Islands of Palmas case, a group of islands may form a legal unit, with the principal island determining the other islands' fate. As to effective occupation for geographical units, the occupation extends by presumption to the whole unit until a competing state

ing territory via effective occupation cannot occur if another state already exercises sovereignty over the area.[135] Great Britain established a colony at Port Egmont in 1765.[136] When the British left Port Egmont in 1774, they did not abandon the islands. Abandonment requires both relinquishing the territory and an intent to abandon.[137] Britain did not have an intent to abandon, but instead demonstrated an intent to preserve her claim by leaving behind markers proclaiming British sovereignty.[138] Therefore, when Argentina occupied the islands in 1828, Great Britain could argue she already exercised sovereignty over the islands and the Argentine occupation was ineffective in acquiring title.

But did Great Britain have a valid sovereignty claim over the Falklands in 1828? As already discussed, Spain's claims and settlement predated Great Britain's claims and settlement by one year, giving Spain a superior title to the islands.[139] Consequently, Great Britain had nothing more than an adverse possession interest against Spain.[140] An adverse possession interest requires actual, uninterrupted occupation to remain effective, not just markers or flags.[141] When the British withdrew from Port Egmont, they left behind not only their settlement, but also any claims they may have had to the islands by adverse possession. Argentina had a clear path to obtain title through effective occupation. Argentina's claim to the Falklands via effective occupation, however, was merely transitory. Although Great Britain may have lost one adverse possession claim in 1774, they acquired another one in 1833[142] and through acquisitive prescription, gained title to the Falklands.

D. *Prescription*

Prescriptive title arises when one state extinguishes another

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displays an actual adverse interest. *See* Islands of Palmas case (Neth. v. U.S.), 2 R. Int'l. Arb. Awards 829, 854-55 (1928); WHITEMAN, *supra* note 99, at 1046-50.

135 *See* text accompanying note 118 *supra*.

136 *See* text accompanying note 19 *supra*.

137 OPPENHEIM, *supra* note 77, at 580. Some writers believe the intent requirement applies solely to uninhabited regions. *See* D. GREIG, *supra* note 86, at 141. Since the Falklands were inhabited by the Spanish in 1774, under this interpretation, Great Britain gave up any claims she might have possessed when she withdrew.

138 *See* text accompanying note 25 *supra*.

139 *See* text accompanying note 94 *supra*.

140 *See* J. GOEBEL, *supra* note 14, at 411-59.

141 *See* text accompanying notes 146-57 *infra*.

142 In 1833, H.M.S. *Clio* arrived at Soledad and established a permanent British base. *See* text accompanying notes 56-59 *supra*.

state's title through adverse possession.[143] Whereas effective occupation refers to acquiring title to *res nullius* territory, acquisitive prescription refers to acquiring title to territory subject to another state's sovereignty.[144] Several underlying factors justify the notion of prescriptive title: the need to preserve stability by not changing a situation which has existed for a considerable time period; the difficulties which the passage of time causes in establishing actual title; and the stronger relative title which an effective exercise of jurisdiction creates against mere abstract sovereignty.[145]

In general, acquiring title by prescription requires four elements.[146]

(1) Possession must be exercised *a titre de souverain*. In other words, the state must exercise authority without recognizing that another state possesses sovereignty over the area.[147]

(2) Possession must be peaceful and uninterrupted. Acquisitive prescription does not operate where the acquiring state maintains possession by force.[148] But it will operate where the acquiring state originally acquired the territory by force, provided the state follows with peaceful possession.[149] The key to peaceful possession is finding that the dispossessed state has acquiesced to the possession.[150] Diplomatic protests may effectively demonstrate a lack of acquiescence for a time and preserve the dispossessed state's claim.[151] But if the state makes no effort to resort to other available remedies, such as

143 1 D. O'CONNELL, *supra* note 74, at 422. Prescription may also refer to creating title in instances where the original title cannot be determined, or where the international community has recognized rights claimed under a "historic rights" theory. *Id.*

144 Johnson, *Acquisitive Prescription in International Law*, 27 British Yearbook Int'l L. 332-34 (1950).

145 1 G. SCHWARZENBERGER, *supra* note 76, at 301. Some writers have not accepted prescription as a valid method for acquiring territory. Their objection primarily concerns situations where a powerful state exerts authority over a population whose silence stems from fear rather than acceptance or acquiesence. However, that situation should be distinguished from the Falklands, which presents no self determination issue. *See* C. FENWICK, *supra* note 59, at 421-22.

146 Johnson, *supra* note 144, at 343-48 (adopting Fauchille's classifications who in turn based his classifications upon Art. 2229 of the French Civil Code).

147 *Id.*

148 *Id.*

149 *Id.*

150 I. BROWNLIE, *supra* note 70, at 160.

151 J. BRIERLY, *supra* note 70, at 170. In the Chamizal case, concerning a boundary dispute between the United States and Mexico, the Commissioners found that diplomatic protest by Mexico prevented the United States from exercising peaceful possession over the area. Mexico was not required to take action which might have resulted in violence. Chamizal case (Mex. v. U.S.), 11 R. Int'l Arb. Awards 309, 328-29 (1911).

referring the matter to the United Nations or the International Court of Justice, the diplomatic protests will ultimately prove ineffectual in stopping the acquisition by prescription.[152]

(3) Possession must be public. Because acquisitive prescription depends upon finding either express or implied acquiescence, a clandestine possession necessarily precludes acquiring title in this way.[153]

(4) The possession must endure for a certain length of time. Although a few writers have chosen fixed requirements, such as fifty years,[154] most jurists have not accepted a specified time period.[155] The length of time required usually depends upon the facts involved in the individual case.[156] Max Huber, in the *Islands of Palmas* case, provided a guideline by ruling that the claimant state must have displayed its jurisdiction long enough to afford any other state with a claim to the territory a reasonable possibilty to ascertain the competing possession and exercise of sovereignty.[157]

Great Britain's possession of the Falkland Islands contains all four elements. Britain has continually refused to recognize any Argentine claims to the islands. The uninterrupted British occupation dates back to 1833.[158] The possession has been peaceful, for during that time, Argentina has done little more than occasionally protest the British presence, and then only at times convenient to her interests.[159] Argentina has never taken the matter before any international tribunal in an effort to resolve the dispute.[160] Taking up arms

152 J. BRIERLY, *supra* note 70, at 170-71. In the Miniquiers and Ecrehos case, which concerned a sovereignty dispute between Great Britain and France over several small islands between the Channel Islands and the Normandy coast, Britain argued, among other things, that French protests were ineffective because France failed to couple those protests with pressure to have the issue determined by an international tribunal. Judge Carneiro largely accepted this argument in his separate opinion. Miniquiers and Ecrehos, 1953 I.C.J. Rep. 47, 106-08.

153 *See* Johnson, *supra* note 144.

154 *See* D. FIELD, OUTLINES OF AN INTERNATIONAL CODE Art. 52 (2d ed. 1876). *See also* British Guiana-Venezuela Boundary Dispute, 89 Brit. For. St. Papers 57 (1896) (fifty years adopted as criterion for prescription).

155 Johnson, *supra* note 144.

156 As the United States Supreme Court wrote in Maryland v. West Virginia, each prescription situation depends upon individual merit and consideration. Maryland v. West Virginia, 217 U.S. 1, 44 (1910).

157 Islands of Palmas case (Neth. v. U.S.), 2 R. Int'l Arb. Awards 829, 867 (1928).

158 *See* text accompanying notes 56-59 *supra*.

159 *See* note 61 *supra* and accompanying text. Interestingly, Argentine activity concerning the Falklands has coincided directly with the British entrance into the European Common Market. As trade between Great Britain and Argentina has declined, Argentine outrage over the Falklands has increased.

160 This refusal includes not only the Falkland Islands, but the Dependencies as well. *See* note 68 *supra*.

in 1982 does not make up for inactivity totaling more than a century. Finally, the 150 years of British possession has endured long enough to afford Argentina an opportunity to refute a finding of acquiescence.

III. Conclusion

After examining the various international principles for acquiring territory, it appears that title to the Falklands bounced around from country to country before finally settling in British hands. France originally held title when the French established the first settlement on the islands. Spain acquired the French rights when France ceded the settlement to Spain. Great Britain had an adverse possession right which she lost by withdrawing her colony at Port Egmont in 1774. Argentina entered the picture, not by acquiring Spain's rights, but by effectively occupying the islands and therefore placing them under Argentine sovereignty. The United States displaced the Argentine occupation and when Great Britain moved back in, Argentina's ineffective action for almost a century and a half cost her title to the Falkland Islands.

It is impossible to say at what point Great Britain actually acquired title to the islands. She did not have title in 1833 when the British naval attachment landed at Soledad to begin occupation. But Great Britain did possess title to the islands almost 150 years later when the Argentine army and navy returned with the same thought in mind.

Brian M. Mueller