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## The Falklands/Malvinas War—1982

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### I. Facts and Context

The Falklands War or Falklands Conflict—also known in Spanish as ‘*Guerra de las Malvinas*’ or ‘*Guerra del Atlántico Sur*’— is only a relatively short episode in the long-standing dispute between Argentina and the United Kingdom concerning the sovereignty over the Falkland Islands (Islas Malvinas), an archipelago in the South Atlantic Ocean,<sup>2</sup> and the Falkland Islands (Islas Malvinas) Dependencies—a term that groups the South Georgia, South Sandwich, South Orkney, and South Shetland Islands.

Some cursory knowledge of the respective territorial claims is required to fully appreciate the precedential value of this incident. Argentina has long based its claims over the islands on succession to the Spanish title. The latter was initially acquired through discovery, later preserved through the cession by the former occupant (France), and maintained by subsequent effective occupation by Spanish, respectively Argentinian, authorities, until 1833. That year, British forces ousted the Argentinian governor as well as other Argentinian nationals and asserted effective authority and control over the archipelago. According to Argentina, this ‘usurpation’ was never consented nor acquiesced to and the British occupation cannot therefore constitute a valid title over the islands.<sup>3</sup>

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<sup>2</sup> As the name of the islands is at the symbolic heart of the territorial dispute opposing Argentina and the United Kingdom, this chapter follows the UN practice that consists in using the name ‘Falkland Islands’ followed by ‘Islas Malvinas’ in parenthesis. For a concise and generally impartial statement of the facts, see ‘Falkland Islands’ (1982) 36 Keesing’s Contemporary Archives 31525–37 and ‘Falkland Islands’ (1982) 36 Keesing’s Contemporary Archives 31709–18. Unless otherwise indicated, the factual descriptions in this chapter rely on the latter source. See also the somewhat incomplete (and sometimes biased) account of Charles Rousseau, ‘Chronique des faits internationaux’ (1982) 86 *Revue générale de droit international public* 724. For a detailed and exhaustive summary of the treatment of the question by the UN Security Council and the UN General Assembly during the year 1982, see UNGA ‘Status of the Falkland Islands (Malvinas)’ (1982) Yearbook of the United Nations 1320–47. See also Department of Political and Security Council Affairs, Repertoire of the Practice of the Security Council, Supplement 1981–1984 (1992) UN Doc ST/PSCA/I/Add.9, Chapter VIII, 224–29, 230–39 and Chapter XII, 334–35. See also, for a succinct account of the actions of UN organs, Paul Tavernier, ‘L’année des Nations Unies, questions juridiques —1982’ (1982) 28 *Annuaire français de droit international* 634, 657–59. See also, with references to the debates in the British Parliament, Geoffrey Marston, ‘United Kingdom Materials on International Law 1982’ (1983) 53 *British Yearbook of International Law* 337, 503–06, 508–16, and 538–59; Geoffrey Marston, ‘United Kingdom Materials on International Law 1983’ (1984) 54 *British Yearbook of International Law* 361, 545–49.

<sup>3</sup> See, eg, Report of the Special Committee on the Situation with regard to the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (1964–1965) UN Doc A/5800/Rev.1, 440–42 [15]–[34]. See also Letter dated 18 October 1982 from the Permanent Representative of Argentina to the United Nations addressed to the Secretary-General (20 October 1982) UN Doc A/37/553 and annexes. For works that are generally favourable to Argentina’s claims, see, eg, *Observations on the Forcible Occupation on the Malvinas or Falkland Islands by the British Government in 1833* (Wood and Son 1833); Paul Groussac, *Les îles Malouines: Nouvel exposé d’un vieux litige* (Imprimerie Coni Frères 1910); Julius Goebel, *The Struggle for the Falkland Islands* (Yale University Press 1927); William R Shepherd, ‘Review of the Struggle for the Falkland Islands. A Study in Legal and Diplomatic History, Julius Goebel, Jr’ (1927) 37 *The Yale Law Journal* 277; Gérard Cohen-Jonathan, ‘Les îles Falkland (Malouines)’ (1972) 18 *Annuaire français de droit international* 235; Alejandro Schwed, ‘Territorial Claims as a Limitation to the Right of Self-Determination in the Context of the Falkland Islands Dispute’ (1982) 6 *Fordham International Law Journal* 443; Adrián FJ Hope, ‘Sovereignty and

Argentina additionally claims sovereignty over the Falkland Islands (Islas Malvinas) Dependencies, considering that the various island groups constitute a single territorial unit, forming part of the Argentinian administrative region of Patagonia.<sup>4</sup>

The United Kingdom in turn contends that its title flows from discovery as well as effective occupation of the Falklands (Malvinas) archipelago in the 1760s and early 1770s, and perhaps more fundamentally, from the effective administration exercised over the islands after the expulsion of the Argentinian authorities. For the British Government, the passing of time has led to a transfer of sovereignty through prescriptive acquisition.<sup>5</sup> The United Kingdom furthermore contends that the 'Falkland dependencies' constitute separate territorial units, as the British titles to these territories have distinct historical origins.<sup>6</sup>

In 1946, the United Kingdom requested the inscription of the archipelago on the list of non-self-governing territories, pursuant to Article 73 of the UN Charter.<sup>7</sup> On 18 September 1964, the Special Committee on Decolonization recommended the parties to 'enter into negotiations with a view to finding a peaceful solution to [the archipelago's future status], bearing in mind the provisions and objectives of the United Nations Charter and of resolution 1514 (XV) (of 14 December 1960), the interests of the population of the islands, and the opinions expressed during the course of the general debate'.<sup>8</sup> In its

Decolonization of the Malvinas (Falkland) Islands' (1983) 6 Boston College International and Comparative Law Review 391; Monica Pinto, 'Argentina's Rights to the Falkland/Malvinas Islands' (1983) 18 Texas International Law Journal 1; Alfred P Rubin, 'Historical and Legal Background of the Falkland/Malvinas' in Alberto R Coll and Anthony Clark Arend (eds), *The Falklands War: Lessons for Strategy, Diplomacy and International Law* (HarperCollins Publishers Ltd 1985); Lowell S Gustafson, *The Sovereignty Dispute over the Falkland (Malvinas) Islands* (OUP 1988); Fabián Raimondo, 'The Sovereignty Dispute over the Falklands/Malvinas: What Role for the UN?' (2012) 59 Netherlands International Law Review 399; Marcelo G Kohen and Facundo D Rodríguez, *Las Malvinas entre el derecho y la historia: refutación del folleto británico 'Más allá de la historia oficial. La verdadera historia de las Falklands/Malvinas'* (EUNSA, Editorial de la Universidad de Salta; Eudeba, Editorial Universitaria de Buenos Aires 2015). For a critical discussion of some of the arguments made by these authors, especially Julius Goebel, see Jorg Fisch, 'The Falkland Islands in the European Treaty System 1493–1833' (1983) 26 German Yearbook of International Law 105.

<sup>4</sup> See, eg, concerning the South Sandwich Islands, UNSC Verbatim Record (21 May 1982) UN Doc S/PV.2360, 8 [83] (Argentina).

<sup>5</sup> See, eg, Letter dated 28 April 1982 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the president of the Security Council (28 April 1982) UN Doc S/15007. For works that are generally favourable to the British views, see, eg, Farooq Hassan, 'The Sovereignty Dispute over the Falkland Islands' (1982) 23 Virginia Journal of International Law 53; Ove E Bring, 'The Falkland Crisis and International Law' (1982) 51 Nordisk Tidsskrift for International Ret 129, 131–36; Brian M Mueller, 'Falkland Islands: Will the Real Owner Please Stand Up Note' (1982) 58 Notre Dame Law Review 616; Gordon W Smith, 'The Falkland Islands Dispute: A Résumé of Its Background' (1982) 13 Revue générale de droit 541; John M Lindsey, 'Conquest: A Legal and Historical Analysis of the Root of United Kingdom Title in the Falkland Islands' (1983) 18 Texas International Law Journal 11; W Michael Reisman, 'The Struggle for The Falklands' (1983) 93 Yale Law Journal 287.

<sup>6</sup> See *Antarctica Cases (United Kingdom v Argentina; United Kingdom v Chile)* [1955] ICJ Pleadings 8. See also, with regard to the South Sandwich Islands, Letter dated 21 June 1982 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council (21 June 1982) UN Doc S/15246. See, with regard to South Georgia, Letter dated 26 April 1982 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council (26 April 1982) UN Doc S/15002. See also Humphrey Waldo, 'Disputed Sovereignty in the Falkland Islands Dependencies' (1948) 25 British Year Book of International Law 311; Clive R Symmons, 'Who Owns the Falkland Island Dependencies in International Law? An Analysis of Certain Recent British and Argentinian Official Statements' (1984) 33 International and Comparative Law Quarterly 726. Graham Land, on the mainland of Antarctica, was initially included in the Falklands Dependencies, but was separated in 1962. See Joan Piñol Rull, 'El uso de la fuerza y el caso de las Malvinas-Falkland' (1982) 1 Afers internacionals 47, 50.

<sup>7</sup> See UNGA 'Trusteeship and Non-Self-Governing Territories' (1946–1947) Yearbook of the United Nations 210. To this day, the Falkland Islands (Islas Malvinas) remain on the list of non-self-governing territories.

<sup>8</sup> Report of the Special Committee on the Situation with regard to the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (1964–1965) UN Doc A/5800/Rev.1, 439 [58]–[59].

Resolution 2065 (XX) of 16 December 1965, the UN General Assembly (UNGA) took note of the existence of a territorial dispute and invited the parties ‘to proceed without delay’ to such negotiations.<sup>9</sup> Bilateral negotiations started in 1966 and continued intermittently and inconclusively until 27 February 1982.

On 19 March 1982, the *ARA Bahía Buen Suceso*, a transport vessel of the Argentinian navy landed at Leith harbour on South Georgia and disembarked a team of metal scrap workers that had been contracted to dismantle a whaling station. The men allegedly raised an Argentinian flag on their barracks. They refused to seek permission from the authorities at Grytviken and to inform the British Governor of the Falklands (Malvinas) of their presence. The British Government immediately protested to the Argentinian authorities, requiring the team to leave or to regularize their situation. As some of the men remained in place, the British Government announced that it would send the ice patrol ship *HMS Endurance* with the mission to remove the men from South Georgia. On 28 March, the Argentinian Minister of Foreign Affairs, Nicanor Costa Méndez, refused to regularize the situation of the men and reaffirmed Argentina’s claims on the Falkland (Malvinas) islands and their dependencies.<sup>10</sup>

The military conflict started on 2 April, with the invasion of the Falkland (Malvinas) archipelago by Argentina. The seventy Royal Marines stationed on the island were quickly overwhelmed by the invading forces. On 3 April, Argentina invaded South Georgia and, on 6 April, installed General Mario Menéndez as military governor tasked with the administration of the Falkland Islands (Islas Malvinas) and their dependencies. On 4 April, President Leopoldo Galtieri expressly rejected a demand by the UN Security Council (UNSC) to withdraw Argentinian forces and announced that the latter would resist any attempt by the British to recover the territory recently occupied.

On 3 April, British Prime Minister Margaret Thatcher announced the dispatch of a naval task force to the South Atlantic ‘as soon as all preparations are complete’.<sup>11</sup> On 8 April, the United Kingdom notified Argentina that, from 12 April 1982, a ‘maritime exclusion zone’ would be established in a circle of 200 nautical miles’ radius around the archipelago. This measure was supplemented on 23 April by a ‘defensive area’—or a ‘defensive bubble’—around the naval task force,<sup>12</sup> and, on 28 April, by a so-called ‘total exclusion zone’, with the same limits as the previous ‘maritime exclusion zone’, but with a broadened personal scope of application extending to any other ship or aircraft of third states ‘operating in support of the illegal occupation’. On 25 April, British forces reasserted their authority and control over South Georgia. Naval and aerial hostilities around the Falkland Islands (Islas Malvinas) started by early May, most notably with the naval bombing of Argentinian positions and with the sinking of the Argentinian light cruiser *ARA General Belgrano* on 3 May and of the British destroyer *HMS Sheffield* on the next

<sup>9</sup> Question of the Falkland Islands (Malvinas), UNGA Res 2065 (XX) (16 December 1965) UN Doc A/RES/2065, [1]. This recommendation was reiterated on several occasions in later sessions of the UNGA, along with an affirmation of the need to speed up the negotiations. See Question of the Falkland Islands (Islas Malvinas), UNGA Res 3160 (XXVIII) (14 December 1973) UN Doc A/RES/3160; Question of the Falkland Islands (Islas Malvinas), UNGA Res 31/49 (1 December 1976) UN Doc A/RES/31/49. See also Giuseppe Cataldi, ‘L’Assemblea Generale delle Nazioni Unite e la controversia sulle Falkland/Malvinas’ in Natalino Ronzitti (ed), *La questione delle Falkland-Malvinas nel diritto internazionale* (Dott A Giuffrè Editore 1984) 75–83.

<sup>10</sup> See also Rousseau (n 2) 736–38.

<sup>11</sup> HC Deb 3 April 1982, vol 21, col 637.

<sup>12</sup> Letter dated 24 April 1982 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council (24 April 1982) UN Doc S/14997. The expression ‘defensive bubble’ is borrowed from William J Fenrick, ‘The Exclusion Zone Device in the Law of Naval Warfare’ (1986) 24 Canadian Yearbook of International Law 91, 110.

day (with both incidents resulting in numerous casualties among the crew members). Five thousand British troops landed on East Falkland (Isla Soledad) on 21 May.

Meanwhile, diplomatic efforts were made to reach a peaceful settlement, with mediation attempts by the US Secretary of State Alexander Haig, by the Peruvian President Fernando Belaúnde Terry, and, finally, by the UN Secretary-General Javier Pérez de Cuéllar.<sup>13</sup> The latter reported to the UNSC on 21 May that his efforts had remained fruitless and that he saw no possibility for a mutually acceptable ceasefire. Hostilities continued until the surrender of General Menéndez on the evening of 14 June. On 21 June, the United Kingdom also reported the 'recovery of possession of the South Sandwich Islands'—where Argentina had maintained a presence on South Thule Island since 1976.<sup>14</sup>

## II. The Positions of the Main Protagonists and the Reaction of Third States and International Organizations

Our study of the legal claims invoked by the states involved and the reaction of third states will be divided in two steps, beginning with the Argentinian invasion, followed by the British recovery.

### 1. The first stage of the crisis: Argentina invades the Falkland Islands (Islas Malvinas) and South Georgia

On 1 April 1982, informed about the intention of Argentina to launch an invasion of the islands, the United Kingdom requested an emergency meeting of the UNSC.<sup>15</sup> The Council met in the evening of the same day and agreed on a presidential statement in which it '[called] on the Governments of Argentina and the UK to exercise the utmost restraint at this time and in particular to refrain from the use or threat of force in the region and to continue the search for a diplomatic solution'.<sup>16</sup>

Argentina's attempts to justify its acts were manifold. Initially, the Permanent Representative of Argentina Eduardo Roca depicted the dispatch of *HMS Endurance* to the waters of South Georgia both as an act of aggression<sup>17</sup> and as an 'imminent threat' triggering 'a right to exercise legitimate defence'.<sup>18</sup> Insisting on Argentina's title to the Falklands Islands (Islas Malvinas) and South Georgia, he further declared that as a result of the British occupation, Argentina 'has been and continues to be the object of continuous acts of aggression'<sup>19</sup> and that 'the continued refusal of the United Kingdom to

<sup>13</sup> For a detailed account of these attempts, see Christina Parajon, 'War-Stopping Techniques in the Falklands' in Kristen Eichensehr and W Michael Reisman (eds), *Stopping Wars and Making Peace: Studies in International Intervention* (Nijhoff 2009) 1–42; Douglas Kinney, 'Chapter II: Mediation Attempts in the Falkland/Malvinas Islands Crisis' (1986) 1 Perspectives on Negotiation: Four Case Studies and Interpretations: The Panama Canal Treaties, the Falkland/Malvinas Islands, the Cyprus Dispute, Negotiating Zimbabwe's Independence 51.

<sup>14</sup> Letter dated 21 June 1982 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council (21 June 1982) UN Doc S/15246.

<sup>15</sup> Letter dated 1 April 1982 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council (1 April 1982) UN Doc S/14942.

<sup>16</sup> Statement by the President of the Security Council (1 April 1982) UN Doc S/14944.

<sup>17</sup> UNSC Verbatim Record (2 April 1982) UN Doc S/PV.2345, 3–4 [29]–[30] (Argentina).

<sup>18</sup> *ibid* 7 [65] (Argentina). See also Letter dated 1 April 1982 from the Permanent Representative of Argentina addressed to the President of the Security Council (1 April 1982) UN Doc S/14940; UNSC Verbatim Record (2 April 1982) UN Doc S/PV.2346, 2 [12] (Argentina). This argument of preventive self-defence was abandoned in later communications by Argentina.

<sup>19</sup> UN Doc S/PV.2345 (n 17) 6 [59] (Argentina).

take effective steps to settle the dispute ... constitutes an additional form of aggression'.<sup>20</sup> Costa Méndez later insisted on the colonial nature of the situation<sup>21</sup> and on the fact that Argentina's actions had been taken in defence of its rights over the islands.<sup>22</sup> He also argued that after 150 years of 'continued usurpation of its territory by a colonial Power', the time for negotiation had elapsed.<sup>23</sup> He further affirmed that Article 2(3) and 2(4) of the UN Charter could not 'be taken to mean the legitimization of situations which have their origin in wrongful acts, in acts carried out before the Charter was adopted and which have subsisted ever since'.<sup>24</sup> In this context, he alluded to the rejection by the Security Council of a draft resolution casted in similar terms as the British draft in the context of India's seizure of Goa<sup>25</sup> and contended that colonialism is nothing else than 'permanent aggression'.<sup>26</sup>

The British authorities immediately condemned the invasion in the strongest terms. Prime Minister Margaret Thatcher declared in an emergency House of Commons debate on 3 April 1982 that the invasion was an 'unprovoked aggression' that '[had] not a shred of justification and not a scrap of legality'.<sup>27</sup> In the UNSC, the British Permanent Representative, Sir Anthony Parsons, denounced the 'blatant violation of the Charter of the United Nations and international law'—mentioning in particular Article 2(3) and 2(4) of the UN Charter.<sup>28</sup> He also discarded the Argentinian thesis of the inapplicability of these provisions to 'situations which arose before the Charter was adopted'.<sup>29</sup> He later qualified Argentina's intervention as violations of Article 2(3) and 2(4) of the UN Charter and as an act of aggression, insisting on the fact that Argentina was the aggressor because it had been the first to use force, as foreseen in Article 2 of the Definition of Aggression:

It was Argentina which, by its first use of force in defiance of the call by the Security Council on 1 April (S/14944), committed an act of aggression within the meaning of the Definition of Aggression contained in General Assembly resolution 3314 (XXIX), misleadingly referred to in the Argentine letter.<sup>30</sup>

<sup>20</sup> *ibid* 7 [63] (Argentina).

<sup>21</sup> UNSC Verbatim Record (3 April 1982) UN Doc S/PV.2350, 2 [11] (Argentina).

<sup>22</sup> *ibid* 3 [22] (Argentina). See also UN Doc S/PV.2360 (n 4) 7 [62] (Argentina).

<sup>23</sup> UN Doc S/PV.2350 (n 21) 3 [23] and 4 [38]–[39] (Argentina). See also UN Doc S/PV.2360 (n 4) 8 [79] (Argentina).

<sup>24</sup> UN Doc S/PV.2350 (n 21) 3 [25] (Argentina). <sup>25</sup> *ibid* 4 [41] (Argentina).

<sup>26</sup> UNSC Verbatim Record (25 May 1982) UN Doc S/PV.2366, 13 [135] (Argentina); UNSC Verbatim Record (2 June 1982) UN Doc S/PV.2371, 7 [72] (Argentina).

<sup>27</sup> HC Deb 3 April 1982, vol 21, col 633. The leader of the opposition Michael Foot qualified it as an 'act of naked, unqualified aggression, carried out in the most shameful and disreputable circumstances' (col 639).

<sup>28</sup> UN Doc S/PV.2346 (n 18) 1 [5] (United Kingdom).

<sup>29</sup> UN Doc S/PV.2350 (n 21) 15–16 [171]–[172] (United Kingdom).

<sup>30</sup> Letter dated 30 April 1982 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council (30 April 1982) UN Doc S/15016, 2. See also Letter dated 11 April 1982 from the Chargé d'Affaires a.i. of the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council (11 April 1982) UN Doc S/14964; Letter dated 26 April 1982 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland (n 6); Letter dated 4 May 1982 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council (4 May 1982) UN Doc S/15041; UN Doc S/PV.2360 (n 4) 10–11 [107]–[109] (United Kingdom); Letter dated 1 June 1982 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council (1 June 1982) UN Doc S/15148; UN Doc S/PV.2371 (n 26) 9 [88] (United Kingdom); Letter dated 23 June 1982 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council (23 June 1982) UN Doc S/15249.

Sir Anthony Parsons also explicitly rejected the thesis of the lawfulness of the use of force for decolonization purposes and affirmed the applicability of Article 2(4) to non-self-governing territories.<sup>31</sup>

At the request of the United Kingdom, the UNSC held a session that culminated with the adoption of Resolution 502 in which it qualified the invasion as a ‘breach of the peace’ and demanded ‘an immediate cessation of hostilities’ as well as ‘an immediate withdrawal of all Argentine forces from the Falkland Islands (Islas Malvinas)’. It also called on both governments ‘to seek a diplomatic solution to their differences and to respect fully the purposes and principles of the Charter of the United Nations’.<sup>32</sup>

Western states unanimously condemned Argentina’s invasion, qualifying it both as a violation of Article 2(3) and 2(4) of the UN Charter.<sup>33</sup> In some cases, they also qualified it as an act of aggression.<sup>34</sup> Ireland insisted that the question of the legality of Argentina’s actions was distinct from the merits of its claims in the underlying sovereignty dispute.<sup>35</sup> In a similar vein, Spain, the only western state that expressed its support for the territorial claims of Argentina, nevertheless disapproved its recourse to military force.<sup>36</sup> Some states that followed a policy of neutrality—at least in the early stage of the conflict—such as Ireland, Spain, Austria, Canada, the United States, or the Nordic states, initially condemned the actions but stopped short of an explicit legal qualification.<sup>37</sup> Still, some of them made clear at a later stage that they saw Argentina’s action as a clear violation of

<sup>31</sup> See, eg, UNSC Verbatim Record (22 May 1982) UN Doc S/PV.2362, 24 [271] (United Kingdom).

<sup>32</sup> UNSC Res 502 (3 April 1982) UN Doc S/RES/502. The resolution reflected word for word (except for the addition of the Argentinian toponym) the draft submitted on April 2 by the United Kingdom. See United Kingdom of Great Britain and Northern Island: draft resolution (2 April 1982) UN Doc S/14947. The resolution was adopted with 10 votes in favour (United States, United Kingdom, France, Guyana, Ireland, Japan, Jordan, Togo, Uganda, and Zaire), 1 against (Panama), with 4 abstentions (USSR, China, Poland, and Spain). See UN Doc S/PV.2350 (n 21) 13 [145]. See Francis Toase, ‘The United Nations Security Resolution 502’ in Stephen Badsey, Rob PW Havers, and Mark J Grove (eds), *The Falklands Conflict Twenty Years on: Lessons for the Future* (Frank Cass 2005) 147–69.

<sup>33</sup> UNSC Verbatim Record (2 April 1982) UN Doc S/PV.2349, 1 [7] (France); UN Doc S/PV.2360 (n 4) 20–21 [211] and [220] (Australia); UNSC Verbatim Record (23 May 1982) UN Doc S/PV.2363, 1 [3] (France); *ibid.* 12 [124]–[125] (Belgium); UNSC Verbatim Record (24 May 1982) UN Doc S/PV.2364, 9 [97]–[98] (Greece); UN Doc S/PV.2366 (n 26) 6 [51] (Netherlands); *ibid.* 8 [79] (Italy); UNSC Verbatim Record (26 May 1982) UN Doc S/PV.2368, 2 [11] (Germany); UNGA Verbatim Record (3 November 1982) UN Doc A/37/PV.52, 896 [137] (Malta); UNGA Verbatim Record (3 November 1982) UN Doc A/37/PV.53, 921 [248] (Finland); UNGA Verbatim Record (4 November 1982) UN Doc A/37/PV.55, 947 [117] (Belgium); *ibid.* 954 [217] (Norway). See also German Federal Government’s declaration of 7 April 1982 quoted in Hans-Heinrich Lindemann, ‘Völkerrechtliche Praxis der Bundesrepublik Deutschland im Jahre 1982’ (1984) 44 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 495, 507.

<sup>34</sup> See UN Doc S/PV.2349 (n 33) 2 [22] (Australia); *ibid.* 3 [33] (New Zealand); UN Doc S/PV.2363 (n 33) 7 [56] (New Zealand). See also the statement of the Dutch Minister for Foreign Affairs on 28 April 1982 quoted in Robert CR Siekmann, ‘Netherlands State Practice for the Parliamentary Year 1981–1982’ (1983) 14 *Netherlands Yearbook of International Law* 245, 330. See also the declaration of French President François Mitterand quoted in Jean Charpentier, ‘Pratique française du droit international—1982’ (1982) 28 *Annuaire français de droit international* 1017, 1093.

<sup>35</sup> See UN Doc S/PV.2349 (n 33) 2 [18] (Ireland).

<sup>36</sup> See UN Doc S/PV.2350 (n 21) 18 [203] (Spain); UN Doc S/PV.2362 (n 31) 2 [11]–[12] (Spain).

<sup>37</sup> See UN Doc S/PV.2349 (n 33) 1–2 [10]–[18] (Ireland); *ibid.* 3 [26]–[30] (Canada); UN Doc S/PV.2350 (n 21) 6–7 [71]–[74] (United States); *ibid.* 20–21 [232]–[244] (Ireland); Text of the statement issued by the Government of Ireland on 2 May 1982 annexed to Letter dated 3 May 1982 from the Permanent Representative of Ireland to the United Nations addressed to the President of the Security Council (4 May 1982) UN Doc S/15036; Letter dated 6 May 1982 from the Representatives of Denmark, Finland, Iceland, Norway and Sweden to the United Nations addressed to the Secretary-General (6 May 1982) UN Doc S/15052; Letter dated 11 May 1982 from the Permanent Representative of Austria to the United Nations addressed to the Secretary-General (11 May 1982) UN Doc S/15073. See also the initial Statement of 2 April by the Ten States Members of the European Community annexed to the Letter dated 3 April 1982 from the Permanent Representative of Belgium to the United Nations addressed to the President of the Security Council (3 April 1982) UN Doc S/14949.

Article 2(4) of the UN Charter.<sup>38</sup> On 3 April, France announced a suspension of the sales of military equipment to Argentina.<sup>39</sup> On 10 April, the European Economic Community—quickly joined by Norway, Canada, and Hong Kong—announced that the members states had decided ‘to apply a total embargo on the export of arms and military equipment to Argentina’ and to suspend all imports from Argentina.<sup>40</sup> The United States also ceased to sell military equipment to Argentina and adopted measures against certain Argentinian banks.<sup>41</sup>

Since 1975 and throughout the conflict, the non-aligned movement (NAM) had endorsed without reserve and on repeated occasions the validity of the claims of Argentina to the Falkland Islands (Islas Malvinas).<sup>42</sup> In a Statement of 28 April, far from endorsing the Argentinian invasion—but also stopping short of an explicit condemnation—the NAM ‘reaffirmed the view that the use of force or the threat of the use of force in relations between States are acts contrary to [its] principles’.<sup>43</sup> This minimalist approach reflected deep divisions among members on the issue of the legality of the invasion. The most fervent supporters of Argentina were some of the Latin American states such as Bolivia, Panama, Paraguay, Venezuela, Ecuador, El Salvador, and Nicaragua. The latter espoused most of the Argentinian arguments.<sup>44</sup> Other Latin American states such as Brazil, Peru, Uruguay, Mexico, Guatemala, Honduras, Chile, or Costa Rica, expressed more discomfort with the claims made by Argentina or at least refrained from endorsing its actions expressly.<sup>45</sup> Notably, Chile, finding support in the recently adopted draft Manilla Declaration,<sup>46</sup> clearly rejected the thesis of the ‘exhaustion’ of the obligation to settle international dispute by peaceful means.<sup>47</sup> Finally, the Anglophone states of South and

<sup>38</sup> UN Doc S/PV.2360 (n 4) 15 [150] (Ireland); UN Doc S/PV.2362 (n 31) 19 [209] (Canada); *ibid* 20 [220]–[225] (United States); UN Doc A/37/PV.55 (n 33) 960 [293] (Austria). See also the Joint statement by the Governments of the Ten States members of the European Community concerning the Falkland Islands issued at Brussels on 10 April 1982 annexed to the Letter dated 13 April 1987 from the Permanent Representative of Belgium to the United Nations addressed to the President of the Security Council (14 April 1982) UN Doc S/14976.

<sup>39</sup> Charpentier (n 34) 1025–26.

<sup>40</sup> Joint statement by the Governments of the Ten States members of the European Community concerning the Falkland Islands issued at Brussels on 10 April 1982 (n 38). See also Agnès Saal-Ory, ‘Chronologie des faits internationaux d’ordre juridique 1982’ (1982) 28 *Annuaire français de droit international* 1117, 1126. For the text of the relevant European Regulations, see ‘European Communities: Council Regulations and Decisions on Suspending Imports from Argentina’ (1982) 21 *International Legal Materials* 547.

<sup>41</sup> See ‘United States: Statements Concerning Assistance and Sales to Argentina’ (1982) 21 *International Legal Materials* 682.

<sup>42</sup> See the relevant passages of the Statements reproduced in Annex III to the Letter dated 18 October 1982 from the Permanent Representative of Argentina (n 3), 17–22.

<sup>43</sup> Annex to the Letter dated 26 April 1982 from the Permanent Representative of Cuba to the United Nations addressed to the Secretary-General (27 April 1982) UN Doc S/15003. See also Communiqué adopted by the Coordinating Bureau of the Movement of Non-Aligned Countries on 5 May 1982 annexed to Letter dated 5 May 1982 from the Alternate Permanent Representative of Cuba to the United Nations addressed to the Secretary-General (6 May 1982) UN Doc S/15048.

<sup>44</sup> See, eg, UN Doc S/PV.2350 (n 21) 7 [79]–[82] (Bolivia); *ibid* 8–13 [93]–[134] (Panama); *ibid* 14 [151]–[152] (Paraguay); Letter dated 14 April 1982 April [sic] from the Permanent Representative of Panama to the United Nations addressed to the President of the Security Council (14 April 1982) UN Doc S/14978; Letter dated 14 April 1982 from the Permanent Representative of Venezuela to the United Nations addressed to the President of the Security Council (14 April 1982) UN Doc S/14979; UN Doc S/PV.2360 (n 4) 18–19 [196]–[198] (Ecuador); UN Doc S/PV.2362 (n 31) 6 [62] (Venezuela); UN Doc S/PV.2363 (n 33) 10–11 [108]–[109] (El Salvador); UN Doc A/37/PV.52 (n 33) 891 [86] (Nicaragua).

<sup>45</sup> See UN Doc S/PV.2350 (n 21) 5 [47]–[55] (Brazil); *ibid* 8 [92] (Peru); UN Doc S/PV.2362 (n 31) 3–4 [23]–[27] (Uruguay); *ibid* 10 [120] (Mexico); *ibid* 22 [243] (Guatemala); UN Doc S/PV.2363 (n 33) 3 [21] (Honduras); Letter dated 17 May 1982 from the Chargé d’Affaires a.i. of the Permanent Mission of Costa Rica to the United Nations addressed to the Secretary-General (18 May 1982) UN Doc S/15090.

<sup>46</sup> Later adopted as Manila Declaration on the Peaceful Settlement of International Disputes UNGA Res A/37/10 (15 November 1982) UN Doc A/RES/37/10.

<sup>47</sup> UN Doc S/PV.2366 (n 26) 7 [70] (Chile).

Central America proved much more willing to condemn the invasion as a violations of both Article 2(3) and 2(4) of the UN Charter.<sup>48</sup> As a result of these divisions, the resolutions adopted by the Organization of American States (OAS), the statements by the Latin American Group at the UN General Assembly, or the Latin American Economic System (SELA) did not endorse Argentina's views nor rejected them expressly.

Support for Argentina was very limited outside the western hemisphere. Most of the African states, even though they generally reaffirmed the NAM position on the sovereignty dispute, were also critical of Argentina's views on the use of force,<sup>49</sup> or refrained from endorsing them.<sup>50</sup> With some exceptions—such as Indonesia which refrained from condemning either side,<sup>51</sup> or Vietnam and the Lao People's Democratic Republic who fervently supported Argentina<sup>52</sup>—Asian states were generally ready to condemn Argentina's invasion and qualified it as a violation of Article 2(3) and 2(4) of the UN Charter.<sup>53</sup> Remarkably, India—which had used the decolonization argument to justify its seizure of Goa some twenty years earlier and had benefitted from the leniency of the Council at the time—condemned the use of force by both sides.<sup>54</sup> Although they did not oppose the adoption of Resolution 502 (1982), the Socialist states generally refrained from explicitly condemning Argentina in legal terms.<sup>55</sup> Finally, many of the non-aligned countries, alongside the Soviet Union, also condemned the adoption of so-called economic 'sanctions' by third states, sometimes qualifying them as 'economic aggression'.<sup>56</sup>

When the question of the Falkland Islands (Islas Malvinas) returned on the agenda of the UN General Assembly in late 1982, a draft resolution proposed by the Latin American Group requesting the parties 'to resume negotiations in order to find as soon as possible a

<sup>48</sup> See UN Doc S/PV.2350 (n 21) 22 [260] (Guyana); Telegram dated 5 April 1982 from the Ministry of External Affairs of Dominica addressed to the Secretary-General (5 April 1982) UN Doc S/14956; UN Doc S/PV.2360 (n 4) 22 [231] (Antigua and Barbuda); UN Doc S/PV.2366 (n 26) 2 [12]–[13] (Guyana); UN Doc A/37/PV.52 (n 33) 893 [105] (Antigua and Barbuda); UNGA Verbatim Record (4 November 1982) UN Doc A/37/PV.54, 935 [132] (Jamaica); UN Doc A/37/PV.55 (n 33) 950 [158] (Belize).

<sup>49</sup> UN Doc S/PV.2350 (n 21) 19 [215] (Uganda); *ibid* 20 [220]–[223] (Togo); UN Doc S/PV.2364 (n 33) 2 [12] (Uganda); *ibid* 3 [26] (Zaire); *ibid* 6–7 [64] and [73] (Kenya); *ibid* 8 [88] (Liberia); UN Doc S/PV.2366 (n 26) 4 [26] (Togo); UN Doc A/37/PV.53 (n 33) 918 [216] (Zaire); UN Doc A/37/PV.55 (n 33) 953 [197] (Sierra Leone); *ibid* 956 [235] (Ghana).

<sup>50</sup> UN Doc S/PV.2363 (n 33) 7 [65]–[66] (Equatorial Guinea).

<sup>51</sup> *ibid* 12–13 [138]–[148] (Indonesia).

<sup>52</sup> See, eg, Letter dated 12 May 1982 from the Chargé d'Affaires a.i. of the Permanent Mission of Viet Nam to the United Nations addressed to the Secretary-General (13 May 1982) S/15076; Statement of the Ministry of Foreign Affairs of the Lao People's Democratic Republic on the Question of the Malvinas, annexed to Letter dated 17 May 1982, from the Permanent Representative of the Lao People's Democratic Republic to the United Nations addressed to the Secretary-General (18 May 1982) UN Doc A/37/227-S/15088.

<sup>53</sup> UN Doc S/PV.2350 (n 21) 5 [61]–[62] (Jordan); *ibid* 6 [67] (Japan); UN Doc A/37/PV.53 (n 33) 905–906 [79]–[80] (Fiji). See also the Statement of 5 April 1982 (Singapore Government Press Release 09-0/82/04/05), reproduced in 'Singapore and International Law' (1982) 24 *Malaya Law Review* 181, 181.

<sup>54</sup> UN Doc S/PV.2366 (n 26) 9 [89] (India); UN Doc A/37/PV.53 (n 33) 906–907 [90]–[93] (India).

<sup>55</sup> See, eg, UN Doc S/PV.2350 (n 21) 22 [264] (Poland); *ibid* 23 [270] (China); UN Doc A/37/PV.53 (n 33) 899 [1]–[9] (Hungary). But see UN Doc S/PV.2368 (n 33) 3 [25] (Yugoslavia).

<sup>56</sup> See, eg, UN Doc S/PV.2362 (n 31) 6 [62] (Venezuela); *ibid* 9 [102]–[103] (USSR); *ibid* 12 [150] (Cuba); UN Doc S/PV.2363 (n 33) 10–11 [108]–[109] (El Salvador); Statement of the SELA annexed to Letter dated 4 June 1982 from the Chargé d'Affaires a.i. of the Permanent Mission of Argentina to the United Nations addressed to the President of the Security Council (4 June 1982) UN Doc S/15159; UN Doc A/37/PV.53 (n 33) 908 [100] (Bulgaria); *ibid* 918 [208] (Byelorussian Soviet Socialist Republic). See also Resolution I: Serious Situation in the South Atlantic (28 April 1982) OEA/Ser.F/II.20, Doc. 28/82 rev. 3, [6], annex to Letter dated 28 April 1982 from the President of the Twentieth Meeting of Consultation of Ministers of Foreign Affairs of The Organization of American States Addressed to the President of the Security (28 April 1982) UN Doc S/15008; UN Doc S/PV.2362 (n 31) 9 [101]–[102] (USSR); *ibid* 12 [150] (Cuba); OAS, Resolution II: Serious Situation in the South Atlantic, adopted on 29 May 1982 by the Twentieth Meeting of Consultation of Ministers of Foreign Affairs, para 1, annex to Telegram dated 29 May 1982 from the Secretary-General of the Organization of American States addressed to the Secretary-General (3 June 1982) UN Doc S/15155.

peaceful solution to the sovereignty dispute’ was adopted only after the addition of a pre-ambular paragraph that reaffirmed ‘the principles of the Charter of the United Nations on the non-use of force or the threat of force in international relations and the peaceful settlement of international disputes’.<sup>57</sup>

## 2. Second stage of the crisis: Britain recovers the occupied territories

According to the British notice of 8 April concerning the establishment of a ‘maritime exclusion zone’, ‘any Argentine warships and Argentine naval auxiliaries found within this zone will be treated as hostile and are liable to be attacked by British forces’.<sup>58</sup> Interestingly, Britain did not ground this measure on the right of self-defence, as it made clear that it was ‘without prejudice to the right of the United Kingdom to take whatever additional measures may be needed in exercise of its right of self-defence, under article 51 of the United Nations Charter’.<sup>59</sup> On 9 April, the United Kingdom denounced the lack of compliance of Argentina with Resolution 502 (1982),<sup>60</sup> which would soon be stated as a reason for the necessity of measures of self-defence.<sup>61</sup> The British notice concerning the ‘total exclusion zone’ established a presumption of hostile character where it stated that ‘[a]ny ship and any aircraft, whether military or civil, which is found within this zone without due authority from the Ministry of Defence in London will be regarded as operating in support of the illegal occupation and will therefore be regarded as hostile and will be liable to be attacked by the British forces’.<sup>62</sup> These measures were justified by the continuing violation by Argentina of the aforementioned resolution.<sup>63</sup> On 7 May, the Ministry of Defence ‘[warned] Argentina that any Argentine warship or military aircraft which are found more than 12 nautical miles from the Argentine coast will be regarded as hostile and are liable to be dealt with accordingly’.<sup>64</sup> On 22 July, Margaret Thatcher announced the decision to lift the ‘total exclusion zone’ but only to replace it by a 150-nautical-miles ‘protection zone’ in which Argentinian aircraft and ships were requested not to enter without prior authorization by the British Government.<sup>65</sup> The latter was framed as a measure of self-defence and remained in force until the early 1990s, despite repeated protests by Argentina.<sup>66</sup>

<sup>57</sup> Question of the Falkland Islands (Malvinas), UNGA Res 37/9 (4 November 1982) UN Doc A/RES/37/9, preamble. See, stating the reason for the addition of this paragraph, UN Doc A/37/PV.52 (n 33) 886 [18] (Mexico).

<sup>58</sup> Letter dated 9 April 1982 from the Chargé d’Affaires a.i. of the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council (10 April 1982) UN Doc S/14963.

<sup>59</sup> *ibid.* <sup>60</sup> *ibid.*

<sup>61</sup> See, eg, Letter dated 13 April 1982 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council (13 April 1982) UN Doc S/14973, 2.

<sup>62</sup> Letter dated 28 April 1982 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council (28 April 1982) UN Doc S/15006.

<sup>63</sup> *ibid.* See also Letter dated 4 May 1982 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland (n 30) 1–2.

<sup>64</sup> Text of the statement made by the British Ministry of Defence on 7 May 1982, annexed to Letter dated 8 May 1982 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council (8 May 1982) UN Doc S/15058.

<sup>65</sup> Letter dated 22 July 1982 from the Chargé d’Affaires a.i. of the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council (22 July 1982) UN Doc S/15307.

<sup>66</sup> See *The Europa World Year: Kazakhstan–Zimbabwe* (Taylor & Francis 2004) 4461. See, eg, Letter dated 7 November 1983 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the Secretary-General (9 November 1983) UN Doc S/16136 and the references.

Argentina—followed by many Latin American and some other states—qualified these measures as acts of blockade constitutive of aggression under Article 3(c) of the Definition of Aggression<sup>67</sup> or as violations of the freedom of navigation, especially insofar as they were directed at neutral ships and aircrafts.<sup>68</sup> Argentina, the OAS, and many Latin American states also criticized these measures as well as the use of force by the United Kingdom as disproportionate and as lacking any valid basis, as they could not be said ‘to repel an imminent and grave danger’.<sup>69</sup> In a resolution adopted on 29 May, the OAS condemned ‘most vigorously the unjustified and disproportionate armed attack perpetrated by the United Kingdom, and its decision, which affects the security of the entire American hemisphere, of arbitrarily declaring an extensive area of up to 12 miles from the American coasts as a zone of hostilities, which is aggravated by the circumstance that when these actions were taken all possibilities of negotiation seeking a peaceful settlement of the conflict had not been exhausted’.<sup>70</sup>

In a statement on behalf of the G7 on 6 June 1982, French President François Mitterrand expressed full support for the United Kingdom—that had been ‘the victim of aggression’—and affirmed that it ‘must recover what it has lost’.<sup>71</sup> The collective security provisions of NATO were not applicable to the territories affected by Argentina’s invasion as they were located south of the Tropic of Cancer (see Article 6 of the North Atlantic Treaty). Interestingly, however, very few states, even among Britain’s closest allies, explicitly supported the United Kingdom’s claim of self-defence at the UN.<sup>72</sup> The overwhelming majority of states confined itself to asking for an immediate cessation of hostilities and a peaceful settlement of the dispute.<sup>73</sup> On 26 May, the Security Council unanimously

<sup>67</sup> See, eg, Letter dated 9 April 1982 from the Permanent Representative of Argentina to the United Nations addressed to the President of the Security Council (9 April 1982) UN Doc S/14961; Letter from the Minister of Foreign Affairs and Worship of Argentina addressed to the Minister for Foreign Affairs of Peru annexed to Letter dated 13 April 1982 from the Permanent Representative of Argentina to the United Nations addressed to the President of the Security Council (13 April 1982) UN Doc S/14975, 2; Letter dated 14 1982 April [sic] from the Permanent Representative of Panama (n 44) 2–3; Letter dated 24 April 1982 from the Permanent Representative of Argentina to the United Nations addressed to the President of the Security Council (24 April 1982) UN Doc S/14998; UN Doc S/PV.2360 (n 4) 19 [198] (Ecuador); UN Doc S/PV.2362 (n 31) 11–12 [134] (Cuba). See also UN Doc S/PV.2364 (n 33) 7 [79] (Lao People’s Democratic Republic). See also Jean Pierre Queneudec et al, ‘Chronique de Droit international de la Mer’ (1982) 28 *Annuaire français de droit international* 900, 911–13.

<sup>68</sup> See the Argentinian letters quoted in the preceding footnote. See also Letter dated 14 1982 April [sic] from the Permanent Representative of Panama (n 44) 2–3; UN Doc S/PV.2360 (n 4) 19 [198] (Ecuador); UN Doc S/PV.2362 (n 31) 11–12 [134] (Cuba). See also UN Doc S/PV.2364 (n 33) 7 [79] (Lao People’s Democratic Republic).

<sup>69</sup> Letter dated 14 1982 April [sic] from the Permanent Representative of Panama (n 44); Letter dated 16 April 1982 from the Permanent Representative of Argentina to the United Nations addressed to the President of the Security Council (16 April 1982) UN Doc S/14984; Letter dated 28 April 1982 from the Permanent Representative of Argentina to the United Nations addressed to the President of the Security Council (28 April 1982) UN Doc S/15009; Letter dated 30 April 1982 from the Permanent Representative of Argentina to the United Nations addressed to the President of the Security Council (30 April 1982) UN Doc S/15021; UN Doc S/PV.2362 (n 31) 14 [158].

<sup>70</sup> OAS, Resolution II: Serious Situation in the South Atlantic, adopted on 29 May 1982 by the Twentieth Meeting of Consultation of Ministers of Foreign Affairs, para 1, annex to Telegram dated 29 May 1982 from the Secretary-General of the Organization of American States (n 56). On the positions expressed by Latin American states in the OAS meetings, see Antônio Augusto Cançado Trindade, ‘La ventesima riunione di consultazione (1982) del trattato interamericano di assistenza reciproca di fronte al conflitto anglo-argentino nell’Atlantico del Sud’ in Laura Forlati, Francisco Leita, and Giovanni Battaglini (eds), *Crisi Falkland-Malvinas e organizzazione internazionale* (CEDAM 1985) 163–205.

<sup>71</sup> ‘Industrialized Countries—Versailles Summit of Seven Major Non-Communist Nations’ (1982) XXVIII Keesing’s Contemporary Archives 31637, 31639.

<sup>72</sup> See UN Doc S/PV.2360 (n 4) 20 [221] (Australia); UN Doc S/PV.2362 (n 31) 20 [225] (United States of America); UN Doc S/PV.2363 (n 33) 6 [52] (New Zealand). See also, but with a strong criticism of Britain’s exercise of its right of self-defence UN Doc S/PV.2364 (n 33) 3 [35] (Zaire).

<sup>73</sup> See, eg, Resolution I: Serious Situation in the South Atlantic (28 April 1982) OEA/Ser.F./II.20, Doc. 28/82 rev. 3, [1], annex to Letter dated 28 April 1982 from the President of the Twentieth Meeting of Consultation of Ministers of Foreign Affairs of The Organization of American States (n 56); Letter dated 3 May 1982 from

adopted Resolution 505 (1982) in which it requested the Secretary-General ‘to undertake a renewed mission of good offices’ but stopped short of ordering an immediate ceasefire.<sup>74</sup> On 4 June, a further draft resolution that ‘[requested] the parties to the dispute to cease fire immediately in the region of the Falkland Islands (Islas Malvinas) and to initiate, simultaneously with the cease-fire, the implementation of resolutions 502 (1982) and 505 (1982) in their entirety’ was vetoed by the United Kingdom and the United States.<sup>75</sup> Italy and Ireland refused to prolong the economic countermeasures and distanced themselves from the remaining members of the European Community.<sup>76</sup>

Many non-aligned states condemned the use of force by the United Kingdom, as it was perceived as a recolonization by force. They saw it either as a violation of Resolution 502 (1982)<sup>77</sup> or as a violation of the prohibition of the use of force.<sup>78</sup> According to Mexico, for instance, ‘[t]he means provided by the Charter to maintain international peace and security should be employed even in the midst of an armed conflict’.<sup>79</sup> Some NAM states stressed that under Article 51 of the UN Charter the right of self-defence was only available ‘until the Security Council has taken measures necessary to maintain international peace and security’.<sup>80</sup> The United Kingdom retorted that this ‘can only be taken to refer to measures which are actually effective to bring about the stated objective’.<sup>81</sup> Both Argentina and the United Kingdom agreed that the effective character of the measures adopted by the Council had to be assessed objectively.<sup>82</sup> Criticisms were also voiced against the United Kingdom for abusing its right of veto as well as the system of collective security<sup>83</sup> and

the Permanent Representative of Ireland (n 37); Official Communiqué of the Ministry of Foreign Affairs of Peru annexed to Letter dated 10 May 1982 from the Permanent Representative of Peru to the United Nations addressed to the President of the Security Council (11 May 1982) UN Doc S/15071; Message dated 19 May 1982 addressed to the President of the Security Council by the Minister for External Relations of Brazil annexed to Letter dated 19 May 1982 from the Permanent Representative of Brazil to the United Nations addressed to the President of the Security Council (19 May 1982) UN Doc S/15097; UN Doc S/PV.2360 (n 4) 17 [176] (Japan); *ibid* 18 [187] (Brazil); UN Doc S/PV.2363 (n 33) 7 [66] (Equatorial Guinea); *ibid* 8 [76] (Paraguay); *ibid* 9 [83] (Colombia); *ibid* 11 [116] (El Salvador); UN Doc S/PV.2364 (n 33) 2 [13] (Uganda); *ibid* 10 [105] (China); UN Doc S/PV.2366 (n 26) 4 [29] (Togo); *ibid* 9 [94] (India).

<sup>74</sup> UNSC Res 505 (26 May 1982) UN Doc S/RES/505 [2]. See UN Doc S/PV.2368 (n 33) 8 [85]. For the draft, see Guyana, Ireland, Jordan, Togo, Uganda and Zaire: draft resolution (26 May 1982) UN Doc S/15122.

<sup>75</sup> See Panama and Spain: revised draft resolution (4 June 1982) UN Doc S/15156/Rev.2. The draft obtained the support of China, Ireland, Japan, Panama, Poland, Spain, Uganda, the USSR, and Zaire with France, Guyana, Jordan, and Togo abstaining (UNSC Verbatim Record (4 June 1982) UN Doc S/PV.2373, 5 [49]). After the vote, US Permanent Representative Jeane Kirkpatrick declared, in a move that was probably designed to avoid alienating the remaining sympathy of Latin American countries, that ‘were it possible to change our vote we should like to change it from a veto—a “no”, that is—to an abstention’ (*ibid* 6 [71]).

<sup>76</sup> See Statement of the Government of Ireland annexed to the Letter dated 4 May 1982 from the Permanent Representative of Ireland to the United Nations addressed to the President of the Security Council (5 May 1982) UN Doc S/15044; UN Doc S/PV.2360 (n 4) 15 [156]; UN Doc S/PV.2366 (n 26) 8–9 [84] (Italy). See also the criticism voiced by Spain, UN Doc S/PV.2362 (n 31) 2 [12] (Spain).

<sup>77</sup> See, eg, Letter dated 24 April 1982 from the Permanent Representative of Argentina (n 66); UN Doc S/PV.2362 (n 31) 4 [37] (Uruguay); *ibid* 6 [60]–[61] (Venezuela); *ibid* 17 [190] (Panama); UN Doc S/PV.2368 (n 33) 11 [122] (USSR); UN Doc S/PV.2371 (n 26) 11 [106] (USSR).

<sup>78</sup> TASS Statement annexed to Letter dated 24 May 1982 from the Permanent Representative of the Union of Soviet Socialist Republics to the United Nations addressed to the Secretary-General (24 May 1982) UN Doc S/15105.

<sup>79</sup> UN Doc A/37/PV.52 (n 33) 887 [32] (Mexico). See also, affirming that Article 2(3) of the UN Charter applies both before and after the outbreak of hostilities, UN Doc S/PV.2366 (n 26) 6 [45] (Jordan).

<sup>80</sup> See, eg, Letter dated 14 April 1982 April [sic] from the Permanent Representative of Panama (n 44), 6; UN Doc S/PV.2362 (n 31) 6 [68] (Venezuela); *ibid* 11 [123] (Mexico).

<sup>81</sup> Letter dated 30 April 1982 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland (n 30). See also the Statement of the Minister for Foreign Affairs of the Netherlands on 28 April 1982, quoted in Siekmann (n 34) 330.

<sup>82</sup> UN Doc S/PV.2360 (n 4) 6 [55] (Argentina); UN Doc S/PV.2362 (n 31) 23 [260]–[261].

<sup>83</sup> See, eg, Letter dated 14 April 1982 from the Permanent Representative of Venezuela (n 44), 2; UN Doc S/PV.2362 (n 31) 5 [52] (Venezuela); *ibid* 9 [98] (USSR).

against the United States for providing military assistance to the United Kingdom.<sup>84</sup> The United Kingdom replied by stressing the ‘inherent’ character of the right of self-defence, which ‘nothing in the Charter [was] intended to impair’ as well the existence of ‘continuing illegal military occupation of the Falkland Islands’.<sup>85</sup>

### III. Questions of Legality

The analysis of the questions of legality raised by the initial invasion and the British reaction will follow the same two-steps approach as in the previous section.

#### 1. The legality of the Argentinian invasion

The unlawfulness of the initial Argentinian invasion has been generally acknowledged in the literature, including by some Argentinian scholars.<sup>86</sup> A striking point is that even the numerous states that fully supported Argentina’s claims of sovereignty over the Falkland Islands (Islas Malvinas) disapproved the recourse to force—thus confirming the customary character of the prohibition of the use of force to settle territorial disputes. This is in line with the passage of Resolution 2625 (XXV) where the UN General Assembly stressed that ‘[e]very State has the duty to refrain from the threat or use of force ... as a means of solving international disputes, including territorial disputes’.<sup>87</sup> According to Marcelo Kohen, the prohibition of the use of force thus extends its protective scope to the actual possessor of a territory (*protection du possesseur*), independently of the merits of the territorial dispute.<sup>88</sup> The rare authors that supported the legality of the invasion

<sup>84</sup> See, eg, UN Doc S/PV.2363 (n 33) 15 [163] (Peru).

<sup>85</sup> Letter dated 30 April 1982 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland (n 30); Letter dated 4 May 1982 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland (n 30) 3.

<sup>86</sup> See, eg, Charles Chaumont, ‘Rapport introductif’ in Monique Chemillier-Gendreau (ed), *Discours juridique sur l’agression et réalité internationale : Actes de la sixième Rencontre de Reims* (Centre d’études des relations internationales, Faculté de droit de Reims 1982) 19 and 24; James ES Fawcett, ‘Note of the Month’ (1982) 38 *The World Today* 203, 204; John Norton Moore, ‘The Inter-American System Snarls in Falklands War’ (1982) 76 *American Journal of International Law* 830, 830; Jean Salmon, ‘Défense de l’intégrité territoriale et libre détermination des populations’ *Le Monde diplomatique* (Paris, 1 June 1982) <<https://www.monde-diplomatique.fr/1982/06/SALMON/36757>> accessed 11 June 2017; Tina A Lamoreaux, ‘United States Obligations under the OAS Charter and the Rio Treaty: An Analysis of the Falkland Islands Crisis Comment’ (1983) 13 *California Western International Law Journal* 493, 504–07; Lindsey (n 5) 33; Nicolas J Watkins, ‘Disputed Sovereignty in the Falkland Islands: The Argentina-Great Britain Conflict of 1982 Comment’ (1983) 11 *Florida State University Law Review* 649, 670; Domingo E Acevedo, ‘Collective Self-Defense and the Use of Regional or Subregional Authority as Justification for the Use of Force’ (1984) 78 *Proceedings of the Annual Meeting (American Society of International Law)* 69, 71; Eric David, *Le conflit des Malouines* (Internat Progress Organization 1984) 50–59; Andrea Gioia, ‘Il ricorso alla forza armata da parte argentina e la reazione britannica’ in Natalino Ronzitti (ed), *La questione delle Falkland-Malvinas nel diritto internazionale* (Dott A Giuffrè Editore 1984) 154–71; Meinhard Schröder, ‘Der Kampf um die Falkland-Inseln’ (1984) 27 *German Yearbook of International Law* 334, 343–46; Alberto R Coll, ‘Philosophical and Legal Dimensions of the Use of Force in the War’ in Alberto R Coll and Anthony Clark Arend (eds), *The Falklands War: Lessons for Strategy, Diplomacy and International Law* (HarperCollins Publishers Ltd 1985) 39 and 43; Bruno Grandi, ‘Principi delle Nazioni Unite e ricorso alla forza: Il caso delle Falkland-Malvinas’ in Laura Forlati, Francisco Leita, and Giovanni Battaglini (eds), *Crisi Falkland-Malvinas e organizzazione internazionale* (CEDAM 1985) 41; Leslie C Green, ‘The Rule of Law and the Use of Force—The Falklands and Grenada’ (1986) 24 *Archiv des Völkerrechts* 173, 182.

<sup>87</sup> Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, UNGA Res 2625 (XXV) (24 October 1970) UN Doc A/RES/25/2625.

<sup>88</sup> See Marcelo G Kohen, ‘Chapitre V. Le rôle des principes fondamentaux du droit international’, *Possession contestée et souveraineté territoriale* (Graduate Institute Publications 2014) [111]–[120] <<http://books.openedition.org/iheid/1308>> accessed 16 June 2017.

argued that there existed an exception when the use of force pursues the objective of decolonization or the recovery of precolonial title.<sup>89</sup> This issue remained in doubt, as a result of the equivocal reaction of UN organs in past cases—most notably at the occasion of the seizure of Goa by India in 1962.<sup>90</sup> Oscar Schachter rejected the Argentinian arguments but admitted that '[the] record is not free of ambiguity'.<sup>91</sup> The plausibility of the argument was nevertheless undermined by the absence of an express exception in the UN Charter. Finally, and with reason, the argument of an 'exhaustion' of the obligation to settle territorial disputes through peaceful means as a result of the lack of result of negotiations was also generally rejected in the literature.<sup>92</sup>

## 2. The legality of the British reaction

Regarding the British military reaction and its invocation of the right of self-defence, opinions were divided. Many authors noted that, although the Security Council had qualified the invasion as a 'breach of the peace', it had refrained from designating Argentina as an aggressor.<sup>93</sup> Still, there was general consensus that the invasion was constitutive of an act of aggression and an 'armed attack' for the purposes of Article 51 of the UN Charter.<sup>94</sup> In the light of Article 3(a) of the Definition of Aggression annexed to UN General Assembly Resolution 3314 (XXIX), this assessment is hardly questionable. As far as gravity is concerned, the fact that the initial invasion occurred without causing the death of any British soldier is irrelevant in the face of the massive landing of troops on the Falkland Islands (Islas Malvinas), and especially, their resulting occupation.<sup>95</sup>

The necessity—broadly speaking—of measures of self-defence is nevertheless much more difficult to assert and caused controversy among scholars. The possibility for the United Kingdom to take measures of self-defence appeared questionable given the fact that the UNSC was seized of the situation and had already ordered an immediate ceasefire in Resolution 502 (1982).<sup>96</sup> Some authors did not dwell on this issue, referring to the fact that Article 51 stipulated that '[n]othing in the present Charter shall impair the inherent

<sup>89</sup> See, eg, Efraín Schacht Aristeguieta, 'Reacción de la América latina y el Tercer Mundo en relación con el problema de las Islas Malvinas. Decisiones de los gobiernos y de los organismos latinoamericanos' (1984) 2 Anuario argentino de derecho internacional 35; Antonio Remiro Brotons et al, *Derecho internacional* (Tirant Lo Blanch 2010) 684–86.

<sup>90</sup> See Maurice Flory, 'Les implications juridiques de l'affaire de Goa' (1962) 8 Annuaire français de droit international 476; David (n 86) 56–57. See also Chapter 8 'The Indian Intervention in Goa—1961' by Tom Ruys in this volume.

<sup>91</sup> Oscar Schachter, 'International Law in Theory and Practice: General Course in Public International Law' (1982) 178 Recueil des cours de l'Académie de droit international de La Haye 9, 142. See also, in a similar vein and even more cautiously, Reisman (n 5) 313: '[T]he Argentinian view was not based on wild or fantastic legal interpretations. It is a cogent, if not a conclusive legal case, substantially supported by most Latin American states and consistent with a good deal of international practice regarding decolonization.'

<sup>92</sup> See, eg, Bring (n 5) 142; Monroe Leigh et al, 'The Falkland/Malvinas Crisis' (1982) 76 Proceedings of the Annual Meeting (American Society of International Law) 267, 275 (remarks by John Norton Moore); Gioia (n 86) 166–68. See also, rejecting the legality of Argentina's invasion despite her harsh criticism at the alleged obstructionist conduct of Britain in the negotiations, Pinto (n 3) 10. But see, more ambiguously, Héctor Gross Espiell, 'El caso de las Islas Malvinas y el derecho a la libre determinación de los pueblos' (1983) 50 Rivista di Studi Politici Internazionali 225, 236–37. See also, expressing sympathy for the thesis, Hope (n 3) 392–93; 'Correspondence' (1983) 77 The American Journal of International Law 606, 608 (Letter by Emilio J Cárdenas).

<sup>93</sup> See especially René-Jean Dupuy, 'L'impossible aggression: les Malouines entre l'O.N.U. et l'O.E.A.' (1982) 28 Annuaire français de droit international 337, 342–45.

<sup>94</sup> See, eg, Gioia (n 86) 172.

<sup>95</sup> See, in this sense, Olivier Corten, *Le droit contre la guerre: L'interdiction du recours à la force en droit international contemporain* (Pedone 2014) 116.

<sup>96</sup> See, eg, 'Correspondence' (n 92) 608 (Letter by Emilio J Cárdenas).

right of individual or collective self-defence'.<sup>97</sup> Yet, this seems to ignore the fact that, in the collective security architecture of the UN, the right of self-defence is indeed conceived as a provisional emergency measure. As such it is only available 'until the Security Council has taken measures necessary to maintain international peace and security'.

This argument raised the question of the binding character of Resolution 502 (1982), an issue on which opinions were divided.<sup>98</sup> In the light of its adoption under Chapter VII and of the fact that the ensuing debates seemed based on the premise of the binding character of the resolution—with many states accusing either Argentina, the United Kingdom, or both states of having 'violated' the resolution—its binding character appears hardly questionable. It had been made clear before its adoption that the resolution was adopted under Chapter VII of the Charter.<sup>99</sup> Right after its adoption, Panama affirmed that 'the Council has not empowered the United Kingdom to undertake military operations such as the one under way in the Atlantic'.<sup>100</sup> During the debates at the Security Council and later at the General Assembly, no state denied the obligatory character of Resolution 502 (1982). It seems unquestionable that Argentina was violating the first point of the resolution. However, did that automatically liberate the United Kingdom from the obligation to respect the ceasefire ordered in the second point, given the fact that the demand to ceasefire was not expressly conditioned on the effective withdrawal of Argentinian force? Argentina argued that the clauses of the resolution were not separable and that performance with the withdrawal demand by Argentina in the absence of a cessation of hostilities by the United Kingdom would have been unjust.<sup>101</sup> The United Kingdom similarly argued that the resolution 'must be read as a whole'.<sup>102</sup> Such an argument based on the principle *inadimplenti non est adimplendum*, although not implausible, is debatable, particularly in light of its potential consequences for the effectiveness of the system of collective security.<sup>103</sup> Even if the application of this exception were admitted, it did not necessarily imply that the distinct provisions of the resolution could be separated. Furthermore, assuming that the argument was valid, was there no procedural obligation on the part of the United Kingdom before resorting to unilateral forceful measures? Leslie Green observes that 'there was no indication, despite the evidence that Argentina was not prepared to comply with Security Council resolution ... of any intention on the part of the Security Council to take any measures that might be required to ensure compliance with its "demands, requests or urgings"'.<sup>104</sup> It was nevertheless evident that the inability of the

<sup>97</sup> See, in this sense, Bring (n 5) 144; Coll (n 86) 44; Anthony C Arend, 'The Falklands War and the Failure of the International Legal Order' in Alberto R Coll and Anthony Clark Arend (eds), *The Falklands War: Lessons for Strategy, Diplomacy and International Law* (HarperCollins Publishers Ltd 1985) 52–55.

<sup>98</sup> According to John Norton Moore, for instance, there was no doubt that the resolution was binding—although he might have thought more about Argentina than the United Kingdom. See Leigh et al (n 92) 276 (remarks by John Norton Moore). See also Nico Krisch, *Selbstverteidigung und kollektive Sicherheit* (Springer 2001) 406; Corten (n 95) 763. But see, negating the binding character of Resolution 502 (1982), Giuseppe Cataldi, 'Il ruolo del Consiglio di Sicurezza delle Nazioni Unite rispetto al conflitto armato' in Natalino Ronzitti (ed), *La questione delle Falkland-Malvinas nel diritto internazionale* (Dott A Giuffrè Editore 1984) 275–78; Watkins (n 86) 671. On the binding character of resolutions based on Article 40 of the UN Charter, see Paul Tavernier, 'Le caractère obligatoire de la résolution 598 (1987) du conseil de sécurité relative à la guerre du golfe' (1990) 1 European Journal of International Law 278, 282–83.

<sup>99</sup> UN Doc S/PV.2350 (n 21) 17 [195] (United Kingdom). <sup>100</sup> *ibid* 24 [287] (Panama).

<sup>101</sup> Letter dated 12 April 1982 from the Permanent Representative of Argentina to the United Nations addressed to the President of the Security Council (12 April 1982) UN Doc S/14968.

<sup>102</sup> Letter dated 13 April 1982 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland (n 59). See also the Statement of the Minister for Foreign Affairs of the Netherlands on 6 May 1982 in Siekmann (n 34) 330.

<sup>103</sup> See the discussion in David (n 86) 61–69.

<sup>104</sup> Green (n 86) 181–82. See also Dupuy (n 93) 348; Chaumont (n 86) 24; Schröder (n 86) 346–47.

Council to adopt further measures was primarily a result of British intransigence and the use of its right of veto. This is not to say that the vetoed draft resolution would have necessarily been an effective measure—there were good reasons to doubt it. Nevertheless, instead of drawing hasty conclusions on the inefficacy of the collective security mechanism, the United Kingdom could have attempted to secure the adoption by the Council of non-military coercive measures under Article 41 of the UN Charter.<sup>105</sup> In these circumstances, the haste of the United Kingdom to resolve the issue by military force seems questionable in terms of necessity requirements, to say the least.<sup>106</sup>

Regarding the requirement of immediacy of the response—being an aspect of the customary necessity requirement—it was widely considered by those who accepted the availability of the right of self-defence that the two or three weeks needed to dispatch the naval task force in the South Atlantic did not foreclose the United Kingdom from its right of self-defence.<sup>107</sup> Now the British justification in this regard relied also on the conception of military occupation as a continuous armed attack. In this perspective, the immediacy requirement was fulfilled as far as the military occupation persisted and measures of self-defence could be justified, even a long time after the beginning of the occupation. Indeed, the simple passage of time cannot deprive a state faced with a continuing armed attack of its right of self-defence. An exception to this principle arguably arises where there are ‘international lines of demarcation, such as armistice lines, established by or pursuant to an international agreement to which [the state] is a party or which it is otherwise bound to respect’.<sup>108</sup> In this case, the demand by the Security Council to cease the hostilities arguably qualified as such. Nonetheless, what if the British arguments on the lack of binding character of the UNSC demand were well-founded? Could the three-week-long de facto cessation of hostilities be deemed sufficient to extend the protection conferred by Article 2(4)?<sup>109</sup> What about the British recovery of the island of South Thule after six years of Argentinian occupation? The abovementioned passage of the Friendly Relations Declaration is arguably open to such an interpretation—although it does not necessarily entail it.<sup>110</sup> It seems, nevertheless, that a number of states were reluctant to confer such a wide-ranging effect to de facto cessation of hostilities, especially in the absence of an

<sup>105</sup> See, in this regard, Christine D Gray, *International Law and the Use of Force* (3rd edn, OUP 2009) 125.

<sup>106</sup> See also Augusto Sinagra, *Controversie territoriali tra stati e decolonizzazione: il contenzioso anglo-argentino per le isole Falkland-Malvinas* (A Giuffrè 1983) 75 and 93.

<sup>107</sup> See, eg, Dupuy (n 93) 348; Gioia (n 86) 178; Peter Malanczuk, ‘Countermeasures and Self-Defence as Circumstances Precluding Wrongfulness in the International Law Commission’s Draft Articles on State Responsibility’ (1983) 43 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 705, 768; Yoram Dinstein, *War, Aggression and Self-Defence* (3rd edn, CUP 2001) 213; Tarcisio Gazzini, *The Changing Rules on the Use of Force in International Law* (Manchester University Press 2005) 144; Maurice Kamto, *L’agression en droit international* (Pedone 2010) 204; Tom Ruys, ‘Armed Attack’ and Article 51 of the UN Charter: *Evolutions in Customary Law and Practice* (CUP 2010) 101–02. But see, affirming that the Argentinian armed attack terminated with the surrender of the British garrison and that, as a consequence, as Article 51 of the UN Charter was no longer applicable, the operation should be qualified as self-help (*autotutela*) rather than self-defence, Laura Forlati, ‘Legittima difesa secondo la Carta delle Nazioni Unite e sanzioni delle Comunità Europee’ in Laura Forlati, Francisco Leita, and Giovanni Battaglini (eds), *Crisi Falkland-Malvinas e organizzazione internazionale* (CEDAM 1985) 138–39 and 142.

<sup>108</sup> Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, UNGA Res 2625 (XXV) (24 October 1970) UN Doc A/RES/25/2625.

<sup>109</sup> See, suggesting that de facto cessation of hostilities could be sufficient, Dietrich Schindler, ‘Die Grenzen des völkerrechtlichen Gewaltverbots’ in Dietrich Schindler and Kay Hailbronner (eds), *Die Grenzen des völkerrechtlichen Gewaltverbots (Limitations of the Prohibition of the Use of Force in International Law)* (CF Müller Juristischer Verlag 1986) 29–32.

<sup>110</sup> See, in this sense, Report of the Special Committee on Principles of International Law concerning friendly relations and Co-Operation among States (1970) UN Doc A/8018, 33 [54].

agreement by the parties or a binding decision by the Security Council.<sup>111</sup> This raises the issue of the line to be drawn between a long-standing possession, in this case dating way back before the adoption of the Charter, and a ‘military occupation’ as a continuous—or even permanent?—form of armed attack, especially in the absence of active hostilities. This issue remains largely unsettled after the Falklands/Malvinas conflict, even to this day.

Despite affirmations to the contrary—mainly by Argentina and other Latin American states—the argument of the alleged disproportion between the means employed by both parties is not relevant to the requirement of proportionality. The latter refers to the proportionality between the means employed and the legitimate purpose of self-defence, that is, to repel an ongoing armed attack.<sup>112</sup> The disparity between the military capacities of each party cannot therefore in itself be construed as a violation of such requirement by the United Kingdom. In this regard, some statements leave the impression that the United Kingdom intended to teach Argentina and the world a lesson about the importance of the prohibition of the use of force.<sup>113</sup> The sincerity of such statements was naturally questioned by the United Kingdom’s rivals<sup>114</sup> and this rhetoric was rightly criticized as an illegitimate exercise of police functions, a role that belonged exclusively to the Security Council.<sup>115</sup> Nevertheless, the main objective pursued by the United Kingdom—as reflected in its communications to the UNSC—was clearly the ‘recovery’ of the territories occupied by Argentina. This was problematic in the eyes of many states for whom the United Kingdom had no valid title over the islands and was under the obligation to proceed to their decolonization. If one pursues this logic to its ultimate consequences, the United Kingdom was only entitled to ensure the protection of its citizens, but not to restore the *status quo ante bellum*.<sup>116</sup> In this perspective, only the withdrawal of Argentinian troops followed by the establishment of a provisional UN administration—as was envisaged in the negotiations led by Pérez de Cuéllar—would have been a satisfactory solution to the crisis. This argumentation is nevertheless problematic as it could have been perceived as a confirmation that the recourse to military force was still able to bring about political advantages in the solution of international disputes, or even as a legitimization *a posteriori* of *faits accomplis* obtained through the use of force.<sup>117</sup>

On a different note, it seems that proportionality played a role in restraining the operations to the islands and related naval operations. The United Kingdom thus affirmed that it had ‘confined [itself] to using the absolute minimum of force necessary to impose pressure on Argentina to restore the rights of the islanders and to protect our own forces, in accordance with our rights of self-defence under Article 51 of the United Nations Charter’.<sup>118</sup>

<sup>111</sup> See Report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States (26 September 1967) UN Doc A/6799, 47–49 [68]–[74].

<sup>112</sup> Addendum to the eighth report on State responsibility, by Mr Roberto Ago (29 February, 10 and 19 June 1980) UN Doc A/CN.4/318/Add. 5–7, II(1) Yearbook of the International Law Commission (1980) 69 [121]. See also Gioia (n 86) 179.

<sup>113</sup> See HC Deb 20 May 1982, vol 24, col 483 (Margaret Thatcher): ‘Britain has a responsibility towards the islanders to restore their democratic way of life. She has a duty to the whole world to show that aggression will not succeed and to uphold the cause of freedom.’ See also UN Doc S/PV.2363 (n 33) 12 [129] (Belgium). See, in this regard, Thomas M Franck, ‘*Dulce et Decorum Est*: The Strategic Role of Legal Principles in the Falklands War’ (1983) 77 American Journal of International Law 109, 110–11.

<sup>114</sup> See, eg, UN Doc S/PV.2371 (n 26) 5 [43] (Argentina): ‘the Government of the United Kingdom has tried to deceive the international community by rhetorical statements to the effect that it is acting in defence of principles, when its chief interest is that of ensuring its military predominance in the South Atlantic.’

<sup>115</sup> See, eg, Fawcett (n 86) 206; Gioia (n 86) 181–82.

<sup>116</sup> But see Gioia (n 86) 174.

<sup>117</sup> See, in this regard, Schröder (n 86) 348–49. See also Hassan (n 5) 64–67.

<sup>118</sup> Text of the message dated 25 May 1982 from the Government of the United Kingdom addressed to the President of the Republic of Colombia, Dr Julio César Turbay-Ayala annexed to the Letter dated 26 May 1982 from the Permanent Representative of Colombia to the United Nations addressed to the President of the Security Council (26 May 1982) UN Doc S/15126, 3.

In this regard, it is significant that at no point during the conflict was the theatre of hostilities extended to the mainland of Argentina,<sup>119</sup> although it cannot be excluded that political factors played a role in this decision.<sup>120</sup> Costa Rica had indeed warned the United Kingdom that it would ‘vigorously repudiate any action that affects the sovereignty and integrity of the mainland territory of the Argentine Republic’.<sup>121</sup> This does not necessarily mean that any operations on Argentinian mainland were necessarily banned—especially insofar as the aerial attacks against the British fleet originated from bases situated on the mainland—but a full-fledged attack against targets unrelated to the occupation of the islands would probably have rightly been widely condemned as a disproportionate measure.<sup>122</sup> Criticism was nevertheless voiced at the United Kingdom for the sinking of the *ARA General Belgrano*, based on the alleged fact that a second torpedo was shot at the ship when she had already been put out of service by the first one.<sup>123</sup> Finally, as far as it applied to third states, the establishment of a ‘total exclusion zone’ was generally seen as a violation of the freedom of navigation, although some authors considered that it could be justified as a measure of self-defence.<sup>124</sup>

Concerning the obligation to notify measures of self-defence to the UNSC, both Argentina and the United Kingdom systematically reported on almost every specific military operation in more than a hundred letters. While this ‘blizzard of Notes’, to borrow the expression used by Sir Anthony Parsons, probably exceeded the requirements of Article 51,<sup>125</sup> it is a clear indication that the states considered that the requirements of necessity and proportionality continue to affect the application of the right of self-defence throughout the conflict.<sup>126</sup>

#### IV. Conclusion: Precedential Value

On the one hand, the widespread condemnation of Argentina’s invasion has been seen as an important reaffirmation of the prohibition of the use of force in the context of territorial disputes. Many delegations that expressed themselves in the UN General Assembly debate in November 1982 indeed reaffirmed the fundamental importance of the principles of peaceful settlement of international disputes and of the prohibition of the use of force.<sup>127</sup> In this perspective, it is highly significant that many of the states who expressly

<sup>119</sup> See, underlining this point, Bring (n 5) 143.

<sup>120</sup> See, in this sense, Lawrence Freedman, ‘The War of the Falkland Islands, 1982 Reconsiderations’ (1982) 61 *Foreign Affairs* 196, 204. But see, quoting legal advice by the British Attorney General as one of the reasons for the decision, William J Fenrick, ‘Legal Aspects of the Falklands Naval Conflict Studies’ (1985) 24 *Military Law and Law of War Review* 241, 249, and 260.

<sup>121</sup> Letter dated 17 May 1982 from the Chargé d’Affaires a.i. of the Permanent Mission of Costa Rica (n 45). See also the Statement of the Minister for Foreign Affairs of the Netherlands on 6 May 1982 quoted in the Siekmann (n 34) 330.

<sup>122</sup> See, in this sense, Christopher Greenwood, ‘Self-Defence and Conduct of International Armed Conflict’ in Yoram Dinstein and Mala Tabory (eds), *International Law at a Time of Perplexity: Essays in Honour of Shabtai Rosenne* (Nijhoff 1989) 277. See also Ruys (n 107) 119.

<sup>123</sup> See Bring (n 5) 143 and 146–47; Gioia (n 86) 180. But see Judith Gail Gardam, *Necessity, Proportionality and the Use of Force by States* (CUP 2004) 171–72; Schröder (n 86) 354–55.

<sup>124</sup> See, eg, Remiro Brotons et al (n 89) 552; Fenrick (n 12) 256. But see Bring (n 5) 146. See also, affirming the legality of the British measures, even five years after the closure of hostilities, Greenwood (n 122) 276.

<sup>125</sup> See Anthony Parsons, ‘The Falklands Crisis in the United Nations, 31 March–14 June 1982’ (1983) 59 *International Affairs* (Royal Institute of International Affairs 1944–2011) 169, 172. See also, noting a tendency to ‘over-report’, Gray (n 105) 123.

<sup>126</sup> See, in this sense, Christopher Greenwood, ‘The Relationship between *Ius Ad Bellum* and *Ius in Bello*’ (1983) 9 *Review of International Studies* 221, 224; Michael Donner, ‘Die Begrenzung bewaffneter Konflikte durch das moderne *jus ad bellum*’ (1995) 33 *Archiv des Völkerrechts* 168, 205.

<sup>127</sup> See UN Doc A/37/PV.53 (n 33) 900 [19] (Brazil); *ibid* 902–03 [41] and [45] (Uruguay); *ibid* 904–05 [68] (USSR); *ibid* 905 [77]–[78] (Fiji); *ibid* 913 [158]–[159] (Poland); UN Doc A/37/PV.54 (n 47) 930 [68] (Congo);

supported the validity of Argentina's territorial claims, nonetheless condemned the invasion. Moreover, the conflict presented an occasion to clarify the scope of the prohibition of the use of force between states set out in Article 2(4) of the UN Charter through the clear rejection of the use of force by states for the purposes of recovery of pre-colonial titles.<sup>128</sup> Given the divisions among members of the Security Council over the existence or inexistence of effective measures by the Security Council and the particular position of the United Kingdom in the collective security architecture (ie as a permanent member endowed with the right of veto), the case does not provide a trenchant indication as to the concrete modalities of application of the 'until clause' of Article 51 of the UN Charter. It seems nevertheless that many states considered that this clause had not become a dead letter, despite the limited effectiveness of UNSC's action during the Cold War, and in this particular case.

On the other hand, the Falklands/Malvinas conflict was understandably seen by many authors and states as a major failure of the UN system of collective security, first, because of the inability of international law to deter Argentina from having recourse to military force,<sup>129</sup> and, second, because the UNSC proved unable to restore international peace and security, even in a conflict that did not oppose the two main ideological blocs of the Cold War.<sup>130</sup> Finally, some authors considered that the economic 'sanctions' were grounded on the right of collective self-defence.<sup>131</sup> Given the numerous condemnations of the counter-measures adopted by the European Community, the Falkland/Malvinas conflict cannot be seen as a straightforward precedent in this regard.

UN Doc A/37/PV.55 (n 33) 938 [15] (Madagascar); *ibid* 948 [135] (Trinidad and Tobago); *ibid* 949 [140]–[141] (Guyana); *ibid* 952 [187] (Netherlands); *ibid* 955 [223]–[224] (Central African Republic); *ibid* 957 [247] (Israel); *ibid* 958 [261] (Sudan); *ibid* 959 [276]–[279] (United States of America); *ibid* 960 [281]–[282] (Greece); *ibid* 960 [290] (Kuwait); *ibid* 960 [292] (Austria).

<sup>128</sup> See in this sense Paolo Rubino, 'Colonialism and the Use of Force by States' in Antonio Cassese (ed), *The Current Legal Regulation of the Use of Force* (Nijhoff 1986) 138–43; Schindler (n 109) 29; Corten (n 95) 221–22.

<sup>129</sup> See, stressing this point, Franck (n 113) 122–23.

<sup>130</sup> See, eg, Monique Chemillier-Gendreau, 'L'analyse du phénomène de libération nationale' in Monique Chemillier-Gendreau (ed), *Discours juridique sur l'agression et réalité internationale: Actes de la sixième Rencontre de Reims* (Centre d'études des relations internationales, Faculté de droit de Reims 1982) 128; Dupuy (n 93) 349; Donald W Greig, 'Sovereignty and the Falkland Islands Crisis' (1980) 8 *Australian Yearbook of International Law* 20, 63–64; Arend (n 97) 62–63.

<sup>131</sup> See Jean Louis Dewost, 'La Communauté, les Dix et les "sanctions" contre l'Argentine—De la crise iranienne à la crise des Malouines' (1982) 28 *Annuaire français de droit international* 215, 231–32. See also Domingo E Acevedo, 'The U.S. Measures against Argentina Resulting from the Malvinas Conflict' (1984) 78 *American Journal of International Law* 323, 332.