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4-2010

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#### Recommended Citation

Julian Ku, *International Law and the Dispute over the Falkland Islands*, 18:4 ILSA QUART. 12 (2010)

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# International Law *and the* Dispute over the Falkland Islands

by Julian Ku

A very old dispute flared anew recently when the government of Argentina won international support for its claim to the Falkland Islands (known as Las Malvinas in Argentina). The proximate cause of Argentina's renewed efforts to reclaim the Falklands are plans by the United Kingdom, which controls the Falklands, to begin exploration for undersea oil and natural gas resources.

This long-standing contest between the United Kingdom and Argentina over the Falklands stretches back over 200 years. Although the existing dispute has deep political and economic implications, the Falklands dispute is also a fascinating example of how rules of public international law play a central role in framing and resolving international disputes between nations.

The Falklands dispute represents the classic collision of two fundamental principles of international law: territorial sovereignty and the right of self-determination. In legal terms, Argentina bases most of its claims on questions of its territorial rights and the United Kingdom tends to emphasize the rights of the Falklands inhabitants to self-determination.

## **The Question of Territorial Sovereignty**

The Falklands Islands are an archipelago located about 300 miles from the mainland of South America. It consists of two main islands and 776 lesser islands. The earliest Europeans arrived during the 16th Century, although there is substantial dispute over which Europeans visited the islands first and in what capacity. The dispute over who arrived first, and whether title to the islands was established and properly

maintained is one of the two main issues at the heart of the dispute.

Argentina's claim of title to the islands rests on two arguments. First, it argues that the Falklands properly belonged to Spain, which had purchased the territory from France and which had maintained a settlement on the islands from 1776 to 1811. Subsequent to Argentina's independence from Spain, Argentina argues that Spain's sovereignty over the Falklands passed to it as Spain's successor. Alternatively, Argentina argues that it established title to the Falklands in 1820 when David Jewett, an American sailor in the service of the government of Argentina, raised the flag of Argentina over the islands in 1820.

The United Kingdom also has a territorial sovereignty argument. Not only was one of the first Europeans to reach the island an English explorer, the United Kingdom maintained a settlement in the islands from 1765 to 1776. Although it withdrew that settlement due to pressures related to the American Revolutionary War, it continued to claim sovereignty. The U.K. eventually returned in 1833 to re-assert sovereignty and to eject Argentine governmental authorities from the islands. The U.K. has maintained control over the islands since 1833.

## **The Right of Self Determination**

Although the U.K. has been in effective occupation of the islands for almost 180 years, Argentina has never relinquished its claim of sovereignty based on its prior settlement and based on its purchase of the islands from France. Indeed, in 1983, Argentina actually invaded the is-

lands to re-assert its territorial claim, only to be ejected once again by U.K. military forces.

To bolster its territorial claim, the U.K. also increasingly relies on a newer, but no less important principle of international law: self-determination. As the U.K.'s Ambassador to the United Nations has stated,

As British Ministers have made clear, the UK has no doubt about its sovereignty over the Falkland Islands, South Georgia and the Sandwich Islands. This position is underpinned by the principle of self-determination as set out in the UN Charter.

The U.K.'s claim of self-determination draws confidence from elections and public opinion polls showing that a large majority of Falklands residents prefer to remain a territory of the U.K.

As a legal matter, Article 1 of the U. Charter states the principle of "self-determination of peoples" to be a fundamental purpose of the UN.

Argentina has a response to this argument as well. While the right of self-determination is widely recognized, it is highly unclear whether the residents of the Falklands qualify as a "people" entitled to exercise this right. The definition of a "people" remains deeply contested under international law. Moreover, because the concept emerged in the context of nations protesting colonial rule, it is hard to be confident that the Falkland residents, mostly decedents of U.K. colonists, fit the definition.

#### Possible Resolutions

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Argentina has foresworn any military intervention to reclaim the Falklands, but it continues to demand that the U.K. open negotiations over the islands' future status. The U.K. continues to resist any negotiations, although it has come under increased pressure from the U.S. and other Latin American nations to open negotiations. One option that neither the U.K. nor Argentina has suggested is resort to an international court. The most likely forum for such disputes would be the principal judicial organ of the United Nations, the International Court of Justice.

The U.K. has accepted the ICJ's compulsory jurisdiction. All Argentina would have to do is accept compulsory jurisdiction and take the UK to the World Court. Under the UN Charter, both nations would have to abide by the outcome of the Court's judgment. Similar territorial dis-

putes have been resolved by the Court in the past. Indeed, this year's Jessup Moot Competition involved a problem based on the facts of the Falklands dispute.

As attractive as international dispute resolution might be, the stakes here may simply be too high to go to the ICJ. Not only do the two countries have nearly 200 year old claims to set against each other, but there are potentially huge economic consequences to such a judgment. Rather, although international law gives legitimate claims to both sides, ultimately this dispute will likely be settled in the realm of politics and negotiations. Yet even in such realms, the legal arguments of the U.K. and Argentina will be framed by long-standing and important principles of international law. ■

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