

The Falkland Islands

The Facts



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The Falkland Islands

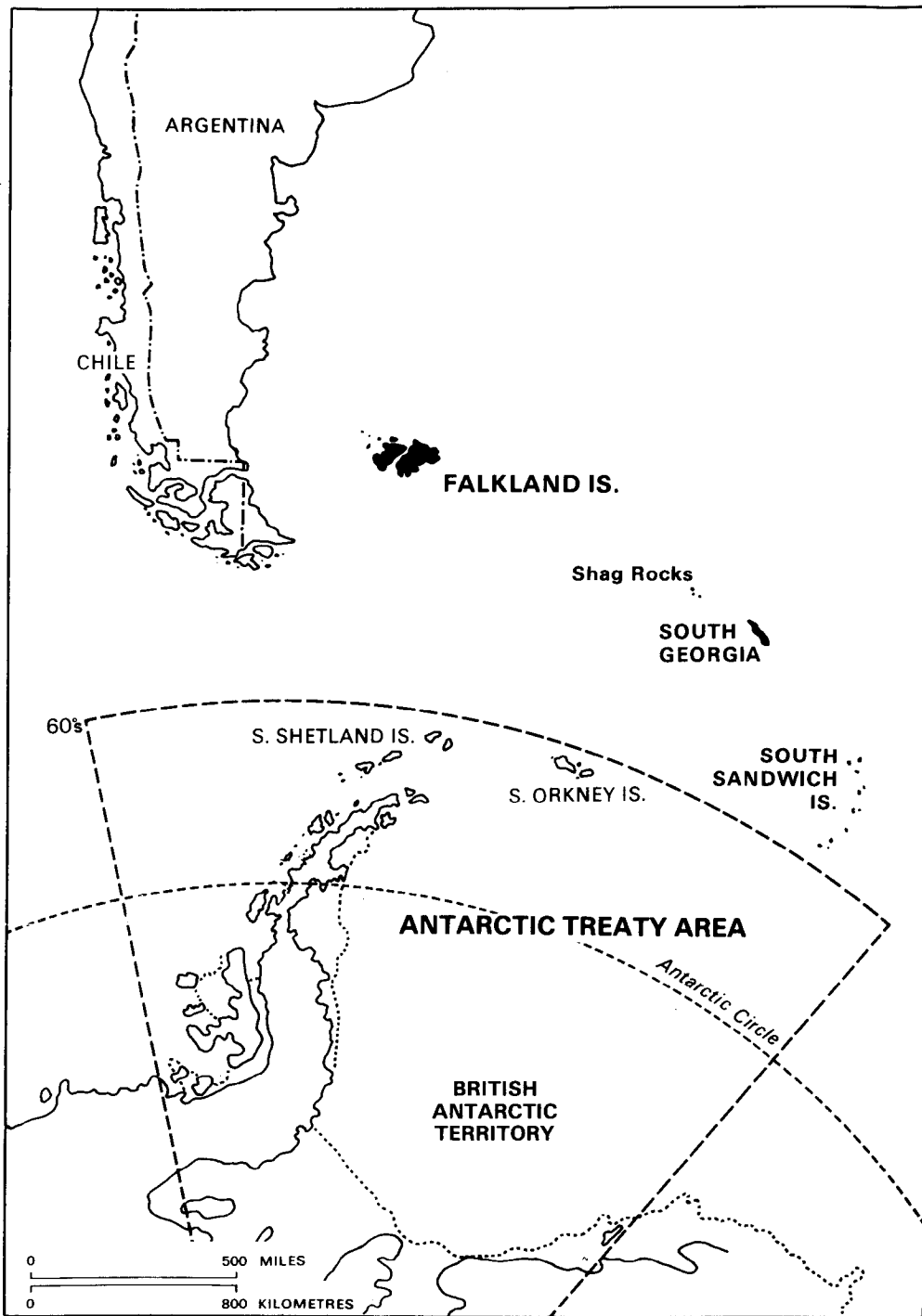
The Facts

The invasion of the Falkland Islands by Argentine Armed Forces on 2 April, followed by the military occupation of South Georgia, was an act of unprovoked aggression – a clear violation of international law and of the fundamental principles of settlement of disputes by peaceful means and of self-determination of peoples, both of which are enshrined in the UN Charter. On 3 April the UN Security Council adopted the mandatory resolution (SCR 502) calling for the immediate withdrawal of Argentine forces from the Islands.

Incident on South Georgia

Argentine allegations that the British reaction to events on South Georgia in March 1982 amounted to 'aggression' against Argentine citizens are spurious.

A group of workmen hired by an Argentine entrepreneur, Constantino Davidoff, landed at Leith, a former whaling station in South Georgia, from an Argentine naval transport vessel on 19 March. Davidoff, who had a contract to dismantle the disused whaling station and sell it for scrap, had been told in advance of the need to comply with normal immigration procedures in South Georgia by first seeking permission to land from the British authorities there at Grytviken. His party deliberately chose to ignore these instructions, first by landing at Leith and then by continuing to refuse to seek the necessary authorisation even when requested to do so by the magistrate at Grytviken. At the same time, they hoisted the Argentine flag and, according to Argentine press reports, sang the Argentine national anthem as a further act of defiance. The Argentine ship subsequently departed, leaving a dozen workers behind. The British Government made clear to the Argentine Government that it regarded these men as being on British territory illegally and requested cooperation in arranging for their departure,



pointing out, however, that the position could be regularised if they were to seek proper authorisation. HMS *Endurance*, a naval ice-patrol vessel, was ordered to proceed to the area, to be available to assist as necessary.

Claims that the group had already been supplied with all necessary documentation in Buenos Aires under the terms of the 1971 Anglo-Argentine Communications Agreement are inaccurate. The 1971 agreement applies only to the Falkland Islands and not to the Dependencies. In any case, the agreement did not absolve either Argentines or Falkland Islanders from complying with normal immigration procedures. Like every other territory, the Falkland Islands and Dependencies have immigration rules governing visits and settlement by foreigners.

On 25 March an Argentine Antarctic supply ship which, the Argentine press stated, was capable of carrying marines, made further deliveries to the shore party. The Argentine Foreign Minister asserted that the Argentine party in South Georgia was on Argentine territory and would be given full protection by the Argentine Government. Argentine naval vessels were in the area. Even when there were indications that the Argentine Government had decided to abandon the search for a diplomatic solution, the British Government continued to seek strenuously to defuse the situation, first by proposing the despatch of a British emissary to Buenos Aires to discuss a peaceful resolution of the incident and subsequently by representations to third parties.

As a result, messages were sent by the UN Secretary General to both parties, the President of the UN Security Council called for Argentine restraint and the American President telephoned the Argentine President with a similar urgent message. Nevertheless, Argentina proceeded with the invasion.

British Sovereignty

British sovereignty over the Falkland Islands and Dependencies rests on a secure historical and legal foundation. In 1690 the British Captain Strong made the first recorded landing on the Falkland Islands, which had no indigenous population before the arrival of settlers in the second half of the eighteenth century. The first British settlement was established in 1766. But up to 1833 there was a period of some confusion, with France, Britain, Spain and the then Buenos Aires Government at various times establishing small, local settlements, none of which endured more than a few years. Apart from having had a small settlement and penal colony for a short period on the Islands before 1833 (the greater part of this was ejected for 'piracy' by the United States Navy in 1831) Argentina's claim to the Islands is based mainly on her having been the successor to the Spanish Viceroyalty of the River Plate, which also governed most of modern Uruguay, Paraguay, Bolivia and Chile. In 1833 the British took control of the Islands, and from that date have

been in open, continuous, effective and peaceful possession, occupation and administration. The people who came to live there thereafter became the first permanently established population in the Islands.

South Georgia and the South Sandwich Islands are British Dependent Territories, legally distinct from the Falkland Islands; but for convenience they are administered by the Falkland Islands Government which is empowered to legislate for them. Captain Cook landed and took formal possession of South Georgia in 1775. The Island became a centre for sealing and whaling from the nineteenth century, but all shore stations ceased operations by December 1965. In 1908 the British Government annexed South Georgia by Letters Patent; since then the Island has been under continuous British administration. A magistrate, who is also the Base Commander of the British Antarctic Survey Stations, resides at King Edward Point in South Georgia.

The South Sandwich Islands were discovered by Captain Cook on the same voyage in 1775; they were similarly annexed in 1908 and have been under continuous British administration since that date.

The first Argentine claim to South Georgia dates only from 1927; they made no claim to the South Sandwich Islands before 1948. The two groups of Islands lie about 1800 and 2300 km from Argentina. Before their annexation by the British, the Dependencies were never occupied by Argentina. The root of British title to them is different from that to the Falkland Islands themselves. Whatever claim Argentina may have to the Falkland Islands cannot apply to the Dependencies. In 1947 and subsequently, Britain offered to submit the dispute over the Dependencies to the International Court of Justice. In 1955 the British Government applied unilaterally to the Court for redress against encroachments on British sovereignty by Argentina, which, however, declined to submit to the Court's jurisdiction in the matter.

Settlement of Disputes

The signatories of the UN Charter, including Argentina, agree under Articles 2(3) and 2(4) to 'settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered' and to 'refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State'.

A number of regional treaties incorporate similar sentiments. The contracting parties of the 1947 Inter-American Treaty of Reciprocal Assistance (Rio Treaty), which include Argentina, 'undertake in their international relations not to resort to the threat or the use of force in any manner inconsistent with the provisions of the Charter of the UN' (Article 1). The Charter of the Organisation of African Unity determines 'to safeguard the territorial integrity' of its States. The signatories of the Final Act of the Conference on Security and Cooperation in Europe

(signed in Helsinki on 1 August 1975) agreed, in the Declaration of Principles Guiding Relations between Participating States, to refrain from the threat or use of force against the territorial integrity or political independence of any State.

Many States are subject to claims by neighbours, which are being pursued peaceably in accordance with the UN Charter. To condone Argentine aggression would be a bad precedent, serving only to encourage further similar acts, whether by the Argentine or others, with the most damaging implications for international law, world order and the peaceful resolution of disputes. Very few countries would be unaffected if boundaries were redrawn on the basis of claims dating back to 1833.

Decolonisation and Self-determination

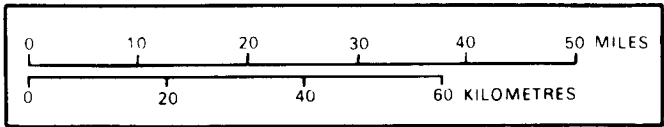
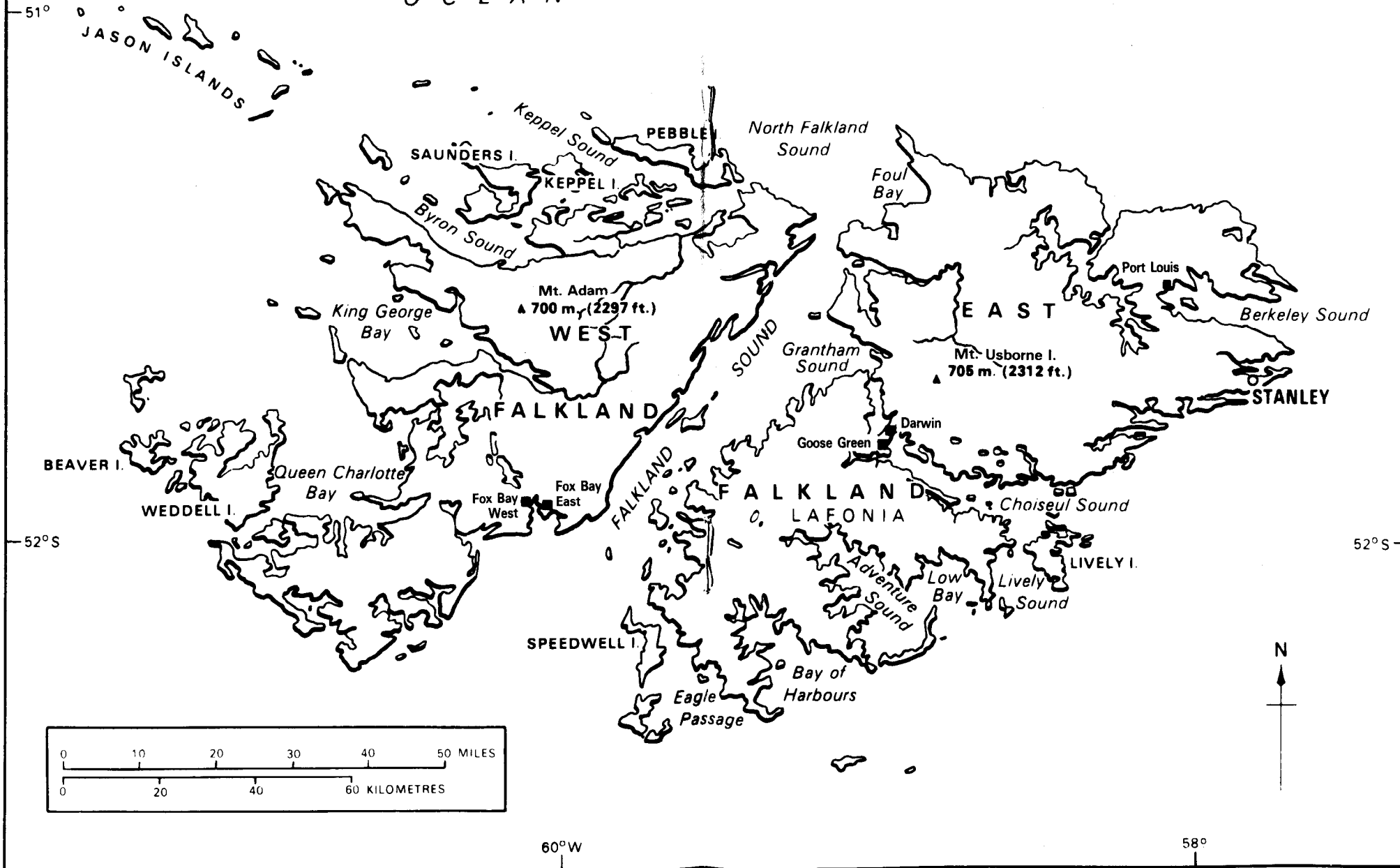
Argentina's aggression cannot be said to have been a case of ending colonialism in the Islands; indeed, if allowed to persist, it would amount to colonialism in itself.

Decolonisation, as it is normally understood, has consisted of the withdrawal of an alien administering power and the transition of a new State to independence or self-government, in accordance with the freely expressed wishes of its people. In this spirit Britain has brought over 40 countries to independence. Indeed, there is now no British dependent territory, except where their inhabitants wish to remain so.

Respect for the principle of self-determination remains fundamental in international relations and in safeguarding international peace and security. The principle of self-determination is recognised in a number of international instruments, such as Article 1 of the UN Charter and the Declaration on Friendly Relations adopted by consensus by the UN General Assembly in 1970; this contains an entire section on 'the principle of equal rights and self-determination of peoples', stating, *inter alia*, that 'all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter'. The common Article 1 of the International Covenants on both Civil and Political Rights and on Economic, Social and Cultural Rights states that 'all peoples have the right to self-determination. By virtue of that right they freely determine their political status...'. The General Assembly resolution on decolonisation, Resolution 1514 (XV) of 1960, cites the wording of the Covenants on self-determination and calls upon States to transfer powers to the peoples of non-self-governing territories in accordance with their freely expressed will and desire. An essential element of this principle is therefore the free and genuine expression of the will of the people, such as has taken place regularly in the Falkland Islands.

SOUTH ATLANTIC
OCEAN

THE FALKLAND ISLANDS



60°W

58°

The UN Charter itself contains important principles for the administration of dependent territories. Britain has always been recognised by the UN as the 'administering power' for the Falkland Islands and the Dependencies and has regularly submitted reports on them under Article 73(e). Article 73 imposes a positive obligation on Britain to treat the interests of the inhabitants as paramount, requiring Britain to accept 'as a sacred trust' the obligation to promote to the utmost their well-being. In particular, Article 73 obliges Britain

- (a) to ensure, with due respect for the culture of the peoples concerned, their political, economic, social and educational advancement, their just treatment and their protection against abuses;
- (b) to develop self-government, to take due account of the political aspirations of the peoples and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement.

It is therefore quite wrong to claim that the use of the term 'interests' in Article 73 allows the wishes of the inhabitants to be overridden. Nor is it for another country to lay down where a people's interests lie: the inhabitants of a country are the best judges of their own interests. Suggestions to the contrary can only encourage interference in the internal affairs of other States and the unprincipled use of force, and have been the classic argument used by those opposed to decolonisation, past and present.

An act of self-determination has come to be generally acknowledged as the correct preliminary to the introduction of changes (such as independence, incorporation into a neighbouring State or free association with the former administering power). The UN has never acquiesced in the decolonisation of a territory in such a way that a people is handed over unwillingly to alien rule. Self-determination and decolonisation need not automatically lead to independence. The status of a territory after an act of self-determination is primarily a matter for the people of the territory itself to decide.

The community on the Falkland Islands, though small, (1813 at the 1980 census) is a permanent, not transient, population. The UN Committee of 24, set up by the General Assembly to supervise the implementation of Resolution 1514, has always maintained that factors such as the size of the population and geographical isolation should not militate against any people's right to self-determination in accordance with the Charter. The Falkland Islanders have no less right to be accepted internationally as a 'people' with rights of self-determination than the population of Argentina. They are not, as Argentina claims, mainly expatriate employees of a British company: 75 per cent were born on the Islands and most are from families established there for well over a century.

Military Dictatorship or Democracy

The current population of Argentina are descendants of settlers from Europe, the indigenous population having been largely eliminated during the opening up of the interior by the Army in the 'Indian Wars' of the late nineteenth century. The great majority of the population descend from immigrants who came to the country after 1870. Militarism has deep roots in Argentina. The military see themselves as 'creators of the nation, defenders of its culture' and guarantors of the cohesion of the State. They have not hesitated to intervene and suspend democratic processes in the face of what they considered an ineffectual civilian Government and a drift towards anarchy. This has occurred five times since 1930. The present regime is a Junta of the Army, Navy and Air Force Commanders-in-Chief, which seized power from Sra Maria Estela Peron in 1976. It appointed General Galtieri President in December 1981.

The alternation between Peronism and military government during nearly the whole period since 1943 produced widespread frustration and a combination of right-wing and left-wing extremism, manifested in both urban and rural guerrilla movements. Under Señora Peron and then under their own authority the Armed Forces suppressed this terrorism with great ferocity. It is generally accepted that many, who had no connections with terrorism at all, must be numbered among those who 'disappeared', never to be seen again, during the course of what the Argentine Armed Forces themselves described as the 'dirty war'. A UN Working Group on Enforced or Involuntary Disappearances estimated that the number might be as high as 9,000. Meanwhile emergency powers under the state of siege have been maintained, all elections suspended and Armed Forces' nominees placed in all elected offices.

In contrast the Falkland Islanders, contrary to Argentine claims that the Islanders are second-class citizens, are free and democratic and have gradually moved towards a system of internal self-government. The population's reiterated desire to remain British, and not to become independent or part of Argentina, has been reinforced by the repressive and authoritarian nature of successive regimes in Argentina.

Falkland Islands Constitution

The Falkland Islands Legislative and Executive Councils were first formed during the nineteenth century. In 1949 and 1977 the Constitution was revised to increase the number of elected Councillors, elections being based on universal adult suffrage. The present (1977) Constitution lowered the voting age from 21 to 18. The Islands are administered by an appointed Governor, who is the personal representative of the Crown, advised by an Executive Council. This consists of two elected and two ex officio members of the Legislative Council and two nominated members. The Legislative Council, composed of six elected and two ex officio members, has the power 'to

make laws for the peace, order and good government' of the territory. It is concerned with the day-to-day running and administration of the Islands, their trade, general development, social services and education. Any member of the Council may introduce a bill or propose a motion; legislation is passed by a simple majority.

British Interest in the Falklands

Allegations that Britain has not shown interest in the welfare of the Islanders are ill-founded.

Britain has given extensive aid—£6.6 million during 1976-80, an average of £735 per head per year. This has included several important projects, notably the electric power station, the permanent airport at Stanley, the road from Stanley to Darwin (the second largest settlement), a secondary school hostel in Stanley, aeroplane and hangar for the internal air service (the main internal link between Stanley and the rest of the territory), new X-ray equipment for the hospital and machinery and storage facilities for the Public Works Department.

Education is free and compulsory for children aged 5 to 15; the Falkland Islands Government recently decided to centralise secondary education in Stanley (thus necessitating the building of the hostel) where education up to the 'ordinary level' of the British Certificate of Education is available. Children wanting to take the 'advanced level' of the General Certificate of Education and the few students undertaking higher education courses abroad are assisted under the British Government's aid programme. Most study in Britain, although a handful attend Anglo-Argentine schools. There are also two Argentine teachers, partly financed by the Falkland Islanders, who give Spanish lessons. The Falkland Islands Government maintains a general hospital at Stanley, which provides medical, surgical, obstetric and geriatric care, and from time to time has offered emergency medical treatment to seamen and other foreigners in distress. There are full trades union rights under Falkland Islands law, legislation governing labour conditions and a full range of social services.

In 1975 the British Government commissioned an economic study by Lord Shackleton, to investigate the best means of developing and diversifying the Islands' economy. Published in 1976, the report recommended a number of projects, based on further development of sheep farming and wool production, enlargement of the airport, establishment of a tourist industry centred on the abundant wild life, harvesting of kelp (seaweed), development of a fishing industry (attention was drawn to the long-term importance of the large stocks of krill) and further social development of the Islands.

Current assessments suggest that the offshore oil and gas potential of the Islands and the Dependencies is unlikely, with present technology, to warrant the high costs which exploration and exploitation in the difficult

local conditions would entail. Nor are there other mineral deposits worth exploiting. The development of the fishery potential is also uncertain; hake and Antarctic cod have been over-fished and require conservation, southern blue whiting has only a small market for human consumption, and krill, while abundant at present, is of unproven commercial purpose. There are strong conservation reasons against uncontrolled exploitation.

Negotiations with Argentina

Lord Shackleton's report also advised closer cooperation with Argentina. In 1965 the UN General Assembly had approved a resolution inviting Britain and Argentina to hold discussions about a peaceful solution to their rival claims to the Islands, bearing in mind the Islanders' interests. Diplomatic discussions resulted in 1971 in a series of communications agreements. In 1974 a further agreement arranged for the Argentine State petroleum company to supply the Islands with petroleum products. The British Government were keen that such practical links between Argentina and the Islands should grow, as their future welfare and development would clearly be best assured with Argentine cooperation.

More talks took place between 1977 and 1980. Further exploratory talks were held in April 1980. In February 1981 talks took place in New York between Argentina and Britain, whose delegation included two of the Falkland Islands' elected Councillors. Argentina rejected the British proposal for a 'freeze' on the sovereignty dispute for an agreed period, during which both sides could cooperate to develop the Islands' resources.

At the end of February 1982 another round of formal talks took place in New York. The British delegation again included two Falkland Islands Councillors. The two sides reaffirmed their resolve to find a solution to the sovereignty dispute and considered in detail an Argentine proposal for procedures to make better progress. The joint communique issued on 1 March stated that the talks had been 'cordial and positive', yet on 2 April Argentina invaded the Islands.

The invasion thus occurred while negotiations were still in progress.

Britain's Right of Self-defence

Argentina is in flagrant and open violation of the fundamental principles of the UN Charter by its unprovoked attack and subsequent military occupation of the Islands. Article 2 of the Definition of Aggression states that 'the first use of armed force by a State in contravention of the Charter shall constitute *prima facie* evidence of an act of aggression . . .' (UN General Assembly Resolution 3314). These unlawful Argentine acts give Britain the right to use force in self-defence. This right, first exercised at the time of the invasion by the small detachment of Royal Marines on the Islands, extends to terminating the illegal occupation. It is expressly recognised by Article 51 of the UN Charter, which makes it

clear that the right of self-defence is 'inherent' and that nothing in the Charter is intended to impair it. In compliance with its obligations under Article 51, the British Government has reported all measures of self-defence to the Security Council.

Security Council Resolution 502 recognises that Argentina is responsible for the breach of the peace; it does not seek to inhibit Britain from exercising her inherent right of self-defence. Article 51 preserves the right 'until the Security Council has taken measures to maintain international peace and security'. The Security Council decision has clearly so far not proved effective to achieve its stated objective, since Argentina during April, far from withdrawing her forces in accordance with the Resolution, sent reinforcements to the Islands. Agreement by Argentina to withdraw her forces, and to negotiate without preconditions for a diplomatic solution to the underlying dispute, as required by the Resolution, would remove the major obstacle to its complete implementation.

Britain remains fully committed to the search for a diplomatic solution to the crisis, which is obviously preferable to military confrontation. Nevertheless, failing such a solution, Britain is fully justified in exercising her inherent right. Her use of military force is governed by the principles of necessity and the use of force proportionate to the threat, as required by international law. British forces have been deployed with the sole limited objective of securing, with minimum casualties on both sides, the withdrawal of Argentine forces from the Islands, as called for by SCR 502. They form part of the graduated pressure—diplomatic, economic and military—to induce Argentina to return to the negotiating table.

Argentina claims that she does not wish to inflict injury or loss on the local inhabitants, nor to modify their way of life. She claims that she wishes to improve conditions for them. However, her recent actions have done nothing to promote her cause among the Islanders; far from winning their hearts and minds, which would have been a prerequisite for any peaceful change, the military occupation and the changes already enforced by the military governor have provided the Islanders with an all too vivid experience of what life can be like under a dictatorship which has scant respect for human rights.

The Argentine invasion is an act of unprovoked aggression. History provides many examples where the international community's failure to take action over such acts by aggressive powers led to much graver crises later.

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