

## UNITED STATES OBLIGATIONS UNDER THE OAS CHARTER AND THE RIO TREATY: AN ANALYSIS OF THE FALKLAND ISLANDS CRISIS

On April 2, 1982, Argentina invaded the Falkland Islands.<sup>1</sup> After a three-hour battle most of the defending British marines surrendered to the Argentinians.<sup>2</sup> Great Britain immediately detached a naval task force to the Falkland Islands.<sup>3</sup>

Great Britain subsequently called for a United Nations Security Council meeting.<sup>4</sup> On April 3, 1982, the Security Council rendered a resolution concerning the Argentine action in the Falkland Islands.<sup>5</sup> The Security Council resolution called for an immediate cessation of hostilities, immediate withdrawal of all Argentine forces from the islands and solution of the conflict through diplomacy.<sup>6</sup>

Argentina responded by ignoring, although not formally rejecting, the resolution.<sup>7</sup> Argentina's Foreign Minister, Mr. Costa Mendez, stated that the landing of Argentine forces on the islands was simply a response to the "military preparation and the sending of warships" by Britain. Mr. Mendez also declared that "Argentina had not invaded any foreign territory,"<sup>8</sup> but had merely reclaimed land which rightfully belonged to the Argentines.

As a result of these incidents, United States President Ronald Reagan accused Argentina of "armed aggression" in the Falkland Islands, instituted limited sanctions against Argentina and openly

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1. The Argentine military force consisted of approximately 2,000 marines and over a dozen warships. The British defense force on the Falkland Islands consisted of 84 marines at the time of the invasion. See N.Y. Times, Apr. 3, 1982, at A1, col. 6; see also Wash. Post, Apr. 3, 1982, at A1, col. 2.

2. N.Y. Times, *supra* note 1, at A1, col. 6.

3. The present force consisted of "a substantial number of Royal Navy ships and a carrier task force [which] was forming off the British Coast to depart Portsmouth on April 7 bound for the South Atlantic." Wash. Post, *supra* note 1, at A24, col. 1.

4. See N.Y. Times, *supra* note 1, at A6, col. 5; see also Wash. Post, *supra* note 1, at A24, col. 8.

5. S.C. Res. 502, U.N. Doc. S/Res/502, at 679 (1982), reprinted in R. PERL, THE FALKLAND ISLANDS DISPUTE IN INTERNATIONAL LAW AND POLITICS 419 (1983).

6. See R. PERL, *supra* note 5, at 419.

7. *Id.*

8. *Id.*

aligned with Great Britain.<sup>9</sup> On April 30, 1982, the Reagan Administration instituted the following measures against Argentina: suspension of all military exports, withholding certification of eligibility for military sales, suspension of new Export-Import Bank credits and guarantees, and postponement of Commodity Credit Corporation guarantees.<sup>10</sup> The United States began to supply missiles, ammunition and other military apparatus in conformance with President Reagan's decision to support Great Britain in the conflict.<sup>11</sup> Historical ties between the two countries were cited as the underlying reason why the United States maintained communication links, including intelligence-gathering satellites over the South Atlantic, with the British.<sup>12</sup>

The United States' position regarding the conflict between Argentina and Great Britain concerning the Falkland Islands created a major source of tension within the inter-American system.<sup>13</sup> The Organization of American States (OAS) peacekeeping system is comprised of two integral parts: the Inter-American Treaty of Reciprocal Assistance (Rio Treaty) and the Charter of the Organization of American States (OAS Charter).<sup>14</sup> As signatories to both treaties, the United States and Argentina entered into agreements based upon the principles of American solidarity and continental cooperation. The purposes set out in the OAS system are "to achieve an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity and their independence."<sup>15</sup> The goals of the Rio Treaty were specifically aimed at providing a collective se-

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9. N.Y. Times, May 1, 1982, at A1, col. 2.

10. Arms sales and other military equipment assistance for the Argentine government have been prohibited under U.S. law since September 30, 1978, by the Carter Administration. These sanctions affect \$3.9 million in government shipments and approximately \$2 million in shipments by commercial U.S. firms to Argentina. Wash. Post, May 1, 1982, at A20, col. 1.

11. N.Y. Times, *supra* note 9, at A1, col. 3.

12. N.Y. Times, May 28, 1982, at A8, col. 5. The United States commitment of material support to Great Britain once again questioned the reliability of the United States as a Latin American ally. See prepared statement of Thomas D. Enders, Assistant Secretary of State for inter-American Affairs, U.S. House of Representatives, Washington D.C., August 5, 1982, reprinted in 82 DEP'T ST. BULL. 2067 (1982).

13. N.Y. Times, May 28, 1982, at A8, col. 5.

14. Inter-American Treaty of Reciprocal Assistance, Sept. 2, 1947, 62 Stat. 1681, T.I.A.S. No. 1838, 21 U.N.T.S. 93 [hereinafter cited as Rio Treaty]. The inter-American system dates back to 1889, developing from a variety of inter-American conferences and organizations into a multipurpose regional organization; see A. THOMAS, THE ORGANIZATION OF AMERICAN STATES (1963).

15. CHARTER OF THE ORGANIZATION OF AMERICAN STATES, Apr. 30, 1948, 2 U.S.T. 2416, T.I.A.S. No. 2361, 119 U.N.T.S. 3 [hereinafter cited as OAS CHARTER].

curity system to deal with serious problems of aggression and threats to the sovereignty of member States within the Western Hemisphere.<sup>16</sup>

This Comment will explore the issue of whether the United States' conduct during the Falkland Islands armed conflict was proper. Particularly, whether the United States breached its obligations to Argentina under the Inter-American Treaty of Reciprocal Assistance and the Charter of the Organization of American States. The history of the islands prior to their seizure will include a discussion of the military activities of both Argentina and Great Britain in relation to their respective sovereignty claims and responses. The obligations incurred by the United States as a party to the OAS Charter and the Rio Treaty will also be examined. This analysis will provide a framework in which to evaluate the role of the United States in the controversy, as well as the effectiveness of the inter-American treaty system. Finally, this Comment will propose an expansion of the inter-American peace and security system to cover similar problems between American nations and extra-continental States.

## I. HISTORICAL BACKGROUND OF THE FALKLAND ISLANDS

Some 250 miles from the Argentine coast there exists a chain of islands known as the Falkland Islands.<sup>17</sup> These small, secluded islands have been a source of controversy between Argentina and Great Britain for over 150 years.<sup>18</sup> The history surrounding the Falkland Islands dispute reveals centuries of conflict between Great Britain and Argentina over the right to sovereignty. Both Argentina and Great Britain rely upon historical events in support of their claims to the islands.

Britain claims that the first sighting of the islands occurred in 1592.<sup>19</sup> The first authenticated sighting, however, was credited to

16. Rio Treaty, *supra* note 14 preamble.

17. The Falkland Archipelago is comprised of two main islands, East Falkland and West Falkland. These two large islands have over 200 surrounding islands and islets. The name Falkland is British, so named in 1690 by Captain John Strong after Viscount Falkland, then treasurer of the British Navy. The Argentines call the islands the Malvinas. See J. Metford, *Falkland or Malvinas? The Background to the Dispute*, 44 INT'L AFF. 463, 466-467 (1968).

18. J. ARCE, *THE MALVINAS* (1957); J. GOEBEL, *THE STRUGGLE FOR THE FALKLAND ISLANDS* 411 (1927 & photo. reprint 1982).

19. See BRITISH INFORMATION SERVICE, *THE FALKLAND ISLANDS AND DEPENDENCIES* 3 (May 1978) [hereinafter cited as BIS]. This British sighting was credited to English Captain John Davis in 1592. Other sightings were reported as early as 1502 by Spanish and

the Dutch in 1600.<sup>20</sup> It was not until 1764 that the first expedition set foot on the Falkland Islands.<sup>21</sup> This French landing resulted in a number of subsequent expeditions by France, Spain and Great Britain. The eventual establishment of a French colony aroused strong protest from Spain; three years later, the French agreed to turn the settlement over to the Spanish government.<sup>22</sup>

Meanwhile, in 1766 a small British settlement was founded on the islands at Port Egmont.<sup>23</sup> Five years after the establishment of this British garrison, Spain forced the British to withdraw from the islands.<sup>24</sup> The two countries approached the verge of war, but in 1771, after lengthy negotiations, the Court of Madrid returned Port Egmont to the British.<sup>25</sup> Four years later, due to economic considerations, Great Britain abandoned the settlement.<sup>26</sup> A leaden plaque was left proclaiming that the islands were the sovereign territory of King George III.<sup>27</sup> Throughout this period Spain retained *de facto* possession of France's original Port Soledad settlement.<sup>28</sup> Spain continued to maintain settlements on the islands until its withdrawal in 1811.<sup>29</sup> During this time Britain did not attempt to reestablish a settlement in this territory.<sup>30</sup>

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Portugese navigators; see also M. CAWKELL, *THE FALKLAND ISLANDS* 1 (1960); I. STRANGE, *THE FALKLAND ISLANDS* 47 (1972).

20. I. STRANGE, *supra* note 19, at 47.

21. Statement by the Representative of Argentina, H. E. Dr. José Maria Ruda before the Subcommittee on the Situation with Regard to the Implementation of the Declaration On the Granting of Independence to Colonial Countries and Peoples 4 (Sept. 9, 1967) [hereinafter cited as J. Ruda].

Spain's protest was based upon a legal claim to the islands under the Papal Bull of 1492. The Papal Bull created a line of demarcation between the Spanish and Portugese areas of discovery. King Louis XV conditioned the turnover of the French settlement on compensation for all incurred expenses. I. STRANGE, *supra* note 19, at 51-52.

22. J. Ruda, *supra* note 21, at 4.

23. *Id.*; BIS, *supra* note 19, at 3.

24. The Spanish declaration of January 22, 1771, reestablished the British settlement. Spain's ambassador to London, Prince de Masserano, declared that

his sovereign disapproves the aforementioned violent enterprise and binds himself to reestablish matters as they were prior to the episode, adding that the restoration to his Britannic Majesty of the Port and Fort called Egmont, cannot and must not in any way affect the question of prior sovereign rights over the Malvinas Islands.

See J. Ruda, *supra* note 21, at 5.

25. *Id.* at 6; see also J. GOEBEL, *supra* note 18, at 411; Lindsey, *Conquest: A Legal and Historical Analysis of the Root of United Kingdom in the Falkland Islands*, 18 TEX. INT'L L. J. 11, 19 (1983).

26. BIS, *supra* note 19, at 3.

27. I. STRANGE, *supra* note 19, at 55.

28. J. GOEBEL, *supra* note 18, at 433.

29. *Id.*

30. The Argentine governor of the Falklands seized three American sealing ships.

In 1816 Argentina declared its independence from Spain and became a sovereign nation. The Argentinians thereafter established a settlement in 1820 on the Falkland Islands.<sup>31</sup> The Argentine garrison remained on the islands until 1831, when it was overthrown by a United States corvette.<sup>32</sup> At this time the American captain declared the islands *res nullis*.<sup>33</sup>

Argentina immediately reestablished the settlement on the islands, only to be forcibly evicted by a British warship attack in 1833. Fifty-nine years elapsed before the British subsequently established another permanent settlement. Great Britain thereafter remained on the Falklands until the recent Argentine invasion.<sup>34</sup> By 1843 the islands were officially considered to be part of the British Crown Colonies.<sup>35</sup>

In 1964 Argentinians initiated formal protests to the United Nations, calling for the return of the islands to their sovereign State.<sup>36</sup> At the very least, Argentina demanded direct negotiations. However, no successful progress was made in negotiations. On March 19, 1982, an Argentine naval transport landed some sixty salvage workers on the South Georgia Island to dismantle an abandoned whaling station.<sup>37</sup> Displaying the Argentine flag, the workers were ordered to leave<sup>38</sup> by British officials. The workers,

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When United States protests were ignored, an American warship destroyed the Argentine settlement. J. Ruda, *supra* note 21, at 6; Pinto, *Argentina's Rights to the Falkland/Malvinas Islands*, 18 TEX. INT'L L. J. 1, 4 (1983).

31. BIS, *supra* note 19, at 3-4; J. GOEBEL *supra* note 18, at 438.

32. BIS, *supra* note 19, at 3-4.

33. *Id.* *Res nullis* indicates that the land, does not belong to any State either because a former owner has abandoned it or because it is not capable of private ownership.

34. J. Ruda, *supra* note 21, at 6-7.

35. "In 1843 an act of the British Parliament put the civil administration on a permanent footing and the Lieutenant Governor's title was changed to Governor. The first Executive and Legislative Councils were set up in 1845." See BIS, *supra* note 19, at 4.

36. In 1965, the United Nations General Assembly passed a resolution acknowledging the disputed claims of Argentina and Great Britain, and called for a settlement by both parties in accordance with U.N. decolonization law. G.A. Res. 2065, 20 U.N. GAOR Supp. (No. 14) at 57, U.N. Doc. A/6014 (1965), noted in Pinto, *supra* note 30, at 6 nn. 38 & 39.

In 1974, the General Assembly passed a new resolution urging Britain and Argentina to arrive at a peaceful solution to the sovereignty conflict. G.A. Res. 3160, 28 U.N. GAOR Supp. (No. 30) at 109, U.N. Doc. A/9030 (1973), questioned by the inter-American Juridical Committee in R. PERL, *supra* note 5, at 387-90; see also Pinto, *supra* note 30, at 7 nn. 44 & 45.

37. "The Argentinians had a contract with [a] British owner of the whaling station and notified British officials in the Falklands of their intentions." Wash. Post, Mar. 31, 1982 at A6, col. 1.

38. The British ship, *Endwore*, was sent to back up the British demand that the remaining Argentinians leave the islands. Argentina responded by sending three warships to the area. *Id.*

however, remained with the support of the Argentine government.<sup>39</sup>

Following Britain's first military invasion on April 25, 1982, Argentina's only cruiser was sunk by a British submarine on May 20, 1982.<sup>40</sup> At this point the fighting escalated, with Britain extending its naval blockade zone within twelve nautical miles of the Argentine coast.<sup>41</sup>

On April 28, 1982, a resolution was adopted by the OAS Ministers of Foreign Affairs.<sup>42</sup> This resolution urged the British government "immediately to cease the hostilities it is carrying on within the security region defined by Article 4 of the Inter-American Treaty of Reciprocal Assistance, and also to refrain from any act that may affect Inter-American peace and security." Further, the resolution called upon the Argentine government "to refrain from taking any action that may exacerbate the situation."<sup>43</sup> Acknowledging Argentina's sovereignty over the islands, the resolution further urged both governments "to call a truce that will make it possible to resume and proceed normally with the negotiation aimed at a peaceful settlement of the conflict . . . ."<sup>44</sup> The adoption of political and economic sanctions were to be denounced. Further, the resolution also urged that such measures be lifted.<sup>45</sup> These sanctions were cited as a "serious precedent, inasmuch as they are not covered by Resolution 502 (1982) of the U.N. Security

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39. *Id.*

40. N.Y. Times, May 22, 1982, at 9, col. 6. On May, 21, 1982, heavy casualties were sustained by both sides, as the British secured and expanded a beachhead on East Falkland. Argentine forces countered the landing by heavily damaging five British ships and destroying one British Harrier jet.

41. Four days later, the British position expanded to fifty four miles and seven more Argentine planes were downed. *Id.*

42. Organization of American States: Twentieth Meeting of Consultation of Ministers of Foreign Affairs Resolutions on the Serious Situation in the South Atlantic. OAS Doc. OEA/Ser. FII.20, Doc. 28/82 (1982). The resolution was adopted by a vote of 17 in favor with none opposed, including 4 abstentions.

43. *Id.*

44. The Foreign Ministers function under the Rio Treaty as the Organ of Consultation is to determine what action is to be taken whenever a particular conflict arises. Article 11 of the Rio Treaty specifies: "The consultations to which this treaty refers shall be carried out by means of the Meetings of Ministers of Foreign Affairs of the American Republics which have ratified the Treaty, or in the manner or by the organ which in the future may be agreed upon."

Article 39 of the OAS CHARTER confirms Article 11 by providing that the Meeting of Foreign Ministers should serve as the Organ of Consultation. See Rio Treaty, *supra* note 14 art. 11.

45. *Id.*

Council,<sup>46</sup> and are incompatible with the Charters of the United Nations and of the OAS and the General Agreement on Tariffs and Trade.”

On April 30, 1982, following the adoption of the April 28 resolution, the United States denounced Argentina's actions as outright aggression.<sup>47</sup> Maintaining that Argentina was in derogation of the United Nations' basic principles which oppose the use of force in settling disputes,<sup>48</sup> the United States openly sided with Great Britain. Ultimately the United States abandoned their position as mediator to a negotiated settlement and pledged to assist British military forces with “material support.” Further sanctions imposed by the United States against Argentina included a cessation of all military exports as well as financial assistance.<sup>49</sup>

On May 29, 1982, the OAS Foreign Ministers reconvened to condemn Great Britain's acts of war against Argentina and to demand an immediate end to such activities.<sup>50</sup> In response to the United States military and economic sanctions against Argentina, the resolution strongly urged “the Government of the United States of America to order the immediate lifting of the coercive measures applied against the Argentine Republic and to refrain from providing material assistance to the United Kingdom, in observance of the principle of hemispheric solidarity recognized in the Inter-American Treaty of Reciprocal Assistance.”<sup>51</sup> More importantly, the Foreign Ministers urged the signatories of the Rio Treaty to “give the Argentine Republic the support that each judges appropriate to assist it in this serious situation, and to refrain from any act that might jeopardize that objective.”<sup>52</sup> During the next two weeks the struggle over the islands intensified and was finally resolved on June 15, 1982.<sup>53</sup> On this day Argentine forces surrendered

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46. N.Y. Times, May 1, 1982, at A1, col. 4.

47. N.Y. Times, May 23, 1982, at A13, col. 1.

48. United States Secretary of State Alexander Haig undertook intense discussions, shuttling between Washington, London and Buenos Aires in an effort to reach a peaceful solution. See N.Y. Times, Apr. 15, 1982, at B14, col. 4 (analyzing Haig's role in the peace negotiations.)

49. The Administration's decision affected \$5.9 million in arms equipment purchased prior to the 1978 Carter Administration's ban on Argentinian sales. See N.Y. Times, May 1, 1982, at 1, col. 4.

50. Organization of American States: Twentieth Meeting of Consultation of Ministers of Foreign Affairs Resolutions on the Serious Situation in the South Atlantic, OAS Doc. OEA/Ser. F/11.20, Doc. 80/82 rev. 1 (1982).

51. *Id.*

52. *Id.*

53. The cost to Argentina and Great Britain to defend their respective sovereignty

to the British, but only after their 2½ month effort to regain control of the Falkland Islands.<sup>54</sup>

Although Great Britain was successful in regaining control of the islands, the major question of sovereignty still exists. The Argentine government continues to claim a sovereign right to the Falkland Islands. The determination of sovereignty is essential to an evaluation of United States obligations under the inter-American system.

## II. THE APPLICATION OF INTERNATIONAL LAW TO THE SOVEREIGNTY CLAIMS OF ARGENTINA AND GREAT BRITAIN

There are no treaties between Argentina and Great Britain, or any other nation, which establish sovereignty over the Falkland Islands. Absent any applicable treaty, any claim that a country might make would have to be analyzed under the principles of customary international law.<sup>55</sup> Various modes of territorial acquisition may be used to establish sovereignty under customary international law:<sup>56</sup> occupation, abandonment, cession and prescription.<sup>57</sup> Assertion of title based upon these principles must also include an analysis of the character of territorial rights at the time of acquisition and the manner in which possession was acquired.<sup>58</sup> Additionally, the validity of each claim must be evaluated both in light of the law existing at the time of the claim and upon consideration of present legal doctrines.<sup>59</sup>

### A. Occupation/Abandonment

1. *Britain's Claim.* According to customary international law, territorial title based on occupation encompasses two ele-

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claims was high in terms of both money and lives. Argentina was reported to spend close to \$19 million a day. Great Britain spent approximately \$2.6 billion which included the replacement cost of seven naval ships and nineteen aircrafts which were lost during the conflict. See N.Y. Times, June 16, 1982, at A1, col. 6.

54. *Id.*

55. W. GOULD, AN INTRODUCTION TO INTERNATIONAL LAW 136 (1957).

56. J. BRIERLY, LAW OF NATIONS 162-73 (6th ed. 1963); 2 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 1028-31 (1971); G. VON GLAHN, LAW AMONG NATIONS 273 (1976).

57. G. VON GLAHN, *supra* note 56, at 273. Additional accepted modes of territorial acquisition are discovery, accretion, conquest and assimilation.

58. See D. BOWETT, THE LEGAL RIGHT OF ISLANDS IN INTERNATIONAL LAW 45 (1979); see also M. SORENSON, MANUAL OF PUBLIC INTERNATIONAL LAW 321 (1968).

59. M. SORENSON, *supra* note 58, at 321.



ments:<sup>60</sup> the intention to act as a sovereign and a demonstration of authority.<sup>61</sup> A State may occupy a territory, thereby acquiring sovereignty, only if that territory is not under the jurisdiction of another State.<sup>62</sup> According to this mode of acquisition, the territory must not be under the jurisdiction of any other State.<sup>63</sup>

The first British claim to the Falkland Islands originated with the establishment of a small British garrison at Port Egmont in 1766.<sup>64</sup> Prior to that the islands had been relinquished by the French to the Spanish.<sup>65</sup> France had established a settlement in 1764;<sup>66</sup> therefore, this subsequent British outpost did not establish sovereignty rights to the islands. Moreover, the islands were relinquished by the French to the Spanish during this time period.<sup>67</sup> Spain maintained legal jurisdiction over the Falkland Islands based on their cession<sup>68</sup> from France. Thus, the establishment of Spanish sovereignty effectively prevents Britain from claiming the islands as their own on the basis of the Port Egmont settlement.

Britain's next claim to the Falklands rests upon the Court of Madrid's return of Port Egmont to Great Britain.<sup>69</sup> Britain accepted the agreement regarding Spanish sovereignty over the region without protest.<sup>70</sup> Britain relinquished any legal claim to the islands by remaining silent about the Spanish reservation. Absent a British protest, their silence can only be deemed as an acceptance of the condition.<sup>71</sup> Therefore, British occupation based upon this claim would not confer any sovereignty rights to the British over the islands.

The British abandonment of the 1774 settlement gives rise to another British claim to the Falkland Islands.<sup>72</sup> Upon departure from the island, a leaden plaque proclaiming British sovereignty

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60. D. BOWETT, *supra* note 58, at 53-54; *see also* LAUTERPRACHT, *Legal Status of Eastern Greenland*, in 6 ANNUAL DIGEST AND REPORTS OF PUBLIC INTERNATIONAL LAW CASES 97 (1933).

61. *See* D. BOWETT, *supra* note 58, at 321.

62. G. SCHWARZENBERGER, *THE MANUAL OF INTERNATIONAL LAW* 115 (1976).

63. G. SCHWARZENBERGER, *supra* note 62, at 115.

64. J. RUDA, *supra* note 21, at 5.

65. *See* BIS, *supra* note 19, at 3; *see also* J. RUDA, *supra* note 21, at 5.

66. I. STRANGE, *supra* note 19, at 51.

67. *See supra* note 22 and accompanying text; *see also* R. PERL, *supra* note 5, at 30.

68. G. VON GLAHN, *supra* note 56, at 279. Cession is defined as the former transfer of title over territory to another state. *Id.* *See also* R. PERL, *supra* note 5, at 13.

69. J. RUDA, *supra* note 21, at 5.

70. *Id.* at 6.

71. *Id.*

72. *Id.*

over the islands was left behind.<sup>73</sup> Great Britain might support their claim by asserting that the plaque preserved the British right to sovereignty. However, acts of a purely symbolic nature do not provide a sufficient basis to title.<sup>74</sup> Moreover, abandonment relinquishes any title to territory based on occupation.<sup>75</sup> There is no direct evidence, however, of Britain's intention to abandon their claim to the islands.<sup>76</sup> Even without this evidence the plaque is insufficient to establish legal title since Spain continued to maintain a settlement on the island during this period.<sup>77</sup>

2. *Argentina's Claim.* Argentina asserts its claim to the Falkland Islands as an heir to the territories which Spain possessed when Argentina gained independence.<sup>78</sup> According to international law, when a country gains independence or takes over the territory of the mother country, it assumes all the responsibilities, obligations and benefits inherent in such ownership.<sup>79</sup> Argentina exercised its right to act as sovereign by acquiring the islands when it established its independence from Spain. Moreover, their display of authority was established by maintaining a settlement on the islands. The maintenance of the Argentine settlement until 1831 satisfies the two elements required to establish territorial title based on occupation: the intention to act as sovereign and a demonstration of authority.<sup>80</sup> Thus, Argentina's occupation of the Falkland Islands and their resulting claim to sovereignty is consistent with international law.

Argentina and Great Britain each possess strong claims of sovereignty based upon the occupation mode of territorial acquisition. However, a sovereign claim of right based on occupation alone is insufficient to establish title.<sup>81</sup> Such a claim must also be based

73. BIS, *supra* note 19, at 3.

74. D. BOWETT, *supra* note 58, at 46.

75. G. VON GLAHN, *supra* note 56, at 275.

76. M. CAWKELL, *supra* note 19, at 35.

77. I. STRANGE, *supra* note 19, at 55.

78. J. RUDA, *supra* note 21, at 8.

79. See J. GOEBEL, *supra* note 18, at 467; see also Note, *The Falkland Islands: Will the Owner Please Stand Up*, 58 NOTRE DAME L. REV. 616 (1983).

80. Supporting arguments on both sides exist as to who is the rightful owner of the islands. Under the occupation theory, Britain's claim could be supported by the establishment of the colony at Port Egmont in 1765. See Hasson, *The Sovereignty Dispute Over the Falkland Islands*, 23 VA. J. INT'L L. 53, 55 (1982).

81. Occupation is a term comprised of two essential elements: discovery and the exercise of sovereignty over the territory. Land that has been previously occupied cannot thereafter be acquired by occupation. R. HINGORAN, MODERN INTERNATIONAL LAW 43 (1979).

upon prior discovery rights,<sup>82</sup> subsequent treaty rights<sup>83</sup> or some other mode transferring title.<sup>84</sup> Under the occupation theory, Argentina would prevail. The Nationality of the discoverer of the Falkland Islands, however, still remains unclear.<sup>85</sup> There are no known treaties establishing sovereignty to the islands. It is apparent, though, that the Argentine sovereignty claim, based on their independence from Spain, is very persuasive under the occupation theory.<sup>86</sup>

### *B. Prescription/Possession by Force*

Britain's strongest claim to the Falkland Islands is based on prescription. The British have occupied and exercised dominion over the islands since 1833.<sup>87</sup> Under the principles of international law, prescription is defined as the "continued occupation, over a long period of time, by a State of territory actually and originally belonging to another."<sup>88</sup> Prescription is an accepted means of determining sovereignty.<sup>89</sup> This concept, however, is so vague that there is no standard for determining the precise length of time required to perfect a State's title.<sup>90</sup> Great Britain has maintained possession of the islands for 150 years. This lengthy period of occupation would appear sufficient to establish a valid claim of title to the islands. Based upon this theory, Argentina's toleration would have caused title to lapse, thereby yielding a valid title to Great Britain.

The difficulty with a British contention based on prescriptive title is two-fold. First, Britain regained control of the islands by forcibly evicting the Argentine settlement. Second, Argentina repeatedly has protested British actions through diplomatic channels.<sup>91</sup> In 1833 Britain denounced Argentina's 1820 claim. This challenge was made apparent when a British ship forcibly removed Argentine inhabitants from the islands.<sup>92</sup> Under international law, however, Argentina's forcible eviction was not a recognized method

82. J. BRIERLY, note 56, at 167.

83. *Id.* at 171, 317.

84. R. HINGORAN, *supra* note 81, at 43-49.

85. M. CAWKELL, *supra* note 19, at 1; *see also* J. ARCE, *THE MALVINAS* 14 (1951).

86. *See supra* notes 31, 78 and accompanying text.

87. *See supra* notes 33-34 and accompanying text.

88. G. VON GLAHN, *supra* note 56, at 275.

89. *See supra* note 56 and accompanying text.

90. J. BRIERLY, *supra* note 56, at 167.

91. G. VON GLAHN, *supra* note 56, at 275.

92. BIS, *supra* note 19, at 3.

of acquiring sovereignty.<sup>93</sup> Since the British possession of the Falkland Islands was obtained by force in violation of international law, this mode of territorial acquisition is insufficient to establish British sovereignty over the islands.

Argentina has a valid claim to sovereignty based on its occupation of the islands after gaining independence from Spain.<sup>94</sup> Great Britain, on the other hand, has a valid claim of sovereignty based on the continued British occupation and possession of the islands. Although there are inherent difficulties with each country's claims of sovereignty, both Argentina and Great Britain have a legally justifiable response to the issue.

### III. RESPONSES TO THE ISSUE OF SOVEREIGNTY

#### A. *The British Response: Argentina's Act of Aggression*

Great Britain maintains that by choosing to invade and occupy the Falkland Islands, Argentina labeled itself as the aggressor.<sup>95</sup> This response is based on Britain's claim of right to sovereignty over the islands. The validity of this position is supported by the United Nations' definition of aggression. On December 14, 1974, the United Nations General Assembly adopted an eight-article text defining aggression. Article 1 of that resolution defines aggression as "the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State or in any such manner inconsistent with the U.N. Charter, as set out in this definition."<sup>96</sup>

Unless the Security Council determines otherwise, Article 2 provides that the first use of armed force by a State is *prima facie* evidence of aggression.<sup>97</sup> Article 3 outlines acts which are consid-

93. Diplomatic protests may prevent the State from peacefully acquiring the area. Such protests would also demonstrate a lack of acquiescence to the takeover a preserve the ousted State's claim. J. BRIERLY, *supra* note 56, at 170; *see also* Chamizal Case (Mex. v. U.S.), 1911 I.C.J. 309, 328-29; *cf.* Minquers and Ecrobos Case (Gr. Brit. v. Fr.), 1953 I.C.J. 47, 106-08. This second case concerned a sovereignty dispute between Great Britain and France over several small islands. Great Britain argued that the French protests were ineffective because France did not refer the matter to an international tribunal.

94. *See supra* note 78 and accompanying text.

95. *See supra* notes 26-35 and accompanying text.

96. *See* General Assembly Report, *reprinted in* R. HINGORAN, *supra* note 81, at 306-07; *see also* U.N. Charter art. 2, para. 4 (where the term "State" is used to resolve member recognition questions without prejudice and denotes the plural form when appropriate).

97. *See* R. HINGORAN, *supra* note 81, at 306; *see also* Garvey, *The U.N. Definition of "Aggression": Law and Illusion in the Context of Collective Security*, 17 VA. J. INT'L L. 177 (1977).

ered aggressive, regardless of a declaration of war. Under Article 3, the following acts constitute aggression: (1) an armed attack or invasion of another state; (2) military occupation; (3) the blockade of foreign ports or coasts; or (4) an air or sea attack.<sup>98</sup> Such acts are not exhaustive; under the provisions of the Charter, the Security Council reserves the right to determine if other acts constitute aggression.<sup>99</sup> Furthermore, an act of aggression constitutes a crime against international peace. The U.N. Charter further points out that potential justifications for such acts will not be considered.<sup>100</sup>

Under the terms of the United Nations definition, Argentina is clearly the aggressor in the Falkland's conflict. Based upon the provisions of Article 2, the April 2, 1982, take-over of the islands is *prima facie* evidence of the first use of armed force constituting aggression. Under Article 3, the military occupation of the islands would constitute the use of force against the territorial integrity of Britain, assuming the British have sovereignty over the islands. Therefore, under Articles 2 and 3 of the United Nations definition of aggression, the Argentine incursion would amount to an act of aggression.

Commentators have questioned the degree of binding authority that the United Nations definition carries.<sup>101</sup> They contend that the terms of the definition are vague and unenforceable.<sup>102</sup> Moreover, it has been asserted that there is a discrepancy between the definition of aggression and "the reality which the definition is intended to address."<sup>103</sup> Recognizing these positions and foregoing the use of this definition, Argentina's actions would still have violated several provisions of the United Nations Charter.

As signatories of the United Nations Charter, Argentina and Great Britain are required to adhere to the Charter provisions. By seizing the Falkland Islands, Argentina violated Article 2(3) of the Charter. Article 2(3) of the United Nations Charter mandates that members shall resolve disagreements peacefully in order to maintain international peace and security.<sup>104</sup> By seizing the Falkland

98. R. HINGORAN, *supra* note 81, at 306.

99. *Id.*

100. *Id.* at 307.

101. Ferencz, *The United Nations Consensus Definition of Aggression: Sieve or Substance*, 10 J. INT'L L. ECON. 701, 709 (1975).

102. *Id.* at 716.

103. Garvey, *supra* note 97, at 196.

104. U.N. CHARTER art. 2, para. 3, provides as follows: "All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." *Id.*

Islands, Argentina thwarted a peaceful settlement. By circumventing further diplomatic negotiations with Great Britain, Argentina did not fulfill its obligation to follow procedures enumerated in the U.N. Charter.

Article 33 of the United Nations Charter also dictates that parties to a dispute must first attempt peaceful methods to resolve a disagreement which may jeopardize international peace and security.<sup>105</sup> These methods include "negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice."<sup>106</sup> After 150 years without a settlement, Argentina had a duty to submit the problem to the United Nations Security Council. Article 37(1) of the Charter states: "[S]hould the parties to a dispute of the nature referred to in Article 33 fail to settle it by means indicated in that Article, they shall refer it to the Security Council."<sup>107</sup> Neither country submitted the matter directly to the Security Council. However, in 1965, in an effort to find a peaceful solution to the problem, the U.N. General Assembly approved a resolution to hold discussions between the two countries.<sup>108</sup> This attempt at a peaceful solution proved unsuccessful.<sup>109</sup> Great Britain and Argentina were ultimately unable to mediate an agreement concerning the sovereignty of the islands. The two countries refuse to recognize the other's territorial claims.<sup>110</sup>

After seventeen years of little or no progress within the Secur-

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105. U.N. CHARTER art. 33, para. 1, provides as follows:

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.
2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

*Id.*

106. *Id.*

107. U.N. CHARTER art. 37, para. 1, provides as follows:

1. Should the parties to a dispute . . . fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.
2. If the Security Council deems that the continuance of a dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action . . . or to recommend such terms of settlement as it may consider appropriate.

*Id.*

108. Subsequent discussions were conducted through diplomatic channels, with various trade and economic agreements being reached concerning the islands. Despite these discussions, the question of sovereignty has seen very little progress. *See* Pinto, *supra* note 30, at 6-9.

109. *See supra* notes 36-39.

110. *See supra* notes 1-39 and accompanying text.

ity Council and the General Assembly, Argentina invaded the Falkland Islands on April 2, 1982.<sup>111</sup> This armed occupation was a violation of Article 2(4) of the U.N. Charter. Article 2(4) mandates that "all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations."<sup>112</sup> Argentina's armed occupation was condemned by the United Nations Security Council. On April 13, 1982, the Security Council adopted Resolution 502, which:

(1) demanded an immediate cessation of hostilities; (2) demanded an immediate withdrawal of all Argentine forces from the Falkland Islands; and (3) called on the Governments of Argentina and the United Kingdom to seek a diplomatic solution to their differences and to respect fully the purpose and principles of the Charter of the United Nations<sup>113</sup>

The applicable United Nations Charter provisions indicate that Argentina acted in violation of its obligations as a United Nations member by failing to resolve the sovereignty dispute through diplomatic channels. Assuming Argentina did have sovereignty over the islands, the right of self-defense and self-help arguably warranted the April 3, 1982, seizure.

### *B. The Argentine Response: The Right of Self-Defense and Self-Help*

1. *Self-Defense.* Customary international law recognizes the right of self-defense against an armed attack.<sup>114</sup> In order to exercise the right of self-defense, three conditions must be satisfied:<sup>115</sup> (1) an action against the State exercising the right, (2) an instant and overwhelming need to act, and (3) the action must be reasonable and proportionate to the situation.<sup>116</sup>

The first condition requires a precedent action against the State which seeks to exercise the right of self-defense.<sup>117</sup> Britain's 1833 coercive and forcible removal of the Argentine settlement

111. N.Y. Times, *supra* note 1, at 1.

112. U.N. CHARTER art. 2, para. 4.

113. See *supra* note 5 and accompanying text.

114. J. SWEENEY, C. OLIVER & N. LEECH, *THE INTERNATIONAL LEGAL SYSTEM* 1254 (2d ed. 1981).

115. J. BRIERLY, *supra* note 56, at 406.

116. *Id.*

117. *Id.*

from the Falkland Islands constitutes such an action against Argentina.<sup>118</sup> Second, Britain's retaliatory offensive against Argentina's seizure of the islands is another aggressive act that would satisfy the first condition.

The second condition requires that the action be reasonable and proportionate to the situation. After Britain's seizure in 1833, Argentina's numerous attempts to resolve the dispute through proper procedures and diplomatic channels were of no avail.<sup>119</sup> Furthermore, under Article 51 of the United Nations Charter, Argentina has the right to self-defense until the Security Council takes positive action.<sup>120</sup> In light of Article 51, Argentina's initial invasion was warranted based upon the belief that all possible peaceful measures of resolving the sovereignty issue with Britain had been exhausted.

Finally, the third condition of self-defense necessitates an instant and overwhelming need to act. The issue regarding Argentina's use of the principle of self-defense lies in justifying the delay in instituting "an instant and overwhelming response." There is only one legitimate answer to the claim that Argentina's 150-year delay fails to meet this element of the definition. That defense would emphasize the fact that Argentina had made repeated attempts to negotiate a peaceful solution to this international dispute before attempting to settle the matter on its own accord. Argentina, therefore, had the right to defend itself against further armed attack by Great Britain and to organize a valid self-defense in response.

2. *Self-help*. Again, assuming Argentina had not invaded foreign territory but merely reclaimed its own, the remedy of self-help justifies Argentina's conduct. According to customary international law, the doctrine of self-help is the process of legally obtaining what one wants, while preventing other States from illegally obtaining what they want.<sup>121</sup> Moreover, the method is applicable "whenever an injured State chooses to take action against a State violating its legal rights (in order) to enforce international law."<sup>122</sup>

There are two fundamental justifications for the continued use of self-help:<sup>123</sup> (1) "the failure of the leading powers to take seri-

118. See *supra* note 34 and accompanying text.

119. See *supra* note 36 and accompanying text.

120. U.N. CHARTER art. 51.

121. W. GOULD, *supra* note 55, at 585.

122. *Id.*

123. M. WHITEMAN, *supra* note 56, at 494.



ously the commitments mentioned and (2) a paralysis, on too many occasions, of the United Nations machinery for the peaceful resolution of international differences."<sup>124</sup> After 150 years Britain has rigidly refused to recognize and discuss the legality of Argentina's territorial claims to the Falkland Islands.<sup>125</sup> After several attempts, the United Nations machinery has been unable to effectively mediate a resolution to this longstanding dispute. Clearly, the most desirable conclusion to the Falkland Islands conflict is a negotiated settlement. In the absence of such a resolution, the doctrine of self-help appears to have been the only effective tool for Argentina to end this protracted dispute.

Both Great Britain and Argentina possess persuasive arguments regarding responses to the question of sovereignty. Each response is founded on a sovereign claim of right to the islands.<sup>126</sup> However, the recorded history of the Falkland Islands is replete with lapses of historical reports and information which significantly cloud the sovereignty issue, and thereby prevent an absolute determination.<sup>127</sup> The Falklands crisis involves more than just a battle between Great Britain and Argentina; it seriously tests the United States' obligations under the inter-American treaty system.

#### IV. UNITED STATES TREATY OBLIGATIONS UNDER THE INTER-AMERICAN SYSTEM

Against the backdrop of the Falklands war, the importance of analyzing the actions of the OAS is clear. The OAS is one of the oldest, most accomplished regional security organizations within the international community.<sup>128</sup> As such, this entity plays an integral role in maintaining and defending the peace and security of the hemisphere.<sup>129</sup> Nevertheless, the United States' willingness to take a position contrary to the OAS in the Falklands dispute not only questions the status of other regional security commitments, but also seriously jeopardizes the United States' role in the inter-American system. The inter-American security system consists of

124. *Id.*

125. See *supra* note 31-42 and accompanying text.

126. See *supra* note 29-44 and accompanying text.

127. See *supra* note 19-38 and accompanying text.

128. See generally M. BALL, *THE OAS IN TRANSITION* (1969); INTER-AMERICAN INSTITUTE OF INTERNATIONAL LEGAL STUDIES, *THE INTER-AMERICAN SYSTEM* (1966); A. THOMAS & A. THOMAS, *THE ORGANIZATION OF AMERICAN STATES* (1963).

129. A. THOMAS & A. THOMAS, *supra* note 128, at 249.

two principle documents:<sup>130</sup> the Inter-American Treaty of Reciprocal Assistance and the Charter of the Organization of American States.<sup>131</sup>

### A. *The Inter-American Security System*

1. *The Rio Treaty.* The 1947 Inter-American Treaty of Reciprocal Assistance, signed at Rio de Janeiro, was designed to function as the basis for continental peace and security.<sup>132</sup> The purpose of the Rio Treaty was "to provide for effective reciprocal assistance to meet armed attacks against any American State and . . . to deal with threats of aggression against any of them."<sup>133</sup>

The Rio Treaty declares that parties to this accord agree that "an armed attack by any State against an American State shall be considered as an attack against all the American States."<sup>134</sup> As such, each party to the Rio Treaty is obligated to support the American States in case of attack.<sup>135</sup> These provisions apply to an armed attack, by either intercontinental or extracontinental states within specific geographically defined areas.<sup>136</sup>

Aggressive acts which do not involve armed force are discussed in Article 6.<sup>137</sup> Under Article 6, there are three situations which justify a collective response: an act of aggression which is not an armed attack, an extracontinental conflict or any other fact or situation that might endanger the peace of America.<sup>138</sup> Under the provisions of Article 6, the March 19, 1982, confrontation between British and Argentine workers constituted a situation which might have endangered the peace of the hemisphere. This action was an extracontinental discord which amounted to an act other

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130. *Id.*

131. *Id.*

132. Note, *The OAS Peace and Security System*, 21 STAN. L. REV. 1156, 1157 (1969).

133. Rio Treaty *supra* note 14 preamble.

134. *Id.* art. 3, para. 1.

135. "[A]nd, consequently, each one of the said Contracting Parties undertakes to assist in meeting the attack in the exercise of the inherent right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations." *Id.*

136. The region to which this treaty specifically refers includes the entire Western Hemisphere from each pole, and from Alaska to Greenland. *Id.* arts. 3, 4.

137. *Id.* art. 6.

138. Article 6 further requires that:

the Organ of Consultation shall meet immediately in order to agree on the measures which must be taken in case of aggression to assist the victim of the aggression or, in any case, the measures which should be taken for the common defense and for the maintenance of the peace and security of the Continent.

*Id.*

than an actual armed aggression. In this instance, the Rio Treaty establishes a legal obligation to assist Argentina in a conflict which might endanger continental peace.

Article 9 provides two examples of acts which are considered aggressive: (1) an "unprovoked armed attack by a State against the territory, the people, or the land, sea, or air forces of another State" and (2) "invasion, by the armed forces of a State, of the territory of an American State, through the trespassing of boundaries demarcated in accordance with a treaty, judicial decision, . . . invasion affecting a region which is under the effective jurisdiction of another State."<sup>139</sup> The Rio Treaty was intended to deal with acts of aggression and other major threats to peace.<sup>140</sup> Specifically, "it was designed to deal with major problems of aggression and threats to the sovereignty and independence of states."<sup>141</sup> Britain utilized the majority of its military strength in response to Argentina's reclamation of the islands.<sup>142</sup> As such, a majority resolution of the OAS characterized this overwhelming response to the sovereignty dispute as a British armed attack.<sup>143</sup>

The Rio Treaty is not the only document in the inter-American system which has the principal goal of peace and security of the continent. These principles and regional obligations are also recognized in the Charter of the Organization of American States.<sup>144</sup>

2. *The Charter of the Organization of American States.* The Charter of the OAS<sup>145</sup> is the second integral part of the inter-American system. The American States established the Charter to "achieve an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity and their independence."<sup>146</sup>

139. *Id.* art. 9.

140. Note, *supra* note 132, at 1157.

141. J. DREIER, *THE ORGANIZATION OF AMERICAN STATES AND THE HEMISPHERE CRISIS* 125 (1962).

142. See *supra* note 37-42 and accompanying text.

143. See *supra* text accompanying note 43.

144. OAS CHARTER, *supra* note 15, arts. 1, 4.

145. The Charter was signed and ratified by the original 21 states that were parties to the Rio Treaty. The Charter was drafted in 1948 at Bogota, Columbia. *Id.*

146. *Id.* art. 1. Articles 4 and 5 of the Charter list a series of purposes and principles to guide members in their relationships with other member nations. Of particular significance are the following essential purposes mentioned in Article 4: "a) To strengthen the peace and security of the continent; b) To prevent possible causes of difficulties and to ensure the pacific settlement of disputes that may arise among Member States; c) To provide for common action on the part of those States in the event of aggression."

Article 24 of the OAS Charter mandates that every aggressive act by a State "against the territorial integrity or the inviolability of the territory or against the sovereignty . . . of an American State shall be considered an act of aggression against the other American States."<sup>147</sup> This provision is strengthened by Article 25, which declared that the hemisphere's peace and security goals will be upheld in conformity with existing treaties, specifically the Rio Treaty.<sup>148</sup> The language of Articles 24 and 25 of the Charter, which strongly resemble the Rio Treaty, emphasizes each member's obligation to support the American States in case of attack.<sup>149</sup>

The United States and Argentina are both members of the OAS Charter as well as signatories to the Rio Treaty.<sup>150</sup> Thus, both countries are required to adhere to these provisions. The legal authority for insisting that the United States support Argentina's conduct is dependent upon whether the United States breached its commitments to the OAS by unilaterally determining Argentina's lack of sovereignty rights and providing aid to Great Britain.

### *B. The Role of the United States in the Falkland Islands Conflict*

Assuming the validity of Argentina's sovereignty claim to the islands, Britain would have been classified as the aggressor.<sup>151</sup> Britain's response to Argentina's regaining possession of the islands gravely affected the inviolability, territorial integrity and sovereignty of Argentina.<sup>152</sup> As such, this conduct would activate a duty on behalf of the United States to provide for effective reciprocal assistance to Argentina.<sup>153</sup> As a signatory to the Rio Treaty and the

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147. *Id.* art. 24.

148. *Id.* art. 25.

149. *Id.* arts. 24-25. Article 24 provides as follows: "Every act of aggression by a State against the territorial integrity of the inviolability of the territory or against the sovereignty or political independence of an American State shall be considered an act of aggression against the other American States". Article 25 provides as follows:

If the inviolability of the integrity of the territory or the sovereignty or political independence of any American State should be affected by an armed attack or by an act of aggression that is not an armed attack, or by extra-continental conflict, or by a conflict between two or more American States, or by any other fact or situation that might endanger the peace of America, the American States, in furtherance of the principles of continental solidarity or collective self-defense, shall apply the measures and procedures established in the special treaties on the subject.

150. *Id.* art. 2; Rio Treaty, *supra* note 14, at 93.

151. *See supra* notes 132-39 and accompanying text.

152. *See* Rio Treaty, *supra* note 14, arts. 3, 6; *see also supra* notes 132-39 and accompanying text.

153. *See* Rio Treaty, *supra* note 14, preamble & art. 3.

OAS Charter, the United States is required to adhere to the provisions of these documents.

Article 3 of the Rio Treaty states "that an armed attack against an American State shall be considered as an attack against all the American States."<sup>154</sup> Consequently, the United States must "assist in meeting the attack in the exercise of the inherent right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations."<sup>155</sup> By openly aligning itself with Great Britain, the United States failed to fulfill the commitment to uphold the peace and security of the American hemisphere. Under Article 3(2) of the Rio Treaty, member nations may individually determine the immediate measures they may take in fulfillment of their treaty obligations, at least until a decision has been reached by the Organ of Consultation.<sup>156</sup> At this stage the United States was under an independent obligation to assist Argentina.<sup>157</sup> This independent obligation became a collective one once the Organ of Consultation met.<sup>158</sup>

The OAS Ministers of Foreign Affairs adopted a resolution on April 28, 1982 calling for the British to refrain from hostile acts and denouncing sanctions against Argentina.<sup>159</sup> Once the Ministers of Foreign Affairs effected this consultation on collective measures, the parties were obligated to comply with the Organ's decision.<sup>160</sup> This decision created a binding legal obligation upon the United States.<sup>161</sup> Two days later the United States openly aligned itself with Great Britain,<sup>162</sup> thereby failing to fulfill its Rio Treaty commitment to uphold the peace and security of the American hemisphere. By applying coercive measures against Argentina and giving material support to Britain, the United States effectively circumvented the provisions enumerated in Article 3 of the Rio Treaty.

On May 29, 1982, the Foreign Ministers reconvened in response to the United States military and economic sanctions taken against Argentina.<sup>163</sup> Clearly, the original OAS resolution merely

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154. *Id.* art. 3.

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *See supra* note 44.

160. Rio Treaty, *supra* note 14, art. 20.

161. *Id.*

162. *See supra* notes 9-10 and accompanying text.

163. *See supra* note 52 and accompanying text.

urged the United States to halt aid to Great Britain.<sup>164</sup> Article 20 of the Rio Treaty states that all signatory States are bound to accept the decisions of the Organ of Consultation<sup>165</sup> with respect to measures taken for the common defense and maintenance of the peace and security of the continent. However, the United States chose to ignore the position taken by the majority of OAS members, thereby violating the terms of the Rio Treaty.

Assuming the validity of Britain's sovereignty claims over the islands, the United States, at the very least, should have remained neutral throughout the conflict in observance of the principles of hemispheric solidarity.<sup>166</sup> The United States is bound by the rules expressly enumerated in the Rio Treaty.<sup>167</sup> By supplying military support and intelligence information to Great Britain in its war effort against Argentina, the United States undermined the purpose and theory behind the inter-American mutual defense system.<sup>168</sup> Respect for the sovereignty and independence of member States is the fundamental principle of the OAS. The overall effectiveness of the System is made suspect by the United States lack of support to Argentine efforts to condemn Britain. The United States response to Argentina's actions<sup>169</sup> focuses attention upon the ramifications of an inter-American treaty system in which one member can unilaterally determine issues, despite an OAS resolution on the matter.

The principles of sovereignty and aggression became a matter of prime importance in the Falklands dispute.<sup>170</sup> Both Great Britain and Argentina arguably had valid claims to the islands. Both countries considered their reactions to the conflict justified. The crucial issue for the OAS, however, is not whether Britain or Argentina had a better claim to the islands or who, in fact, was the aggressor in the conflict. Rather, the issue in the Falkland Islands dispute is whether the United States, as an individual OAS member, had the power to unilaterally decide who was the aggressor in the conflict and whether treaty provisions applied. If one member may determine and unilaterally act upon issues in a treaty-defined dispute, the inter-American treaty system's principles of collective action have little or no effect. The question is not whether the

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164. N.Y. Times, May 30, 1982, at 1, col. 3.

165. Rio Treaty, *supra* note 14, art. 20.

166. See *supra* note 146 and accompanying text.

167. Rio Treaty *supra* note 14 preamble.

168. OAS Charter note 14, arts. 4, 5.

169. See *supra* notes 9-12 and accompanying text.

170. See *supra* notes 1-8 and accompanying text.

United States' actions were proper, but whether, as a member of the OAS, any country will now have to honor its pledge to support the independence of a hemispheric nation and to faithfully fulfill OAS treaty obligations.<sup>171</sup>

The fact that United States military assistance was given to Great Britain despite the binding OAS resolution indicates a serious defect in the treaty provisions. The weakness in the treaty's defense system is the absence of a specific provision prohibiting support of a country that the OAS Foreign Ministers have determined is the aggressor in a hemispheric conflict.

## V. AMENDMENT OR MODIFICATION OF THE RIO TREATY

The question of whether the present system is sufficient to effectively deal with similar volatile conflicts in the future is vital. The critical shortcoming in this defense system, as with other areas of international law, is the lack of compulsory provisional enforcement. However, the entire system need not fail as an operative structure of collective security. On the contrary, an expansion of the system's provisions is needed.

Under the current provisions of the Rio Treaty, the Ministers of Foreign Affairs meet to decide upon the collective measures to be taken when the peace and security of the Western Hemisphere is threatened.<sup>172</sup> In the case of an extracontinental conflict,<sup>173</sup> the Ministers of Foreign Affairs may not respond unless such action affects "the inviolability or the integrity of the territory or the sovereignty or political independence of any American State."<sup>174</sup> Once this limitation is met, the Ministers may implement any of the collective measures of of Article 8 of the Rio Treaty.<sup>175</sup> Article 8 enumerates measures with the Organ of Consultation may implement in cases of aggression or threats thereof.<sup>176</sup> A decision to impose economic or diplomatic sanctions is binding on all parties to the treaty.<sup>177</sup> This enforcement power should be expanded to bind

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171. See note, *supra* note 133, at 1186.

172. Rio Treaty, *supra* note 14, art. 11.

173. These Articles outline acts that constitute a threat to peace and security. *Id.* arts. 3, 6.

174. *Id.* art. 6.

175. *Id.* art. 20.

176. These measures are: the recall of chiefs of diplomatic missions; the breaking of diplomatic and consular relations; the partial or complete interruption of economic relations or of rail, sea, air, postal, telegraphic, telephonic, and radiotelephonic or radiotelegraphic communications; and the use of armed force. *Id.* art. 8.

177. *Id.* art. 20.

members to prohibitory acts as well.

An expansion should be made to preclude a signatory State from directly contradicting the collective action that a majority of members have determined necessary to maintain hemispheric peace and security. This expansion would prevent a member nation from directly supporting the aggressive acts of a nonmember State. Consequently, this additional provision to the Rio Treaty would effectively ensure the neutrality of the members, as well as ensuring compliance. No individual member could block action which the majority of States support by a unilateral determination of the aggressor in the conflict. Thus, if the majority of American States agree upon specified actions, a dissenting member would be bound to prohibitory, but not mandatory acts.

Although this proposed measure would repudiate direct support of the "aggressor State" by an OAS member, the latter provision would act as an escape clause. A dissenting State would not be bound to any mandatory provisions not specified in Article 8 of the Rio Treaty.<sup>178</sup> Therefore, a member could remain neutral in a dispute, absent a decision by the Organ to employ any of the prohibitory measures.

The effectiveness of such a prohibitory clause would prevent a contracting party from an arbitrary decision of the issues. Although no State is required to use armed force,<sup>179</sup> this proposal would not permit a State to circumvent a decision by the Foreign Ministers calling for the majority of States to use force. Therefore, when two-thirds of the voting members<sup>180</sup> at a Meeting of Consultation determine the aggressor in a conflict, each party would at least be bound to the prohibitory acts in the decision regardless of individual votes. The success of this expansion of the Rio Treaty depends upon strict compliance to its obligations by all member States.

It is essential for the OAS to take action against a member State which willfully disregards treaty obligations. Without respect for these obligations the regional measures for maintaining peace and security will become impotent. However, the overall effectiveness of potential political or economic sanctions against a noncomplying OAS member would be weak due to enforcement problems.

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178. *Id.*

179. *Id.*

180. *Id.* This provision requires that all decisions of the Organ of Consultation shall be taken by a two-thirds vote of the ratifying State.



Presently, there are no enforcement measures against a State which fails to carry out measures adopted by the Organization to maintain peace. Consequently, the most workable sanction against a non-conforming party would be a lack of support from fellow members in future hemispheric disputes. The effect of such added pressure continues to be strong enough to assure that member States comply with the legal commitments under the Rio Treaty. Nations cannot be sure that hemispheric support from other members will not be needed in the future. This provision enhances as well as upholds the theories and principles behind the collective security system.

The purpose and goals of the treaties support an expansion of the provisions to proscribe noncompliance and direct support of an aggressor nation. The principle of inter-American cooperation of member States is imperative to the viability of the Rio Treaty. This proposal would greatly strengthen and uphold the goals of peace and hemispheric solidarity.

## VI. CONCLUSION

One hundred and fifty years of dispute culminated in the April 2, 1982, Argentine invasion of the Falkland Islands. An examination of the competing claims to the Falkland Islands reveals that both Great Britain and Argentina have valid sovereignty claims to the islands.<sup>181</sup> Great Britain has a valid claim of right based on the continued British occupation and possession of the islands.<sup>182</sup> Argentina has a valid claim of sovereignty based on occupation of the islands after gaining independence from Spain.<sup>183</sup> Each country also has a sound response to the other's sovereignty claims.<sup>184</sup> Argentina maintains that Great Britain exercised dominion over the islands only through a violation of international law in acquiring possession.<sup>185</sup> Thus, in the absence of any alternative and successful means of vindicating their vital right to sovereignty, the use of self-help and self-defensive measures on the part of Argentina was warranted.<sup>186</sup> Conversely, Britain contends that such actions by Argentina violated the provisions and obligations of the United Nations Charter.<sup>187</sup> Both countries' claims continue to have legal

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181. *See supra* notes 60-94 and accompanying text.

182. *See supra* notes 60-77 and accompanying text.

183. *See supra* notes 78-86 and accompanying text.

184. *See supra* notes 95-27 and accompanying text.

185. *See supra* notes 32-35 and accompanying text.

186. *See supra* notes 114-24 and accompanying text.

187. *See supra* notes 95-106 and accompanying text.

significance.<sup>188</sup> The Falklands conflict, however, involves more than the resolution of this protracted sovereignty dispute.<sup>189</sup> More importantly, it raises the question of the viability of the inter-American system when member nations refuse their obligation to prevent and control extracontinental conflicts.

United States involvement during the Falkland Islands conflict illustrates that the OAS collective security machinery is most effective only when United States policy coincides with the goals of the organization. United States policy, however, should not be permitted to unilaterally determine what and whether treaty provisions have been fulfilled. To do so would undermine the goals of the Rio Treaty. The prime objective of that treaty is to provide a collective security system to deal with direct threats to the sovereignty of member States within the Western Hemisphere.

By signing the Rio Treaty in 1947, the United States and other member countries recognized a strong need for a collective security system.<sup>190</sup> In consideration of this need, the proposed collective security mechanism would greatly enhance the viability of, and confidence in, decisions of the OAS. In this way, it would also facilitate an effective handling of similar disputes in the future.

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188. *See supra* notes 126-27 and accompanying text.

189. *See supra* text accompanying notes 123-28.

190. *See supra* notes 132-36 and accompanying text.