

BILATERAL RELATIONS WITH ARGENTINA: OFFICIAL TALKS  
(BERNE 10-12 JULY 1984)

FALKLAND ISLANDS: UN ASPECTS

BACKGROUND BRIEF

A: THE CONFLICT

1. During the Falkland Islands conflict of 1982 the Security Council was the focus of UN activity. Two resolutions were adopted and a third draft was vetoed by the UK and the US.

- A 2. SCR 502 originated in a British draft tabled during the immediate aftermath of the Argentine invasion. It determined that a breach of the peace existed, demanded a cessation of hostilities and Argentine withdrawal from the Falkland Islands, and called on the governments of the UK and Argentina to "seek a diplomatic solution of their difficulties". It was adopted on 3 April 1982 by a vote of 10-1 (Panama) - 4 (USSR, Poland, China, Spain).

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B 3. SCR 505 was based on an unacceptable Irish draft which the Africans on the Security Council revised to the point where it was adopted by consensus on 26 May. It expressed appreciation for the Secretary-General's efforts and requested him to undertake a new mission of good offices with a view to negotiating a ceasefire with the parties.

4. SCR 502 contained a determination of a breach of the peace and was a decision under Chapter 7 of the UN Charter. It was mandatory. SCR 505 flows directly from, and refers back to, SCR 502 and can be considered as having been made under Chapter 7. This is not drafted in terms that make it mandatory. The Argentines might again argue that the call to the parties to seek a diplomatic solution in SCR 502 and the request to the Secretary-General under SCR 505 apply to the UK now and that we are somehow in breach of them. It is clear to us that these parts of the two Resolutions concerned with finding a diplomatic solution and with the request to the Secretary-General to lend his good offices etc to the parties to the conflict were addressed to a particular situation outstanding at the time. These parts of the Resolution are not therefore applicable to the current situation.

C 5. A further draft resolution tabled on 2 June by Spain and Panama called for an immediate cease fire.

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This would have tied our hands militarily at a time when the Argentines were still on the Falkland Islands. The draft just achieved the required minimum of 9 votes to force a British veto. The Americans also cast a veto but Mrs Kirkpatrick announced minutes later that if the vote could have been taken again she would, on instructions just received, have abstained.

B: UN INVOLVEMENT SINCE THE CONFLICT

6. Since the end of the conflict the focus of UN activity has shifted to the General Assembly. Unlike Security Council decisions adopted under Chapter 7 of the UN Charter, General Assembly resolutions are recommendatory only. The Argentines tabled draft resolutions in 1982 and 1983 calling for a resumption of negotiations over sovereignty and requesting the Secretary-General to renew (continue) his mission of good offices. Resolution 37/9 (1982) was adopted by 90-12-52: resolution 38/12 by 87-9-54. They are attached together with the breakdown of voting. The UK arguments against the resolutions were that there had been no definitive end to hostilities: that the Argentines had made clear that the resolutions were intended to prejudge the outcome of the sovereignty dispute; and that they implied the removal from the

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F,G Islanders of their right to self-determination. These arguments are set out more fully in Sir John Thomson's Explanations of Vote.

H 7. In October 1983, shortly before the second of these debates, (commissioned by the first resolution), the Secretary-General produced the report. This called for a "resumption of dialogue coupled with the adoption of confidence-building measures". As a result of pressure from us, it avoided explicit reiteration of the Assembly's call for negotiation. In our view we have acted in accordance with this advice in seeking to establish a dialogue on normalisation with the Argentines.

8. It is unclear whether the Argentines will table a third resolution this year. Much will no doubt depend on the progress made at the bilateral talks.

C: PRIOR UN INVOLVEMENT

I 9. This can be traced to 1960, when the Assembly passed its principal resolution on decolonisation (Resolution 1514(XV) - Declaration on the granting of independence to colonial countries and peoples). The Resolution underlined the right to self-determination while condemning any attempt to disrupt a country's

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territorial integrity . The UK abstained on Resolution 1514 because of the implication that dependent territories should be prepared for immediate independence: in the UK view the method and timing of progress towards independence was necessarily a matter for the people themselves to work out together with the administering power. Resolution 1514 helps our Falkland case at the UN to the extent that (unlike the related articles of the UN Charter) it enshrines the right of self-determination. The Argentines draw comfort, on the other hand, from the general condemnation of 'colonialism' and specifically from the principle of territorial integrity. We argue that this was intended to prevent the break-up colonial territories, and cannot be intended to apply to disputes over sovereignty.

10. In 1961 the Assembly decided to establish a Special Committee, subsequently known as the "Committee of 24", to make suggestions and recommendations on the progress and extent of the Declaration on Decolonisation (Resolution 1514) and to report regularly to the Assembly.

11. In 1964 the Special Committee considered a detailed report, by a sub-committee, on the Falkland Islands which led it to conclude that Resolution 1514 applied to the Falklands. The Special Committee noted

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the existence of a dispute between the administering power and Argentina concerning sovereignty and invited the two governments to enter into negotiations to find a peaceful solution. During the Special Committee's consideration of this item the UK placed a firm reservation on its position: the Special Committee was not entitled to consider territorial claims or disputes over sovereignty, so the UK could not be bound by any recommendations in that sphere. It was for the Islanders to determine what their ultimate constitutional status should be: the UK was always ready to consider any proposals for constitutional change which the islanders might advance.

12. In the years before the Argentine invasion, the Assembly went on to adopt three resolutions concerning the Falklands. They are:

- J           No 2065 (XX) of December 1965
- K           No 3160 (XXVIII) of December 1973
- L           No 31/49 of December 1976

The UK abstained on the first two, in the company of some 13 other Western countries. We were alone in voting against the 1976 resolution although 32 countries (Western, Commonwealth, Japan) abstained.

13. None of the three resolutions endorsed Argentina's claim to sovereignty. However, the 1973 and 1976 resolutions expressed "gratitude" to Argentina for its

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efforts "to facilitate the process of decolonisation and to promote the well-being of the population of the Islands" (a reference to the 1971 communication agreement). Moreover the 1976 resolution bore in mind in a preambular paragraph the Political Declaration adopted by the Conference of Ministers for Foreign Affairs of Non-Aligned Countries in Lima (1975) and the Declaration by Non-Aligned Heads of Government at their Fifth Conference in Colombo (1976). These explicitly supported the "just claim" of Argentina (Lima) and demanded the "restoration of sovereignty to the rightful owner" (Colombo). The general tendency of the three resolutions by the General Assembly was thus to confuse the issues of decolonisation and sovereignty and, given the known background of persistent Argentine claims to sovereignty and the biased pronouncements of the Non-Aligned Movement, to favour the Argentine position to the detriment of the British case (self-determination for the Islanders and a sound basis for our sovereignty).

D: OTHER UN ASPECTS

14. A number of articles of the UN Charter are particularly relevant to the Falkland Islands. Article 1.2 includes as one of the purposes and principles of the United Nations the development of

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"friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples".

15. Article 33 provides that the parties to any dispute shall "seek a solution by negotiations ..... or other peaceful means of their own choice." The Argentines might argue that our refusal to discuss sovereignty puts us in breach of this article. Our defensive line would be

i) The Charter does not impose an obligation on States to negotiate. Negotiation is only one of a number of possible routes to the solution of disputes;

ii) The provisions of the Charter must be read in the light of the situation that has arisen. The search for a peaceful solution was broken off in 1982 by Argentina when it resorted to force against the Islands in flagrant violation of the Charter. It cannot be resumed as if there had been no aggression. Certainly the victim of the aggression, having repelled it in exercise of the right to self-defence enshrined in the Charter, cannot be required to behave as if the aggressor's violation of the Charter had not taken place. Our willingness to move towards the normalisation of relations demonstrates our constructive spirit but the onus must be primarily on Argentina, having committed so flagrant a violation of



the Charter, to create the climate in which a solution in conformity with the principles of justice and international law (Article 1(1) of the Charter) can emerge. That will require renunciation by Argentina of the use of force, acknowledgement of the rights of the Islanders and respect for their wishes. Until these changes take place, it is Argentina that is holding up the solution of the dispute, not the UK.

16. Article 51 of the Charter enshrines the right of self-defence and was the UN justification for our recovery of the Islands by military means.

17. Article 73 sets out the responsibilities incumbent on governments which are responsible for dependent territories. It embodies the principle that "the interests of the inhabitants of these territories are paramount". We would not wish to place too much emphasis on this article in justifying our position on sovereignty since there is no reference to the wishes of the Islanders or the principle of self-determination. The Argentines have long professed willingness to take into account the interests of the Islanders. The question has always been who is going to be the judge of those interests. There is nothing in article 73 to say that it has to be the Islanders. We would however argue that they are best placed to exercise such a judgement.

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18. Trusteeship has from time to time been mentioned as a possible solution to the Falkland Islands dispute. It was however tacitly agreed by the 'Big Four' when the principles of the Charter were being formulated that the International Trusteeship system should not be used for dependent territories which were subject to competing claims of sovereignty. It is highly doubtful whether the UN could ever effectively manage a territory over which two members of the Organisation were in direct and fundamental disagreement unless both parties were prepared to freeze their claims. This would be unacceptable to us; and trusteeship would anyway be unacceptable to the Islanders.

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