

The Legal Position of the Falkland Islands

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Most reviews of the legal position of the Falkland islands begin with the Papal Bull of 1493 and the Treaty of Tordesillas of 1494; and state that these rights had been acknowledged and confirmed in treaties between various European powers, including Britain, during the seventeenth century and, in particular, by the Treaty of Utrecht 1713. Britain and Argentina both dispute the significance and content of these treaties.

If these extremely historical legal arguments are relevant then any court considering the legal basis of the Falkland Islands should first address the legal basis of countries such as the USA and Argentina which, after independence in the 18th and 19th centuries, progressively abrogated all treaties signed with surrounding nations, especially with the indigenous peoples.

Nations have attempted to avoid the absurdity of tracing claims to sovereignty back to Adam and Eve by signing agreements that supersede all previous treaties. The legal basis for sovereignty is then determined by the most recent joint declaration that mutually recognises frontiers.

The UN Charter is the most convenient starting point, [Article 103 of the United Nations Charter](#) states that:

“In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.”

The UK and Argentina have both agreed to draw a line under the past by agreeing to the UN Charter.

According to the UN Charter and UN Resolution 1514 the sovereignty of the Falklands should either be determined by its people OR, possibly, assigned to Argentina on the basis of territorial integrity. The relevant parts of the UN Charter and Resolution 1514 are given at the end of this article. However, it should be noted that Resolution 1514 gives precedence to the wishes of the people:

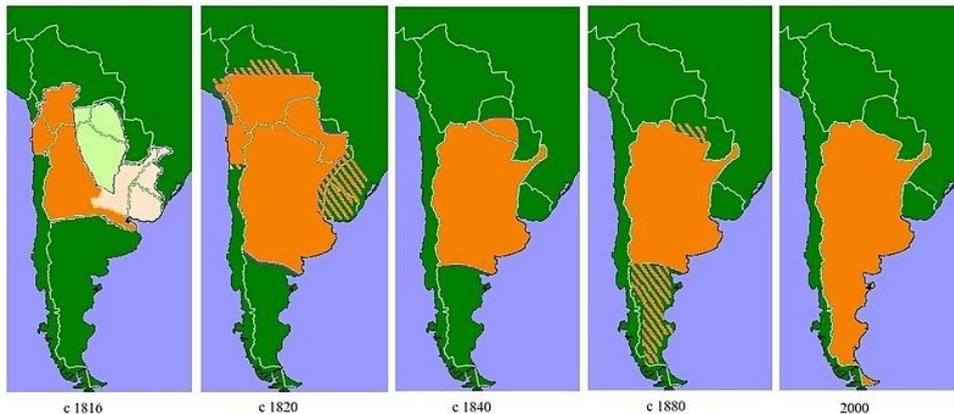
“1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.
2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

If the wishes of the people are paramount then Argentina has no sovereignty. This was tested in the [2013 Falkland Islands referendum](#) in which, on a turnout of 92%, 99.8% voted to remain a [British Overseas Territory](#), with only three votes against. British Overseas Territories have a semi-independent status with Britain managing defence and foreign affairs.

Clearly only the argument of “territorial integrity” can be used by Argentina to claim sovereignty. If territorial integrity is paramount then does Argentina have a legal or physical claim to sovereignty on the basis of territorial integrity?

It is important to understand that during the period when Argentina says it had territorial sovereignty over the Falkland Islands Patagonia was [ruled by the Mapuche](#), not Argentina.

The Expansion of the United Provinces and Argentina:



The legal territorial claims begin with the [1850 Convention of Settlement](#) in which Britain and Argentina declare that they have no outstanding issues. If Argentina and Britain agreed that they had no differences in 1850 then Argentina has no sovereignty.

If the 1850 Convention of Settlement is disallowed then the next relevant treaty is the Spanish-Uruguay Pact of 1841 in which Spain assigned sovereignty over the Falklands to Uruguay. If Spain had the right to assign sovereignty of the Falklands to Uruguay then Uruguay might have a territorial claim to the Falklands but Argentina does not. This pact was recognised by Argentina so Argentina has no claim to sovereignty.

If the 1841 Pact is disallowed then the next legal problem is to determine which South American state might inherit sovereignty from Spain after the South American wars of independence under the principle of "uti possidetis juris". This principle generally means that the country that was responsible for governing a region prior to the end of Spanish rule becomes sovereign over that region after independence.

The Spanish Governor of the Falklands was appointed from Buenos Aires until May 30th 1810, from 1810-12 the Governor was appointed from Montevideo. The Uruguayans and Spanish seem to have recognised this sequence of events in signing the Pact of 1841. The Spanish abandoned the Falklands in 1811. Technically this means that the Falklands could be Uruguayan except that between 1812 and 1820 they were unpopulated and unclaimed and (if it is accepted that the Spanish originally had dominion) either reverted to Spanish dominion or belonged to the Captain General of Chile, Chile being Spanish controlled until 1818, when it became a republic. On this basis the Falklands might be either Uruguayan or Chilean. Argentina has no territorial claim to sovereignty.

Notice also that it was the United Provinces of South America, not Argentina, that laid claim to the Falklands in the early nineteenth century. The United Provinces were certainly not geographically the same as Argentina and whether they can be considered politically contiguous with Argentina is a moot point.

Prior to any South American claim over the Falklands the British and Spanish had conflicting claims. The next relevant treaty is the Nootka Sound Convention of 1790.

Nootka only forbids new settlements, it allows British occupation because they had an existing settlement in West Falkland - the Spanish recognised the British rights in West Falkland with the Masseran Declaration of 1771. Article 6 of Nootka also permits British settlement because Patagonia was not populated by colonists and settlement was only forbidden off populated coasts

(colonized coasts). The full Convention also allows British occupation because the United Provinces, by attempting to settle the Islands in the 1820s, activated the provisions for occupation by non-Spanish powers, so voiding any agreement for the British to respect Spanish rights in the Islands. In fact, once the United Provinces attacked the Falklands it caused the Treaty of Utrecht to fall into abeyance because it was not a signatory, and once it occupied the Falklands it caused Nootka to be superseded (the islands were no longer occupied by Spain). Argentina might have had a claim over the Falklands, along with Chile and Uruguay, when Spain relinquished its claim to sovereignty but the United Provinces had invaded before this happened. Argentina has no sovereignty.

Arguments from proximity alone

The possible legal argument that Argentina has sovereignty due to proximity or as a result of the Falklands being part of its offshore continental shelf is void because in 1833, when the Falklands were claimed by the British, Argentina was nowhere near the Falklands. Patagonia was only annexed by Argentina in 1881.

Even if an independent Falklands violated Argentina's territorial integrity UN Resolution 1514 does not declare that the Falklands must be Argentine. The primary clauses in Resolution 1514 give priority to the wishes of the people. Argentina would not be entitled to sovereignty even if it could demonstrate a legal territorial right to sovereignty.

Given that Argentina appears to have no valid claim to sovereignty and the people of the Falkland Islands have voted to reject Argentine sovereignty why does the world largely support Argentina? The answer is clear, British governments and the British Foreign Office have hoped to trade the Falklands for advantage in South America for the 150 years before 1982. It was only the British people who objected to their government's machinations. The result of this perfidy by the British is that what should be an open and shut case is considered by the whole world to be dubious.

The declaration in resolution 1514 states:

"And to this end Declares that:

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.
2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.
4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.
5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.
6. Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.

7. All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity."

Territorial integrity is introduced into the UN Charter by this resolution - no doubt to comfort the Russian and Chinese empires and other land empires, especially large ex-colonies such as Brazil and the USA.

The UN Charter:

Article 73:

'Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the wellbeing of the inhabitants of these territories, and, to this end:

1. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;
2. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;
3. to further international peace and security;
4. to promote constructive measures of development, to encourage research, and to co-operate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and
5. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.'

Article 103

"In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."