

# Getting it right: the real history of the Falklands/Malvinas

A reply to the Argentine seminar of 3 December 2007  
by Graham Pascoe and Peter Pepper © 2008



Fig. 1. Port Egmont on Saunders Island in the Falkland Islands. Here in January 1765 Captain John Byron claimed the Falklands for Britain. The picture shows the ruins of the warehouse and dock (1766).

## **1. The December 2007 seminar; the Argentine 2007 pamphlets**

On 3 December 2007 a seminar entitled “Argentine Rights and Sovereignty”, organised by the Argentine Embassy, was held at the London School of Economics, at which the Argentine claim to the Falkland Islands was publicly presented in Britain for the first time.

The claim to the Falkland Islands is now a significant element in Argentine foreign policy, though as we shall demonstrate below, there have been long periods when Argentine governments accepted that the islands were British. The Argentine claim has been presented annually only since 1945, when it was mentioned at the founding conference of the United Nations in San Francisco, in a single sentence on Argentine territories (without mentioning the Falklands by name); since 1964 the annual Argentine statements of the claim at the United Nations have been much more extensive.<sup>1</sup>

However, those statements, like Argentine books, leaflets, and letters to British MPs, **contain many important omissions and some extremely serious historical errors**. This booklet addresses the most serious of those omissions and errors, and briefly recounts the true history of the Falkland Islands and the Falklands dispute. It is a highly condensed version of a detailed (1,000-page) study of the subject, *The Falklands Saga: a Critical Study of the Falkland Islands in History and International Law*, by Graham Pascoe and Peter Pepper (forthcoming, probably 2009).

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<sup>1</sup> Full texts of Argentine statements on the Falklands at the United Nations are given in *Malvinas, Georgias y Sandwich del Sur: Diplomacia Argentina en Naciones Unidas*, 3 vols., Buenos Aires 1983. The texts on the 19 years 1945 to 1963 fill 80 pages (vol. I pp. 12-125, of which 33 are blank), while those on the 17 years 1964 to 1981 fill 608 pages (281 in vol. I and 354 in vol. II, of which 27 are blank).



Fig. 2. The speakers at the LSE seminar, 3 December 2007, left to right: Professor Rudolf Dolzer, Virginia Gamba Stonehouse, Federico Mirr  (Argentine Ambassador to Britain), Ra l Vinuesa, and Professor George Philip of the LSE (chairman)

The 2007 seminar was chaired by Professor George Philip of the LSE, and was addressed by a distinguished panel of speakers: Professor Rudolf Dolzer (an international lawyer and author of a book on the legal status of the Falklands<sup>1</sup>); Virginia Gamba Stonehouse (an Argentine academic who has written in both Spanish and English on the Falklands dispute); Argentine ambassador Federico Mirr ; and Dr. Ra l Vinuesa (a prominent Argentine international lawyer).

The speeches at the seminar were based on an 8-page pamphlet in English which was distributed to those present, entitled in Spanish and English *Islas Malvinas, Georgias del Sur y Sandwich del Sur / Malvinas, South Georgia and South Sandwich Islands* (i.e. the British territories claimed by Argentina). The text is a translation of an illustrated 16-page pamphlet in Spanish entitled *Islas Malvinas*, published in Buenos Aires in March 2007 by the “Observatorio Parlamentario – Cuesti n Malvinas”, also available on the website of the Argentine embassy in Washington ([www.embassyofargentina.us](http://www.embassyofargentina.us)). These two pamphlets (figure 3) may therefore be taken to represent Argentina’s current official position on the Falklands dispute; we refer to them as the “Argentine 2007 pamphlets”.

## **2. The Falkland Islands; the Falklands dispute**

The Falkland Islands (called in Spanish “Islas Malvinas”) are a group of islands in the South Atlantic, some 300 miles (450 kilometres) from the coast of Argentina. There are two main islands, East and West Falkland, and almost 750 smaller ones. The islands have a total area of 12,713 square kilometres (4,700 square miles) – they are larger in area than Jamaica, Lebanon or Cyprus, and they are as large as the 25 smallest member states of the United Nations added together. Their resident population is about 3,000.

The Islands never had any native inhabitants, and were first settled by France; there was a French settlement at Port Louis on East Falkland from 1764 to 1767 (section 8, fig. 4 below). The islands were formally claimed by Britain in 1765, and from 1766 to 1774, with one interruption, there was a British garrison at Port Egmont on Saunders Island, where ruins still exist (fig. 1). The French settlement was taken over by Spain in 1767, which maintained a garrison at Port Louis for 44 years until 1811. The present population of the islands is a unique mixture: some families are descended from shipwrecked Danish, Norwegian or Swedish seamen; some are descended from settlers from Uruguay, France, Finland or Gibraltar, but most are of British origin. Many families have lived in the islands for five or six generations, several for seven generations, and a couple even for eight or nine generations.

<sup>1</sup> Rudolf Dolzer, *The Territorial Status of the Falkland Islands (Malvinas): Past and Present*, New York/ London/ Rome 1993; original version in German, *Der v lkerrechtliche Status der Falkland-Inseln (Malvinas) im Wandel der Zeit* [“The international-law status of the Falkland Islands (Malvinas) through the ages”], Heidelberg 1986.

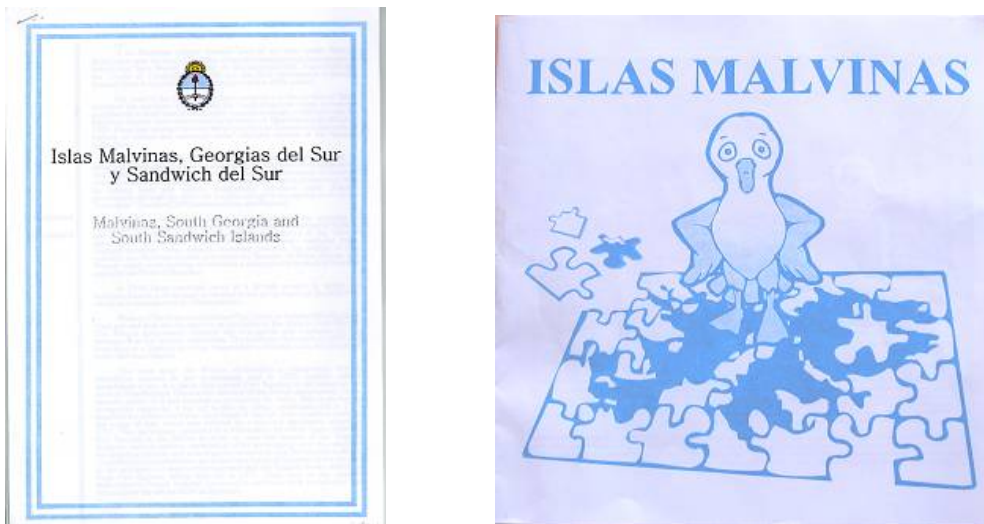


Fig. 3. The Argentine 2007 pamphlets: (left) English, December 2007; (right) Spanish, March 2007. A cartoon bird appears on the cover and on every page of the Spanish pamphlet; the text (p. 2) identifies it as a Southern Giant Petrel, *Macronectes giganteus*. The Southern Giant Petrel is a familiar bird in the Falkland Islands, where for over a century it has had the nickname “Stinker”.

Argentina claims that the islands are rightfully Argentine territory, and has asserted that claim at various times during the last 175 years, **but by no means continuously**. In April 1982, the brutal Argentine military dictatorship (1976-1983) invaded and occupied the islands by force, initiating the Falklands War in which over 1,000 people were killed. Most Argentinians believe this was intended to strengthen the dictatorship’s deteriorating domestic position. At the same time Argentina also seized South Georgia, which it had not claimed until the 1940s after decades of acquiescence in British sovereignty.

Despite defeat by Britain in the Falklands War, Argentina has continued to press for Britain to hand all these islands over. In 1994, when President Carlos Menem was altering the Constitution to enable him to stand for election for a second period of office, the Argentine claim to the Falklands, South Georgia and South Sandwich Islands was enshrined in the Argentine Constitution (see section 40 below).

### **3. The Papal Bulls, 1493, and the “Treaty” of Tordesillas, 1494**

Following Columbus’s “discovery” of the New World in 1492, Pope Alexander VI issued a series of Bulls (official papal pronouncements, named after their lead seal or “bulla”) granting all the new lands to Spain. Alexander VI was a Spaniard from Valencia, Rodrigo Borgia, probably the most corrupt and immoral pope in history,<sup>1</sup> and he was keen to please King Ferdinand of Spain.

By the Bull *Inter Caetera* in 1493, Pope Alexander VI “gave” to Spain the whole of America, both north and south – including the whole of what is now the United States and Canada. This “grant” was immediately disputed by Portugal. In 1494, in order to settle the dispute, Spain and Portugal signed a pact known as the “Treaty” of Tordesillas. This gave Portugal a large portion of the papal grant and divided up the whole of the undiscovered non-Christian world between Spain and Portugal. The dividing line at about 47° W thus gave Brazil to Portugal, but the rest of North and South America “remained” Spanish.

In 1529<sup>2</sup> the dividing line between Spanish and Portuguese possessions was extended into the Pacific: Alaska and Japan both “became” Spanish, India “became” Portuguese, and Australia (still undiscovered) was theoretically divided between Spain and Portugal.

The Argentine 2007 pamphlets present the Bulls and the Pact of Tordesillas as if they were “the international law of the period” (English seminar pamphlet p. 1, Spanish pamphlet p. 3), but that is going much too far. The Aztecs, Incas, Mayas and the other peoples of the Americas (and the Japanese of course) had perfectly good laws of their own; they were not Catholics and were not bound by the Pope’s authority. Not only that; the Bulls and the “Treaty” were legally questionable in other ways as well:

<sup>1</sup> Alexander VI, known as the “Borgia Pope”, rose in the Church by selling church offices. He was famous for his orgies, and his four known illegitimate children included the murderer Cesare Borgia and his notorious daughter Lucrezia Borgia, widely regarded as a poisoner.

<sup>2</sup> By the Treaty of Zaragoza between Spain and Portugal.



1. The Pope broke the basic legal principle *nemo dat quod non habet* (“no one gives what he does not possess”) – he had no authority to “give” the Americas to anyone, since they did not belong to him.
2. The “Treaty” of Tordesillas broke another basic legal principle *pacta tertiis nec nocent nec prosunt* (“pacts neither harm nor benefit third parties”). The peoples of the Americas were a third party, so the agreement was not binding on them. In other words it was not a proper treaty at all but a mere bipartite pact between Spain and Portugal to stay out of each other’s sphere of influence. Spain and Portugal did not rightfully “possess” South America at all; they conquered it by force and held it for so long that all opposition was crushed, causing the deaths of perhaps 80 million people. After that, the sheer length of possession gave Spain and Portugal customary rights in Latin America.
3. The Papal Bulls and the “Treaty” of Tordesillas were not accepted by King François I of France or Queen Elizabeth I of England.
4. The Papal Bulls and the “Treaty” of Tordesillas were the founding documents of European imperialism and, in the case of the Americas, led to genocide against the native inhabitants. It is odd to use them today as justification for anything whatever.

Several other points are worth noting here too. South Georgia and the South Sandwich Islands lay in the Portuguese sphere of influence under the provisions of the “Treaty” of Tordesillas. Argentina claims to have inherited the Falkland Islands from Spain, but there can be no question of that in the case of South Georgia and the South Sandwich Islands. Nevertheless, they are now claimed by Argentina – in fact Argentina started the Falklands War on South Georgia in 1982.

Argentina’s claim to have inherited the Falklands from Spain is based on the fact that the Falklands were part of the Spanish Viceroyalty of the River Plate, to which Argentina is a successor state. However, the Viceroyalty also included Uruguay, Paraguay, Bolivia, and parts of Chile and Peru, which raises the problem of “identity of heir” – Argentina did not inherit a unitary claim, but only half that claim at most. In addition, Spain continued to claim all Spanish territories long after they were lost, and eventually accepted the Falklands as British (see section 29).

The current Argentine claim to Antarctica is also based on *Inter Caetera*, and is centred on the Graham Land Peninsula, which Argentina has recently “renamed” Tierra de San Martín, after the leader of the Argentine liberation struggle against Spain. But Argentina also claims territory in Antarctica far across the dividing line with Portugal prescribed by the “Treaty” of Tordesillas. This claim is aggressively promoted – the back cover of Argentine passports shows a map of Argentina plus the Falklands, South Georgia, and what Argentina calls “Argentine Antarctica”. By Argentine law, this and all other territories claimed by Argentina must appear as Argentine territory on all maps published in Argentina.

However, many countries, including the United States, Russia, China, India, South Korea, and others with bases in Antarctica have never recognised any territorial claims in Antarctica, whether raised by Argentina, Australia, Britain, Chile, France, New Zealand, Norway, or any other country.

#### **4. Discovery**

The Argentinians claim in their 2007 pamphlets that the Falklands were discovered by one of the ships in the expedition of Ferdinand Magellan in 1519-20, the first expedition to sail round the world.<sup>1</sup> **That is not true.** That claim is based on the theory that Estebão Gomes, the Portuguese pilot of the ship *San Antonio*, who deserted the expedition in the Straits of Magellan, saw the Falklands before or after his desertion. But none of the chroniclers aboard mentions any such discovery; all say the ship returned up the coast, and there is **not a shred of positive evidence to support that theory.**

Though definite proof is lacking, there is evidence that the islands were first discovered by an unrecorded Portuguese expedition before Magellan set sail. The evidence is found in two early maps, one made by the Portuguese cartographer Pedro Reinel in about 1522 – the very first map to show the Falklands – the other a French copy of a Portuguese map bought in Lisbon by André Thevet (1516-1592), a Franciscan friar and prolific writer on many subjects; this copy is now in the manuscript of a large unpublished work by Thevet in the Bibliothèque Nationale de France in Paris.<sup>2</sup> These two maps of

<sup>1</sup> Argentina has at times claimed that the Falklands were discovered by Amerigo Vespucci in 1502, but the only “evidence” for that is a forged letter, which does not even imply that he discovered any islands.

<sup>2</sup> *Le Grand Insulaire et Pilotage d’André Thevet...*, Bibliothèque Nationale de France, Paris, Ms. fr. 15 452, vol. I, folio 268. The map of the Falklands was first illustrated on the cover of a monograph by Roger Hervé, *Découverte*

Portuguese origin suggest that it was Portuguese navigators who first saw and mapped the Falklands. It is not unusual that no written record of their expedition survives; voyages of discovery in those days were often national or commercial secrets, and unless a journal survived, they are completely unknown today.

The Argentine seminar pamphlets go on to claim (English p. 1, Spanish p. 3) that from then on the Falklands “remained under effective control of the Spanish authorities”. **That is nonsense.** A Spanish ship spent several months in the islands in 1540,<sup>1</sup> but after the failure of a Spanish settlement on the Straits of Magellan in the late 16th century,<sup>2</sup> very few Spanish ships sailed as far south as the Falklands right up to the mid-18th century, and there is not a single Spanish account of a sighting of the islands in all that time.<sup>3</sup> For over 150 years British, French and Dutch ships had the Falklands to themselves, and Spain relied on navigators from those countries for information on the islands, which was then added to Spanish maps.

Although it was not the first sighting of all, the first sighting of the Falklands to be recorded in print was by Captain John Davis (discoverer of the Davis Strait in North America) on 14 August 1592 – he was blown off course into the Islands by a storm.<sup>4</sup>

## **5. The Rival Names**

The islands derive their English name from Falkland Sound, the name given to the waterway between the two main islands by Captain John Strong, who spent several days in the islands in January 1690 in his ship *Welfare*.<sup>5</sup> The name “Falkland Islands” for the whole archipelago was first used in the journal of Woodes Rodgers in December 1708, and was first published in 1712 in his account of his voyage.<sup>6</sup>

The French were active in the South Atlantic from the beginning of the 18th Century, and in 1716 the French mapmaker Amédée-François Frézier published the best map of the islands so far made, calling them “Les Isles Nouvelles” (The New Islands).<sup>7</sup> The French Geographer Royal, Guillaume Delisle, invented a better name on two maps of 1720 and 1722 (the first not published till later) – he called them “Les Iles Malouines”, after the port of St Malo in Brittany, home port of the French ships which had visited the Falklands.

The Spaniards never had a name of their own for the Islands, but from the mid-1760s they adopted the French name “Iles Malouines”, adapting it into “Islas Maluinas”. Around 1805 they began to spell it “Malvinas”, though as late as 1811 they still sometimes spelt it “Maluinas”. “Malvinas” is now the Spanish name for the islands; in its current form it is a century later than the English name.

## **6. The Treaties That Were Not Broken**

The 2007 Argentine pamphlets say (English p. 1, Spanish p. 3): “the whole southern region of America with its coasts, seas and islands, indisputably remained under Spanish sovereignty through the different treaties signed in the period, such as the ‘American’ Treaty of 1670 between Spain and England.” In English that treaty is more often known as the Treaty of Madrid, and it says no such thing. There is an English translation from the original Latin of this treaty in the Public Record Office (National Archives) in London.<sup>8</sup> It is a treaty of friendship by which Spain recognized Britain’s possessions in the Caribbean and elsewhere in America at that time (article 7). But there is no reciprocal recognition of the rest of America as Spanish. Both Spain and England did agree not to trade in each other’s territories (article 8), except under licence (article 9). The Treaty referred to territories “possessed” by each party, and was written with the Caribbean and North America in mind, not South America; it nowhere mentions any British acceptance of Spanish sovereignty.

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*Fortuite de l’Australie et de la Nouvelle-Zélande par des Navigateurs Portugais et Espagnols entre 1521 et 1528*, Paris 1982.

<sup>1</sup> An unknown Spanish ship (christened the *Incognita* by author Julius Goebel in 1927).

<sup>2</sup> Now called Puerto Hambre [“Port Famine”]; it is now in Chilean territory.

<sup>3</sup> Laurio H. Destéfani, *Las Malvinas en la Época Hispana (1600-1811)*, Buenos Aires 1981, p. 67.

<sup>4</sup> Davis’s brief account was printed in Richard Hakluyt’s *Principal Navigations...*, London 1600, vol. III, p. 846.

<sup>5</sup> He named the Sound after Viscount Falkland, who was one of the owners of the *Welfare* and was later First Lord of the Admiralty (1693-94). Strong’s unpublished log is in the British Library, Sloane MS 3295.

<sup>6</sup> *A Cruising Voyage round the World...*, London 1712, pp. 103-106.

<sup>7</sup> The Spanish translation of this, “Islas Nuevas”, continued to be used for many years in Argentina. Entries in the records of the Port of Buenos Aires, Archivo General de la Nación (AGN), Sala X, 42-3-10 show the British brig *Romeo* arriving from the “Islas Nuevas” on 29 April 1822. Similarly the *Adeona*, Captain William Low, is recorded as leaving for the “Islas Nuevas” on 3 August 1822.

<sup>8</sup> Public Record Office (PRO), SP9/246/49. A translation of the Madrid Treaty of 1670 as signed by King Charles II.

The Treaty of 1670 was signed well after Britain had occupied the South Atlantic island of St Helena in 1659, under the charter of the East India Company awarded on 19 October 1657 by the “Lord Protector” Oliver Cromwell, at that time the republican ruler of England. It is nonsense to say that the Treaty of 1670 banned Britain from navigating in the South Atlantic – Article 15 of the 1670 Treaty preserves the liberty of navigation in “the American Seas” for both Britain and Spain.<sup>1</sup>

## 7. The Treaty of Utrecht

Twelve treaties were signed at Utrecht in 1713 between various European powers, notably the general peace treaty often called “the Treaty of Utrecht”. None includes formal British recognition of Spain’s possession of South America as claimed in the Argentine 2007 pamphlets (English p. 1, Spanish p. 3); Britain merely promises assistance in returning Spanish possessions in America to their state in the time of the death of Carlos II of Spain (which had sparked the War of the Spanish Succession). Like the treaty of 1670, the Treaty of Utrecht refers to territories “possessed” by Spain – neither in 1670 nor in 1713 did Spain possess the Falklands in any real sense except by the (invalid) “Treaty” of Tordesillas.

The Argentine 2007 pamphlets also claim that the Treaty of Utrecht gave Spain an “exclusive right to sail in the waters of the South Atlantic.”<sup>2</sup> **That is completely untrue**; the treaty confirmed no such exclusive right – Britain never accepted any restriction on the freedom of the seas, and retained St Helena in the South Atlantic throughout the 18th century (and right up to today). Many British ships, particularly from the East India Company, sailed in the South Atlantic on their way to India and elsewhere.

## 8. Settlement



Fig. 4. Port Louis in winter, looking south-east across the basin towards Berkeley Sound. No buildings from the 18th century remain standing; the long building at far right next to the tree is the British barracks built in 1843 (now a private house, the oldest inhabited building in the islands).

The French were the first to settle the Falklands. In 1764, the French nobleman Louis-Antoine de Bougainville established a settlement at Port Louis on Berkeley Sound in the north-eastern corner of East Falkland, which soon had some 80 inhabitants including women and children.

Soon afterwards a British round-the-world expedition under Captain the Honourable John Byron (grandfather of the poet Lord Byron) visited the islands, and in 1765 Byron discovered and named Port Egmont, a good natural harbour by Saunders Island to the north of West Falkland (fig. 1). Here, on 22 January 1765, he formally claimed the Falklands in the name of George III, not knowing that the French were already there – in fact they watched him sailing along the north coast of the islands.

<sup>1</sup> Article 15 of the Treaty of Madrid, 1670, says: “The present Treaty shall in nothing derogate from any Pre-eminence, Right or Dominion of either Confederate in the American Seas, Channels or Waters, but that they have and retain the same in as full and ample manner, as may of Right belong unto them: But, it is always to be understood that the Liberty of Navigation, ought in no manner to be disturbed, where nothing is committed against the Genuine Sense and Meaning of these Articles”. A later Treaty of Madrid (27 March 1713) confirms the validity of all earlier treaties between Britain and Spain, thus confirming the liberty of navigation for both countries.

<sup>2</sup> Alfredo Palacios (see sections 36 and 37) claimed in *Las Islas Malvinas*, Buenos Aires 1934, 2nd ed. 1948, p. 18, that Article 14 of the Asiento Treaty, also signed in 1713, said the same. But this was merely a safe conduct into Spanish ports, including Buenos Aires, for ships carrying the slaves that the Asiento Treaty allowed Britain to supply to Spanish colonies in America. It in no way restricted the right of other British ships to sail in the South Atlantic. This may be the source of the erroneous interpretation of the Utrecht Treaties by Argentina.

In his memoirs, written in 1770,<sup>1</sup> Bougainville claimed that the French had found Port Egmont before the British and named it “Port de la Croisade”, and many writers both Argentinian and British have followed him in that assertion. **But he was wrong**; the French never found Port Egmont at all, and the place named by the French was a different one: Keppel or Pebble Sound, not found until over a year later in April/May 1766. The French only learnt where Port Egmont was on 4 December 1766, when the British captain John McBride visited Port Louis and told them where it was.

Up to the 1760s Spain had never shown any interest in the Falklands and they had no Spanish name. The French settlement, however, was seen as a strategic threat to Spanish interests in South America; the Spanish government claimed that the islands were rightfully Spanish and in 1767 forced the handover of the French establishment to Spain.<sup>2</sup> This was not a question of right or wrong; the French did not recognise any superior Spanish title, but the French and Spanish royal families were linked by the Bourbon “Family Compact”, and France simply gave in to Spanish pressure. Bougainville himself did not believe the Spanish had any superior title – in 1800, he even wrote to Napoleon urging him to raise the question of the French claim to the Falklands at the negotiations leading to the Peace of Amiens (1801).<sup>3</sup>

The Spaniards called the islands “Islas Maluinas”, from the French name “Malouines”; they changed the name of Port Louis to Puerto Soledad, and for 44 years (1767-1811), Spain maintained a garrison and penal colony there. The presence of women was soon prohibited, and the islands remained a hated hardship post for their Spanish commandants and their men, to say nothing of the criminals banished there. British and American ships continued to use the Falklands, ignoring the Spaniards.

On 10 June 1770, having discovered the British at Port Egmont, Spain attacked the establishment and expelled the British garrison; Britain and Spain came close to war, which was in the end averted by an agreement signed in January 1771 in which Port Egmont was restored to Britain.

The Argentine 2007 pamphlets say (English p. 1, Spanish p. 4) that the agreement contained:

... a Declaration by which Spain restored Port Egmont to the British in order to save the honour of the King of England, making express reservation of its [= Spanish] sovereignty over the whole of the Malvinas Islands, and also of an Acceptance of this Declaration in which Great Britain remained silent as to the Spanish reservation of rights.

**That is untrue.** Such a reservation of Spanish rights had originally been proposed in December 1770 during the negotiations, stating that the agreement “cannot prejudice the anterior rights of the king of Spain to those islands”,<sup>4</sup> but at British insistence this was **removed from the final text** of the Anglo-Spanish agreement. The agreement as actually signed in London on 22 January 1771 merely stated:

... that the engagement of his said Catholick Majesty [the king of Spain], to restore to his Britannick Majesty the possession of the port and fort called Egmont, cannot nor ought in any wise to affect the question of the prior right of sovereignty of the Malouine islands, otherwise called Falkland’s Islands.<sup>5</sup>

In other words, the question of the prior right of sovereignty was left as it had been before the dispute – **both** countries’ rights were left untouched, Britain’s as well as Spain’s. That was confirmed by Dr Samuel Johnson, the major British literary figure of the second half of the 18th century, in one of the most famous pieces of writing on the Falkland Islands.<sup>6</sup> However, Argentina has constantly repeated a false version of this declaration although the original text is easily available, and the false version has been stated by many others too, such as Professor Dolzer, who says: “it has to be observed that Spain explicitly reserved her rights to the Islands while Britain at no point addressed the issue of sovereignty.”<sup>7</sup> A reading of the original texts confirms that **both** countries’ rights were reserved.

<sup>1</sup> Louis-Antoine de Bougainville, *Voyage autour du monde par la frégate du Roi La Boudeuse et la flûte l’Etoile en 1766, 1767, 1768 et 1769*, Paris 1771, pp. 52-53. It includes his account of his first expedition to the Falklands.

<sup>2</sup> Spain paid Bougainville 618,108 *livres tournois*, roughly £27,000 in money of the day, for his private expenses.

<sup>3</sup> Diego Luis Molinari: *La Primera Unión del Sur, Origenes de la Frontera Austral Argentino-Chilena Patagonia, Islas Malvinas y Antártida*, Buenos Aires, 1961, p. 67.

<sup>4</sup> Text proposed by the duc de Choiseul, Foreign Minister to Louis XV (working for Spain), 3 December 1770, in Jean-Etienne Martin-Allanic, *Bougainville Navigateur et les Découvertes de son Temps*, Paris 1964, pp. 1114-1117.

<sup>5</sup> From Spain’s declaration; original French text in *British and Foreign State Papers 1833-1834* (printed London 1847), pp. 1387-1388; English translation from Julius Goebel, *The Struggle for the Falkland Islands*, New York 1927, pp. 358-359.

<sup>6</sup> Samuel Johnson, *Thoughts on the Late Transactions Respecting Falkland’s Islands*, London 1771, p. 38.

<sup>7</sup> Dolzer 1993, p. 47.

The Argentine assertion (first made in 1833) that Britain made a secret verbal promise to evacuate the Falklands is not true either. There were rumours of such a promise in the 1770s and later, and a mutual withdrawal from the Falklands by both Spain and Britain was discussed during the negotiations, but rejected. In 1833 British Foreign Secretary Viscount Palmerston asked the King's advocate, Sir Herbert Jenner, to peruse the relevant documents in the British archives. Jenner's findings<sup>1</sup> disproved any idea of a secret promise, and all the relevant documents were later sent to Argentine Chargé d'Affaires Manuel Moreno to prove this point. Moreover, not all Argentine historians believe that Britain made a secret agreement to leave at the time of the 1771 agreement. Diego Luis Molinari says the British did say they would leave – but did not say so in a ministerial capacity.<sup>2</sup> Professor Dolzer also agrees that “no legally binding agreement was made”.<sup>3</sup>

Britain did leave Port Egmont four years later in 1774, as an “economy measure” – Britain's North American colonies were showing signs of political unrest, and it was to redeploy Britain's forces to confront the American Revolution that the decision was taken to evacuate Port Egmont. Diego Luis Molinari identifies this as the reason for Britain's withdrawal.<sup>4</sup>

### **9. The Nootka Sound Convention (El Tratado de San Lorenzo), 1790**

In 1790 war between Britain and Spain nearly broke out again over the possession of Alaska (which had “become” Spanish by the Papal Bulls and the “Treaty” of Tordesillas). War was averted this time by a treaty known in English as the Nootka Sound Convention, after an inlet on Vancouver Island where the dispute had arisen. Article III of this treaty (known in Spanish as “El Tratado de San Lorenzo”) guaranteed freedom of the seas to both Britain and Spain, though Britain was not to trade illicitly with Spanish settlements (Article IV), and both Britain and Spain agreed not to form new establishments on South American coasts situated south of coasts or islands already occupied by Spain (Article VI).

As the Argentine 2007 pamphlets correctly say (English p. 2, Spanish p. 5):

In 1790, with the signing of the Treaty of San Lorenzo at the El Escorial [i.e. the Nootka Sound Convention, signed at the Escorial Palace near Madrid], Great Britain undertook not to establish any settlements on either the eastern or the western coasts of South America or on the adjacent islands already occupied by Spain such as the Malvinas Islands.

What the pamphlets omit to mention, however, is that there were two important additions: Article VI expressly permitted British seamen (many of whom were engaged in killing seals) to land on those coasts and to build huts, etc., and more importantly, an extra secret article removed the restriction on new establishments if any other power did make an establishment south of “the parts of those coasts already occupied” by Spain.<sup>5</sup> In the late 1820s (see sections 12 and 14), Argentina did in fact form an establishment at Port Louis in the Falklands, south of coastal areas already occupied by Spain in 1790. By a strict interpretation of the Nootka Sound Convention, Britain therefore became entitled to form an establishment in the Falklands as soon as Argentina had become established there.

Argentine historian Diego Luis Molinari believes that the secret clause in the Nootka Sound Convention was specifically put in by Britain with the Falklands in mind, and that Britain's reassertion of sovereignty in 1833 (see sections 18 and 19) was an exercise of Britain's rights under this clause.<sup>6</sup> In the opinion of Professor Dolzer, the Nootka Sound Convention was a purely bipartite agreement between Britain and Spain, which means that Argentina could not benefit from its provisions in any way.<sup>7</sup>

### **10. Spain abandons the Islands, 1811; David Jewett, 1820**

In 1810 a revolt against Spanish colonial power broke out in Buenos Aires; in 1811 the Spanish garrison was withdrawn from the Falkland Islands to Montevideo (now in Uruguay); the Spanish Viceroyalty of the River Plate broke up into several independent countries (Argentina, Uruguay, Paraguay, Bolivia) and by 1826 the whole of South America was independent apart from Cuba and Puerto

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<sup>1</sup> Public Record Office (PRO), London, CO 78-1, p. 285.

<sup>2</sup> Molinari 1961, p. 40.

<sup>3</sup> Dolzer 1993, pp. 47 and 48.

<sup>4</sup> Molinari 1961, p. 40.

<sup>5</sup> Complete text of the Nootka Sound Convention, in the original French and in English translation, in Dolzer 1993, pp. 246-251.

<sup>6</sup> Molinari 1961, pp. 47, 54 and 71.

<sup>7</sup> Dolzer 1993, pp. 58 & 59.



Rico (held by Spain until 1898). After 1811, the Falklands had no resident population, though they were still visited by many British and American ships, whose crews sometimes spent long periods ashore in the islands, built stone houses and huts, and even grew vegetables. So the language spoken in and around the Falklands from 1811 onwards was English, as it had been since the 1770s except at Puerto Soledad.

For some years until the mid-1820s Spain fought against the new republics of South America including Argentina, which employed privateers (privately-owned ships licensed for the purpose by the government) to capture Spanish ships. One Argentine privateer was the *Heroína*, which sailed in 1820 commanded by an American called David Jewett – at that time all South American navies were crewed by British and American seamen. Professor Dolzer says Jewett was sent “with special instructions to acquire possession of the islands”,<sup>1</sup> and many Argentine sources state the same, though there is **absolutely no evidence for that assertion and much evidence against it**. Jewett left the River Plate in the *Heroína* on 21 March 1820 in search of Spanish victims.<sup>2</sup> He spent seven months, from March to October 1820, vainly looking for Spanish prizes, but his voyage was a disaster. His crew were sick with scurvy and mutinous, and he had to execute six of them. Above all, he found no Spanish ships, but in the end he captured a Portuguese one, the *Carlota*, which was piracy, since Argentina and Portugal were not at war. He would probably have taken the *Carlota* to Buenos Aires as a prize, but he lost her in a storm, so he decided to sail to the deserted Falklands, where his crew could recover but not desert him, and he no doubt hoped to capture any Spanish ships that arrived there. Otherwise he would have had to return empty-handed to Buenos Aires, with no financial gain to the shareholders and crew. His ship was barely seaworthy when he arrived in the Falklands on 27 October 1820, and he had only 12 fit men.<sup>3</sup>

Berkeley Sound seems to have been empty when Jewett arrived, since he anchored far down it and only managed to get in touch with Captain James Weddell of the British brig *Jane*, anchored at Salvador, several miles to the west over the hills; Weddell had to walk over seven miles overland to get to Jewett’s ship. Weddell helped him to move the ship up to the anchorage at Port Louis, and on 6 November 1820 Jewett made a proclamation “taking possession” of the islands for Argentina, witnessed by a few captains of ships that had just arrived. No one knows the exact wording used, and no orders for Jewett to do this have ever been found. Captain William Orne of the American schooner *General Knox* seems to have missed Jewett’s “possession ceremony”, and Jewett gave him a letter informing him of the claim.

Jewett and his crew then “vegetated”, as one of his crew put it,<sup>4</sup> in the islands for six months, since not a single Spanish ship appeared. In the end, in desperation, Jewett seized a United States ship, the *Rampart*, carrying cargo for Spain, thus committing piracy a second time.<sup>5</sup> He wrote a long report to Buenos Aires dated 1 February 1821, describing his voyage but **not mentioning any claim to the Falklands**, and asked to be relieved. He left the islands in April 1821; his successor as captain of the *Heroína*, the Englishman William Mason, left Port Louis three weeks later, leaving Port Louis again uninhabited. Mason also captured a Portuguese ship, but was caught by the Portuguese in March 1822, convicted of piracy by a Lisbon prize court, and sentenced to imprisonment; the court also accused Jewett of piracy, though he was by then in Brazil.<sup>6</sup> It is a moot point whether an announcement made by a pirate who keeps it secret can count as a valid territorial claim.

On returning to his home port, Salem, Massachusetts, Captain Orne gave Jewett’s letter to the local paper, the *Salem Gazette*, which published it on 8 June 1821, and it was reprinted by the *Times* in London on 3 August 1821. If it had not been for the publication of that letter, and an account in a book by James Weddell five years later,<sup>7</sup> the Jewett claim would be unknown today. The *Times* reprint of the Orne letter was then repeated in a Gibraltar paper and was picked up by the Spanish paper *Redactor de Cádiz*. It was

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<sup>1</sup> Dolzer 1993, 62.

<sup>2</sup> Date of Jewett’s sailing in letter by his successor William Mason, written from prison in Portugal, in Archivo General de la Nación, Buenos Aires (AGN), Marina Corsarios, 10-5-1-3.

<sup>3</sup> Jewett’s report of 1 February 1821 in AGN, Buenos Aires, Marina Corsarios 1820-1831, 10-5-1-3.

<sup>4</sup> Letter by Captain Laureano de Ansoátegui on board the *Heroína* anchored at Puerto Soledad, 20 January 1821, in AGN, Buenos Aires, Marina Corsarios 1820-1831, 10-5-1-3.

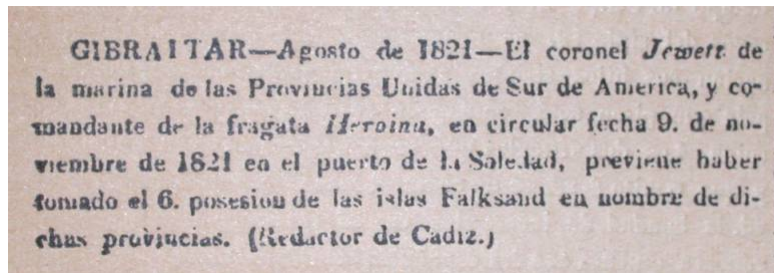
<sup>5</sup> The irregularity of Jewett’s proceeding was denounced to US Secretary of State John Quincy Adams by John Murray Forbes, US Minister at Buenos Aires (despatch in William R. Manning, *Diplomatic Correspondence of the United States concerning the Independence of the Latin-American Nations*, New York 1925, pp. 569

<sup>6</sup> Translation of the report of the Portuguese Auditor General of Marine, Manuel José de Figueredo, dated 30 April 1822, sent on 1 January 1833 by Francis Baylies, US chargé d’affaires in Buenos Aires, to US Secretary of State Edward Livingston in Washington; printed in full in William R. Manning: *Diplomatic Correspondence of the United States, Inter-American Affairs 1831 – 1860, Vol I, Argentina*, Washington DC 1932, fn. 1, p. 169-171.

<sup>7</sup> James Weddell, *A Voyage towards the South Pole, Performed in the Years 1822-24*, London 1825, pp. 103-111.

only when the Cadiz report reached Buenos Aires, as a foreign news story, that Jewett's "claim" to the Falklands become known in Argentina. It was published in the Buenos Aires *Argos* on 10 November 1821, over a year after the event (fig. 5).

Fig 5. The only public announcement in Argentina of Jewett's claim – in the Buenos Aires *Argos* on 10 November 1821, more than a year after the event, as a foreign news story.



The Argentine 2007 pamphlets say (English p. 2, Spanish p. 5) that neither Britain nor the United States made any objection to the announcement of Jewett's "taking possession" of the Falklands, thereby implying that those countries acquiesced in it. However, the Buenos Aires government made no official announcement (it did not know anything had happened in the islands), and there were no diplomatic relations between Britain and Argentina at that time, so there were no channels for any reaction.

In 1832, Louis Vernet (see section 11) included a totally erroneous account of the activities of David Jewett in a report to Argentine Foreign Minister Vicente de Maza, as part of the defence of his own activities which had caused a crisis with the Americans (see section 16).<sup>1</sup> Vernet claimed that Jewett had found fifty ships in the Falklands, had ordered them to cease fishing (i.e. killing seals) and had ordered them to leave. **That was entirely untrue. Jewett "vegetated" at Puerto Soledad (Port Louis); he issued no orders to anyone whatever.** Vernet was (perhaps deliberately) confusing Jewett's actions with his own actions 12 years later. Vernet's untrue account has become widely believed and is repeated in many books, including that by Professor Dolzer.<sup>2</sup>

## 11. Louis Vernet; Pablo Areguati

The Argentine 2007 pamphlets both mention David Jewett, who spent only six months in the Falklands entirely at Puerto Soledad (Port Louis), without achieving anything except reading a proclamation, firing a salute and committing an act of piracy.

But neither of the pamphlets mentions Louis Vernet (1791-1871), who spent several years in the islands and who founded the permanent settlement which still exists today. It is through Louis Vernet that Argentina acquired any basis for a claim to the Falklands in the first place, but his role is nevertheless suppressed – his often-expressed preference for British sovereignty (see sections 15 and 28) leads some Argentine historians to consider him "unpatriotic" ("apátrida").<sup>3</sup>

Vernet was of French Protestant (Huguenot) descent, born in Hamburg in Germany, and he spent some years in the United States before settling in Buenos Aires. He spoke fluent French, German, English and Spanish, and established a settlement at Puerto Soledad (to which he gave its former French name, Port Louis), which at times had a population of around 80-90 people of various nationalities including British, American, German and Argentinian.

Both the Argentine pamphlets say (English p. 2, Spanish p. 5) that:

During the 1820s Argentine governments took various actions confirming their sovereignty over the Malvinas Islands, including the appointment of governors, legislation on fishing resources and the granting of territorial concessions.

In fact there was never a "governor", only a "civil and military commandant" (Louis Vernet himself), and he did not receive that title until June 1829. What happened was more complex.

<sup>1</sup> Vernet's report, "In forme del Comandante Político y Militar de Malvinas", was printed in "*Colección de Documentos Oficiales...*" (in both Spanish and English versions), Buenos Aires September 1832, as document no. 29; it was also printed in full in English in *British and Foreign State Papers (BFSP)* vol. XX, 1832-1833 (printed London 1836), pp. 369-436; facsimile of *BFSP* text in Raphael Perl, *The Falkland Islands Dispute in International Law and Politics*, London/ Rome/ New York 1983, pp. 211-278.

<sup>2</sup> Dolzer 1993, 59 and 62.

<sup>3</sup> E.g. Mario Tesler in *El Gaucho Antonio Rivero, La Mentira en la Historiografía Académica*, Buenos Aires (no date but circa 1965), p. 202; and Molinari 1961, pp. 52 and 108.

Vernet became an associate of Jorge Pacheco, an impoverished Argentine veteran of the liberation struggle against Spain. Pacheco's wife, Dionisia Obes, was the sister of Cipriana Obes, the wife of Bernardo Bonavía, one of the last commandants of the Spanish establishment in the Falklands. Through this connection Vernet learned of the wild cattle on East Falkland, at a time when his own main business was slaughtering wild cattle in Argentina – he had an estancia just south of the Salado River, only 100 kilometres south of Buenos Aires. This river was the border with territory still controlled by the native Indians, who fought desperately for decades against the Argentine colonists who were invading their ancestral lands. The Indians killed one of Vernet's brothers, Federico, and one of his brothers-in-law, Captain Antonio Sáez, took Vernet's cattle and burnt the buildings.

The Buenos Aires government owed Pacheco money, which it could not pay. On 23 August 1823, in order to improve his financial situation, Pacheco, supported by Vernet, approached the government for permission to exploit the wild cattle and seals in the Falklands. This permission was granted on 28 August 1823;<sup>1</sup> Pacheco and Vernet prepared an expedition, and as it was about to leave made another application, on 18 December 1823, for a small grant of land, cannons and for the appointment of a retired militia officer, Pablo Areguati, to be unpaid "commander" of their settlement. The grant of land was made the same day, but no cannons were supplied, and Areguati was not appointed to any rank. This is clear from the reply of the BA government:

The Govt., having a duty to protect commerce and assist all branches of trade in the country, considers it right to concede to the applicant freely the lands that he requests, under the absolute obligation to conduct a proper survey so he can obtain titles of ownership, the Govt thus reserving the provision of this, as of all the other points requested by the applicant.<sup>2</sup>

So the government reserved its position, and Areguati was not given any rank. This is supported by the fact that in the few communications by him that survive in the Archivo General de la Nación (AGN) in Buenos Aires, not one suggests that he had any official position. Nor, apparently, was any public announcement made either of this grant or the proposed expedition.

Argentine historian Ricardo Caillet-Bois, who wrote the most detailed book on the Argentine claim, fudges the question of Areguati's appointment.<sup>3</sup> But another distinguished Argentine historian, Mario Tesler, rejected it altogether in an article in the Buenos Aires newspaper *Clarín* entitled "Gobernadores Que Nunca Fueron" (Governors That Never Were), on 6 June 1974. This clearly states that Areguati was not appointed. Tesler is the leading authority on the Falklands in Argentina today; he says "in reality it was only a request, he did not get appointed".<sup>4</sup>

At that time the Falklands were *res nullius*, "no one's property",<sup>5</sup> though there were three limitations to that: Spain still claimed the islands, Britain had a claim dating from the establishment at Port Egmont 50 years earlier, and whether that was valid or not, Britain definitely had certain limited rights (of landing, building huts, etc.) under the Nootka Sound Convention with Spain. Britain's rights under the Nootka Sound Convention were meagre, but they had been upheld through constant use for over 30 years and were a clear limitation on any other country's possible claim to full sovereignty.

Pablo Areguati left Buenos Aires in January 1824 with about twenty-six gauchos and reached Port Louis in the Falklands on 2 February. The expedition was a disaster. On 12 February Areguati wrote to Pacheco (fig. 6), describing the expedition's desperate situation.<sup>6</sup> They were living off rabbits, without gunpowder with which to hunt, and without adequate horses to even get out of their camp – "we are perishing" he says. The expedition collapsed after only a few months, and receipts in the Buenos Aires archives show that Areguati paid off the expedition's hired gauchos in July and August 1824.<sup>7</sup>

<sup>1</sup> AGN, Sala VII, Legajo 127, doc. 22. Text printed in Dolzer 1993, 253.

<sup>2</sup> AGN, Sala VII, Legajo 127, doc. 23: "Habiendose hecho el Gob. un deber de proteger el comercio y fomentar todo ramo de industria en el pays, ha tenido a bien conceder al suplicante en gracias los terrenos que solicita, bajo la precisa obligacion de hacer consultar la mensura y amojonamiento para que pueda obstar a los titulos de propiedad, reservandose al Gob proveen asi sobre esto como sobre todos los demas puntos que solicita el representado."

<sup>3</sup> Ricardo Caillet-Bois, *Las Islas Malvinas*, Buenos Aires 1952, p. 196.

<sup>4</sup> Mario Tesler in *Clarín*, Buenos Aires 6 June 1974: "en realidad solo fue un pedido, pues no llegó a ser nombrado".

<sup>5</sup> That the Falklands were *res nullius* after the Spaniards left is accepted in *Historia General de las Relaciones Exteriores de la República Argentina*, edited by Andrés Cisneros and Carlos Escudé, Buenos Aires 1998, vol. I p. 176, footnote.

<sup>6</sup> AGN Sala VII, F. 129 Doc 51; text also printed in Caillet-Bois 1952, pp. 196-7.

<sup>7</sup> AGN, Buenos Aires, Sala VII, Legajo 129, Vernet's accounts A#12, B#6.

Malvinas Feb 10 1824

Don Jorge Pacheco

Muy Sr mio y amado: he estado  
 Llegado a esta el 9 del corriente sin novedad  
 alguna con solo cinco caballos flacos, todo  
 lastimado el Buey por q no cupieron mas.  
 Con ellos no podemos ni registrar el campo.  
 El bue he estado hasta cinco leguas  
 y no encontramos vacas ningunas sino  
 crías de toros de a quatro y de a seis.  
 Mi amado si va a protestar a mi nom-  
 bre los perjuicios de hecho. El bue que  
 se me originan y demas al Sr Escobed  
 por no ponerme los caballos q he por  
 vado. Estamos sin carne, sin galleta, y sin  
 polvora para cañon. No mantenemos el co-  
 rre por azados, pues no hay quera a can-  
 sa. No puedo salir a cazar por q no  
 hay caballos. Con deute a q estamos  
 pereciendo, he concluido.  
 No mantenerme  
 caso el tablar porando los mayores frios

y misos en este tiempo; no tenemos cosa  
 para la Isla a extra para poder de lab  
 Do Buey, ninguno me quiere dar una  
 por q con nosotros. El Capitan del Buey  
 sin q me traigo, no ha favorecido en que  
 onto ha podido, a todo un hombre de bien,  
 Pero el de la Galera no se ha postado  
 bien q se ve, y los muchos que se  
 los mactaron que ha traido. Sin embargo  
 hasta no habian con Escobed no puede  
 daban a la conducta. El bue solo me  
 pitar q q no se lo q traigo por este pun-  
 to. Los frutos, espaldas, hachas, y otros  
 van, viene todo mojado y deteriorado. No  
 puedo de mas cosas, yo estimari me  
 haga el gran favor de protestar a mi  
 nombre los perjuicios q se me originan  
 por no ponerme los caballos precisos  
 para la Corrida. En fin O debe q se  
 hacen. Pongame a la pila de la  
 y mande quanto que se a la Amigo  
 P.D.  
 Si acaso el Sr Escobed no ha estado

Fig. 6. “We are perishing”: Areguati’s letter describing the grim state of the 1824 expedition.

All members of the expedition had returned to Buenos Aires by August 1824, leaving the Falklands uninhabited apart from the crews of British and American sealing ships.

Nevertheless, the Argentine government has claimed, even at the United Nations, that it put a “governor” in the Falklands in 1823:

In 1823 the Government of Buenos Aires designated Don Pablo Areguati Governor of the Malvinas Islands... An expedition took out the supplies needed for the new settlement, but it only prospered partially...<sup>1</sup>

**All that is untrue.** Areguati was never “Governor”; there was no one from Argentina at all in the Falklands throughout 1823, and the 1824 expedition did not “prosper partially”; it gave up completely after five months. Professor Dolzer adds more fictional elements – he says:

In 1823, Buenos Aires appointed the first Argentine governor who was temporarily successful in enforcing the fishing and hunting regulations... Argentina appointed a governor for the Islands at that time [1823], and there is evidence that foreign fishermen landing on the Islands at that time respected and followed the Argentine orders concerning fishery rights in the following years.<sup>2</sup>

**All that is complete nonsense.** Areguati and his tiny band only just managed to survive themselves, let alone make any orders concerning fishery rights.

It is largely on the basis of this erroneous history about the activities of David Jewett and Pablo Areguati that Professor Dolzer based his comment in the December 2007 seminar that Argentina had satisfactorily established itself in the Falklands before Britain began to protest.

For the two years from mid-1824 until June 1826 there was no one at all from Argentina in the Falklands, and reports that Argentina had a “governor” in the Falklands when Britain signed a Friendship and Navigation treaty with Argentina in 1825 **are untrue**. In any case, the 1825 treaty said nothing about the extent of Argentine territory, and the navigation it referred to was in the River Plate.<sup>3</sup> Professor

<sup>1</sup> Statement on Argentina’s claim to the Falklands by the Argentine Representative to the UN, Dr. José María Ruda, to the UN “Special Committee of Twenty-Four” on Decolonisation, 9 September 1964; text in Raphael Perl, *The Falkland Islands Dispute in International Law and Politics*, London/Rome/New York 1983, p. 360.

<sup>2</sup> Dolzer 1993, pp. 59 and 65.

<sup>3</sup> Text of 1825 treaty in Dolzer 1993, pp. 254-255.



Dolzer<sup>1</sup> and the Argentine 2007 pamphlets (English p. 2, Spanish p. 5) imply that the absence of any objection from Britain at the time of the 1825 treaty amounted to acceptance of Argentina's claim, but **that is nonsense.**

## **12. Vernet's 1826 expedition and the 1828 concession**

Louis Vernet then went to the Falklands himself in June 1826 with a band of 25 gauchos,<sup>2</sup> to try to recover the money lost by the 1824 expedition. He encountered great difficulties, but refused to give up, and from June 1826 onwards there were some employees of his (gauchos) housed in the semi-ruined buildings at Port Louis. The Falklands have had a resident population ever since, without interruption.

It was difficult to make money just by slaughtering the wild cattle, so on 5 January 1828 Vernet approached the government in Buenos Aires in person with a colonisation proposal: he asked to be granted East Falkland if he set up a colony himself, which the Buenos Aires government would then encourage with privileges. In addition to East Falkland Vernet petitioned for "Statenland" (Isla de los Estados, near Tierra del Fuego), plus the right of fishery throughout the Falklands archipelago and on the entire coast of the Republic, and freedom from taxes for 30 years.<sup>3</sup> It was a breathtaking request – nearly all those territories were far beyond the real limits of Argentine authority at the time.

Nevertheless, the Buenos Aires government agreed that same day, 5 January 1828: Vernet was granted all of Statenland (where there was abundant wood, absent from the Falklands) and everything he wanted in East Falkland, except thirty square leagues of land earlier granted to Pacheco (which Vernet later bought), and ten square leagues by San Carlos Water which the government reserved for itself. He got the right of fishery along the mainland coast, but only south of the Río Negro, and was only granted freedom from taxes for 20 years. A condition of the grant was that Vernet had to form a colony within three years, which put him under constant pressure to get things done quickly. Vernet was well aware that it was far from clear whether Buenos Aires in fact possessed any rights over those southern regions, and that he himself was supplying a basis for a claim to them:

... having realised the natural advantages that it might provide the country, I conceived the project of establishing a Colony directly subordinate to Buenos Aires which at the same time would give the state the benefit of putting the sovereignty over the coasts and islands of the south beyond doubt.<sup>4</sup>

In other words, it was ultimately Vernet who gave Buenos Aires rights in the Falklands, not the other way round. He knew that the doubtfulness of any Argentine claim to those areas meant there was no compelling need to approach the government, but he was covering himself in case of any problems – he said later that he did not intend to strengthen the rights of Buenos Aires, but only to "secure the best protection I could for my new colony, from the Authorities for the time being, regardless who they might be" (see section 28).

At any rate, he duly took more people to Port Louis, where there was soon a population of 50 or so. But his next steps – and others he took later, see sections 15 and 28 – explain why he is omitted from the Argentine 2007 pamphlets.

## **13. Vernet submits his concession to the British**

By then Vernet must have known about the British claim to the Falkland Islands. He submitted his land grant to the British Consulate in Buenos Aires, where Vice-Consul Charles Griffiths countersigned it on 30 January 1828; whether Vernet saw the British Minister, Woodbine Parish, at that time is uncertain. Vernet certainly met Parish a year later, since Argentine newspaper reports in March 1829 revealed that a presidio (a penal settlement and frontier garrison) was to be set up in the Falklands. This alerted the British Embassy to the fact that Argentina had official designs on the Falklands – it would not just be a private venture involving slaughtering cattle, like Vernet's current venture dating from 1826. Parish asked to see Vernet and, on 25 April 1829, sent a despatch to the British Foreign Secretary, Lord Aberdeen, reporting his conversation with Vernet – Parish said:

<sup>1</sup> Dolzer 1993, pp. 86-87.

<sup>2</sup> AGN, Sala VII, Legajo 129, doc. 56. It lists 25 gauchos as going to the Falklands – not "a new crew of about 100 persons", as stated in Dolzer 1993, p. 66.

<sup>3</sup> AGN, Sala VII, Legajo 127, doc. 25.

<sup>4</sup> AGN, Sala VII, Legajo 129, doc. 59: "... habiendo entrado en el concimiento de las ventajas naturales que proveia el pais concebi el proyecto de establecer una Colonia bajo la inmediata obediencia de Bs As que al paso que al Estado le resultaria el bien de poner fuera de problema el derecho de soberania sobre las costas y isles del sud."

He would, I believe, be very happy if His Majesty's Government would take his settlement under their protection: – He sails for the Falklands with his family in about a month, and intends to pass he says some years there in promoting the objects of this colony.<sup>1</sup>

Vernet gave Parish a copy of his grants and a description of the people at his settlement at that time (April 1829), which Parish sent to Aberdeen as well.<sup>2</sup> On the basis of these despatches, the British Foreign Office instructed Parish to protest at this infringement of British sovereignty.<sup>3</sup> This was before the British government knew of any formal Argentine claim to the Falklands.

Vernet was keen to attract British and German settlers, since he had no high opinion of South Americans, though gauchos (South American cowboys) were essential to his economic activities, which consisted largely in killing the wild cattle in the islands and selling their meat and hides. He set up the settlement entirely at his own expense, without financial or other support from Buenos Aires.

#### **14. The establishment of the Comandancia**

Both Argentine 2007 pamphlets mention that on 10 June 1829<sup>4</sup> the Buenos Aires Government issued a decree setting up the "Political and Military Command of the Malvinas" ["Comandancia Político y Militar de las Malvinas"], and that the British government made an official diplomatic protest to Buenos Aires against the decree (English p. 2, Spanish p. 5). The British viewpoint was that the islands belonged to Britain, and that Buenos Aires had no right to do anything there. That formed the basis for Britain's diplomatic protest of 19 November 1829, which preserved Britain's rights.<sup>5</sup> It should be remembered that no country in the world accepted that the islands belonged to Buenos Aires – Britain regarded them as British, the United States regarded them as open to anyone, Spain still claimed them, and France may perhaps have harboured designs on them, regarding them as rightfully French since they had been first settled by France.

It should be noted here too that the government in Buenos Aires at that time was far from legal.<sup>6</sup> It was led by General Juan Lavalle, who had seized power in a coup the previous December and murdered

<sup>1</sup> Vernet to Aberdeen, "Dispatch 24", in PRO FO 6 499, p. 4. Also quoted (in Spanish) in Caillet-Bois 1952, pp. 305.

<sup>2</sup> Vernet said there were 10 white inhabitants from Buenos Aires, 10 seafaring men, mostly English and Americans, Vernet's brother and brother-in-law, 18 Negroes indentured for 10 years and 12 Negro girls – 52 people in all.

<sup>3</sup> PRO FO 6 499, page 23, dated 8 August 1829.

<sup>4</sup> 10 June was the date when the Spanish surprise attack on Port Egmont in 1770 forced the British garrison to capitulate. British historian Mary Cawkell believed that the use of this date again for the declaration of the Comandancia was no coincidence, but represented a snub to Britain. That date is now "Malvinas Day" in Argentina. Although the proclamation of the Comandancia was publicly gazetted, Vernet's appointment was not. So Argentine historians Paul Groussac and Mario Tesler both regard it as a private, rather than a public, appointment.

<sup>5</sup> Text of Britain's first protest in PRO, FO 6 499, p. 33: "The undersigned H.B.M. Charge d'Affaire has the honour to inform H.E. General Guido the Minister Encharged with the Department of Foreign Affairs that he has communicated to his Court the official document signed by General Rodriguez and Dn Salvador Maria del Carril, in the name of the Government of Buenos Ayres, and published on the 10th of June last, containing certain Provisions for the Government of the Falkland Islands. The undersigned has received the orders of his Court to represent to H.E. General Guido that in issuing this decree, an authority has been assumed incompatible with His Britannic Majesty's rights of sovereignty over the Falkland Islands. These rights, founded upon the original discovery and subsequent occupation of the said islands, acquired an additional sanction from the restoration, by His Catholic Majesty, of the British settlement, in the year 1771, which, in the preceding year, had been attacked and occupied by a Spanish force, and which act of violence had led to much angry discussion between the Governments of the two countries. The withdrawal of His Majesty's forces from these islands, in the year 1774, cannot be considered as invalidating His Majesty's just rights. That measure took place in pursuance of a system of retrenchment, adopted at that time by His Britannic Majesty's Government. But the marks and signals of possession and property were left upon the islands. When the Governor took his departure, the British flag remained flying, and all those formalities were observed which indicated the rights of ownership, as well as an intention to resume the occupation of that territory, at a more convenient season. The undersigned, therefore, in execution of the Instructions of his Court, formally protests, in the name of His Britannic Majesty, against the pretensions set up on the part of the Argentine Republic, in the decree of 10th June, above referred to, and against all acts which have been, or may hereafter be done, to the prejudice of the just rights of sovereignty which have heretofore been exercised by the Crown of Great Britain. The undersigned, &c. (signed) Woodbine Parish Buenos Ayres November 19th, 1829".

<sup>6</sup> Although the Lavalle regime was unlawful, its creation of the Comandancia was at least properly gazetted. But Vernet's own appointment was not even gazetted. So some Argentine historians, such as Paul Groussac and Mario Tesler, think it was unlawful and merely a private appointment by government, subsidiary to the creation of the Comandancia itself.

the lawful governor, Manuel Dorrego. After Lavalle's overthrow later in 1829, Brigadier Juan Manuel Ortiz de Rosas took power lawfully – and declared all the Lavalle government's acts null and void.<sup>1</sup>

### **15. Vernet's preference for Britain**

As we have seen (section 13), in April 1829 Louis Vernet had told the British Minister to Buenos Aires, Woodbine Parish, that he would be happy for his settlement in the Falklands to be under British sovereignty, and two months later in June 1829, shortly before leaving Buenos Aires for the islands, Vernet even wrote two letters to Parish inviting him to invest in his colony!<sup>2</sup>

Vernet made yet another plea for British sovereignty to William Langdon, a British naval lieutenant who visited Port Louis in late 1831 and arranged to purchase Vernet's first land concession in the Falklands. Vernet knew this message would be passed on to the British Government, and Langdon did pass it on, pointing out that:

... from a conversation I had with Mr. Vernet upon the subject, I am authorised in saying no objection would be made to the occupation of it by the British Government, provided private property would not be interfered with.<sup>3</sup>

That is well known by historians in Argentina, and Ricardo Caillet-Bois quotes it too.<sup>4</sup>

Although it was thanks to Louis Vernet that there was any Argentine presence in the islands at all, and thus any basis for a claim today, this is why his name is suppressed in some Argentine publications including the two 2007 pamphlets. Vernet provided yet more evidence of his preference for British sovereignty in his communications with the British Government in the years immediately following the British re-assertion of sovereignty<sup>5</sup> and when he went to Britain in 1852<sup>6</sup> (see section 28).

### **16. The seizure of the American ships and the “Lexington raid”, 1831-32**

But Vernet sowed the seeds of his own downfall. In 1831 he seized three American sealing ships, the *Harriet*, *Superior* and *Breakwater*, and took some of their crewmen prisoner, accusing them of “illegal” killing of seals in the islands. He did not seize any British ships – he had been warned by Britain not to do so,<sup>7</sup> and in any case he hoped for British protection and British sovereignty over the Falklands. The crew of the *Breakwater* recaptured their ship and escaped back to the United States, and Vernet sent the *Superior* sealing for his own profit, but she eventually returned to the US leaving him with only the *Harriet*, in which he and his family left Port Louis for Buenos Aires on 7 November 1831. He never returned to the Falklands.<sup>8</sup>

The American sealers and whalers, like the British, had been visiting the islands for sixty years;<sup>9</sup> the United States government did not recognise any territorial sovereignty in the Falklands and denied that Vernet (or Argentina) possessed any authority whatever in the islands. The United States Navy had

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<sup>1</sup> Rosas intended during 1832 to strip Vernet of his fishing privilege along the coast south of the Río Negro. This is revealed in a despatch of February 1833 from Francis Baylies, ex-Chargé d’Affaires of the United States at Buenos Ayres, to US Secretary of State Edward Livingston. Full text in Manning 1932, p. 176: “The existing Government have repeatedly denounced the intrusive government under which the decree of the 10<sup>th</sup> of June was issued as mutinous, and have recognized none of their laws and decrees... It may be asked why should they exhibit such pertinacity in sustaining Vernet? In my opinion they should have abandoned him without hesitation, had not the interest of some of the leading men in the Govt. been in a degree involved with his... Vernet will eventually be compelled to relinquish his claims to the Falklands which will become in some way or other the exclusive domain of the ruling family. – Hence the strong effort to sustain Vernet.”

<sup>2</sup> AGN, Sala VII, Legajo F.129, docs. 70 and 71, Vernet's letters to Woodbine Parish of 19 and 21 June 1829.

<sup>3</sup> Letter from Lt William Langdon, dated 20 January 1832, to R.W. Hay, Permanent Under-Secretary at the Colonial Office, enclosing maps of the Falklands and his grant of “Section 3” by Vernet, in PRO FO 6 499, p. 102.

<sup>4</sup> Caillet-Bois 1952, p. 316.

<sup>5</sup> PRO FO 6 501, pp. 143, 147-157.

<sup>6</sup> AGN Sala VII, Legajo 134, doc. 45.

<sup>7</sup> This warning had been made in Parish's interview with Vernet's assistant Mathew Brisbane in November 1830: PRO FO 6 499, p. 41.

<sup>8</sup> One of Dolzer's many historical errors is that he says Vernet left the Falklands after the *Lexington* raid (Dolzer 1993, p. 81).

<sup>9</sup> The activities of the New England whalers around the Falklands were mentioned by Edmund Burke in the House of Commons on 22 March 1775. An American whaling vessel was at Port Egmont when Britain evacuated the islands in 1774.

already been informed of Vernet's harassment of US ships in the Falklands, and in his State of the Union Address on 6 December 1831, US President Andrew Jackson complained about the acts of aggression against American ships in the Falklands and announced that the US Navy would despatch another ship to protect US interests in the islands. During the next few months the Americans reinforced their squadron at Rio de Janeiro, in case it were necessary to sail to the Falklands to protect US interests.

However, one US warship had already set off, having received general orders to protect US interests in the Falklands. That ship was the sloop USS *Lexington*, commanded by Captain Silas Duncan, who arrived at Buenos Aires in November 1831 to find the *Harriet* under arrest there. After consulting US Consul George Slacum,<sup>1</sup> who had protested to no avail about Vernet's seizure of American ships, Captain Duncan sailed to the Falklands, and on 31 December 1831 took prisoner the seven men who had seized the three American ships – his visit to the Falklands is known as “the *Lexington* raid”, and resulted in a sharp dispute between the United States and Buenos Aires that lasted for a long time.<sup>2</sup>

To prevent further harassment of American ships, Duncan and Captain Davison of the *Harriet* announced (perhaps untruthfully) that the New York sealing ships would band together to punish the settlement, leading the inhabitants to believe it had no future.<sup>3</sup> Duncan also declared that the islands were the “common property of all nations” (in harmony with United States government policy, which denied any territorial sovereignty there).

Duncan offered to take any who wished to leave back to Montevideo, and some 25 of the roughly 70 inhabitants took him up on the offer – he made a point of welcoming them aboard his ship. In addition, 13 out of Vernet's 15 black slaves were taken aboard by Henry Metcalf, the American settlement manager. Two black women did not leave, however, and lived as free people in the Falklands for many more years; one of them (Gregoria Parry) died in Stanley almost 40 years later in 1871. The *Lexington* then sailed away with about 46 people from the settlement aboard: 7 prisoners, 13 slaves and 26 settlers including two German families with altogether 5 children, one English-speaking family with 4 children, and a Spanish-speaking couple with one child. Apart from the seven men arrested by Duncan, all were “non-prisoners” who left the islands semi-voluntarily (encouraged to leave by Duncan's exaggerated rumours about the risks to the settlement). At least one family, from Italy, was glad to go.<sup>4</sup> The departure of these people, including nearly all the European settlers, was a serious blow to Vernet's settlement.

About 24 people remained in the settlement at Port Louis, most of them Spanish-speaking gauchos from Buenos Aires, who were Vernet's employees, plus several Charrúa Indians, who had been at war with the Montevideo authorities and gone to the Falklands with Vernet to avoid being kept in prison.

Captain Duncan released the “non-prisoners” at Montevideo and took the 7 prisoners to Rio de Janeiro, but they were taken back to Buenos Aires in another American warship<sup>5</sup> and released. None had been harmed, and by the end of April 1832 all were free.

Once back in Buenos Aires, three of the “non-prisoners” and all 7 prisoners made sworn statements describing how Captain Duncan disabled the settlement's cannons, burned its gunpowder and smashed its muskets – that of course was to prevent anyone in the Falklands from committing any more acts of aggression against American ships. Duncan also took away the property belonging to the seized American ships. But not one of those statements mentions any damage to the settlement's buildings or facilities,<sup>6</sup> and it is clear that no serious material damage was done – all the houses remained inhabitable, the settlement continued with a very much reduced population, and went on selling beef and supplies on Louis Vernet's account.

President Andrew Jackson praised Captain Duncan for his actions – Levi Woodbury, Secretary to the US Navy, wrote to Duncan saying: “... the President of the United States approves the course which you pursued, and is much gratified at the promptness, firmness and the efficiency of your measures”.<sup>7</sup>

<sup>1</sup> The American Chargé d'Affaires, John Murray Forbes, had died some months before and had not yet been replaced, so US Consul George Slacum had to do the best he could to protect American interests.

<sup>2</sup> The extensive correspondence between the United States and Argentina at this time is printed in full in Manning 1932, from which the details given here are taken.

<sup>3</sup> Stated in Henry Metcalf's affidavit to the Buenos Aires port captain, Francisco Linch, dated 9 February 1832, printed in Manning 1932, p. 212.

<sup>4</sup> The Grossy family; Julio Grossy and his brother had been in charge of seine fishing but had not prospered.

<sup>5</sup> The USS *Warren*, flagship of US Commodore Benjamin Rodgers.

<sup>6</sup> Accounts that the crew of the *Lexington* destroyed a fort at Port Louis are false – there was no fort.

<sup>7</sup> Woodbury to Duncan, 4 April 1832, in US National Archives, Washington DC, Naval Record Group 45, M147, micro film 18; quote also given on the website of USS *Duncan*, www.usduncan.org/silasbio.



The 2007 Argentine pamphlets both say that an American warship “razed” the settlement, implying that it was totally destroyed (English p. 2, Spanish pp. 5-6). **That is untrue.** None of the eyewitnesses mentioned any damage to the buildings, and Captain Duncan clearly intended the settlement to continue – he recognised its usefulness in supplying visiting ships (provided no more acts of aggression against American ships were committed), and gave certificates to the people who stayed on at Port Louis stating they had not taken part in any harassment of US ships.

The American squadron continued to gather at Rio de Janeiro, getting ready to sail to the Falklands in case there were any further interference with US ships. The American build-up worried Rear-Admiral Sir Thomas Baker, commander of the British South Atlantic station based at Rio, who reported to London that the United States might be preparing to send a squadron to the Falklands. That in the end forced the British government to act to protect its sovereignty claim, and at the end of August 1832 the Admiralty issued orders for a British warship to visit the islands annually to sustain British rights and to prevent any foreign forces (which could only have been American or Argentinian) from establishing themselves there. It is important to note that Britain only envisaged an annual visit by a British ship, not any kind of takeover of the islands.

### **17. The Baylies Mission**

At the time of the *Lexington* raid in the Falklands a new American chargé d'affaires in Argentina, Francis Baylies, was on his way to Buenos Aires. He had been appointed in January 1832, but did not arrive in Buenos Aires until June. He had been charged with finding a solution to the dispute over fishing (i.e. sealing) in the Falklands, and securing the release of the *Harriet*. When news of the *Lexington* episode reached Washington, the US government ordered him to justify Duncan's actions. In his discussions with the Argentinians, Baylies used the argument that the Falklands were British, not Argentinian, and that the United States had inherited rights to fish there from the days when they were a British colony.<sup>1</sup> He accused Vernet of piracy – in US law, seizure of ships on the high seas, or in bays or rivers where there was no authority recognised by the United States, was piracy.

After months of discussion, Francis Baylies finally despaired of being able to reach agreement. He gave up and left Buenos Aires in September 1832 in the USS *Warren*, taking US Consul George Slacum with him. In other words, the seizure of American ships in the Falklands by Louis Vernet under Argentine authority had caused the breaking-off of diplomatic relations between Argentina and the United States. Full diplomatic relations were not restored until 1844.

### **18. The *Sarandí*; the visit by HMS *Clio* to Port Louis, January 1833**

Just as Baylies was leaving Argentina for the United States, Governor Rosas of Buenos Aires sent a garrison of 26 soldiers to the Falklands, some of whom were criminals serving sentences in the army. Some took their wives and children. They were under the command of Captain Jean Etienne Mestivier, a Frenchman by birth, and left Buenos Aires on 25 September 1832 aboard the armed Argentine schooner *Sarandí*, commanded by José María Pinedo. Their purpose was to reinforce Argentina's claim to the islands against any possible action by the United States Navy – and also to continue the harassment of American sealing ships, which had caused the dispute between Argentina and the United States in the first place. Three days later British chargé d'affaires Henry Fox made an official protest against the despatch of the garrison.<sup>2</sup>

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<sup>1</sup> PRO FO 6 499, p. 180: on 15 October 1832, British chargé d'affaires Henry Fox reported to Palmerston: “... it is my duty to add... that the North Americans appear to claim, further, for themselves, an original right to freedom of fishery over all the waters adjacent to the Falkland Islands; and moreover to ground this claim (as Coheirs as it were with Great Britain in America) upon the very fact of right of sovereignty over those islands being vested in the British Crown...”.

<sup>2</sup> Britain's second protest, this time against the appointment of Mestivier, PRO, FO 6 499, p. 195: “Buenos Ayres September 28<sup>th</sup> 1832: The Undersigned, His Britannick Majesty's Minister Plenipotentiary, has observed, a decree lately published by the Government of Buenos Ayres, bearing date September 10<sup>th</sup>, by which a Civil and Military Commandant, ad interim, is appointed over certain Stations in the Atlantic Sea, including the Falkland Islands. His Excellency Senor Don Manuel Vicente Maza, Minister charged with the Department of Foreign Relations is aware that, as soon as the Decree of the 10<sup>th</sup> June 1829, issued by the Revolutionary Authorities at that period in possession of the Province of Buenos Ayres, and containing certain provisions for the Government of the Falkland Islands, had been made known to His Britannick Majesty's Government, an official Protest against any assumption of right of sovereignty over those Islands, on the part of the Argentine Republick, was, in pursuance of the express orders of His Court, presented to the Government of Buenos Ayres, by the Charge d'Affaires of His Britannick Majesty. At the

The *Sarandí* arrived at Port Louis on 6 October 1832, and Captain Mestivier took over the Falklands in a ceremony on 10 October. Then Captain Pinedo left in the *Sarandí* to patrol the islands, and on 7 December stopped another American ship, the sealing schooner *Sun*, and ordered her captain, Joseph Trott, to leave the islands, thus continuing the harassment that had caused the US-Argentine dispute.

On 30 November 1832, while Pinedo was away, nine men of the garrison, led by one of the criminals, Manuel Sáenz Valiente, and incited by the second-in-command, Adjutant José Antonio Gomila, mutinied and brutally murdered Mestivier in front of his 22-year-old wife – they shot and stabbed him in his kitchen, dragged him outside, slashed his face, stuffed raw meat and tobacco into his mouth, and jumped on his body. The mutineers then took control of the garrison and prepared to capture a British schooner (probably to escape in), the *Rapid* of Liverpool, which had called at Port Louis to make repairs. They did not capture the ship, however, and escaped to the hills, where they were caught by the crew of a French ship, the *Jean-Jacques*, which had arrived by chance, and by some loyal gauchos.<sup>1</sup> Pinedo arrived back at Port Louis on 31 December 1832 to find all in chaos.

On 2 January 1833, only three days after Pinedo's return, the small sloop HMS *Clio* arrived at Port Louis – she was the ship sent by Britain to pay the first of an intended series of annual visits. On 3 January her captain, John James Onslow, hauled down the Buenos Aires flag and hoisted the Union Jack, but his orders were not to molest any civilian inhabitants he might find in the Falklands: “you are not to disturb them in their agricultural or other inoffensive employments.”<sup>2</sup> All Onslow did was to order Pinedo to remove the Argentine garrison of 26 soldiers, with their wives and children; Pinedo protested ineffectually but duly sailed in the *Sarandí* on 5 January.

It is important to note that **the civilian residents of the islands were not expelled**. Captain Onslow's report reveals that he obeyed his instructions scrupulously – in fact he went to great lengths to persuade the inhabitants, some of whom were dissatisfied with their life in the islands, to remain – see section 19. Captain Pinedo of the *Sarandí* confirmed this in his statement to Port Captain Patricio Lynch on his return to Buenos Aires – he said Onslow had told him that:

... those inhabitants who freely wished it should remain and both they and their property would be respected as before...<sup>3</sup>

On 5 January 1833 the *Sarandí* and the schooner *Rapid* left Port Louis for Buenos Aires, the *Rapid* with nine of the mutineers aboard in irons, including the seven murderers of Mestivier.

The two ships arrived in Buenos Aires on 15 January 1833 – forestalling a second visit to the Falklands by the USS *Lexington*. On their way up the River Plate they sailed past Montevideo just before the schooner *Sun* arrived there (it had been stopped by Pinedo on 7 December 1832, see above). The *Lexington* was at Montevideo at the time, under the command of Silas Duncan's successor Captain Isaac McKeever. Captain Trott of the *Sun* told McKeever that the Argentine commander had expelled him from the Falklands, whereupon McKeever at once prepared to take the *Lexington* to the Falklands again to protect American ships against the continuing harassment by the Argentine authorities. On 16 January McKeever wrote to Levi Woodbury, the US Navy Secretary in Washington, announcing his intention “to

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time when the events that had occurred at the Falkland Islands during the last year, became known at Buenos Ayres, the Undersigned refrained from making any observation upon those events, out of a sincere and friendly desire not in any way to embarrass the Government of the Republic, in the discussions in which it seemed likely to be engaged with the United States of America. But, lest the silence of the Undersigned should by possibility be considered as implying an abandonment on the part of his Government, of the Rights of His Britannick Majesty, it becomes his duty now again officially to declare to the Government of Buenos Ayres, that the Sovereignty of the Falkland Islands, which compose a part of the Command granted in the Decree above alluded to, is vested in the Crown of Great Britain; and that no act of government or authority can be exercised over those Islands by any other power, without infringing upon the Just Rights of His Britannick Majesty. The Undersigned in making this communication to Senor Don Manuel V. Maza, avails himself &c... Signed H.S.Fox” (Note: The Revolutionary Authorities mentioned above were the so-called “Decembristas” led by Juan Lavalle, who seized power in December 1828 and executed Governor Manuel Dorrego. They lasted until ousted by Rosas and others in late 1829.)

<sup>1</sup> Details of the circumstances of the murder of Mestivier from report by Colonel Belford Hinton Wilson, 24 January 1833, in PRO CO 78/1, fols. 205 *recto* to 206 *verso*; from Pinedo's testimony at his trial, in AGN VII doc. 60; and from the logs of the schooner *Rapid*, in AGN VII, F. 130, doc. 45.

<sup>2</sup> Rear-Admiral Baker's orders to Onslow, and several different versions of Onslow's report on his visit to Port Louis, are in PRO Adm 1/2276, and in PRO FO 6 500, pp. 96 (orders), and 116-124 (Onslow's report as sent to British chargé d'affaires Philip Gore in Buenos Aires; text identical to the version sent to the Admiralty).

<sup>3</sup> From Pinedo's testimony at his trial later in 1833, AGN Sala VII, Legajo 60, p. 22: “... los habitantes que quisiesen voluntariamente quedán, que serian respetados ellos y sus propiedades como anteriormente...”

proceed thither without delay in order to give the necessary protection to our Citizens, engaged there in the exercise of their just rights”. But just then he heard that the *Sarandí* had been sighted on 15 January sailing past Montevideo, so he added a PS saying that he would go to Buenos Aires to find out what was going on, and concluded: “At my suggestion the schooner Sun will return to the fisheries and continue her occupation in defiance of the illegal warning received.”<sup>1</sup> On the same day, the secretary of the US Legation in Montevideo, John Mendenhall, wrote to US Consul George Slacum in Buenos Aires informing him that “Capt. McKeever is preparing to set sail immediately for the Islands, to give the necessary protection to our Countrymen, thus again interrupted in the exercise of their just rights, and in doing which effectually he conceives he may be even under the necessity of *capturing the Sarandí*...”<sup>2</sup>

So if Britain had not sent the *Clio* at that precise time, the *Lexington* would have returned to the Falklands and taken further steps to restrict the activities of Buenos Aires, perhaps even including the capture of the *Sarandí*. In the end, however, McKeever did not go to the Falklands, since the expulsion of the Argentine garrison by the *Clio* had removed the threat to American ships.

In Buenos Aires on 8 February 1833 the seven principal culprits in the murder of Mestivier were publicly shot by firing squad.<sup>3</sup> Two others were flogged and sentenced to further time in the army, but Adjutant Gomila, who had egged them on, was merely sentenced to be banished from Buenos Aires and placed on half pay – the leniency of his punishment drew a bitter protest from Mestivier’s widow.<sup>4</sup>

### **19. The population that was not expelled**

In his opening address to the Argentine seminar at the London School of Economics on 3 December 2007, Ambassador Mirré repeated what is probably the most serious distortion in Argentine accounts – the idea that Britain expelled an Argentine population from the Falklands in 1833. Argentina has claimed this repeatedly at the United Nations.<sup>5</sup> **But it is not true.**

When the *Clio* arrived, there were 33 genuine resident civilian settlers; Captain Onslow gave them a free choice of staying or leaving; he applied no pressure on them to leave and indeed encouraged some to stay (see below). Only four of them chose to leave – they are named in books by the prominent Argentine historians Ernesto J. Fitte<sup>6</sup> and Mario Tesler,<sup>7</sup> Argentina’s current leading expert on the Falklands:

Joaquín Acuña and his wife Juana  
Mateo González and his wife Marica

Acuña and González were gauchos who worked for Vernet. Three single men also left, described as “foreigners”: José Viel, Juan Quedy and Francisco Ferreyra. They cannot have been genuine residents, as **not one of them appears in Vernet’s accounts**; they probably arrived on the *Sarandí*, as did Máximo Warnes, who is described as a “prisoner” and was probably the first inmate for a proposed penal settlement in the Falklands. In addition, a British seaman, Charles Brasier, and an American seaman, William Drake, were taken aboard the *Clio*. Vernet’s American settlement manager, Henry Metcalf, left in the *Rapid*; he is known to have wanted to leave, and he claimed Vernet owed him money.<sup>8</sup> Only 11 civilians left, most of whom were not genuine residents. They were not expelled; they made a free choice.

Of the civilian residents, 22 remained at Port Louis: 12 from Argentina (8 gauchos, 3 women and 1 child); 4 were Charrúa Indians from Uruguay; 2 were British, 2 German, one French and one from Jamaica.<sup>9</sup> So over half the population who stayed were Argentinian.

Before he left, Captain Pinedo told the Frenchman who stayed, the illiterate head gaucho Jean Simon, that he was to be “Comandante Político y Militar”. Whether Simon agreed to this or not, he certainly never attempted to act as such. But he was loyal to his employer. He defended Vernet’s property against other gauchos who wanted to share it among themselves, and maintained Vernet’s business, which later cost him his life (see section 20). Argentine historians know very well that he was not expelled.

<sup>1</sup> McKeever to Woodbury, 16 and 18 January 1833, in US Archives Naval Record Group 45, microfilm 18, Doc. 20.

<sup>2</sup> Letter from John Mendenhall, US Legation secretary in Montevideo, to Slacum, 16 January 1883, enclosed in Slacum’s letter, 13 July 1833, to US Secretary of State Louis McLane, in Manning 1932, 184, fn.; Manning’s italics.

<sup>3</sup> Report in the English-language *British Packet and Argentine News*, Buenos Aires, 9 February 1833, p. 1.

<sup>4</sup> In a letter to the Buenos Aires newspaper *Lucero*, 9 February 1833.

<sup>5</sup> E.g. in the statement on Argentina’s claim to the Falklands by the Argentine Representative to the UN, Dr. José María Ruda, to the UN Decolonisation Committee, 9 September 1964; full text in Raphael Perl, *The Falkland Islands Dispute in International Law and Politics*, London/Rome/New York 1983, 351-372.

<sup>6</sup> Ernesto J. Fitte, *La Agresión Norteamericana a Las Islas Malvinas*, Buenos Aires 1963, pp. 372, 373.

<sup>7</sup> Mario Tesler, *El Gaucho Antonio Rivero*, Buenos Aires (no date), pp. 235-237.

<sup>8</sup> Details from the “ship’s log” of the *Clio*, PRO Adm 53/258, and from AGN VII, F. 130, doc. 62.

<sup>9</sup> Numbers from names in Captain Onslow’s report, PRO Adm 1/2276, and Belford Wilson’s report (see below).

Only the garrison was expelled. They had been in the islands for only three months since arriving on 6 October 1832, and of the 26 soldiers, 10 had been involved in the murder of Mestivier. Nine of them were under arrest aboard the British schooner *Rapid*. The garrison was in no sense a genuine population.

Far from expelling the resident population, Captain Onslow did his best to persuade them to stay. In his report he states:

I had great trouble to persuade 12 of the Gauchos to remain on the Settlement, otherwise cattle could not have been caught, and the advantages of refreshments to the shipping must have ceased.<sup>1</sup>

Later in his report Onslow states:

I regretted to observe a bad spirit existed amongst the Gauchos, they appeared dissatisfied with their wages... The whole of the inhabitants requested me to move the government in their favour for grants of land.

The gauchos were dissatisfied because they were being paid in worthless paper “currency” printed by Vernet instead of silver coins.

Onslow sailed in HMS *Clio* on 10 January 1833, and a few days later another small British ship, HMS *Tyne*, commanded by Captain Charles Hope, paid a brief visit to Port Louis (14-18 January). On board was Colonel Belford Hinton Wilson, the British ambassador-designate to Peru, who spoke fluent Spanish. He spoke in Spanish to the gauchos, who told him they had been paid in silver by Captain Onslow, whereas Vernet had paid them in worthless paper “currency”. Wilson reported to the Admiralty:

These Gauchos would cheerfully remain on the Island under any Englishman whom the Government may please to appoint...<sup>2</sup>

All this shows beyond doubt that **the genuine inhabitants were not expelled or in any way molested**. In fact they appear to have looked forward to an improvement in their situation under the British flag. So the Argentine claim that Britain expelled an Argentine population from the Falkland Islands in 1833, which was repeated by Ambassador Mirr  at the seminar on 3 December 2007, is **untrue and a most serious error**. Nevertheless it underlies the Argentine claim to the Falklands and provided much of the justification for the Falklands War of 1982 in which a thousand people died.

## **20. The “year of limbo”, 10 January 1833 to 10 January 1834**

Captain Onslow had merely been ordered to visit the islands, no more, and Britain did not actually occupy the islands at that time, though the storekeeper William Dickson was instructed to hoist a British flag on Sundays and when a ship approached. That was typical of British policy at the time. British interests were maintained in the cheapest way possible – in the 1830s, unlike the later Victorian period, British governments were rigidly against acquiring overseas territories.

There followed exactly a year, 10 January 1833 to 10 January 1834, during which there was no resident official authority in the islands at all, neither British nor Argentinian. There were still British and American sealing ships, mainly around the western islands, and the settlement at Port Louis continued and was resupplied from Buenos Aires by Louis Vernet. Vernet chartered the British schooner *Rapid* and sent it back to Port Louis in March 1833 with stores and seven more civilians: Vernet’s Director of Fisheries, Mathew Brisbane (who had left aboard the *Sarandi* of which he had been pilot), four gauchos, the British clerk Thomas Helsby, and Ventura Pasos, a well-connected Argentinian from Buenos Aires – he was the nephew of one of the first rulers of Argentina after independence and was related by marriage to Vernet’s wife. That brought the population of Port Louis up to 29, of whom three were British, two were German, one French, and the remaining 23 were Spanish-speaking (18 of them from Buenos Aires). The *Rapid* sailed again from Port Louis on 5 April 1833, taking to Buenos Aires a full cargo of produce from the islands for Vernet, mainly hides and rabbit skins prepared by the inhabitants of Port Louis.<sup>3</sup>

**That shows how untrue it is to say that the Argentine population was “expelled”.**

<sup>1</sup> From Onslow’s report, PRO Adm 1/2276. The 12 gauchos were the 8 from Buenos Aires plus the 4 Charr as.

<sup>2</sup> From Belford Hinton Wilson’s report in PRO CO 78/1, fols. 212 *recto* to 213 *recto*.

<sup>3</sup> Details from the brief untitled settlement log kept by the English-speaking inhabitants at Port Louis from 3 March to 25 August 1833; original in PRO Adm 1/42, nos. 1 and 2; most of it was published (in Spanish translation) in *El Episodio Ocurrido en Puerto de la Soledad de Malvinas el 26 de Agosto de 1833: Testimonios Documentales*, issued by the Academia Nacional de la Historia, Buenos Aires 1967, pp. 29-36.



A few British ships paid visits during 1833 (HMS *Tyne* for four days in January, HMS *Beagle* with Charles Darwin aboard in March), but there was no official presence. Captain Onslow had paid in silver for the beef he bought from the inhabitants, and Onslow was instrumental in getting a promise from Vernet's gaucho foreman Jean Simon that he would continue to pay the gauchos in cash,<sup>1</sup> but Vernet's assistant Mathew Brisbane had brought more of Vernet's worthless paper currency when he returned to Port Louis aboard the *Rapid* in March 1833 and reverted to paying the gauchos with it. In the end, on 26 August 1833, eight of the gauchos, led by Antonio Rivero, murdered five of the leading inhabitants: Mathew Brisbane, William Dickson, Anton Vaihinger (a German labourer), Jean Simon, and Ventura Pasos from Buenos Aires. All these were employees of Louis Vernet, **not** – as some mythmakers have tried to suggest – representatives of Britain.

### **21. Britain takes over, January 1834; the first Falklands ancestors; the foundation of Stanley**

In the end Britain acted to restore order, though too late to save the lives of the five murdered inhabitants. Following Britain's parsimonious policy at that time, no governor was sent, but only a mere naval Lieutenant, Henry Smith, to become "resident naval officer" in the islands: he had been a lieutenant aboard HMS *Tyne*. On 10 January 1834 – a year to the day since the *Clio* sailed away – Smith raised the Union Jack at Port Louis and set up a tiny administration, supported by four sailors. The eight criminal gauchos murdered one of their own number, but were then caught by Smith. His task was made easy by Antonio Rivero, who betrayed his companions, but has since been hailed as a hero by Argentine mythmakers.<sup>2</sup> Smith sent them all for trial in Britain, but only British citizens could be tried in Britain for murders committed abroad, even in the King's dominions. Doubts over whether the murderers could reasonably be regarded as British led to their being sent back to Montevideo and released.

Since 10 January 1834 the Falkland Islands have been administered by Britain, first under a mere "resident naval officer", then from 1842 under a Governor. The population slowly increased; several people who arrived in the early 1840s still have descendants in the islands now in the 7th or 8th generation. They have become the natural population of the Falklands.

The present capital of the islands, Stanley, also known as Port Stanley, was founded in 1845. That again demonstrates how old the British presence in the islands is – Stanley is the oldest town in the world so far south. Many years afterwards, Argentine towns such as Ushuaia and Puerto de Santa Cruz were founded by missionaries from the Falklands.

### **22. The Baring Debt**

At the seminar in December 2007, Ambassador Mirré omitted to mention the efforts Governor Rosas made to "sell" Argentina's claim to the Falklands in exchange for annulment of the Baring Debt (a loan taken out by the Argentine government in the 1820s from Barings Bank in London, on which Argentina had suspended payment). Rosas first instructed his Minister to London, Manuel Moreno, to discreetly find out (without revealing that it was an idea of the Argentine Government) if Britain would be amenable to such an exchange in 1838. Then in 1842, when the Baring emissary Franck de Pallacieu Falconet went to Buenos Aires to try to get payments on the loan restarted, Rosas again offered to exchange the Argentine claim to the Falklands for annulment of the loan, and urged him to persuade the British Government to accept this. Manuel Moreno in London was also instructed to raise the matter directly with the British Government. These offers were turned down, since the British government's view was that the islands were British and nothing to do with Argentina. The affair is described in detail in an article in the Argentine periodical *Boletín del Centro Naval*, Buenos Aires January/February 1944,<sup>3</sup> which makes it clear that the question was put to British Foreign Secretary Lord Aberdeen, who turned it down.<sup>4</sup> Moreno thought the basic problem was simply that the British government held that Britain's title to the islands was good and did not accept Argentina's sovereignty claim. But in addition, the Baring Loan was by then so long in arrears that with accumulated interest it was worth about £1,900,000 – much more than the Falkland Islands were worth at that time.

<sup>1</sup> AGN, Sala VII, Legajo 130, Doc 60. Letter by William Dickson to Vernet, dated 26 March 1833.

<sup>2</sup> A man by the name of Antonio Rivero was killed fighting the British at the battle of Obligado in 1845. Argentine mythmakers have claimed this was the same man, thus contributing to the myth that he was an anti-British hero. During the 1982 War, Port Stanley was re-named Puerto Rivero in his honour, until better-informed Argentine historians pointed out that he was just a common criminal.

<sup>3</sup> Humbert F. Burzio: "Rosas, el empréstito inglés de 1824 y las Islas Malvinas", in *Boletín del Centro Naval*, Buenos Aires, January/February 1944, p. 647ff.

<sup>4</sup> AGN Sala X, 1-11-2. Argentine Chargé d'Affaires in London Manuel Moreno to Minister for Foreign Affairs Felipe Arana, dated 5 April 1843.

### **23. Argentina's protests, 1833-1849; "prescription"**

Argentina protested to the United States in 1832 at the actions of Captain Duncan of the *Lexington*, and in 1833 protested to Britain at the actions of Captain Onslow. For the next 17 years, from 1833 to 1849, Argentina protested regularly against the possession of the Falklands by Britain. There were two kinds of protests: first, there were three campaigns by diplomatic letters, with some gaps of several years between them, in 1833-34, 1841-42 and (one letter only) in 1849.<sup>1</sup> Secondly, a brief protest was made in the "Message to Congress" every year from 1833 to 1849 inclusive. The Messages to Congress were official addresses at the highest level (like the State of the Union Address by the President of the United States), made each year at the ceremonial opening of the Argentine Congress. They were of international significance – foreign diplomats attended, international affairs were treated in detail, and the addresses were printed, not only in Argentina but in other countries including Britain.<sup>2</sup>

In international law, the effect of protests is to "stop the clock" and prevent the operation of "prescription", also called "preclusion", the lapsing of one country's claim against another. Protests do not change a claim, so its strengths and weaknesses remain; it simply continues as it was. So the Argentine claim (with all its weaknesses) was kept alive by those regular protests. Failure to protest against some grievance may be a sign of "acquiescence" (i.e. acceptance, agreement), and acquiescence may also be shown by other acts or statements that suggest that a country's claim is not being maintained. Argentina's protests ceased after 1849; section 24 explains why.

### **24. The Convention of Settlement; the end of Argentina's claim, May 1850**

In the 1840s Britain and France intervened militarily in the River Plate region, mainly in what is now Uruguay. However, both countries' policy was a failure, and both withdrew their forces following treaties concluded with Argentina, which at the time was ruled dictatorially by General Manuel de Rosas, Governor of Buenos Aires. Negotiations between the British representative, Henry Southern, and General Rosas filled most of 1848 and 1849, and resulted in a peace treaty, the "Convention between Great Britain and the Argentine Confederation, for the Settlement of existing Differences and the re-establishment of Friendship". We refer to it for short as the "Convention of Settlement"; it is also known as the "Arana-Southern Treaty" after its signatories, the Argentine Foreign Minister Felipe Arana and the British emissary Henry Southern. The Convention was referred to as a "peace treaty" many times by both sides; it represented a considerable triumph for Rosas, since he was able to impose his will on two humiliated opponents, Britain and France. But Rosas was prepared to pay a price – the Falklands. By failing to mention Argentina's claim to the islands in the Convention, he effectively dropped it.

No official Argentine account, in the 2007 pamphlets or elsewhere, mentions the Convention of Settlement at all, or suggests why Argentine protests ceased after 1849, although several Argentine historians do discuss the Convention and mention the cessation of Argentina's protests (section 25).

But the Argentine 2007 pamphlets not only fail to mention that Argentine protests ceased; they even imply, wrongly, that Argentina continued to keep the issue alive. They say (English p. 3, Spanish p. 7): "The issue remained unsettled and was recognised as such by the British Foreign Secretary in 1849..."

**It is untrue to say that the British Foreign Secretary recognised the issue as "unsettled".** The British Foreign Secretary at the time, Lord Palmerston,<sup>3</sup> was well aware that the negotiations for the Convention of Settlement were proceeding in Buenos Aires and that Argentina was showing signs of acquiescence in Britain's possession of the Falklands. On 27 July 1849, in reply to a question in the House of Commons, he said:

... a claim had been made many years ago, on the part of Buenos Ayres, to the Falkland Islands, and had been resisted by the British Government. Great Britain had always disputed and denied the claim of Spain to the Falkland Islands, and she was not therefore willing to yield to Buenos Ayres what had been refused to Spain. 10 or 12 years ago the Falkland Islands, having been unoccupied for some

<sup>1</sup> All these protests by letter are printed in full in Alfredo Becerra, *Protestas por Malvinas*, Buenos Aires 1998.

<sup>2</sup> Several Messages to Congress were published in Britain in the 1830s and 1840s, in English translation, in the volumes of *British and Foreign State Papers (BFSP)*, and all of them from 1810 to 1910 inclusive were reprinted in full in Spanish in *Los Mensajes 1810-1910*, by H. Mabrugaña, Buenos Aires 1910.

<sup>3</sup> Henry John Temple, 3rd Viscount Palmerston (1784-1865), three times Secretary of State for Foreign Affairs: 22 November 1830 to 15 November 1834; 18 April 1835 to 2 September 1841; and 6 July 1846 to 26 December 1851, and twice Prime Minister: 6 February 1855 to 19 February 1858 and 12 June 1859 to 18 October 1865. He sat in the House of Commons because his Viscounty was in the Irish peerage.

time, were taken possession of by Great Britain, and a settlement had ever since been maintained there; and he thought it would be most unadvisable to revive a correspondence which had ceased by the acquiescence of one party and the maintenance of the other.<sup>1</sup>

The Argentine ambassador in London, Manuel Moreno, clearly unaware of what Rosas was negotiating, wrote to Lord Palmerston on 31 July 1849 protesting against that statement. His letter quoted Palmerston's phrase about the "acquiescence of one party [i.e. Argentina] and the maintenance of the other [i.e. Britain]", and he also quoted several recent protests including some from the Messages to Congress. On 8 August 1849 Palmerston replied briefly, stating that "I have always understood the matter in question to stand exactly in the way described by you in your letter."<sup>2</sup> In other words, Palmerston himself had indeed mentioned Argentina's acquiescence just as Moreno had said, and the Argentine protests had indeed been made just as he had stated too, so Moreno's letter was a correct statement of the case – including Palmerston's mention of Argentina's acquiescence.

**Palmerston did not say the question was "unsettled" – indeed quite the reverse; he said it had been ended by Argentina's acquiescence.**

*Convention for re-establishing the perfect Relations of Friendship between Her Britannic Majesty and the Argentine Confederation.*

Her Majesty the Queen of Great Britain, and his Excellency the Governor and Captain-General of the Province of Buenos Ayres, charged with the foreign relations of the Argentine Confederation, being desirous of putting an end to the existing differences, and of restoring perfect relations of friendship, in

*Convencion para restablecer las perfectas Relaciones de Amistad entre la Confederacion Argentina y Su Majestad Británica.*

El Excelentísimo Señor Gobernador y Capitan General de la Provincia de Buenos Ayres, encargado de las Relaciones Exteriores de la Confederacion Argentina, y Su Majestad la Reyna de la Gran Bretaña, deseando concluir las diferencias existentes, y restablecer las perfectas relaciones de amistad, en

VII. Under this Convention perfect friendship between Her Britannic Majesty's Government and the Government of the Confederation, is restored to its former state of good understanding and cordiality.

7°. Mediante esta Convencion, queda restablecida la perfecta amistad entre el Gobierno de la Confederacion, y el de Su Majestad Británica, á su anterior estado de buena inteligencia y cordialidad.

Fig. 7. Preamble and Article VII of the Convention of Settlement, 1849/1850<sup>3</sup>

The Convention of Settlement was signed on 24 November 1849 and ratified by both sides in Buenos Aires on 15 May 1850 – at that time treaties only came into force after they had been ratified. And after the ratification of the Convention, Argentina completely ceased to mention the Falkland Islands to Britain – for over a third of the 19th century.

The introduction and the ratification document of the Convention speak of "putting an end to the existing differences" and to "the settlement of existing differences" between Britain and Argentina, and the title and Article VII say that "perfect friendship" or "perfect relations of friendship" between Britain and Argentina are restored by the Convention (fig. 7). So, once the Convention had been ratified, "the existing differences" between Argentina and Britain had been settled and "perfect friendship" between the two countries had been restored.

It is noteworthy that the Falklands were not mentioned once, neither during the negotiations on the Convention, nor in the text of the treaty itself. From Britain that was to be expected: Britain's position was that the islands were British and were nothing to do with Argentina. But from Argentina that was remarkable – a peace treaty normally "resets the clock" in the relations between its signatories, and in signing and ratifying it without adding a reserve of sovereignty, or even any mention of the Argentine claim, Argentina was allowing the new situation to reflect Britain's view that the islands were British.

The Convention of Settlement ended Argentina's protests over the Falklands. After the Message to Congress in December 1849, the Falklands were not mentioned again in the Messages to Congress for 91 years until 1941 (see section 37). The Messages had been a natural forum for Argentina's annual protests from 1833 to 1849 inclusive, and remained a top-level diplomatic forum that sometimes dealt in detail with Argentina's territorial disputes with other countries (Chile and Brazil), but the Falklands were not mentioned at all. Argentina did not mention the Falklands in any way to Britain for 34 years until 1884, and there was no Argentine diplomatic protest against the possession of the Falklands by Britain for 38 years until January 1888 (see section 34). And after the protest of 1888 there was no diplomatic protest by Argentina to Britain for the rest of the 19th century and well into the 20th. The totally different behaviour of Argentina before and after the Convention of Settlement strongly supports Lord Palmerston's statement

<sup>1</sup> *The Times*, London, Saturday 28 July 1849, p. 2, col. 6.

<sup>2</sup> Copy of Palmerston's letter in the Public Record Office, London, FO 6 502, fol. 376 *recto*; full texts of Moreno's letter of 31 July 1849 (in Spanish) and Palmerston's reply (in English and Spanish) in Becerra 1998, pp. 136-140.

<sup>3</sup> *British and Foreign State Papers (BFSP)* 1848-1849 (printed London 1862), pp. 7 and 10.

about Argentina's acquiescence. Not only that; in the decades following the Convention, Argentina gave many clear indications that the Falklands dispute with Britain had ended (see sections 29 and 35).

**It is impossible to reconcile the Convention of Settlement with any idea of a continuing Argentine claim to the Falkland Islands. By that Convention, Argentina accepted that the Falklands were British.**

## **25. Historians' opinions of the Convention of Settlement**

There is plenty of evidence from various historians that the Convention of Settlement ended Argentina's claim to the Falklands. In a book published in Madrid in 1919, the Mexican diplomat and historian Carlos Pereyra says that the Argentine dictator General Manuel Rosas wanted to purchase the end of Britain's involvement in River Plate affairs by giving up the claim to the Falklands, and Pereyra adds that the effect of the Convention was as if it had had an unwritten article stating that "Britain retained the Falkland Islands."<sup>1</sup> Pereyra's book was reprinted in Buenos Aires in 1944, with the same statements.<sup>2</sup>

The negative effect of the Convention of Settlement was also mentioned by a member of the Argentine Chamber of Deputies, Absalón Rojas, in a major debate on 19 July 1950 on Argentina's claim to the Falklands. Rojas blamed General Rosas for the loss of the Falklands to Britain, and complained that the restoration of "perfect friendship" between Britain and Argentina without any reference to the Falklands was a serious omission and a weak point of the Argentine claim.<sup>3</sup>

Other Argentine historians also believe that the Convention of Settlement seriously affects Argentina's claim to the Falklands. The historian Ernesto Fitte criticised it in 1974,<sup>4</sup> and Alfredo R. Burnet-Merlín, in a book printed in Buenos Aires in 1974 and reprinted in 1976, quotes both Pereyra and Rojas, and says that the omission of any mention of the Falklands in the Convention of Settlement was "a concession to Britain or a culpable oversight".<sup>5</sup>

## **26. The Argentine Gaps**

**Argentine accounts of the Falkland Islands have long gaps in them. Both the Argentine 2007 pamphlets jump from 1849 to 1884, as if there had been no history in between, and as if Argentina had maintained its claim throughout. But Argentina did not maintain a claim at all, and the years in between are vital for an understanding of the Falklands.**

## **27. The 1850s**

In the census of 1851, the population of the Falkland Islands was recorded as 384, of whom 140 were children under 15. The 1861 census gave a total population of 541 including 117 children in education, many of whom were born in the Islands. By 1859 two more islands as well as East Falkland had been permanently settled: New Island and Keppel Island became inhabited for the first time in history.

In addition, 1851 saw the foundation of the Falkland Islands Company, which played a major role in the development of the islands for many years, initially a dynamic and positive role, though during the 20th Century it began to hold back the development of the islands.

In 1853 Hamburg (a partly independent state at that time), and in 1858 Denmark, opened consulates in Stanley. These were the first of a dozen countries that maintained consulates in the islands for much of the 19th century and well into the 20th, implying that they accepted the islands as British.

**For the whole of the 1850s, Argentina did not mention the Falklands to Britain.**

## **28. Vernet in Britain, 1852-58**

Ignored by Argentina after the Convention of Settlement, Louis Vernet decided to take up the matter of his financial losses with Britain. He did not expect to be able to claim for the lands he had been

<sup>1</sup> Carlos Pereyra, *Rosas y Thiers. La Diplomacia Europea en el Río de la Plata 1838-1856*, Madrid 1919, pp. 202, 206.

<sup>2</sup> Carlos Pereyra, *Rosas y Thiers. La Diplomacia Europea en el Río de la Plata 1838 – 1856*, new edition Buenos Aires 1944, pp. 217, 222.

<sup>3</sup> Verbatim record in *Diario de Sesiones de la Cámara de Diputados, Año del Libertador General San Martín, 1950, Tomo II, Período Ordinario, 6 de julio-10 y 11 de agosto*, Buenos Aires 1951 pp. 1095-1096.

<sup>4</sup> Ernesto J. Fitte *Crónicas del Atlántico Sur*, Buenos Aires 1974, p. 256.

<sup>5</sup> Alfredo R. Burnet-Merlín, *Cuando Rosas quiso ser inglés* ["When Rosas wanted to be British"], Buenos Aires, printed April 1974, June 1974 and October 1976, pp. 20-22.



granted, but he did claim for his houses, moveable property, etc., in particular the trained hunting horses that he had taken to the Falklands for the use of the gauchos.

Vernet had made a lot of money from a patented chemical mixture that protected leather (a major Argentine export) against worm. Financed by this, he set off for Britain. He landed in 1852, and submitted a claim to the Colonial Office for £14,296, which with interest Vernet claimed should rise to £28,000. Much of this was disputed by the British Government; Vernet's ten stone houses had been in a very poor state of repair, and Admiral Sir Graham Hammond, who had visited the Islands in 1835, had considered that Vernet's property was not even worth £1,000.<sup>1</sup>

But Britain did accept Vernet's claim for his hunting horses. It finally offered Vernet £2,400, of which £550 would be withheld against some of his paper currency that was still in the islands. The British government refused to pay Vernet any interest, as he had not raised the subject from 1839 until 1852.

Vernet was appalled. Finally, and under protest, he accepted the offer in 1858, and signed a waiver that prevented him making further claims.<sup>2</sup> He had just received news of the death of his wife and was deeply depressed. He returned to Buenos Aires, and over the next two decades until his death in 1871, he attempted to get money from the United States for the losses he alleged the *Lexington* had caused him.<sup>3</sup> However, he was ultimately unsuccessful.

In Vernet's correspondence with the British Government during his long stay in Europe, he again emphasised his preference for British sovereignty, as he had in the 1820s and 30s (sections 13 and 15) – in a letter of 5 May 1856 he wrote to Lord Harrowby (Lord Privy Seal 1855-1858):

... the wish, to get my Colony under the British Flag, was in accordance with my own interests and those of my colonists, which required such change of flag; because situated as we were on the Highway of Nations, we could not expect permanent prosperity, unless placed under the sovereignty of a Government capable of protecting us against filibustering<sup>4</sup> or other aggressions. As to the grants of Land, wild cattle, and privileges, these were originally obtained not with the view to establish any claim to the Islands on the part of Buenos Ayres, but merely to secure the best protection I could for my new colony, from the Authorities for the time being, regardless who they might be.<sup>5</sup>

It was largely thanks to Louis Vernet that Argentina acquired a basis for a claim to the Falklands, but his often-expressed preference for British sovereignty makes him a poor proponent of the Argentine case.

## **29. The 1860s**

Argentina had effectively accepted that the Falklands were British by the Convention of Settlement in 1850. During the 1860s, that acceptance was confirmed at the highest level in statements made by several Argentine presidents or vice-presidents in their Messages at the opening of the Argentine Congress. Those Messages had been a natural international forum for official protests to Britain over the Falklands from 1833 to 1849, but now they contained several statements implying that there was no dispute between Argentina and Britain and hence that there was no claim to the Falkland Islands.

For example, in his Message at the opening of the Argentine Congress on 1 May 1865, President Bartolomé Mitre said that Argentina had scrupulously fulfilled undertakings with Britain and France, so "there was nothing to prevent the consolidation of friendly relations between this country and those Governments."<sup>6</sup> If there had been a dispute between Britain and Argentina over the Falklands, there would have been something to prevent that consolidation.

A year later, Vice-President Marcos Paz opened Congress on 1 May 1866, and in his Message mentioned some old claims for private losses by British citizens:

<sup>1</sup> PRO FO 6 501, p. 139. In his letter to the Admiralty, dated 10 July 1835, Admiral Hammond said: "With regard to his [Vernet's] proposal for an advance of £2000 I am of opinion that all the property on the Island (except the wild cattle) even if admitted to be his, would be overvalued at half this sum."

<sup>2</sup> AGN, Sala VII, Legajo 131, docs 49 to 54.

<sup>3</sup> Vernet's daughter Malvina had married an American officer, Greenleaf Cilley. He and his brother Jonathan tried to get the US authorities to pay damages on several occasions. They also lobbied Domingo Faustino Sarmiento, who was Argentine Ambassador to the US until he became president of Argentina in 1868. Sarmiento considered Vernet a mere mercenary and found reasons for not helping him.

<sup>4</sup> I.e. piratical attacks.

<sup>5</sup> AGN, Buenos Aires, Sala VII, F.131, doc. 46; letter from Vernet to Lord Harrowby dated 5 May 1856.

<sup>6</sup> Translation here from *British and Foreign State Papers (BFSP) 1865-1866* (printed London 1870), p. 1174; original in H. Mabragaña, *Los Mensajes 1810-1910*, Buenos Aires 1910, vol. III, p. 227: "... no ha habido sino motivos para consolidar las relaciones amistosas que existen entre éste y aquellos gobiernos."

The British Government has accepted the President of the Republic of Chile as arbitrator in the reclamation pending with the Argentine Republic, for damages suffered by English subjects in 1845. **This question, which is the only one between us and the British nation, has not yet been settled.**<sup>1</sup>

The wording of that statement is perfectly clear – apart from the question of personal claims for damages, **there was no dispute between Argentina and Britain. The Falklands were no longer an issue between the two countries.**

In his Message to the Argentine Congress on 1 May 1869 President Domingo Sarmiento expressed satisfaction at the state of Argentina's foreign relations:

The state of our foreign relations fulfils the aspirations of the country. Nothing is claimed from us by other nations; we have nothing to ask of them except that they will persevere in manifesting their sympathies, with which both Governments and peoples have honoured the Republic, both for its progress and its spirit of fairness.<sup>2</sup>

All those statements, made in the official Message at the ceremonial opening of the Argentine Congress in the 1860s, strongly imply that there was no dispute between Britain and Argentina over the Falklands.

For the Falklands the 1860s were an even more important decade than the 1850s. In 1863 the islands were visited by an official Spanish diplomatic and scientific expedition commanded by Vice-Admiral Luiz Hernández de Pinzón, who in January had visited Buenos Aires and initiated negotiations for the recognition of the whole of Argentina by Spain (at that time the Province of Buenos Aires had only just become reunited with the rest of Argentina, and Spain did not have a recognition treaty with Buenos Aires). The expedition's two frigates spent six weeks in Stanley harbour from 27 February to 9 April 1863; they fired a salute to the British flag and received Governor James Mackenzie on board, and the expedition accepted gifts of scientific specimens. They were official representatives of the former colonial power, Spain, and clearly accepted the Falklands as British.

By 1870, the islands' total population had risen to 811, including 120 children in education, most of whom had been born in the islands. Large amounts of land were leased out on East Falkland, and in the later 1860s West Falkland acquired permanent residents for the first time – by the end of the 1860s the whole of it had been parcelled out into farms and the first babies had been born there.

All that is highly significant in international law. During the 1860s **Britain performed innumerable administrative acts in the Falklands, without the slightest protest from Argentina.** Failure to protest at administrative acts by another country is an important constituent of acquiescence.

By 1868, the Argentine government had so completely forgotten about its claim to the Falklands that it granted Staten Island (Isla de los Estados) off Cape Horn to the Argentine explorer and navigator Commander Luis Piedra Buena, although it had been part of the January 1828 grant to Louis Vernet.

In 1869 Belgium, Italy and Germany (the North German Confederation) opened consulates in Stanley; the North German consulate then took over the representation of Hamburg. With Denmark, there were now four countries (plus Spain) that accepted the Falklands as British.

**For the whole of the 1860s, Argentina did not mention the Falklands to Britain.**

### **30. The 1870s**

In 1875 the United States opened a consulate in Stanley, with a paid full-time American consul, thus abandoning the US government's earlier policy of not recognising any territorial sovereignty in the Falklands. In 1877 Chile opened a consulate, as did Sweden and Norway jointly (the two crowns were united at that time) – their consuls were unpaid honorary consuls, but they nevertheless counted in international law as full consuls.

The opening of a consulate is significant in international law. It does not *constitute* diplomatic recognition (that is achieved by the exchange of ambassadors), but it *implies* diplomatic recognition – if a country does not recognise the legitimacy of another's government, it does not open a consulate there. By

<sup>1</sup> Translation from *BFSP 1866-1867* (printed London 1871), p. 1009; original in Mabrugaña 1910, vol. III, p. 238: "Este mis mo gobierno [= el gobierno británico] aceptó por árbitro al Presidente de la República de Chile, sobre perjuicios sufridos por súbditos ingleses en 1845. Aun no se ha resuelto esta cuestión que es la única que con aquella nación subsiste." (Our emphasis added here.)

<sup>2</sup> Translation here from *BFSP 1870-1871* (printed London 1877), 1227-1228; original in Mabrugaña 1910, vol. III, p. 286: "El estado de nuestras relaciones exteriores responde á las aspiraciones del país. Nada nos reclaman las otras Naciones: nada tenemos que pedir de ellas, sino es la continuación de las manifestaciones de simpatía con que de parte de pueblos y gobiernos ha sido favorecida la República por sus progresos y espíritu de justicia."

the end of the 1870s there were consulates of Belgium, Chile, Germany, Italy, Sweden and Norway (jointly), and the United States in Stanley.<sup>1</sup> Those seven countries clearly did not accept that there was a valid Argentine claim to the Falkland Islands – and by 1875 Argentina had not mentioned it for over a quarter of a century anyway.

By 1880 the population of the Falklands had risen dramatically to 1,497, and 140 children were at school. There were 60 births that year and only 9 deaths, showing a natural increase of about 50 native-born people. A few of those children were **second-generation Falkland Islanders** – they were the children of parents who had themselves been born in the Falklands. The Falkland Islanders were beginning to become a distinct population.

**For the whole of the 1870s, Argentina did not mention the Falklands to Britain.**

### 31. **The “Campaign of the Desert” (Campaña del Desierto) and the *Devonshire Incident***

During the late 1870s Argentina expanded considerably towards the south; European immigrants, particularly from Italy, were flooding into the country, and the railways were spreading out too. The revolution in firearms technology during the American Civil War had produced the breech-loading Remington rifle, which gave Argentine forces an immense advantage over the native Indians, who had been fighting for decades against the Argentine colonists who were usurping their ancestral lands.

Some Indian counter-attacks were serious – the huge Indian war parties, known as “Malones”, sometimes as many as a thousand strong, devastated a number of Argentine settlements. To deter them, the Argentine Minister of Defence to President Avellaneda, Adolfo Alsina, began to construct a defensive ditch and wall, known as the *Zanja de Alsina*, from near Bahía Blanca to the north-west. But only about half of it, some 300 kilometres, had been built by the time he died in 1876, and it had not been very successful at keeping the Indians out. He was replaced by the much more aggressive Julio Argentino Roca, whose genocidal campaign in the late 1870s with the Remington breech-loading rifle killed 50 to 60 thousand Indians and destroyed their ability to resist for ever. So much territory was acquired for Argentina that the Remington became known as the “Rifle Patria”, the “Fatherland Rifle”. The vast expanse of Patagonia was thereby opened up for colonisation by Argentina from the end of the 1870s.



Fig 8. The Argentine 100-peso note (above) carries a reproduction of a picture in the Museo Histórico Nacional, Buenos Aires, showing Julio Roca’s officers celebrating their victory on the Río Negro following their campaign of extermination.

Fig. 9. One of several monuments at Puerto de Santa Cruz on the Patagonian coast, commemorating the landing of the Argentine task force, led by Comodoro Luis Py, that put an end to Chilean claims to much of Patagonia.

Argentine sovereignty was proclaimed there on 1 December 1878.



<sup>1</sup> Details mostly from the *Falklands Blue Books* (official reports from Governors), 1846-1944, PRO CO 81/1-99.

In other words, the ancestors of the present population of Patagonia arrived there several decades later than the ancestors of some of the families of today's Falkland Islanders. As a community, the Falkland Islanders are almost as old as the English-speaking community in New Zealand, and are the world's oldest community so far south. That should be borne in mind in view of Argentine assertions that the Falkland Islanders are an "introduced population".

At that time the ownership of Patagonia was being disputed with Chile, which had expanded south down the Pacific coast much faster than had Argentina on the Atlantic seaboard. In 1843 the Chileans claimed the Magellan Straits and in 1848 founded Punta Arenas in southern Patagonia. A cat-and-mouse game then began, much of it centred on the mouth of the Santa Cruz River. There the Chileans seized first a French ship, the *Jeanne Amélie*, in 1876, and in 1878 an American one, the *Devonshire*. They had been loading guano with permits from Argentina, but not Chile. Significantly, Chile opened a consulate in the Falklands in June 1877, which remained open until the 1950s.

The *Devonshire* incident finally precipitated Argentine action and, on 1 December 1878 Argentine forces occupied what is now known as Puerto de Santa Cruz,<sup>1</sup> at the mouth of the Santa Cruz River. This occupation put an end to Chilean claims to Patagonia, since Chile, involved in rising tension with Bolivia over the abuse of its citizens in Antofagasta in the north, could not risk a war with Argentina at the same time. Only three months later the War of the Pacific, sometimes known as the "Guano War", between Chile and Bolivia and Peru, did break out.

In 1880, Julio Roca stood for election on the strength of his victories over the native Indians – and won. Now Argentina had an aggressive president, in command, had eliminated the native Indians, defeated Chilean claims to Patagonia, and had acquired the Patagonian coastline opposite the Falklands. The stage was now set for Argentina to cast covetous eyes on the Falklands again.

### **32. The Falklands in the 1880s**

By 1884 the Falkland Islands had been *de facto* British for half a century; they had been *de jure* British ever since Argentina and Britain had settled all their differences by the Convention of Settlement 34 years earlier in 1850, and from then on there had been no protest, nor even so much as a mention of the Falklands, by Argentina to Britain. There had been consulates of Chile, Denmark, Germany, Italy, Sweden and Norway (jointly) and the United States in Stanley for a decade or more, indicating significant foreign acknowledgement of British sovereignty, and Spain, the former colonial power, had accepted the islands as British over 20 years earlier in 1863 (section 29).

West Falkland and several other islands now had permanent settlements, and the islands' total population amounted to about 1,700, including some 150 children in full-time education.<sup>2</sup> Those children attended school in the islands and grew up there, and in due course married and had children themselves. The second generation of native Falkland Islanders began to be born just before 1880, and 50-60 children were born in the islands every year throughout the 1880s, many of whose parents had themselves been born in the islands in the 1850s and 1860s. Those children were Falkland Islanders; many of them have descendants in the islands today, six or seven generations later, and there are already a few children in the eighth and ninth generation.

By the mid-1880s the islands had had a properly functioning system of government for over forty years, and in 1884 the first compilation of its laws was printed in Stanley, *Laws and Ordinances of the Falkland Islands from the Settlement of the Colony to the Year 1884*, including a list of all naturalisations from 1841 up to 1884 and some announcements of new naturalisations – for example, a resolution passed by the Legislative Council on 10 July 1884 confirmed the naturalisation of an Italian, an Argentinian, a Norwegian and a German.<sup>3</sup>

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<sup>1</sup> The settlement of Puerto de Santa Cruz was founded in 1863 by the missionaries Theophilus Schmidt and John Friedrich Hunziker, from the Patagonian Missionary Society based on Keppel Island in the Falklands. They landed at Weddell Bluff, now Moro de Weddell, named after the British explorer James Weddell. The original settlement there was known as the Cañadon de los Misioneros (Missionaries' Gully) after them.

<sup>2</sup> The census of 1881 recorded a population of 1,553 (976 males, 577 females), which appears in the *Blue Book* for 1881 (PRO CO 81/36). Unfortunately the same figure was entered unaltered every year thereafter until the next Census of 1891 (which recorded a population of 1,789), in obedience to the heading "Population at last census" above the pre-printed population columns for these years, thus obscuring the exact figures. However, precise figures of births and of children in education were recorded in the *Blue Books* every year; in the early 1880s there had been on average about 55 births to about 15 deaths, i.e. a natural population increase of about 40 a year.

<sup>3</sup> *Laws and Ordinances* 1884, p. 137.



### 33. Maps



Fig. 10. Map in Richard Napp, *Die Argentinische Republik* (German edition), Buenos Aires 1876. The oval shows where the Falklands should be.

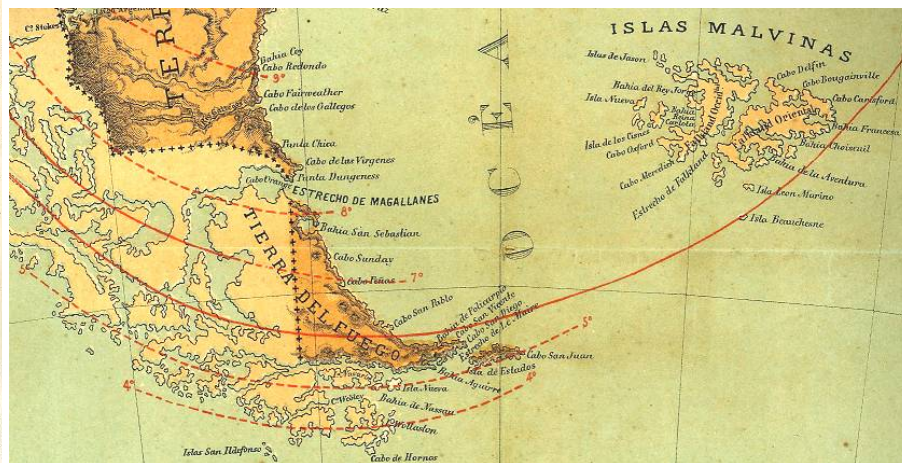


Fig. 11. Detail from the 1882 Latzina Map, *Mapa Geográfico de la República Argentina...*, Buenos Aires 1882. The Falklands are marked in a blank beige colour, like Chile or Uruguay but unlike Argentina, which is marked much darker and with shaded relief. (The curved orange lines are isotherms indicating average temperatures.)

During the three decades in the 19th century in which Argentina did not mention the Falklands to Britain, a number of maps were published in Argentina that did not show the Falklands as Argentine territory – in fact not a single one printed between 1850 and 1884 clearly showed them as Argentine.

Several of those maps omitted the Falklands by covering their position with a block of text or the key, as in the map in fig. 10, published in Buenos Aires in 1876, but one especially important map, the “1882 Latzina Map” (fig. 11) treated the islands differently: it included them, but not marked in the brownish “Argentina colour” with shaded relief (valleys, hills, etc.), as if they were a part of Argentina’s territory – it marked them in blank beige like places *outside* Argentina, the same as Uruguay and Chile. The 1882 Latzina Map was highly significant, since it was financed by the Argentine Foreign Ministry and published in 120,000 copies, distributed to Argentine consulates all over the world to attract immigrants to Argentina. A century later it played a role in the territorial dispute over the Beagle Channel Islands between Argentina and Chile. The Beagle Channel islands (3 small islands at the bottom of the map) were long disputed between Argentina and Chile, but in 1977 a court of arbitration consisting of judges from the International Court of Justice ruled that they belonged to Chile, pointing out (among other things) that they are marked on the 1882 Latzina map as if they were outside Argentina.<sup>1</sup> That is noteworthy, given that the Falklands are also marked in blank beige, just like the three Beagle Channel islands.

Argentina and Chile almost went to war over the Beagle Channel Islands in 1978, but Pope John Paul II intervened and in 1985, after the Falklands War, Argentina accepted the Vatican’s decision that the islands belonged to Chile (though the adjacent sea areas were partly shared). Since Argentina in the end accepted that the Beagle Channel islands were not Argentinian, as the 1882 Latzina map shows, it would seem logical to accept that the Falklands, shown in the same colour, are not Argentinian territory either.

### 34. Estoppel; the “Affair of the Map”, 1884

“Estoppel” is a principle of law under which a party to a dispute may not go back on earlier statements if the other party would thereby suffer detriment. It is a principle of private law, but has often been considered to be relevant in international law too. The situation by 1884 was that the Falklands had been ruled by Britain for half a century and had been a loss-making concern. That situation was just beginning to change: until 1880 there had been a yearly grant-in-aid from Britain and the mail-service was subsidised until 1885, but after that the islands began to pay their own way.<sup>2</sup> Argentina had signed a treaty

<sup>1</sup> Details from “Beagle Channel Arbitration between the Republic of Argentina and the Republic of Chile”, in *International Law Reports*, vol. 52, Cambridge 1979, esp. pp. 197-198, 212.

<sup>2</sup> Details from the 1880s summarised in the *Colonial Report on the Falkland Islands* for 1927, London 1928, p. 3.

with Britain 34 years earlier (the Convention of Settlement, ratified in 1850; see section 24) that implied acceptance of the possession of the islands by Britain, and since then had not mentioned the Falklands to Britain. During that time Britain invested in the islands without return, i.e. “suffering detriment”.

By chance, at that point Argentina raised the matter of the islands to the British government for the first time in over a third of a century. There was still no protest or even an official announcement; on 30 May 1884 the Argentine Foreign Minister Francisco Ortiz casually mentioned in a conversation with British ambassador Edmund Monson that Argentina was now “rounding off” its territories and was considering “reviving” the claim to the Falklands.<sup>1</sup> In asking Britain to hand the islands over at that precise juncture, Argentina was expecting to take over a going concern with a profitable economy that had been set up by loss-making actions on the part of Britain. If Argentina had maintained a claim during those 34 years, Britain might have invested the money elsewhere and avoided the loss. Since Britain had incurred that loss during a long period without any territorial claim from Argentina, there are good grounds for believing that there existed an estoppel against Argentina’s raising a claim again in the 1880s.

This new move by Argentina had been decided early in 1884. On 28 January Foreign Minister Ortiz had written to the Argentine Ambassador in Washington, Luis L. Domínguez, ordering him to raise the question of the *Lexington* raid on Port Louis in 1831-32. At first, Domínguez advised against this; on 25 April 1884 he replied saying that the *Lexington* episode had been expunged by the Treaty of Navigation, of San Juan de Flores, and the Treaty of Friendship, Navigation and Commerce signed on 27 July 1853.<sup>2</sup> He was, however, overruled by Ortiz, and forced to bring up the *Lexington* episode again – without success. The claim on the United States was dismissed again by President Cleveland in 1885.

The “Affair of the Map” with Britain broke in the Argentine press on 8 December 1884<sup>3</sup> with reports that the Argentine Geographical Institute was putting the Falklands into a map of Argentina that they were preparing with the help of a large government subsidy – and that the decision to include the Falklands had been taken by the Committee responsible for the map, headed by former president General Bartolomé Mitre. The article even talked about compensation for the heirs of Vernet, which made their involvement clear too. This publication led to a formal British diplomatic complaint.

At first Francisco Ortiz, the Argentine Foreign Minister, tried to fob Britain off by saying that it was nothing to do with the government and that the Argentine Geographical Institute was an independent entity. Plainly this was untrue. The map controversy lasted four years, and the correspondence contained two references to the Argentine suggestion that the matter should be decided by arbitration, but that is all. In a letter dated 2 January 1885 Ortiz urged “... that the postponed discussion be reopened again... and resolved by the friendly means and law that today civilised nations adopt to solve questions of this type.”<sup>4</sup> However, the discussion had not been “postponed”; nothing can be postponed except by agreement, and there had been no agreement by either side to postpone the issue. Argentina had dropped the Falklands issue in 1850 and the issue was closed.

Nevertheless, on 20 January 1888 Argentine Foreign Minister Norberto Quirno Costa protested to Britain against Britain’s possession of the Falklands – **that was the first Argentine protest for over 38 years since December 1849**. However, it did not initiate regular mentions of the Falklands by Argentina, and the subject was soon dropped again. It was not until the 1940s that President Perón revived formal Argentine interest in the islands.

The 2007 Argentine pamphlets say (English p. 3, Spanish p. 7): “Argentina proposed to submit the issue to international arbitration, which was also rejected by the United Kingdom without any reason being given.” The last letter of the exchange, dated 12 June 1888, complains about “the silence the British Government was maintaining in the face of Argentine suggestions to submit the matter to arbitration”,<sup>5</sup> but after that letter Argentina dropped the idea of arbitration once more – and did not mention the Falklands again to Britain for over 20 years.

It is worth pointing out that **any arbitration would most likely have awarded the Falklands to Britain**. The islands had been ruled by Britain for half a century, and there were now three generations of

<sup>1</sup> Details from Monson’s despatch to the Foreign Office, 30 May 1884, in PRO, FO 6/503, 1-8.

<sup>2</sup> Correspondence in full in Ernesto J. Fitte: *La Agresión Norteamericana y las Islas Malvinas*, Buenos Aires, 1966, pp. 455-466. In just the same way, the Convention of Settlement can be seen as expunging the Falklands dispute.

<sup>3</sup> In the Argentine newspaper *El Nacional*.

<sup>4</sup> Ortiz’s letter of 2 January 1885 in full (in Spanish) in Becerra 1998, 153-157.

<sup>5</sup> Letter from Argentine Foreign Minister Norberto Quirno Costa, 12 June 1888, in Becerra 1998, pp. 209 -210. The next item in Becerra’s collection of Argentine protests is dated 7 March 1919 (31 years later), and is a merely internal Argentine letter without international relevance.



people living there, who all wished the islands to remain British. Moreover, Argentina had effectively ceded the islands to Britain by the Convention of Settlement in 1850, had confirmed that cession by various acts, and had not raised the matter for 34 years.

### **35. The evidence for Argentina's acquiescence, 1849-1888 and after 1888**

As we have pointed out, there is considerable evidence that Argentina acquiesced in Britain's possession of the Falklands (i.e. accepted it by action or inaction). Acquiescence was indicated by Argentina in several acts of omission or commission between 1849 and 1888, and again during a long period after 1888. Those acts are briefly listed here (most have already been mentioned above):

1. Argentina signed the Convention of Settlement and Friendship (the Arana-Southern Treaty) with Britain in November 1849 and ratified it on 15 May 1850. Both sides regarded it as a peace treaty that settled all disputes with Britain and hence confirmed Britain's possession of the Falklands. The destructive effect of this Convention on any Argentine claim to the Falklands was pointed out in a book by Carlos Pereyra published in Spain in 1919 and reprinted in Argentina in 1944; it was discussed in a debate in the Argentine Congress in 1950 and mentioned in a book by Ernesto Fitte published in Buenos Aires in 1974, and both Pereyra and the 1950 debate were mentioned in a book by Alfredo Burnet-Merlín published in Buenos Aires in 1974 and 1976.
2. Argentina remained silent for 38 years without protesting at Britain's possession of the Falklands, or at Britain's many administrative acts in the Falklands, from the last protest in the 1849 Message to Congress until the last protest by letter on 20 January 1888.
3. Successive Argentine governments dropped all protests in the Messages to the Argentine Congress from 1849 onwards, and did not mention the Falklands at all in the Messages for 91 years, from 1849 until 1941.
4. In the 1860s Argentine leaders made several official statements at the highest level (president or vice president) in the Messages to Congress, indicating that Argentina had no dispute with Britain.
5. Argentine maps of Argentina did not include the Falklands at all, or marked them in the same way as other countries such as Chile.
6. A new Argentine constitution in 1853, finally adopted in 1862, distributed seats in Congress on a territorial principle but without any mention of the Falklands.
7. Argentina became a member of the Universal Postal Union (UPU) in 1878, but for over 30 years did not object to the fact that the Falklands were members too (they had been included in the UPU since 1877), or to Falkland Islands postage stamps, which were first issued in 1878.

After the protest of 20 January 1888 Argentina dropped the question of the Falkland Islands again for several decades, during which there were further acts of omission or commission signifying acquiescence in Britain's possession of the Falklands:

8. Argentina remained silent for almost 60 years from 1888 until well into the 1940s without any formal protests to Britain over the Falklands. In 1914 and again in 1915 Argentine Foreign Minister José Luis Murature specifically stated that there had been no Argentine protest over the Falklands since 1888.<sup>1</sup>
9. Argentina accepted mediation by Britain in a territorial dispute with Chile over the Beagle Channel islands in 1899-1902. This made Britain an arbitrator over Argentina's territory, strongly suggesting that at the time Argentina was not pursuing a territorial claim against Britain over the Falklands. The mediation was mentioned with approval in successive Messages at the opening of the Argentine Congress between 1899 and 1902.

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<sup>1</sup> Argentine Foreign Minister José Luis Murature told the British ambassador to Argentina, Sir Reginald Tower, on 23 December 1914: "Not since 1888... had his Government made any representation to His Majesty's Government on the subject of the Falkland Islands", and Tower reported on 20 March 1915 that "I have been personally assured by Dr. Murature, and as he authorised the Argentine consul-general in Panamá on the 20th February to state officially, the last Argentine protest in regard to the Falkland Islands was dated 1888..." (quotes from Sir Reginald Tower's despatches to British Foreign Secretary Sir Edward Grey, 23 December 1914, in *British Documents on Foreign Affairs* Part II, D (Latin America, 1914-1939), vol. I, ed. George Philip, 1989, p. 18; and to Sir Edward Grey, 20 March 1915, in *BDFFA* Part II, D I, 1989, p. 20).

10. In a meeting with British Foreign Secretary Sir Austen Chamberlain in December 1927, the Argentine Foreign Minister, Dr Angel Gallardo, undermined Argentina's claim by stating that he found Britain's claim strong – Sir Austen Chamberlain reported to the British Minister in Buenos Aires that “Dr. Gallardo said that he had been recently looking into the question of the Falkland Islands, and had come to the conclusion that our position and claim there were exceedingly strong.”<sup>1</sup>

All those actions or inactions are in one way or another incompatible with the existence of a dispute between Argentina and Britain over the Falklands, and supply abundant evidence of acquiescence by Argentina in British possession of the islands. Points 2 to 7 demonstrate that the Convention of Settlement was indeed seen by successive Argentine governments as a peace treaty between Argentina and Britain, which by restoring “perfect friendship” marked a new start in relations with Britain that necessarily entailed the end of the Falklands dispute, even though the Convention did not expressly mention it.

### **36. The development of Argentina's claim to the Falklands in the 1930s**

As we have pointed out, Argentina dropped and abandoned its claim to the Falklands in the 19th century, and after an unsuccessful attempt to raise it again during the “Affair of the Map” dropped it again. It was resuscitated, however, not by Argentine governments (who were the only legal guardians of Argentina's territorial interests) but by private individuals such as the French historian Paul Groussac (1848-1929), who emigrated to Argentina, became director of the national library through connections with President Roca, and in 1910 published a book in French, *Les Isles Malouines*, in Buenos Aires, as part of the 100th anniversary celebrations of Argentine independence. Groussac promoted the Argentine claim much more aggressively than a native Argentine would have done (in Argentina the subject was in abeyance at the time), but his history is seriously at fault; he largely omitted the all-important American involvement in the Falklands (which he in fact knew all about), misinterpreted the events of 1770-71, and omitted the vitally important Convention of Settlement and the foreign recognition of Britain's possession of the Falklands. It was written before the Vernet papers were donated to the Argentine archives, and he makes no mention of Vernet's pro-British sentiments. Nor did he consult any British archives.

In 1927 Julius Goebel, son of a German immigrant to the United States, published *The Struggle for the Falkland Islands* in New York. His book drew on Groussac and likewise supported the Argentine claim to the Falklands, but although his treatment of the 1760s and 70s is detailed, he falls into several errors and also omits vital aspects such as the Convention of Settlement and foreign recognition. Goebel was anti-British and also strongly disapproved of the foreign policies of President Jackson in such places as the Falklands and Mexico. His book was reviewed in the *Boletín del Centro Naval* in January 1928 by Teodoro Caillet-Bois, a naval officer who subsequently translated it all into Spanish (see section 38). His review emphasised its anti-British content.

Groussac died in 1929, but he had been a friend of Argentine politician Dr. Alfredo Palacios, who visited the Falklands in late 1928, and got a law passed in 1934 by the Argentine Congress requiring Groussac's book to be translated into Spanish – and sent to every school in Argentina. The translation was printed in 1936 and reached all schools in 1937, together with its anti-British message. In 1934 Palacios had also published a book, *Las Islas Malvinas*, which is full of historical errors.

### **37. The Malvinas lobby: World War II and the “Junta de Recuperación de las Malvinas”, 1939**

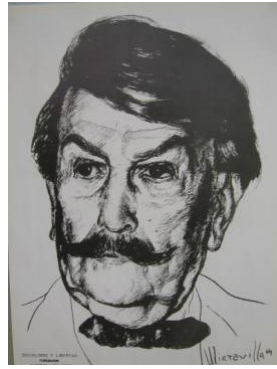
Despite the activities of Alfredo Palacios and others, the Argentine Government did not press the Argentine claim with any energy in the 1920s or 30s, but the Second World War changed all that. With about 15 other nationalists, Alfredo Palacios formed a “Committee to Recover the Malvinas” (“Junta de Recuperación de las Malvinas”), which first met at his house on 19 October 1939, six weeks after the outbreak of the War. There was considerable support in Argentina for the Axis powers, both among German and Italian immigrants and within the armed forces, which had become extremely influential after the military coup of 1930 (the first of five military coups in Argentina in the 20th century, followed by those of 1943, 1955, 1966 and 1976).

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<sup>1</sup> Despatch from Sir Austen Chamberlain to Sir Malcolm Robertson (British Minister in Buenos Aires), December 31, 1927, printed at the time as document A 7276 / 381 / 2 in the *Foreign Office Confidential Print*, reprinted in *British Documents on Foreign Affairs* Part II, D, 5, London 1989, pp. 104-105. In the 1930s Argentina did impose a surcharge on mail from the Falklands, and mentioned in various contexts that it claimed the Falklands, but made no formal protest to Britain.

Fig. 12. Alfredo Palacios (1880-1965), the eccentric Argentine politician who revived the Argentine claim to the Falklands in the 1930s.

He was founding President of the “Junta de Recuperación de las Malvinas”, which lobbied to take advantage of the Second World War to take over the Falklands.



There can be no doubt that the outbreak of war was the trigger for this move – the members of the Committee hoped that the outcome of the war would allow Argentina to take over the Falklands. They lobbied politicians, and published a manifesto on 3 January 1940 (the anniversary of the British re-assertion of sovereignty over the Falklands in 1833, see section 18).

On 17 June 1940 France asked for an armistice, which dismayed Alfredo Palacios, a socialist and ardent admirer of France and all things French. On 20 June he therefore resigned from the Committee he had founded only eight months before – he did not wish to continue with a campaign that was being used by German and Italian sympathisers in Argentina to attack Britain, which was now fighting alone against Nazi Germany. It was thanks to the efforts of the remaining members of the Committee that Argentina mentioned the Falklands issue at the Havana Conference of July 1940, when the colonies of the European belligerents had been discussed. That led to the first mention of the Falklands since 1849 in the Government’s annual Message to Congress, by President Roberto María Ortiz on 28 May 1941. Even then, it was not a formal protest but only a passing reference to Argentina’s claim as part of a comment on Argentina’s participation in the Conference:

The signing of those instruments moreover gave the Argentine delegate, Dr Leopoldo Melo, an opportunity to reaffirm, by means of reservations in the case, our rights over the Malvinas Islands, whose status as a colony or European possession we naturally cannot recognise.<sup>1</sup>

Palacios’s successor as president of the Committee was Antonio Gómez Langenheim, who did not share Palacios’ scruples about the war. He had published a book about the Falklands in December 1939 that forcefully stated the Argentine claim, though with all the usual historical errors and omissions.<sup>2</sup> On 3 January 1941 the Committee held a ceremony at the tomb of Louis Vernet, followed by a public discussion addressed by Brigadier Juan Bautista Molina, Gómez Langenheim and Carlos Obligado.<sup>3</sup> These ceremonies and all the activities of the Committee were strongly supported by the “Alianza de la Juventud Nacionalista” a pro-Nazi youth movement. The Committee commissioned a new song to celebrate Argentina’s claim to the Falklands; the competition was won by Carlos Obligado, a member of the Committee, with a poem entitled the “Malvinas March”, which was set to music by José Tieri and was first sung at the meeting on 3 January 1941. Falkland Islanders had to listen to it *ad nauseam* in 1982. The Committee gave lectures to the Argentine ministries of War and the Navy about the claim to the Falklands. It also produced a map of the Falklands with Spanish place names, and from the 1970s Argentine maps of the islands replaced almost all the traditional local names with newly invented “Argentine names”, to make the islands “look Argentinian”. The Committee succeeded in getting the erroneous version of Falklands history by Groussac and Gómez-Langenheim into the Argentine national school syllabus. Soon children were coming into classes that had “Las Malvinas son Argentinas” chalked on the blackboard. From then on the nation was well on the way to being brainwashed.

Later in the war Juan Domingo Perón (1895-1974) rose to prominence. He had been in Mussolini’s Italy at the outbreak of the war, broadly supported the Axis cause, and was a leading supporter of the pro-Fascist colonels who seized power in a coup in 1943. He was President of Argentina from 1946 to 1955

<sup>1</sup> *Diario de Sesiones*, Buenos Aires 28 May 1941, p. 1942: “La firma de estos instrumentos, además, dió oportunidad al delegado argentino, doctor Leopoldo Melo, para reafirmar mediante las reservas del caso nuestros derechos sobre las islas Malvinas, cuya condición de colonia o posesión europea no podemos, desde luego, reconocer.”

<sup>2</sup> Antonio Gómez Langenheim, *Elementos para la historia de nuestras Islas Malvinas*, 2 vols., Buenos Aires 1939.

<sup>3</sup> The ceremony on 3 January 1941 was addressed by Raúl P. Bassani, and flowers were laid at Louis Vernet’s tomb. Carlos Obligado’s mother was from the Gómez-Langenheim family.

and again briefly from 1973 until his death; after the war he gave sanctuary to many Nazi war criminals.<sup>1</sup> He was eventually to make the takeover of the Falklands and Britain's other possessions in the South Atlantic, and "Argentine Antarctica", into Government objectives – the Second World War allowed Argentina's claims to be fixed as a central government policy.

### **38. Goebel and Caillet-Bois**

Julius Goebel's book *The Struggle for the Falkland Islands* was republished in Spanish in Buenos Aires in 1950, financed by the Argentine Navy.<sup>2</sup> The translation was by Teodoro Caillet-Bois, who had reviewed it in January 1928, and who was uncle to the historian Ricardo Caillet-Bois. Ricardo, a serious academic writer, published another anti-British book in 1952, although his book at least had some input from the Vernet papers and revealed Vernet's pro-British sentiments. These books, however, were not sent out to Argentine schools, as Groussac's had been. With all these publications and the indoctrination of Argentine schoolchildren, the groundwork for the 1982 Falklands War was well and truly laid.

### **39. The Falkland Islands Dependencies and Antarctica**

The Argentine 2007 pamphlets both make brief mention of South Georgia, the South Sandwich Islands and related areas (English p. 3 and title, Spanish p. 7).<sup>3</sup> The pamphlet in English states (p. 3):

From that time on [= from 1884], the Argentine Republic made repeated demands formulating the relevant protests whenever it had notice of British actions contradicting its sovereignty over the Malvinas Islands, South Georgia and South Sandwich and the surrounding maritime spaces...

**That is untrue.** As we have seen, Argentina's protests ceased again totally after a single isolated protest in January 1888, and since 1888 there has not been a formal diplomatic protest to Britain. From about 1908 Argentina did occasionally mention the Falklands claim, but did not protest to Britain, the only possible recipient for a valid official protest. For example, in early 1908 Argentina protested to Italy against the inclusion of the Falklands in the Rome Postal Union Convention, but no protest was made to Britain, and Argentina did not pursue the matter. Indeed the Argentine Foreign Minister José Luis Murature had specifically stated in 1914 and again in 1915 that there had been no Argentine protest over the Falklands since 1888 (section 35). Alfredo Becerra's collection of Argentine protests includes no documents between 1888 and 1919, and that of 1919 is a purely internal Argentine communication.<sup>4</sup>

The present Argentine claim to South Georgia is based on the whaling activities of the "Compañía Argentina de Pesca" (known as "Pesca"), but it is severely compromised by the fact that "Pesca" accepted British sovereignty, as witnessed by two leases to lands on South Georgia signed by the company. The first lease, for land at Grytviken, was signed on 16 November 1904, ran from 1 January 1906 and was eventually extended to 1960; the second, for a site at Jason Harbour, was signed at the British Consulate in Buenos Aires on 22 July 1909 by the president of "Pesca", Hermann H. Schlieper, and was later signed by Governor Allardyce and the Falklands Colonial Secretary W. A. Thompson, representing the British Crown.<sup>5</sup> When it expired in 1927, the lease reverted to the Falkland Islands Government. Quite apart from that, the "Treaty" of Tordesillas of 1494 "allocated" South Georgia to Portugal, voiding any possible claim by Argentina to have inherited it from Spain. Nevertheless, the Argentine assertion of a claim to South Georgia was to provide the initial spark to ignite the Falklands War in 1982.

The first country to assert an official claim to South Georgia, the South Sandwich Islands, the South Shetlands, and the South Orkneys was Britain, which on 21 July 1908 issued Letters Patent that defined South Georgia, the South Orkneys, the South Shetlands, the Sandwich Islands and Graham Land (the

<sup>1</sup> See *The Real Odessa: How Perón brought the Nazi War Criminals to Argentina*, by the American-born Argentine author Uki Goñi (grandson and son of Argentine diplomats), London 2002, revised ed. London and New York 2002. Those who obtained sanctuary in Argentina included Adolf Eichmann, the organiser of the murder of some 6 million Jews; the Auschwitz "doctor" Josef Mengele; and the "butcher of Lyons" Klaus Barbie.

<sup>2</sup> *La Pugna por las Islas Malvinas, un Estudio de la Historia Legal y Diplomática*, Buenos Aires 1950, published by the Servicio de Informaciones Navales del Ministerio de Marina.

<sup>3</sup> The history of European exploration of Antarctica and the attendant disputes up to 1950 is recounted by E. W. Hunter Christie in *The Antarctic Problem*, London 1951. Robert Headland gives a detailed history of South Georgia in *The Island of South Georgia*, Cambridge 1984.

<sup>4</sup> Alfredo Becerra, *Protestas por Malvinas (1833-1946)*, Buenos Aires 1998.

<sup>5</sup> Leases listed in Headland 1984, Appendix I, p. 257; the Jason Harbour lease is illustrated in *Pesca: A History of the Pioneer Modern Whaling Company in the Antarctic*, by Ian B. Hart, Salcombe 2001, frontispiece.

Antarctic Peninsula) as the “Falkland Islands Dependencies”, to be administered from the Falklands.<sup>1</sup> The Letters Patent consolidated and confirmed the 18th-century claims made by Captain James Cook and others,<sup>2</sup> and were published in the official *Falkland Islands Gazette*. On 20 February 1909 the British Minister in Buenos Aires sent a copy of the *Gazette* to the Argentine Foreign Ministry, who acknowledged receipt on 18 March, but Argentina registered no protest or even official comment at that time.<sup>3</sup> Britain appointed a resident magistrate on South Georgia in 1909, who administered the semi-resident population of up to 1,000 people at the height of the whaling industry during the following half a century. The 1908 Letters Patent had specified that Graham Land and the Islands claimed lay south of the 50th parallel of latitude. In the 1940s some Argentinians misinterpreted this as including part of the South American mainland and thus rendering the Letters Patent invalid. This was nonsense; it would also have made the Falkland Islands part of their own dependencies! But, in any case, the matter had already been clarified some 30 years earlier by more detailed Letters Patent issued on 28 March 1917 which were required, not because of any defect in the original Letters, but because knowledge of territory even further south had by then become more detailed. Argentina still did not react.

Between the two World Wars claims were raised to sectors of Antarctica by New Zealand, France, Australia, and Norway, who all recognised each others’ claims and Britain’s claim. In 1940 Chile claimed a sector that partly overlapped the prior British claim of the Falkland Islands Dependencies. There was still no official Argentine claim to Antarctica or any of the associated islands, until on 15 February 1943 the Argentine government sent a note to the British government claiming a sector of Antarctica, which overlapped prior British claims and partly overlapped the earlier Chilean claim. The sector claimed by Argentina was enlarged in 1947.<sup>4</sup> Although many British Antarctic expeditions, such as the Scottish expedition of Dr Bruce in 1903, preceded any presence from Argentina, Argentina dates its presence in Antarctica from 1904, when Britain invited Argentina to take over the huts left by Bruce’s expedition on Laurie Island in the South Orkney Islands (not part of the Antarctic mainland). However, no official Argentine claim to the Antarctic continent was raised until 1943.

On 24 June 1947, Argentine President Juan Domingo Perón issued a decree claiming both South Georgia and the Falklands,<sup>5</sup> and sent warships to Antarctica in December 1947 and January 1948.

On 17 December 1947 the British government offered to go to arbitration at the International Court of Justice in The Hague over South Georgia and Argentina’s other new claims, committing itself in advance to accept the Court’s decision.<sup>6</sup> But Argentina sharply rejected the offer on 28 January 1948 in a note to the British ambassador in Buenos Aires, bluntly asserting that the areas in question (the Falklands, South Georgia, the claimed sector of the Antarctic and the associated islands) were Argentinian, without giving justification.<sup>7</sup> In 1951, 1953 and 1954 Britain made further offers to take the question to arbitration,

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<sup>1</sup> Text in Hunter Christie 1951, pp. 301-302; it runs in part: “BRITISH LETTERS PATENT appointing the Governor of the Colony of the Falkland Islands to be Governor of South Georgia, the South Orkneys, the South Shetlands, the Sandwich Islands and Graham’s Land, and providing for the Government thereof as Dependencies of the Colony – Westminster, July 21<sup>st</sup> 1908. EDWARD the Seventh, by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India: To all to whom these presents shall come, Greeting. Whereas the group of islands known as South Georgia, the South Orkneys, the South Shetlands, and the Sandwich Islands, and the territory known as Graham’s Land, situated in the South Atlantic Ocean to the south of the 50<sup>th</sup> Parallel of South latitude, and lying between the 20<sup>th</sup> and 80<sup>th</sup> degrees of West longitude, are part of our Dominions, and it is expedient that provision should be made for their government as Dependencies of our Colony of the Falklands: Now WE do hereby declare that from and after the publication of these our Letters Patent in the Government ‘Gazette’ of our Colony of the Falkland Islands the said group of islands known as South Georgia, the South Orkneys, the South Shetlands and the Sandwich Islands, and the said territory of Graham’s Land shall become Dependencies of our said Colony of the Falkland Islands... (Articles 2 to 8 omitted). In witness whereof we have caused these our Letters to be made Patent, Witness ourself at Westminster, this 21<sup>st</sup> day of July, in the eighth year of our reign. By Warrant under the King’s Sign Manual [*Signed*] MUIR MACKENZIE”.

<sup>2</sup> Captain Cook claimed South Georgia for Britain on 17 January 1775. His journal states: “I landed at three different places, displayed our colours, and took possession of the country in his majesty’s name, under a discharge of small arms”. He named the island itself after George III, and named the bay where he landed Possession Bay. Cook was the first to sight the South Sandwich Islands, on 31 January 1775. The South Shetlands were claimed for Britain by Edward Bransfield in 1820, and George Powell claimed the South Orkneys for Britain in 1821.

<sup>3</sup> Headland 1984, 240.

<sup>4</sup> Headland 1984, 240.

<sup>5</sup> Presidential decree no. 14062.

<sup>6</sup> Full text of Britain’s note offering arbitration in Hunter Christie 1951, 305-308.

<sup>7</sup> Full text of Argentine Foreign Minister Bramuglia’s reply in Hunter Christie 1951, 309-313.

either to the International Court of Justice or to a special tribunal, but Argentina again rejected all these offers. Britain then lodged a unilateral appeal with the Court on 4 May 1955, asking for a judgement. The Court Registrar passed the appeal to Argentina, but the Argentine government replied by refusing to acknowledge the Court's jurisdiction, giving no justification except to say that Argentina had "unquestioned rights and titles derived from and based on legitimate methods of acquiring territorial domain, and effective, notorious and peaceful possession".<sup>1</sup>

Such considerations would give Britain indubitable title to the Falklands, where there has been "effective, notorious [i.e. publicly known] and peaceful possession" for over 150 years since the ratification of the Convention of Settlement in 1850. However, they do not apply to Argentina's claim to the Falklands or any of the other areas, since there has been no such possession by Argentina at all.

Although the Argentine 2007 pamphlets do not mention the fact, Argentina is aggressively pursuing its claim to a sector of Antarctica. As well as the Falklands, the territory shown on the back of Argentine passports includes "Argentine Antarctica", and all maps published in Argentina must by law include it too. The constitution of the Province of Tierra del Fuego includes both "Argentine Antarctica" and the "South Atlantic Islands", which Argentina considers to include all the British possessions in the South Atlantic (the Falklands, South Georgia, the South Sandwich and South Orkney Islands). The air bridge from Ushuaia to Marambio<sup>2</sup>, Argentina's main base in Antarctica, is even referred to as the "Sovereignty Patrol", and Argentina holds political meetings in Marambio to support its claim.

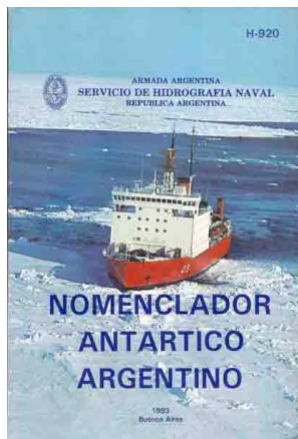


Fig 13, left: The 1993 "Nomenclador" listing the new Argentine names for Antarctica and the sub-Antarctic islands. Fig 14, above: A major street in Buenos Aires, renamed to support the Argentine claim to Antarctica.

Argentina is still using its traditional methods to promote its claims (figs. 14-16): the "Nomenclador" in fig. 13 lists Spanish names in Antarctica to replace the earlier English names. There are many streets and places with the name "Malvinas" in Argentina. Fig. 14 illustrates the name of a major street in Buenos Aires, changed to support Argentina's claim to Antarctica.

Tierra del Fuego was made into a province in 1990,<sup>3</sup> its constitution (fig. 15) includes Antarctica and the South Atlantic Islands in the territory of the province.

Fig 15. Right: The front cover of the Constitution of Tierra del Fuego. Antarctica appears in the title, and the map includes the Falklands.



However, the moratorium on territorial claims to Antarctica under the 1959 Antarctic Treaty places all Argentine Antarctic claims (and those by Britain and other countries) in abeyance, perhaps permanently.

#### **40. Self-determination**

The Falkland Islands are not an independent country, but that does not mean they are simply "ruled by Britain". Like an independent country, they have a constitution, and they have their own laws, which are based on those of Britain but are not identical with British laws. The making of local laws is carried out by the Legislative Council, which has a solid democratic basis – 8 out of 12 members are elected by universal suffrage, while the 4 *ex officio* members (the Chief Executive, the Attorney-General, the Financial Secretary and the commander of British forces) do not have full voting rights. The first

<sup>1</sup> Headland 1984, 241.

<sup>2</sup> Otherwise known as Seymour Island.

<sup>3</sup> Argentine federal law no. 23,775.



compilation of Falkland Islands laws, *Laws and Ordinances of the Falkland Islands from the Settlement of the Colony to the Year 1884*, was published in Stanley in 1884, and there have been several more since then – those of 1915, 1951, and the ongoing modern version from 1998 onwards are illustrated in fig. 16.

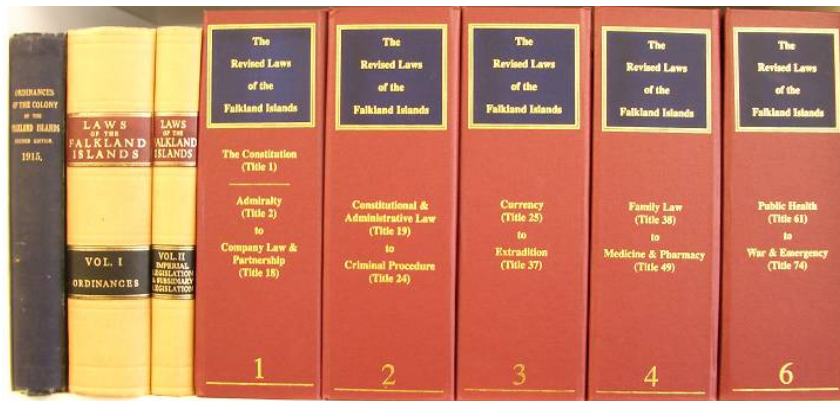


Fig. 16. Rule of Law: Three compilations of Falkland Islands laws: *Ordinances of the Colony of the Falkland Islands*, 1915; *Laws of the Falkland Islands*, 2 vols. 1951, and 5 of the 7 volumes of the ongoing loose-leaf *Revised Laws of the Falkland Islands*, 1998 to date.



Fig 17. The elected members of the Legislative Council of the Falkland Islands, 2008. Left to right: Councillors Richard Stevens, Michael Summers, Janet Robertson-Pompert, Michael Rendell, John Birmingham, Richard Cockwell, Dr Andrea Clausen and Ian Hansen.

The Legislative Council is elected by free, full, equal and secret suffrage, and in terms of number of voters per candidate, the Falklands are among the most democratic places in the world. The Governor appointed by the British government has much less authority than in the past, and under the 1997 Constitution the Governor does not preside at meetings of the Legislative Council; instead, the Councillors elect a Speaker. Proposed changes in the Constitution are discussed within the islands and decided on by the Legislative Council. The Constitution has been changed several times since 1982, always in the direction of reducing the power of the Governor and increasing the democratic participation of the Falkland Islanders in the running of their country.

Argentina, however, maintains (see section 42) that the islanders have no right to self-determination. That view is reflected in the addition to the Argentine constitution, in which Argentina's claim to the Falklands was enshrined by President Menem in 1994:

The Argentine Nation ratifies its legitimate and imprescriptible sovereignty over the Malvinas, South Georgias and South Sandwich islands and the corresponding maritime and insular areas, as being an integral part of the national territory. The recovery of those territories and the full exercise of sovereignty, respecting the way of life of their inhabitants, and in conformity with the principles of International Law, constitute a permanent and unrenounceable objective of the Argentine people.<sup>1</sup>

It is noteworthy that there is no mention of the “interests” of the Falkland Islanders, still less of their “wishes”; the Constitution only commits Argentina to respecting “the way of life of their inhabitants”. But who is to say what that “way of life” consists of? For a long time a central part of their way of life has been self-determination; they have run their country democratically themselves. If Argentina were ever to take the islands over, self-determination would be abolished, and Argentine officials would decide for Falkland Islanders what is good for them. That would be to introduce 19th-century-style colonialism.

#### **41. The people**

For well over a century, the majority of Falkland Islanders have been born there, and now constitute a unique community. Though most families are of British origin, quite a number are ultimately descended from shipwrecked Scandinavians, such as the Dane Karl Hansen and the Swedes Frans Theodor Rylander (who swam ashore from the sinking *Colonsay* in 1860, stayed for the rest of his life and changed his name to Francis Theodore Rowlands) and Axel Pettersson, whose ship ran ashore in 1899. Another Dane arrived in 1859, changed his name to James Anderson, married Mary Riley in the islands in 1867, and had twelve children. Anton Richard Larsen was a Norwegian who deserted his ship at New Island in the 1890s and was hidden by Ellen Cull, whom he later married. The Dane Christian Andreassen was put ashore sick from his ship at Stanley in 1907 and stayed for the rest of his life.

There are many descendants of those men in the islands today, and the Falklands telephone directory lists several originally Scandinavian names: there are 12 entries for Berntsen, 5 for Hansen, 2 for Larsen, 4 for Rowlands, 2 for Pettersson and 11 for Anderson. Several other long-established families are not British in origin: there are 9 entries for Alazia (descended from Joseph Alazia, a Frenchman naturalised in 1872) and 2 for Pitaluga, a family descended from Andrez Pitaluga from Gibraltar, who arrived at Port Louis aged 16 in 1841 and whose family was originally from Genoa in Italy. The surnames naturally changed if the descent passed through daughters, so that many descendants of non-British families no longer bear the original immigrants’ surnames – for example, a number of islanders are descended from Johannes Henricksen (a German-speaking Russian Finn who arrived in Stanley in the early 1880s, was naturalised in 1885 and had 11 children), though the name of Henricksen has died out in the islands. At the time of the British Nationality Act of 1981, about a third of the Falklands population (some 600-700 people) were “non-patria”, i.e. they had no parent or grandparent born in Britain. Of the families of British origin, those of Biggs, Goss and Watson have been in the islands for over 160 years, those of Bonner, Felton, Gleadell, Short and Williams for 150 years, and many other families have been in the islands for over a century. There are now many sixth, seventh and eighth-generation Falkland Islanders, and the ninth generation has just recently begun to see the light of day.

At the time of the last Falklands census on 8 October 2006, the total civilian population of the islands was 2,955, excluding all military personnel and their families. That is the largest population the islands have ever had; the number of native-born Falkland Islanders was the largest since the 1940s (in 1946, 90% were native-born), and it is still steadily increasing. The permanent residents on census day 2006 were born in a total of 62 different countries including the Falklands; the places of birth of some of the largest groups of people in the islands were as follows:<sup>2</sup>

Falkland Islands	1,339	Argentina	29 (of whom 2 were Argentine citizens)
Britain	838	Germany	28
St Helena	394	New Zealand	26
Chile	161	Russia	10
Australia	36	Uruguay	10

<sup>1</sup> Argentine Constitution, 1994: “La Nación Argentina ratifica su legítima e imprescriptible soberanía sobre las islas Malvinas, Georgias del Sur y Sandwich del Sur y los espacios marítimos e insulares correspondientes, por ser parte integrante del territorio nacional. La recuperación de dichos territorios y el ejercicio pleno de la soberanía, respetando el modo de vida de sus habitantes, y conforme a los principios del Derecho Internacional, constituyen un objetivo permanente e irrenunciable del pueblo argentino.”

<sup>2</sup> Source: *Falkland Islands Census Statistics*, Stanley 2006, pp. 6-7.

Argentina maintains that the Falkland Islanders are “an introduced population”, but in fact for well over a century most of them have arrived in the islands by a short biological route – **they were born there**.

#### **42. The Falklands dispute in the international field**

Both Argentine 2007 pamphlets repeat the standard Argentine view of the legal position in the Falklands dispute (English p. 5, Spanish p. 11):

The specificity of the Malvinas Islands Question lies in the fact that the United Kingdom occupied the islands by force in 1833, expelled the original population and did not allow its return, thus violating Argentine territorial integrity.

As we have seen, **the assertions in that sentence are untrue**. The genuine civilian population was not expelled; Britain persuaded most of them to stay, most people who stayed were from Argentina, and two women from Argentina lived in the islands for almost another forty years. As recounted in section 20, several people returned to the islands in March 1833, and there has never been any general prohibition against Argentinians living in the islands. At all times from 1833 up to today there have been non-British people from several countries in the islands, often including people from Argentina (see list in section 41).

Both Argentine 2007 pamphlets (English pp. 3 and 4, Spanish p. 7) mention United Nations Resolution 2065 (XX) of 16 December 1965, which calls on Argentina and Britain to seek a peaceful solution to the Falklands dispute within the framework of UN Resolution 1514 (XV) of 14 December 1960. The first two sections of Resolution 1514 (XV) run as follows:<sup>1</sup>

(1) The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of World peace and co-operation.

(2) All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Section 1 clearly prohibits the subjection of the Falklands to Argentina, which to the islanders is very obviously an “alien” country, and older islanders have unpleasant memories of the attempt by Argentina in 1982 to impose “alien subjugation, domination and exploitation” upon them. Section 2 gives the Falkland Islanders the right to self-determination, which they have exercised for many years. They are also free to “determine their political status” – for example to remain in association with Britain, to become independent, or to join some other country (which could be Argentina or any other country).

But Resolution 1514 (XV) also contains a limitation:

6) Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.

The claim in both Argentine 2007 pamphlets that the British possession of the Falklands is “violating Argentine territorial integrity” (quoted at the beginning of this section) refers to section 6 of Resolution 1514 (XV) – Argentina is naturally forced to base its case on section 6, since sections 1 and 2 run counter to any Argentine claim to the Falklands.

However, the applicability of section 6 to the Falklands dispute is highly questionable. Since the Falkland Islanders are, and have been for 170 years, of a different nationality from the Argentinians, there cannot be said to be any disruption of “national unity”. And the argument from “territorial integrity” is weak – in Argentine theory, the Falklands were part of Argentina’s territory and were taken away by Britain in “1833”, but as we have seen, that view is severely limited. Argentina did not inherit a unitary claim to the islands from Spain (section 2 above), and the brief settlement founded by Louis Vernet, which gave Argentina the basis for a claim in the first place, was mixed in nationality and Vernet himself would have preferred British sovereignty. Above all, Argentina effectively ceded the islands to Britain by the Convention of Settlement in 1850 and abandoned all claim to them, ceasing all protests and performing many acts of omission and commission that indicated acquiescence in Britain’s possession of the islands (sections 23, 28, 32 and 34 above).

The Falklands are included in several international organisations: in the Universal Postal Union (since 1877): in the Commonwealth, which accepts the islands as a perfectly normal participant in the

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<sup>1</sup> Text printed e.g. in *Public International Law*, ed. Charles Chatterjee and David Davies, Horsmonden (Kent) 1996, 101-103. The roman numeral in brackets is the UN session number.

Commonwealth Games, in which the islands first participated in 1982 and have taken part in ever since; and in the European Union, in which the islands were included in 1973 as an Overseas Territory of a member state. In other words, there is a wide range of international acceptance that the islands are British.

### **43. Conclusion**

The principal arguments put forward by the Argentinians in their 3 December 2007 seminar, and repeated in both the 2007 pamphlets, are untrue. The truth of the matter is that:

- (1) The 17th and 18th-century treaties between Britain and Spain did not prohibit British possession of the Falklands.
- (2) The Argentinians have quoted the 1771 Anglo-Spanish agreement incorrectly. The agreement as finally signed preserves the claims of both Spain and Britain, not Spain alone. There was no secret promise by Britain to evacuate the Falklands after the restitution of Port Egmont.
- (3) The Argentinians and Professor Dolzer have incorrectly described the history of the 1820s in the Falklands. David Jewett did claim the Falklands then for Argentina, but he had not been sent there. He did not attempt to apply fishing regulations, or Argentine laws, or tell any foreign ships to leave. His claim was not announced formally in Argentina or even mentioned in his report. Professor Dolzer has also incorrectly described the activities of Pablo Areguati in the Falklands in 1824. Areguati was never given any official rank, nor did he attempt to enforce Argentine law or fishing regulations. It was all he could do to survive himself, and his expedition collapsed after a few weeks. Britain did object promptly when Louis Vernet was given an official title in 1829. Professor Dolzer's assumption that Argentina did establish itself adequately in the islands in the early 1820s is based, as we have shown, on a profound distortion of history.
- (4) Argentina's claim that the 1825 Treaty of Friendship and Navigation with Britain supports its claim to the Falklands is incorrect. There was no one from Argentina in the Falklands at that time, and the Treaty does not describe Argentine territory at all.
- (5) The Argentine claim that Britain expelled an Argentine population from the Falklands in 1833 is false; the settlement continued, and most of its inhabitants were from Buenos Aires.
- (6) Argentina did not inherit a unitary claim to the Falklands from Spain, and its claim is further weakened by the lack of foreign recognition in the 19th century and by Louis Vernet's preference for British sovereignty.
- (7) Argentina dropped its claim to the Falklands by ratifying the Convention of Settlement in 1850. The failure to mention that this ended Argentina's claim to the Falklands is a gross distortion of history, as are the statements by Argentine historians that the British Foreign Secretary accepted in 1849 that the matter was "pending" or "postponed" – the reverse is true. After 1850 Argentina dropped all protests to Britain over the Falklands, and did not mention the Falklands to Britain for 34 years. The dropping of the Argentine claim was confirmed by Argentine leaders in their Messages to Congress in the 1860s, and the Falklands were not mentioned in any Message to Congress for 91 years until 1941.
- (8) The Argentine claim was artificially revived in 1884, by non-diplomatic means – the "Affair of the Map" – but after failing to change Britain's position Argentina dropped the matter again for several decades.
- (9) The Argentinians have never had a valid claim to South Georgia and the South Sandwich Islands. These islands were only claimed by Argentina after the Second World War, after decades of acquiescence and after acknowledgement of Britain's sovereignty there.
- (10) The Argentine argument that Islanders have no right to self-determination is absurd. They have the same rights as any other immigrant population of the New World.

We conclude that the Argentine seminar of 3 December 2007 and the two Argentine 2007 pamphlets do not make a case for Argentine sovereignty over the Falklands, South Georgia and the South Sandwich Islands. **All these islands are rightfully British.**

**The Falklands dispute was ended over 150 years ago with Argentina's agreement; there is no need for any "solution".**

Graham Pascoe  
Peter Pepper

May 2008