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**The Falkland Islands and their  
Adjacent Maritime Area**

*Patrick Armstrong and Vivian Forbes*



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## **The Falkland Islands and their Adjacent Maritime Area**

by

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The opinions contained herein are those of the authors and are not to be construed as those of IBRU.

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# The Falkland Islands and their Adjacent Maritime Area

*Patrick Armstrong and Vivian Forbes*

## 1. Introduction

This *Briefing* documents the origins of the dispute relating to sovereignty over a group of remote islands in the South Atlantic, tracing its development over two centuries. The varying ways in which the islands were viewed, both by Britain and by Argentina, over this long period are considered, but the 1982 conflict is not discussed in detail. Efforts by the British administration to encourage economic development in the years following 1982, by providing an effective legal regime, first for offshore fisheries, and later for exploration for hydrocarbons in the Falkland Islands continental shelf are described, and the recent moves towards a cooperative approach to the development of the offshore maritime resources of the region are emphasised.

## 2. The Falkland Islands

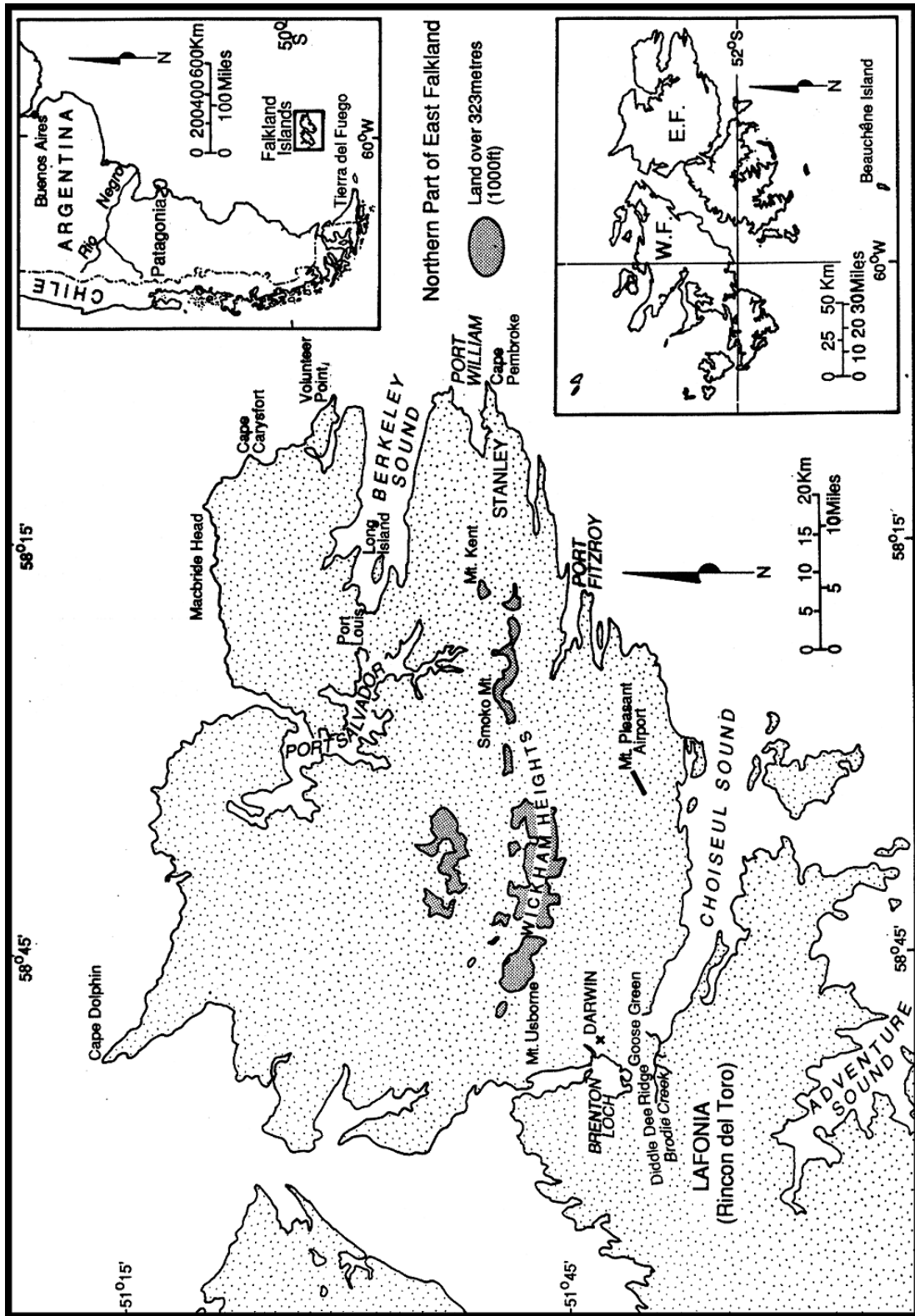
The Falkland Islands archipelago comprises two large islands, East and West Falkland, and several hundred smaller islets in the South Atlantic (51°-52°30'S; 57°45'-61°30'W); the total area is about 13,000km<sup>2</sup>, and the islands are about 480km from the mainland of South America. Geologically the Falklands have affinities with Africa; the Falkland Islands or Lafonia microplate lay originally to the south and east of southern Africa, having rotated through about 100° before the opening of the South Atlantic.<sup>1</sup> The Falklands consist largely of Palaeozoic sedimentary material; particularly conspicuous is quartzite, in places nearly vertically inclined, and which forms a marked east-west ridge which is especially prominent on East Falkland (see Figure 1).

The highest mountain is Mt. Usborne (approximately 705m). Much of the terrain is covered by thin layers of peat, with a low vegetation of grass and shrub heath. Trees are absent except where they have been planted close to some of the settlements. Stone runs form a conspicuous element in the landscape; these are linear arrangements, probably formed by periglacial activity, of irregularly shaped boulders. The individual boulders vary in size from 10cm to 20m across. The bleak environment is largely controlled by the climate: temperatures average 9°C in the summer months (January, February) and 7°C in the winter. Snow can occur in any month, but seldom lies long; ground frost can also occur at any time of the year, but there are no glaciers or permanent snow beds. Very high winds are also a characteristic – the annual mean is over 30km per hour. There is a permanent population, mainly of English and Scots stock of rather over 2,000, and since the 1982 conflict, a garrison (with associated personnel) of around the

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<sup>1</sup> The first suggestion that the Falklands might constitute a rotated fragment of the Africa plate seems to be Aidié, 1952. For more recent discussion see Mitchell, *et al.*, 1986, and Ben-Avraham, *et al.*, 1993. The last of these makes interesting comparisons between structures revealed by recently released geophysical data from off South Africa with data from the continental shelf near the Falklands.

Figure 1: The Falkland Islands





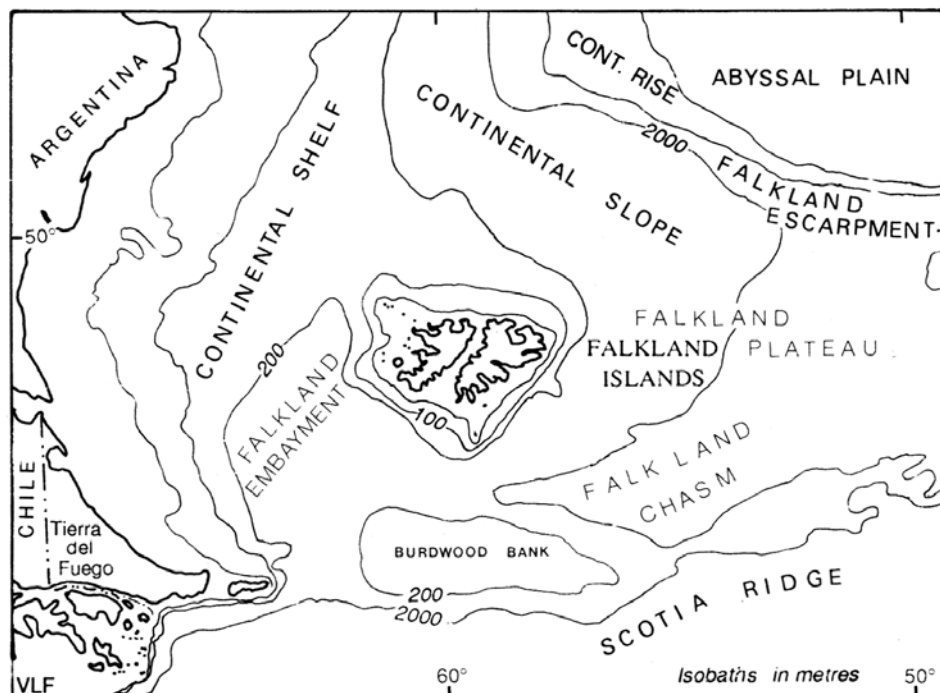
same number. The economy is closely dependent upon wool, but the licence fees from offshore squid fishing are also important. There is a small tourist industry, catering for an elite type of visitor attracted to the extremely beautiful, wild, unpolluted Falklands environment and who comes for the trout fishing or birdwatching.

The location of the islands just to the north of the Antarctic Convergence means that the cool, turbulent oceanic waters around the archipelago are biologically productive. The nearby southern ocean supports large numbers of whales, dolphins, seals and sea birds, feeding upon krill, fish and squid (*Illex* and *Loligo*). The seals and sea birds (penguins, prions, albatrosses) constitute important ecological links between the islands and the surrounding southern ocean ecosystem, as they breed on the islands, where their guano enriches the otherwise rather infertile soil, but venture far afield for food.

An important component of the Falkland Islands environment is provided by very extensive kelp beds in some of the long, narrow inlets and in the shallow waters offshore. Three main species occur (*Durvillea antarctica*, *Macrocystis pyrifera*, *Lessonia antarctica*), each occupying a subtly different ecological niche. Many invertebrates depend on the kelp habitat, and these in their turn provide food for many fish and several bird species; amongst the latter is the Falklands steamer duck (*Tachyeres brachydactyla*), an endemic, flightless species.<sup>2</sup>

The archipelago is surrounded by a quite extensive area of continental shelf (see Figure 2) which may contain sedimentary rocks of much younger age than those exposed on the islands themselves (see Section 4.3). The sea is relatively shallow to the north and west, and around the Burdwood Bank some 150km to the south, but deepens gradually towards the eastern part of the Falkland Plateau area.

**Figure 2: Bathymetry of the Continental Shelf Adjacent to the Falkland Islands**



<sup>2</sup> Strange, 1987, gives a general view of the natural history of the islands. One of the present authors provides a brief summary on the Falklands environment in Armstrong, 1994.

### 3. The Issue of Sovereignty

#### 3.1 Early History

It is not the major function of this *Briefing* to provide a detailed commentary on the complex history of settlement and naval and military presence in the Falkland Islands, nor of the manner in which some of the manoeuvres and incidents of history have been used to justify each part of the palimpsest of claim and counterclaim to which this archipelago has been subjected. A summary, however, may be useful to bring matters into focus.

A number of sightings of the Falkland Islands were made by British, French and Dutch seamen in the early sixteenth century, but were not followed up. The first undisputed landing is that of John Strong, captain of the *Welfare*, bound from Plymouth to the South Seas, in January 1690. Captain Strong sailed between the two main islands, naming it Falkland Sound – the first use of the name in connection with the islands. Over the next few decades there were several British and French landings on the islands, the French being in the forefront of exploration: they referred to the islands as the Isles Malouines, after the port (St. Malo) whence many of the French expeditions set forth; this is the origin of the name Islas Malvinas used by South Americans for the islands. Sometimes both British and French ships were exploring around the islands at the same time, unknown to each other.

As early as 1740 pleas were being made to the British Admiralty to claim the Falklands, on the grounds of their potential importance on a sea route – nothing was done however.<sup>3</sup>

In 1763 the French lost their colonies in North America to Britain, and in the same year a young French aristocrat, Antoine de Bougainville (1729-1811), sought to establish another colony, at the opposite end of the American land mass to Quebec, as a recompense. A number of embittered former colonists from Arcadia, the French colony in Nova Scotia, were part of his group. After loading up large numbers of livestock in Montevideo in January 1764, the two vessels comprising the expedition arrived at what they named Baie Saint Louis (Berkeley Sound, East Falkland) on 17 February. A fort of turf and stone was constructed which still stands as a flower-covered series of mounds close to the present Port Louis settlement.

Bougainville seems to have had a restless disposition, for three days after the ceremony of possession on 5 April 1764 he returned to France, leaving 28 settlers. He was back in the islands just under a year later, however, bringing the total number of settlers to 80, but again his visit was a short one, for he left for France once more in April 1766. Meanwhile the Spanish authorities had got to hear of Bougainville's venture, and protested with vigour. Bougainville agreed to transfer his colony to Spain, for a very substantial sum. On his last voyage to the islands in late 1766, he called in at Rio de la Plata to be joined by a Spanish party, and on 1 April 1767 the colony was formally handed over to Spain.<sup>4</sup>

Meanwhile, in complete ignorance of the French activities, His Majesty's Ships *Tamar* and *Dolphin* sailed from England in June 1764 under the command of Captain John Byron. He reached the Falklands in January 1765, naming Port Egmont on Saunders Island, West

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<sup>3</sup> Strange, 1983: 48.

<sup>4</sup> *Ibid.*: 51-52.

Falkland in honour of the First Lord of the Admiralty. He claimed this island, and those adjacent, for George III, not knowing of the French claim, on East Falkland, of a few months earlier; he had, indeed, sailed very close to the French settlement, across the mouth of Berkeley Sound.

Despite the secretive nature of the French venture, by 1765 rumours of the French settlement's existence were circulating in England, and in September of that year a flotilla of three vessels set sail under Captain John McBride. Amongst his instructions was the directive to inform any lawless person living on the islands that they were inhabiting land belonging to Britain. Those not wishing to take an oath of allegiance were to be given six months to get out!

From 8 January 1766 onwards he consolidated the Port Egmont settlement, erecting a blockhouse and other buildings. On an exploration cruise in December 1766 the French settlement was sighted, and McBride made contact with the French Governor, M. de Neville, delivering him a note informing him of Britain's claim. Although the meeting was most friendly, even cordial, the claim was rejected, neither party knowing of Bougainville's decision to hand over the settlement to Spain.<sup>5</sup>

However, when the Spanish Governor, Felipe Ruiz Puente took over from de Neville, the tension seems to have risen. McBride having returned to England to report on developments, Captain Hunt, then in command, in September 1769, presented the captain of a Spanish schooner with a warning to leave. A few days later the situation was reversed, and Hunt was issued with a note ordering him to depart. This went on for some time.

In June 1770 the Spanish authorities dispatched a force of five frigates, with a massed force of 1,600 men to Port Egmont, far outnumbering the small British detachment. Each of the two commanders ordered the other to leave, and after something of a stand-off the Spanish landed: shots were fired, but the British soon surrendered and departed. Britain and Spain were on the brink of war, but in the subsequent negotiations a deal was patched up, the settlement was returned to Britain a few months later, and for the next two and a half years Britain's Port Egmont settlement was unchallenged.

But, perhaps unwisely, as part of "*an economical Naval regulation*" the settlement was abandoned. Then, as before and since in British defence circles, issues of cost took priority. The block-house had a notice affixed to it proclaiming it, the islands and all "*wharves and harbours, bays and creeks thereunto*" to be "*the sole right and property of His Most Sacred Majesty, George the Third*", but when the Spaniards from Puerto de la Soledad, as Port Louis was by then called, inspected the site a year or so later it had gone to ruin.

The Puerto de la Soledad settlement was maintained by the Spaniards, however, for the next thirty years. Governors – good, bad and indifferent – came and went, the settlement, seldom with more than a hundred souls, survived, but did not prosper, and there were occasional murmurs that it should be abandoned. Abandoned it was, in 1806, as South America moved towards revolution. The United Provinces emerged in 1816, claiming to succeed Spain in all

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<sup>5</sup> *Ibid.*: 53. The incident is reminiscent of occasions in the 1950s when the commanders of British and Argentinian bases in Antarctica delivered notes of protest to each other, and then proceeded to attempt to drink each other under the table!

her territories in South America, but it was not until November 1820 that efforts were made to establish the new, independent government's authority on the Islas Malvinas.<sup>6</sup>

During the interregnum, and indeed for some years after, the islands were used as bases for whaling and sealing by sailors from many nations, and a fairly brutish life seems to have been lived amongst the remnants of the settlements by a motley crew of thugs, outlaws and pirates. No lawful authority was exercised.

The 6 November 1820 saw formal rights of possession declared in the name of the United Provinces, by one Colonel Soledad Jewitt. In due course Argentina emerged from several decades of disturbed and tyrannical rule, but hold on the Falklands (or Malvinas) remained tenuous. Attempts to foster colonisation were not very successful, and a succession of brief governorships followed. One of the holders of the position Governor of the Malvinas, Louis Vervet, was not only a substantial landholder in the islands, but also Governor of Tierra del Fuego! He attempted to exercise his authority by excluding whalers and sealers (many of them American) from the islands, and in 1831 he seized three US sealing schooners, claiming that they had no lawful authority to use the Falklands.

At least one section of American opinion disagreed with this particular interpretation of the sovereignty issue, and a Captain Duncan, commander of the USS *Lexington*, exacted reprisal, sacking Port Soledad on 28 December 1831. The little settlement was “ruined”, Captain Duncan allowed his crew to do “great harm to the houses and gardens”, and Vervet's agent was “treated more like a wild beast than a human being.” For years afterwards some of the few settlers that remained fled to the country whenever a ship of war appeared. Anarchy remained the principle form of government. A temporary Governor was appointed by Buenos Aires, Major Juan Esteban Mestivier in late 1832: he did not survive long – being murdered by a gang of thugs.<sup>7</sup>

But throughout much of this period of disquiet, the British were quietly seeking to regain sovereignty to the islands through diplomatic channels. The British Ambassador, Woodbine Parish, forwarded a letter asserting the British claim to the Ministry of Foreign Affairs in Buenos Aires in November 1829. The matter dragged on, however, without resolution, and in 1832, HMS *Clio* (under Captain J.J. Onslow) and HMS *Tyne* (Captain C. Hope) were despatched to take possession, calling first at the remains of the old British Settlement of Port Egmont, arriving at Port Soledad on 2 January 1833. The British flag was hoisted and saluted, and the relatively junior Argentinian officer remaining after Mestivier's murder, Jose Maria Pinedo, was issued with a letter telling of the intention of the British party to “exercise the right of sovereignty over these islands.” He departed, a day or two later, apparently without sorrow or regret.

Surprisingly, the British did not press home their claim to sovereignty by remaining in the islands, or by establishing even a minimal garrison. After saluting the flag they soon left, and less than two months later, on 1 March, when HMS *Beagle* sailed into Berkeley Sound (with naturalist Charles Darwin aboard) the situation was as chaotic as ever. The *Beagle's* commander, Captain Robert FitzRoy recorded laconically:

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<sup>6</sup> *Ibid.*: 54. A good summary of these events is also provided in: Philpott, 1992.

<sup>7</sup> Strange, 1983: 54-56.

*...there was no constituted authority whatever resident on the islands, but that the British flag had been left by Captain Onslow in charge of an Irishman.*<sup>8</sup>

The flag-guardian, one William Dickson by name, described by FitzRoy as “*loquacious*” and formerly employed as a storekeeper, had been given firm instructions to hoist it every Sunday, and whenever a vessel came into port!

FitzRoy and the crew of the *Beagle* had other matters to attend to, and left in early April, “*with a heavy heart and gloomy forebodings.*” FitzRoy wrote at length in his account of the gauchos who, “*gamble and fight with long knives giving each other severe wounds*”, and of the sealers with their rifles and clubs, stating: “*there was no lack of the elements of discord.*” His premonitions were well founded and in August a further series of murders took place, including flag-holder Dickson, the capitaz of the gauchos (a Frenchman, Jean Simon) and several other settlers.

When HMS *Challenger*, then in Rio de Janeiro, heard of the matter, she set off, arriving in Port Louis early in January 1834. A Lt. Smith was left as acting Governor, with a squad of marines. He immediately set about attempting to round up the desperadoes, who had escaped to open country. He was successful in capturing several of them, and indeed the log of HMS *Beagle*, on the ship’s second visit to the Falklands in March 1834 records: “*Tuesday 18 March – Received on board Antonis Rivers, prisoner.*”<sup>9</sup>

The *Beagle* was the first British ship of war to visit the islands after the arrest, and Captain Fitzroy was duty bound to accept several of the prisoners who were held in irons. Naturalist Charles Darwin described the incident in some detail. The captives were taken to South America, and eventually to England for trial. But under what law were they to be tried? The murders had allegedly taken place on land claimed by Britain, but before lawful government had been established. To send them to Buenos Aires for trial would be to acknowledge Argentina’s sovereignty. They languished in Newgate prison for a while, but were never brought to trial; after a period of wrangling they were returned to South America as free men. Darwin was remarkably perceptive and prescient when he noted that the Falklands were, “*a bone of contention between nations*”, and in a letter to his sister at the time of his first visit to the Falklands, noted:

*We arrived here in the Falkland Islands in the beginning of this month... We found to our great surprise the English flag hoisted – I suppose the occupation of this place, has only just been noticed in the English papers; but we hear all the southern part of America is in ferment about [it]. By the awful language of Buenos Ayres one would suppose this great republic meant to declare War against England!*<sup>10</sup>

Two points emerge from the study of the bickerings over sovereignty during the first seventy years following the first settlement of the Falkland Islands.

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<sup>8</sup> FitzRoy, 1839: 270.

<sup>9</sup> The log of HMS *Beagle* is held in the Public Record Office, Kew, at ADM 51/3054. See also Boumphrey, 1961.

<sup>10</sup> Charles Darwin to Caroline Darwin, 30 March 1833. Original held in Darwin Archives at Cambridge University Library at DAR 223. Published in Burkhardt, *et al.*, 1985: 304.

First, the disputation between France and Spain, between France and Britain, later between Britain and Spain, and later still between Britain and the young Argentina arose because of neglect and indecision. Britain abandoned her establishment at Port Egmont for reasons of economy, and even when she regained authority in the islands, no proper administration was established for some time. So too, for long periods, the Spanish, and later Argentinian administration was half-hearted. It is no wonder that anarchy ruled, with, as Darwin put it, “*complicated scenes of cold-blooded murder, robbery, plunder, suffering...[and] infamous conduct.*”<sup>11</sup> British administrations of the late twentieth century were no more decisive and clear in their thinking than those of over a century earlier.

Second, although it is seldom explicitly referred to in the documents, time and again there are hints that marine resources were considered as important as those of the islands themselves, and issues of marine power and sovereignty were also thought significant. Captain Duncan “ruined” the settlement of Port Soledad in 1831, furious that, as Americans, they were being excluded from the sealing and whaling resources of the waters around the islands. Captain FitzRoy was concerned in 1833 about the risks of serious conflict between whalers and sealers. He wrote of:

*...the crews of some thirty whale-ships, hovering about...the islands; the men of American vessels, all armed with rifles; the English sealers with their clubs...the several French whalers who could not or would not see why they had not as good a right to the islands as Englishmen...without the presence of a man-of-war, or the semblance of any regular authority.*<sup>12</sup>

Indeed, one of the purposes of the *Beagle*'s visit to the archipelago was strategic – it was to construct hydrographic charts of an island group considered important as a replenishment base on the Cape Horn run. Darwin, no doubt after discussing the matter with FitzRoy and the other officers, wrote to his sisters:

*The islands...from their local situation will be of great importance to shipping; from this cause the Captain intends making an accurate survey.*<sup>13</sup>

And later:

*This island must some day become a very important halting place in the most turbulent sea in the world. – it is midway between Australia & South Sea to England. Between Chili Peru &c & the R. Plata & R. de Janeiro. - There are fine harbors, plenty of fresh water & good beef.*<sup>14</sup>

Thereafter Britain's hold on the islands was consolidated. Richard Moody was appointed Governor in 1840, and colonisation actively encouraged. Britain was careful not to recognise earlier land grants, for that would imply recognition of the authority under which they were issued.

<sup>11</sup> Charles Darwin's Diary entry for 10 March 1834. Barlow, 1933: 216. For an account of Darwin's work in and impressions of the Falklands, see Armstrong, (1992).

<sup>12</sup> FitzRoy, 1839: 278-279.

<sup>13</sup> Charles Darwin to Caroline Darwin, 30 March 1833, *op cit.*.

<sup>14</sup> Charles Darwin to Caroline Darwin, 6 April 1834.

### 3.2 The Crystallisation of the Sovereignty Dispute

As the Falkland Islands remained continuously under British administration for nearly a century and a half, there is no need here to document in detail the later settlement and maritime history. Suffice it to say that population slowly increased, a successful wool industry was established, and whaling and sealing remained important until well into the present century.

Periods of appreciation of the strategic importance of the Falklands alternated with phases of benign neglect. Argentina retained her claim to the islands, although there were periods during which it was proclaimed more stridently than others. British Foreign Office and Colonial Office files in the Public Record Office abound with reference to friction with Argentina over Falkland Island matters. There is evidence in the files that sometimes there was tension between the two departments: the Foreign Office seeking to maintain good relations with Argentina (and other South American countries) and the Colonial Office attempting to protect the interests of the Islanders.

Details of a single aspect will serve as an example. There were long-time difficulties over the insistence that Falkland Islanders had Argentinian papers when they visited Argentina. The problem can be traced back to the very early decades of the twentieth century, and there were difficulties of this sort over passports in 1922, 1933, 1934, 1936 and 1937, 1948 and in the 1950s. As Sir David Kelly wrote in a 1934 memorandum:

*...our policy in regard to the Falklands must be to maintain our rights while avoiding all incidents calculated to fan the always smouldering embers of Argentine resentment. There is absolutely no hope of our reaching any agreement on the question of principle involved, and our guiding principle must be to avoid dragging this century old controversy into the limelight...<sup>15</sup>*

When the Colonial Office in 1950 requested the Foreign Office to take up the matter with Buenos Aires, the reply was that it “*would be quite useless and even harmful.*” At one stage the Governor of the Falklands was issued a block of London passports for Islanders who wished to travel to Argentina. A letter from Chancery, British Embassy Santiago, dated 31 December 1952, enclosed a letter (17 December 1952) from the British Consul in Punta Arenas in southern Chile, referring to the day-to-day problems experienced. There was an appreciable Falkland Islander community in the Punta Arenas area, and “*for some time*” those wishing to go to Argentina had been required to hold Argentinian passports and documents:

*Generally speaking this is taken in good part, causing amusement more than anything else. There are no more patriotic people in the British Empire than the Falkland Island people.*

There was a feeling that Argentinian pressure had recently been tightening. A 1952 Foreign Office Minute summarised the situation:

*Since the war we have become more and more dependent on Argentina as a source of meat and the growth of nationalism all over the world and anti-colonial*

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<sup>15</sup> Public Record Office, Kew: A6065/1118/2. See also below.

*feeling has made it more desirable than ever that we should refrain from bringing disputes over colonial territories to a head with the likely consequence of suffering some setback or rebuff at the UN. There are therefore stronger reasons than ever for refusing to make an issue of the dispute.*

A minute to Anthony Nutting, Parliamentary Under-secretary at the Foreign Office dated 14 March 1953 reads:

*Regretfully HM Government have no weapon ready to their hand with which they might enforce better treatment of the Falkland Islanders within Argentinian jurisdiction. Protests alone will do nothing. We shall merely elicit the flat assertion that the Falkland Islands are manifestly Argentinian territory, albeit under foreign occupation and that the inhabitants are Argentinian citizens. Retaliation offers no prospect of advantage.*

There is much more in the files of the same nature, indeed, some of it even stronger in tone. The extreme delicacy of the matter can be judged from the fact that some papers from files on this matter (for example A 1523/4 are closed until the year 2004 – 50 years after the events to which they relate).

Meanwhile tension was building elsewhere in the South Atlantic. In January 1953 an Argentinian party built a base adjoining the British base on Deception Island in the Antarctic. The Colonial Office was extremely concerned, and in a Top Secret telegram to the Falkland Islands administration, on 30 January 1953, commences as follows:

*Latest Argentinian and Chilean landings in Deception Island appear to be deliberately provocative, and ones we should not tolerate.*

The Secretary of State went on to say that under section 3 of the *Aliens Ordinance* there was authority to order detention and deportation of any alien, if it were “*deemed to be in the public good.*” To ensure surprise and reduce the risk of bloodshed, there was to be no warning of the Argentinian and Chilean governments. On 15 February it was reported:

*Two Falkland Island Policemen supported by one Lieutenant RN, one Major, RM and thirty-five Royal Marines were landed with Sten guns, rifles, bayonets and tear gas at 2.51pm, local time, in arresting two inhabitants of Argentine hut, who did not resist.*

Personal congratulations were sent to those involved in the arrest by Sir Anthony Eden, then the British Prime Minister. An attempt was made to hush the whole event up (with the connivance of the Argentinians and Chileans), but the matter leaked out. There was a very real fear at the time that there might be reprisals against other British bases in Antarctica or the Falkland Islands themselves. In April, May and June the Governor of the Falklands expressed, in ciphered telegrams to the Colonial Office, some concern about reports of unidentified aircraft in several parts of the islands, and at one stage the cooperation of diplomatic missions in South America was sought to see if any light could be thrown on the



matter. It was eventually decided that most of the intruders were aircraft that had veered off-course, or on navigation training exercises, and of little immediate concern.<sup>16</sup>

The Deception Island Incident soon faded from the headlines with some segments of the British press regarding the affair as a joke, comparing it with a scene from a Gilbertian opera, but it is not without comparisons with the events of 1982. In both cases there seems to have been something of a test of British resolve involving the presence of *agents provocateurs* on remote islands within the Falklands area. In 1953 it was at Deception Island; in March 1982 it was on South Georgia. Although following the Deception Island incident tension in the Falkland Islands remained quite high for a while, the real danger to the main islands was probably slight. In 1982 Argentine activity on South Georgia in middle and late March 1982 was followed by an Argentine invasion of East Falkland on 1-2 April.

The story of the brief Argentine occupation of the Falkland Islands, the mounting of the British Task Force of 28,000 men and over 100 ships to retake the islands, and the eventual Argentine surrender on 14 June 1982 is too recent and too well documented elsewhere to need description here.<sup>17</sup>

### 3.3 The Argentinian Situation

Although the Argentine claim to the islands persisted, the enthusiasm with which the Buenos Aires government pursued it fluctuated. And just as different strands of opinion existed within the British camp, so too did internal tensions, in some ways comparable, exist in the Argentinian establishment. Again a single brief example must suffice as illustration.

In 1969 a decision had been made to issue a licence to the Shell subsidiary Shell Capsa (Compania Argentina de Petroleo SA) to explore for oil in the continental shelf, off southern Argentina, in accordance with the provisions of Argentina's *Law of Hydrocarbons* 17.319, clause 14 of which stated that any company could be authorised to search for oil in Argentina or Argentine waters. The more extreme nationalists opposed this grant to a foreign company, saying that the matter should be held over until the Argentine state-owned oil and gas companies had the technology to be able to do the exploration. Nevertheless, the survey went ahead at the cost of US\$1.5 million over the southern hemisphere summer of 1969-1970.<sup>18</sup>

The bickering within the Argentine governing junta continued. On 17 June 1970 a formal statement on oil policy was issued, which reserved for the state companies a leading role in the exploitation of oil and gas, but the more liberal side came into the ascendancy, and in January 1971 the military government decrees (numbers 22 and 59) were signed authorising the granting of blocks of up to 97,000km<sup>2</sup> to oil companies. Shell argued, in their representations, perhaps naively in view of their large British shareholding, that the grant of

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<sup>16</sup> These annotations are based on Foreign Office Papers, PRO, Kew, especially the following: FO371/103143-103174. Foreign Office Original Correspondence, Political, 1953; Chilean and Argentinian Naval Intrusions in Antarctica (103144). Problems confronting British Residents in the area of Punta Arenas who were born in the Falkland Islands and wish to visit Argentina.

<sup>17</sup> Gustafsen, 1988; Hanrahan and Fox, 1982; song, 1988; Strange, 1983; Way, 1983; provide a sample of the English language literature dealing with the 1982 Conflict – of varying types and from a range of points of view. No doubt there is a comparable range of materials in Spanish from Argentina.

<sup>18</sup> The data collected were assessed by a US company, Geocom Inc, who advertised its findings in the June 1971 issue of *World Oil*.

exploration rights by Argentina to a private company would tend to consolidate their sovereignty over the continental shelf. Nevertheless the protagonists of the state concerns kept up their pressure, tending to be identified with the hardliners who opposed the friendly policy towards Britain, and favoured a more vigorous policy aimed at recovering the Malvinas, and by April 1975 the Argentine representative at the UN told the General Assembly that Britain, who by then had got a sniff of oil near the Falklands, had no right to explore for oil in the South Atlantic – and so it went on.<sup>19</sup>

In fact, a number of wells were drilled in the adjacent Argentinian part of the Malvinas basin. Several are said to have had appreciable hydrocarbon shows. *Ciclon-1*, drilled by YPF (Yacimientos Petroliferos Fiscales, the Argentinian National Oil Company) in the South Malvinas basin in 1979/80 is particularly mentioned.

A report compiled by Lord Shackleton (son of Sir Ernest Shackleton, the Antarctic explorer) as the result of a 1976 survey – *Economic Survey of the Falkland Islands* – commented on some aspects of these developments, urging “*greater political and economic cooperation*” with Argentina. Besides emphasising the fisheries resources, it referred to the possibility of hydrocarbons in offshore waters, although it was not over-optimistic. Nevertheless, the 1977/78 seismic survey followed. Whether these activities influenced thinking in Argentina prior to 1982 can only be the subject of speculation.

#### **4. 1982 and After: The Need for Economic Development**

Although the existence of different views within each of the two government establishments may have acted to restrain those of more extreme views, the conflict when it came, seen through the sweep of 150 years of history – having been foreseen by Charles Darwin in the 1830s – had a certain inevitability about it.

The other way of looking at the situation from the British point of view is to argue that all the signals were there that the Argentinians intended, in the early 1980s to take some action. The long history of the dispute and the existence of a less-than-popular military government in Argentina that badly needed to take some action to generate public support can be viewed in this light. Some actions by the Argentinian side can be seen retrospectively to be even more pointed.

A few months before the invasion a large Argentinian aircraft landed at the Stanley airfield bearing a prefabricated building, which was then erected for the use of certain Argentine officials then resident on the islands. It is asserted by Islanders that this was to test the bearing capacity of the runway! Despite this, and diplomatic messages from missions in South America, the benign neglect of the Islands by the British government persisted through the early months of 1982. There are those who argue that the dispatch of even a modest force of aircraft and troops by the UK government, then led by Mrs Margaret Thatcher, to strengthen the tiny Royal Marine detachment stationed in the Falklands would have been sufficient to discourage the Argentinian adventure.

After the 1982 conflict, everything changed. The period of political and economic neglect of the islands was, at least for the time being, over, and there began a period of almost feverish

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<sup>19</sup> Gustafsen, 1988: 84-86.

activity. The British Government commissioned Lord Shackleton to undertake another survey, published with the title *The Falkland Islands Economic Study*, a thorough evaluation of the Islands' resources. A number of possibilities for economic development were identified, amongst the most important of which were, once again, fisheries. In view of the substantial overfishing that had previously occurred in waters adjacent to the Falkland Islands, by vessels from a number of countries, the report urged:

*...that in order to secure the future economic benefits from the offshore fisheries of the Falklands, the United Kingdom should adopt for the Falklands the regime now accepted as normal world-wide, namely a fisheries limit of 200 miles. This would incidentally remove the anomaly that Argentina already claims control over waters extending 200 miles from the Falklands, but Britain does not: it would also remove one deterrent to economic development.*

#### **4.1 The Management of Fisheries**

A number of important legislative developments then followed. After lengthy discussion of this matter, in the UK Parliament and elsewhere, on 29 October 1986, the Governor of the Falkland Islands issued a *Proclamation* (No.4 of 1986) which may usefully be quoted at some length:

*Whereas the Falkland Islands are entitled under international law to a fishery limit of 200 nautical miles from the baselines from which the breadth of territorial seas is measured subject to the boundary with a neighbouring state prescribed by the rules of international law concerning the delimitation of maritime jurisdiction,*

*And Whereas there is a need to conserve the living resources and to regulate on an interim basis, fishing in the seas around the Falkland Islands,*

*Now therefore I, Gordon Wesley Jewkes, acting in pursuance of instructions given by Her Majesty through a Secretary of State, do hereby proclaim as follows:*

- 1. There is established for the Falkland Islands an interim fishery conservation and management zone, hereinafter referred to as "the zone".*
- 2. The zone has an inner boundary the outer limits of the territorial sea of the Falkland Islands and has its seaward boundary the line formed by the circumference of a circle which has a radius of 150 nautical miles and its centre at Latitude 51°40'S, Longitude 59°30'W, except that between those points on the circumference situated at 52°30'S, Longitude 63°19.25'W and 54°08.68'S, Longitude 60°00'W the seaward boundary shall be a rhumb line.*

The United Kingdom Government thus affirmed the right to assume a fishing zone of 200 nautical miles (nm), in keeping with evolving international law, particularly with Part V, especially Article 57, of the United Nations Convention on the Law of the Sea (UNCLOS). It may be noted in passing, however, that UNCLOS did not enter into force until 16 November 1995, and the United Kingdom has not yet signed the Convention. However, for some years

the UK has in general conducted itself in broad conformity with its provisions. For its part, Argentina ratified the Convention on 1 December 1994, having signed it on 5 October 1984.<sup>20</sup>

However, despite the affirmation of the right for a 200 mile fishery zone, the 1986 Proclamation, as an interim measure, only extended the fishery conservation and management zone to 150 miles from the centre of the circle, in places less than 100 miles from the islands themselves. This may perhaps be partly because the immediate predecessor of the fishery zone was a naval protection zone, aimed at excluding Argentine ships and aircraft from the Falklands region during and following the 1982 conflict. The slice out of the zone towards the south-west is presumably an acknowledgement of Argentine rights to an exclusive economic zone: the rhumb line defined in the Proclamation is very approximately equidistant between West Falkland and the south-eastern corner of Tierra del Fuego. Subsequent sections of the Proclamation reserved the right to extend the outer margin of the zone (section 3) and to manage and conserve the living resources of the zone in the same manner as in the territorial waters of the islands (section 4).

In the same year, the *Falkland Islands Fisheries (Conservation and Management) Ordinance*, 1986 was passed, establishing procedures for the calculation of tonnages of various species to be taken, and for application for licences. In the years that followed, fishing vessels from several nations (Japan, Poland and South Korea among them) were licensed to fish in the zone, particularly for squid, and factory ships became a familiar sight offshore of Berkeley Sound, East Falkland. Licence fees subsequently brought in several million pounds per annum. In 1992 licences for the harvesting of squid yielded £20.6 million per year, out of a Falkland Government revenue total of £44 million. There has been some subsequent decline.

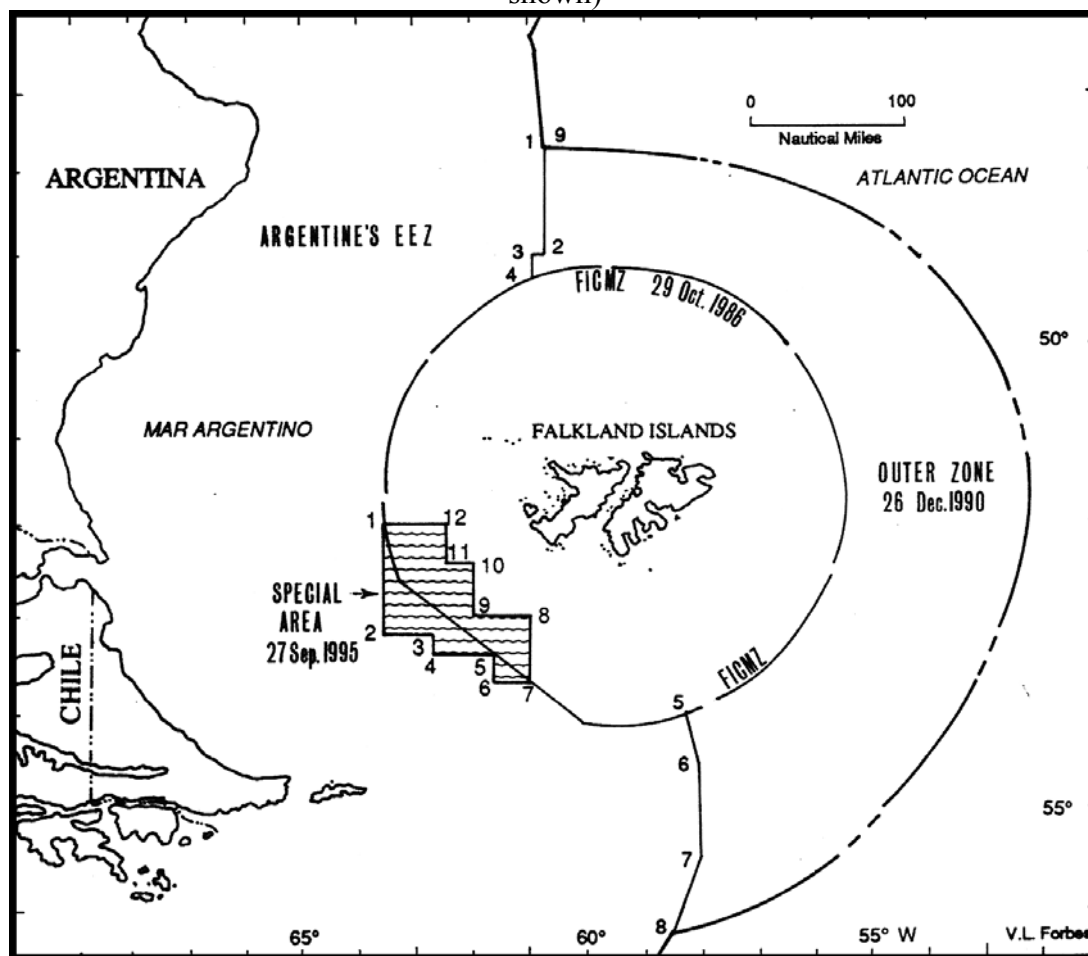
On 28 November 1990, following a series of meetings between British and Argentine officials, a *Joint Statement on the Conservation of Fisheries* was issued. In this document, it was agreed that the two governments would cooperate over the conservation of fish stocks in the South Atlantic Ocean between 45°S and 60°S. In a *Proclamation* (No.2 of 1990), dated 20 December 1990 the Governor of the Islands gave partial legal effect to that agreement in Falklands waters. An “outer fishery conservation zone” or “outer zone” was proclaimed (section 1) and provision was made for varying the limits of the zone (section 3). In a schedule to the proclamation, the outer zone is defined by a quite complex set of coordinates. The line uniting points 8 and 9 of this (56°14’S, 58°31’W and 47°42’S, 60°41’W) is defined as:

*...a line drawn anti-clockwise 200 nautical miles from the nearest points on the baseline of the territorial sea of the Falkland Islands.*

The effect of delimiting the outer zone in this way was to designate a crescent-shaped area enclosing the inner zone on its western side. Further coordinates delimit the precise boundaries of the outer zone to the west, where the ‘horns’ of the outer zone face onto what the British view accepts as an Argentine exclusive economic zone. Figure 3 shows the arrangement of the two zones.

<sup>20</sup> Argentina did, however, accompany its ratification of the UN Convention on the Law of the Sea with a declaration which, among other things, reaffirmed its “legitimate and inalienable sovereignty over the Malvinas and the South Georgia and South Sandwich Islands and their respective maritime and island zones” (see Appendix I).

**Figure 3: The Falkland Islands Fishery Conservation Zones**  
(The “Special Area” mentioned in the UK-Argentine Joint Declaration of 1995 is also shown)



#### 4.2 The Delimitation of Baselines: A Comparison of the British and Argentine Approaches

Meanwhile, in conformity with the general spirit of international law (as perceived by the UK Government), and in pursuance of the *Colonial Boundaries Act, 1895*, the British Parliament enacted the *Falkland Islands (Territorial Sea) Order, 1989*. This entered into force on 1 January 1990. Section 3.1 of this instrument (Order No.1993 of 1989) provides that:

*...the baseline from which the territorial sea adjacent to the Falkland Islands is measured shall be the low-water line along the coast of all the islands...*

However, section 3.3 notes that the baseline system comprises a series of loxodromes (straight lines between two points on a constant azimuth), constructed so as to join a number of turning-points, the coordinates of which are set out in a schedule. The values of the coordinates are based on the Falklands Island datum (1943). The 22 turning-points are located on the low-water line on or adjacent to significant geographical features.

**Figure 4: The Falkland Islands Baselines – UK Version**  
(Showing the approximate extent of the 12 nautical territorial sea)

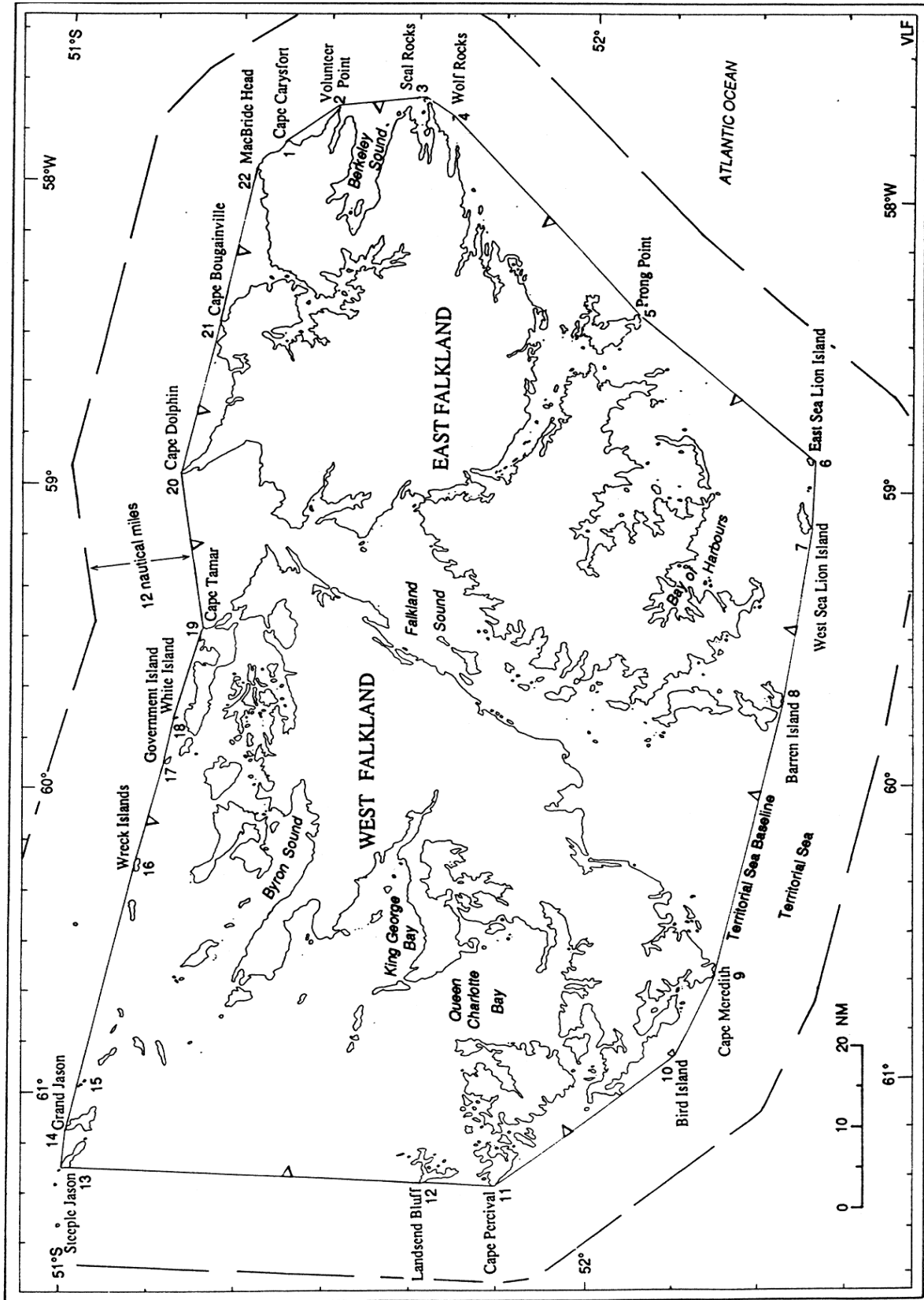
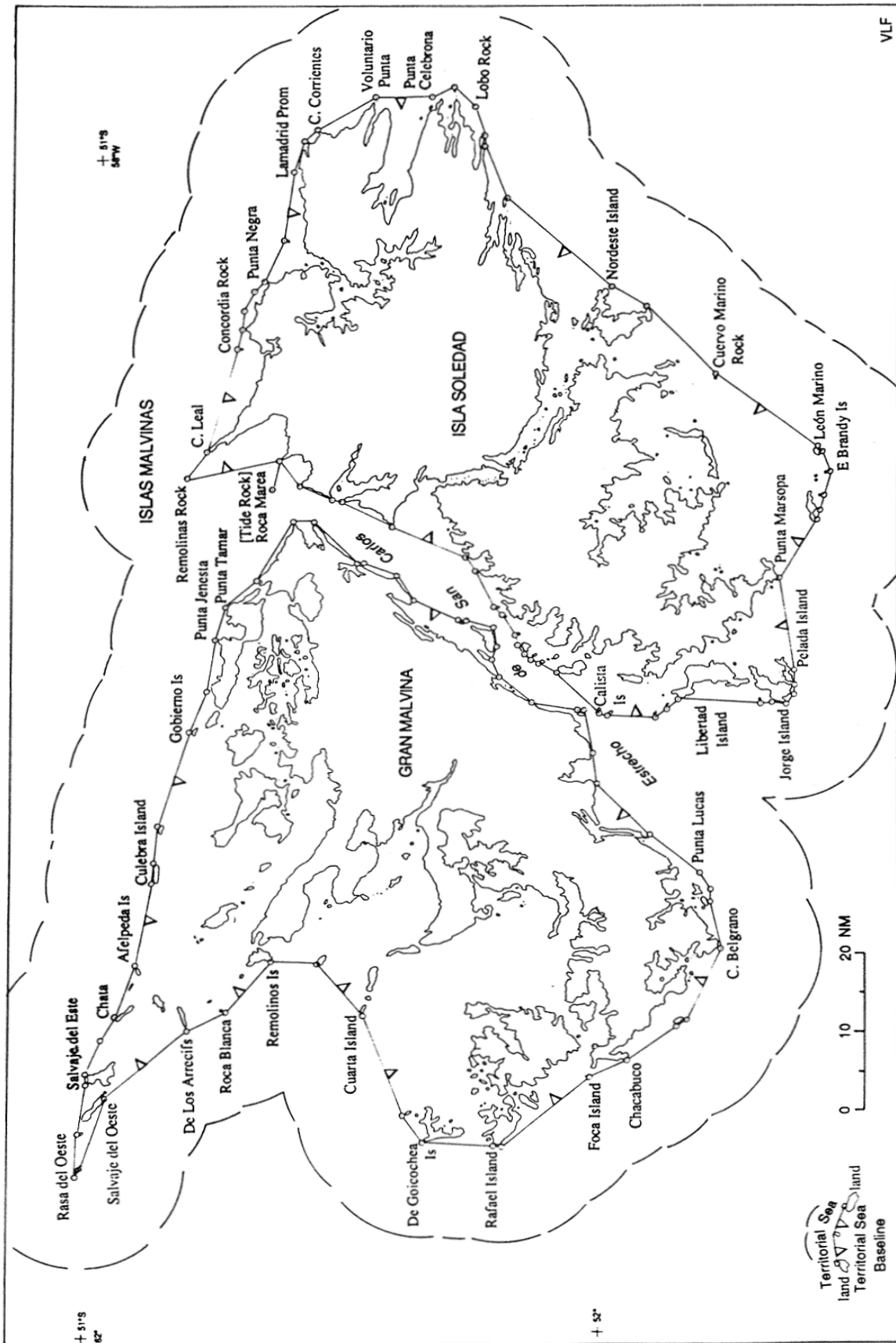


Figure 5: The Falkland Islands (Islas Malvinas) Baselines-Argentine version



The greatest length of any segment (between points 12 and 13) is 41.7nm, the shortest segment is 5.4nm (between points 3 and 4). The system commences at Cape Carysfort (point 1) on East Falkland, proceeding clockwise connecting Cape Meredith (point 9) on West Falkland, New Island (points 12), Steeple Jason and Cape Bougainville (points 21) on East Falkland. Seal Rocks, Lively Island, Sea Lion Islands and most of the Jason Islands are included. Falkland Sound becomes internal waters by virtue of the lines connecting points 8 and 9, and 19 and 20. The total length of the 22 segments is about 360.84nm, with an average segment length of 16.4nm (see Figure 4). The baseline system is constructed in a manner somewhat analogous to an archipelagic baseline system (as provided for in Article 47 of UNCLOS), although as a colonial territory the Falklands do not constitute an archipelagic state. Such baselines are those:

*...joining the outermost points of the outermost islands and drying reefs of the archipelago, provided that within such baselines are included the main islands and an area in which the ratio of the area of water to the area of land is between 1 to 1 and 1 to 9.*

There are further provisions preventing the lines being longer than 100nm, except in very restricted circumstances.

It is interesting to compare the UK-legislated baselines with those brought in by Argentine procedures about two years later. On 14 August 1991 Argentina enacted Law 23.968.<sup>21</sup> The Act defined the territorial sea baselines and establishes marine-area boundary lines for the Republic of Argentina. Anexo 1 [Annex 1] of the Act lists the coordinates and respective geographical features of the turning points that comprise the baseline system for the 'Islas Malvinas'. The Argentine system nominates 108 points located on the low-water mark on the coast of the islands. The points are numbered from 207 to 315: Gran Malvina (West Falkland) is encompassed by a series of loxodromes joining points 207 (Jason West Cay) to 258. Soledad (East Falkland) is encircled by lines linking 259 (Eddystone Rock) to 315 inclusive. The total length for the Argentinian system is 546nm (286.39nm for Gran Malvina and 259.72nm for Isla Soledad), the segments varying from 0.3 to 17.55nm, with a mean of marginally over 5nm. The Argentine baseline system is shown in Figure 5, while Figure 6 provides a general picture of the maritime jurisdictions in the area from the Argentine viewpoint.

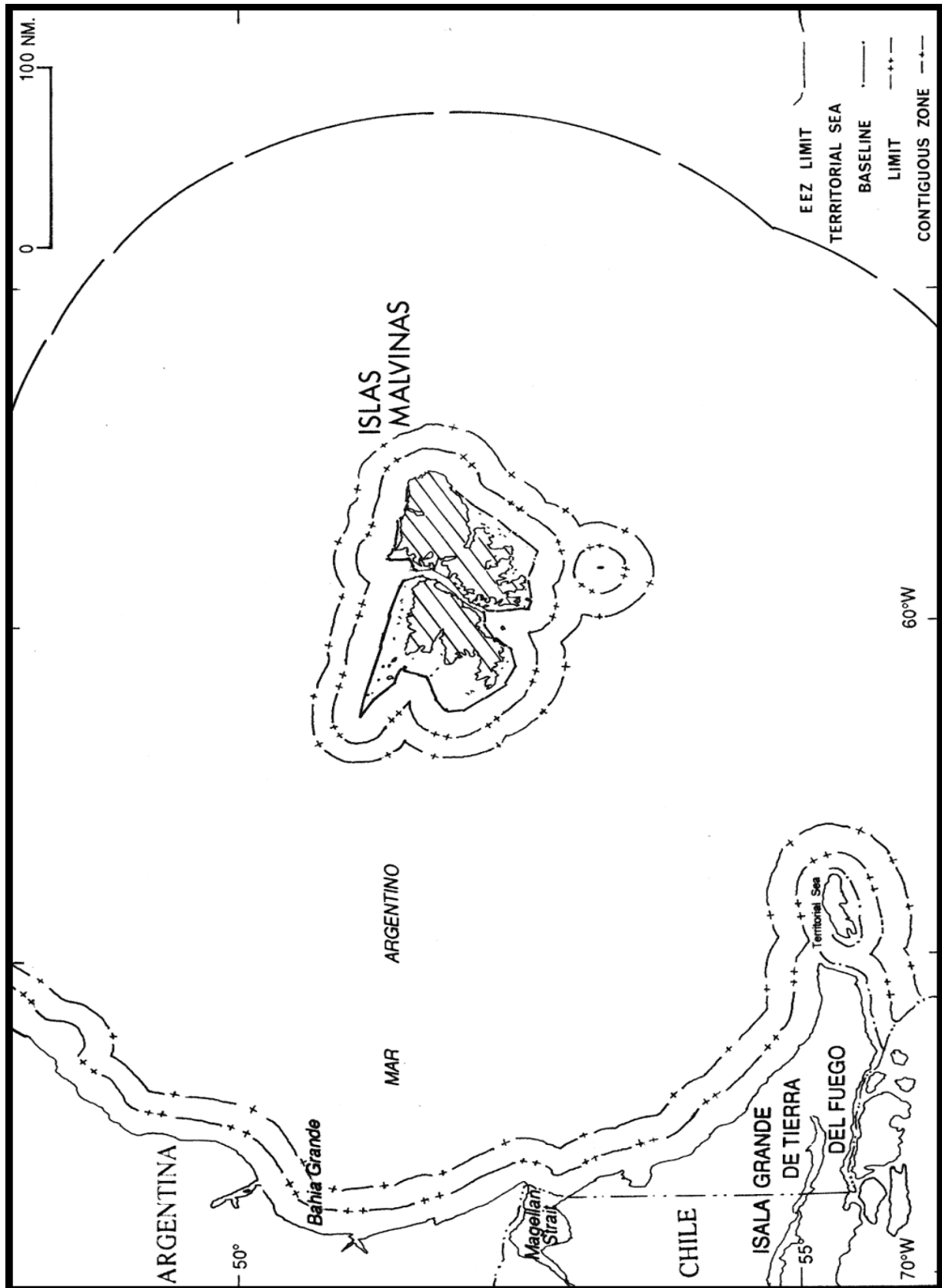
Both systems appear to follow the procedures indicated in UNCLOS, especially Articles 5-16 of Section 2, Part I,<sup>22</sup> for the designation of baselines, but that of Argentina could be described as the more meticulous and conservative, the segments between turning points being much shorter. One of the consequences of the difference between the two systems are the inclusion of Falkland Sound within internal waters in the UK delimitation, although not in that of Argentina.

<sup>21</sup> See *Boletín Oficial de la República Argentina*, No 23.278, 5 December 1991.

<sup>22</sup> For example, UNCLOS Article 7.1 provides: "In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured."



Figure 6: Maritime Jurisdiction around the Falkland Islands (Islas Malvinas) – Argentine Version



On the other hand the British system does not make use of Jason West, Jason East Cays and Eddystone Rock as turning points, as might be considered an entitlement, as these islets are within 12nm;<sup>23</sup> doing so would slightly increase the area of claimed internal waters.

### 4.3 The Continental Shelf: 1991-1994

An important use of baselines is in the delimitation of claims to the continental shelf, wherein important resources may be found, and a proclamation by the Governor of the Islands, dated 22 November 1991, and effective forthwith noted that:

*for the purposes of international law the continental shelf around the Falkland Islands extends...to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured or to such other limit as prescribed by the rules of international law, including rules for the delimitation of maritime jurisdiction between neighbours. (Proclamation No.1 of 1991, Falkland Islands Gazette, xcix: 23).*

More generally, the Governor in that instrument proclaimed:

*1. Any rights exercisable over the seabed and subsoil of the continental shelf, including the natural resources thereof, beyond and adjacent to the territorial sea around the Falkland Islands are hereby vested in Her Majesty.*

In section 2 of the Proclamation the area within the which the rights mentioned in section 1 are exercisable are defined as comprising:

- (a) the area defined in section 2 of Proclamation No.4 of 1986*
  - (b) the area defined in section 2 and the schedule to Proclamation No.2 of 1990;*
  - and,*
  - (c) any such area designated by a further Proclamation as an area within which any such rights are exercisable.*
- All such areas are hereafter referred to as designated areas.*

In other words, for the time-being at least, the limits of the continental shelf claimed coincide exactly with the total area over which fisheries jurisdiction is asserted. On this basis the *Falkland Islands Designated Area* covers about 400,000km<sup>2</sup> (see Figure 3).

This proclamation coincided with the passing by the Legislative Council of the Colony of the Falkland Islands (Legco) of the *Continental Shelf Ordinance*, 1991. This provided an interim framework for the preliminary (i.e. primarily non-intrusive) exploration of the continental shelf within the designated area. For example section 3 of this ordinance prohibits any person or body corporate from exploring for any mineral in the designated area, or removing any mineral from the area, except as provided by the ordinance. The term “*explore*” is carefully defined to include all forms of geological and geophysical prospecting, and the removal of any sample. Heavy penalties were prescribed for any infringements. Section 4 set out conditions for the granting of licences.

<sup>23</sup> One territorial sea’s width – both the United Kingdom and Argentina now claim the 12nm territorial limits.

By this stage the pace of developments was beginning to accelerate. The Falkland Islands Government (FIG) had appointed the British Geological Survey (with its extensive experience of the North Sea and adjacent areas) as consultants – Falklands matters were dealt with through an office in Edinburgh – and in the first part of 1992 invited bids from companies known to be interested in offshore geophysical survey. Presumably the number and character of the bids in some way fell short of what was hoped for, as on 22 September 1992 a public invitation was issued seeking applications for licences. A special issue of the *Falkland Islands Gazette* (Vol.CI, No.17) gave in full the *Notice* (No.4) inviting “*fresh applications from persons wishing to conduct speculative seismic and gravity-magnetic surveys in the Falkland Islands Designated Area.*” Companies that had expressed interest earlier in the year were, “*in no way disqualified*” from applying pursuant to the public invitation. Interested companies were invited to submit applications, accompanied by a fee of £1,000 by 16 October 1992 (i.e. only 24 days after the announcement that applications were sought). Successful companies were to be notified by the end of November 1992, with a view to the geophysical survey work being carried out during the southern hemisphere summer of 1992-93. Such was the pace at which events were proceeding, that the terms of the licences, contained in the *Continental Shelf Petroleum Survey Licences (Model Clauses) Regulations, 1992*, did not appear until 27 October 1992!

Survey licences were in due course allocated to two companies, Spectrum Energy and Information Technology and Geco-Prakla, although there is some suggestion that some major companies shied away from the work through fear that it might cause difficulties with operations in Argentina. Offshore work continued through much of 1993, and eventually a combined total of 15,558km of surveys was completed. Spectrum later completed an infill survey, increasing the density of their lines in part of their area to the north of the islands: this survey provided a further 3,650km of data.<sup>24</sup>

It is inappropriate to include a detailed description of Falklands offshore geology here, as much of what has been written is speculative, based as it is on the recent Geco-Prakla and Spectrum Energy geophysical surveys, and the very limited number of earlier surveys (mostly from the 1970s), three boreholes drilled in 1974 by the Deep Sea Drilling Programme into the Maurice Ewing bank, some hundreds of kilometres east of the Islands, together with 17 holes drilled in the Argentine offshore area, to the west of the Falklands Designated Area. At the time of writing (late 1996) there had been no drilling in the Area itself.

It seems, however, that the Islands, at the western end of the submarine Falklands Plateau, are surrounded by four major sedimentary basins: the Falklands Plateau Basin, the South Falklands Basin, the Malvinas Basin and the North Falklands Basin. They lie beneath 200-2,500m of water, and contain sedimentary sequences of Devonian-Carboniferous to Tertiary age (see Figure 2). The Lower Cretaceous Springhill Formation has been identified in some places as a possible reservoir, but others exist that may be suitable. The existence of wedge-shaped structures in possible reservoir rocks, together with faulting and other disturbances have been demonstrated by the surveys, and these seem to imply favourable environments for hydrocarbon accumulation. Some of the boreholes in the Argentine sector of the Malvinas Basin have yielded shows of hydrocarbons. The Hidra oilfield, southeast of the Magellan Straits, has been proved to have over 44 million barrels of recoverable reserves. It has to be emphasised in the strongest terms that until further survey work, and a substantial drilling

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<sup>24</sup> Richards, 1995.

programme has been undertaken no definite assertion can be made, but many petroleum geologists are reasonably hopeful of prospects in the Falkland Islands Designated Area.<sup>25</sup>

## 5. Preparations for Offshore Hydrocarbon Development

Meanwhile, with the assistance of economists at Aberdeen University, a draft plan for the taxation of the possible oil revenues was drawn up and advice sought on social and ecological impacts. It was widely appreciated that development of oil and gas resources (if they existed) in the continental shelf around the Falkland Islands would have profound effects on the small but closely-knit Falkland Islands community and the relatively undisturbed Falklands environment with its abundance of wildlife, and efforts were made to involve the Falkland Islanders in the decision-making. Thus, in November 1993, a pamphlet *The Falkland Islands and Oil* was widely distributed in the islands in an attempt to explain some of the issues – legal, economic and political.

In June 1994 a report entitled *Oil Development Strategies for the Falkland Islands* was produced for the Falkland Islands Government by Environmental Resources Management (ERM) and was circulated to the Islands' community. In October 1994, on the eve of a major debate on the subject in the Legislative Council (Legco), a 'distillation' of the ERM report, and of a 'commentary' on the report prepared from reactions to it from various government departments and commercial advisers was widely distributed as an *Information Paper* by the Falkland Islands Development Corporation (FIDC). An 'information offensive' then took place to involve the population in discussion of the options facing the islands. Publicity was given to the various documents, and to Legco's deliberations in the local press (the *Penguin News* and the *Teaberry Express*) and on the local broadcasting service. Comment was actively sought.<sup>26</sup>

At the same time an approximate programme was drawn up by FIDC as follows:

- **Pre-licensing planning**, during which the strategy for development was to be determined and an assessment made of social and environmental changes anticipated and a legislative framework for licensing, taxation and environmental protection and management put in place. This was proceeding apace in late 1994 continuing in 1995 and thereafter.
- **Licensing**. The first licensing round commenced in October 1995 and closed in July 1996. The production licences offered comprised four stages, with the requirement that some acreage be relinquished at the end of each phase. The first three exploration phases are to be of five, seven and ten years respectively. Initially there is no requirement for drilling (although it is encouraged), but the drilling requirement increases in the later phases. The final exploitation phase would last 35 years, but might be extended.

<sup>25</sup> Richards, *et al.*, 1996: 161-182.

<sup>26</sup> The succeeding paragraphs are based on the Falklands Oil pamphlet, Richards, 1995, and the 1994 Government Information Paper.

- **Seismic survey** would continue some eight or nine months of the year during the first five years.
- **Exploratory drilling** would not be expected during the first four years, but, as it was compulsory in the second and third phases, would be expected to build up between years six and twelve, and might continue thereafter.
- **Construction phase.** Assuming worthwhile reserves of oil or gas were found, some two or three years of construction would be required before production commenced.
- **Production.** No attempt has been made to accurately forecast the time-frame for this phase as so much would depend on when (and if) a discovery were made, and the technical difficulty of its development, along with market conditions at the time, among other factors. It was noted that the average time from licence to discovery in the North Sea was 7.5 years, and from licence to production 17.2 years. Production might extend for up to 30 years – hence the long exploitation phase built into the licences. A production licence can be maintained for a total period of up to 57 years.

It should be stressed that the above schedule was drawn up in 1994 using comparisons with the North Sea. However, there is a strong body of opinion that some of these estimates are far too pessimistic. The Falkland Island continental shelf is in many respects analogous to the basins west of the Shetland Islands, where innovative technology, including the use of floating production systems have allowed production to be brought on at a much faster rate than during the earlier North Sea development. Oil companies have already run economic models for the Falklands using West of Shetland analogues.

It was appreciated that the production phase might never eventuate, and that for the next ten years or so the islands should plan for a relative modest *exploration* industry, and with this in view the Chamber of Commerce and Falklands Islands Government have dispatched delegations to Aberdeen and Newfoundland to help the Islands' business community and administrators consider what might be needed. The Governor, David Tatham, also visited the Shetlands in July 1994. Their conclusion, and that of the Information Paper, was that, with a few exceptions, almost everything necessary for the seismic exploration stage, and even the preliminary drilling stages, already existed on the Islands. The exceptions were:

- some minor upgrading of the Mount Pleasant Airport (the main military and civilian airport built after the 1982 conflict);
- the sealing of the road from this airport to Stanley;
- relatively minor additions to Stanley Harbour, to make it suitable for supply operations for an offshore industry;
- minimal alterations to Stanley Airport to render it suitable for use as a helicopter base (it was used as such by the forces from 1982-86, until the Mount Pleasant facility was complete);
- the construction of a transit camp for 150-200 workers.

The situation was summarised as follows:

*In summary there is little to suggest that the Falkland Islands could not adequately cope for several years exploration through judicious improvements to existing facilities.*

Some of these suggestions are already being put into effect.

The consultants and the authors of the Information Paper detail closely what economic, social and environmental impacts could be expected at the various stages of exploration and production. For example, during the stage of intensive seismic survey of the offshore continental shelf, economic impacts are seen in terms of the “*generation of limited business opportunities for local companies and revenue up to £600,000 per annum.*” There might be some spin-off for the local tourist industry if regular air services were established to the South American mainland instead of the use of occasional charters. Negligible social disruption was foreseen, and environmental impacts were summarised as follows:

*There is potential for conflict between seismic vessels and fishing vessels, and for disturbance to squid stocks. Seismic work in sensitive areas will need to be regulated to avoid key fishing times.*

In the exploratory drilling stage appreciably more economic social and economic impacts are foreseen, and the following possible environmental disturbances are envisaged:

- Disturbance of the sea-bed, described as being “*absolutely minimal compared to trawling.*”
- Disturbance of adjacent fisheries, localised and limited in comparison to seismic exploration.
- Operational discharges, capable of being controlled by regulation.
- Potential diesel or chemical spill risk, or drill-hole blow-out. Pollution risks to be controlled by regulation and emergency response facilities.

The impacts mount as the production stage approaches, and the Information Paper carefully spells out what these might be under various scenarios. For example, it is estimated that income to the Government might total £30 million per annum from a single small oilfield, to several hundred million pounds in the case of a real bonanza. The social effects of an influx of workers, and immigration and voting-right aspects are considered. Environmental impacts at this stage are seen in terms of the disruption of the islands “*peace and tranquillity*”, the land and buildings required for a deep-water harbour, the increased danger of blow-outs and tanker spills, disturbance of wildlife and marine areas, and noise from aircraft and helicopter movements.

At this stage the ERM report recommended:

*[There must be] heavy emphasis on sharing facilities between oil companies and strong control over the scale and siting of developments...[with] a slow build-up of onshore activity in a controlled fashion with close cooperation between FIG and the oil companies, and between the oil companies themselves.*

Elsewhere the ERM report stresses the need for:

*Making sure that best practice environmental protection and pollution control is in place [and] providing some form of protection for environmentally sensitive areas.*

It is clear that at least the intention at present is that there will be most careful planning, and the development of appropriate emergency response facilities and procedures at each stage.

It is important that a good knowledge exists of the present Falklands environment, and particularly the islands' ecology, and a programme of baseline studies is in progress, so that the effects of subsequent events can be monitored. The penguin and seal colonies, the offshore kelp fields, together with the windswept but awe-inspiring 'camp' – the areas outside Stanley – are aspects of the environment that the islanders wish to protect.

## 5.1 The Current Legal Framework for Hydrocarbon Development

The 1991 *Continental Shelf Ordinance*, described above, which provided the framework for the initial geophysical survey, has now been repealed, and replaced by the much more complex *Offshore Minerals Ordinance*, 1994, that was passed by Legco late in October of that year. It should be noted that this statute is quite separate from the UK legislation, but there are a number of similarities with the legal regime governing the UK sector of the North Sea (however the Designated Area is about one-and-a-half times the area of the UK North Sea). Thus the Area is subdivided into *quadrants*, one degree of latitude by one degree of longitude; their actual area in km<sup>2</sup> therefore gets smaller as one moves polewards. Figure 7 shows that there are 92 quadrants in the Area, those towards the margin being truncated, some highly so. Each quadrant is divided into thirty *blocks* – five east-west, by six north-south. Numbering of the blocks in each quadrant, 1-30, proceeds from west to east, commencing in the northwest corner of each quadrant. Block 65/1 thus indicates the block in the northwest corner of quadrant 65.

The 1994 Ordinance has some 81 sections (grouped into six parts), and has four schedules.

- **Part 1** is introductory; section 2, for example, is a “*dictionary section*”, providing precise definitions of many of the terms used in the Ordinance.
- **Part 2** provides for the exploration for, and exploitation of offshore minerals under licence, sections 5-13 setting out procedures for the grant of licences, and related matters. Sections 14-16 deal with environmental damage. Section 14(1), and Schedule 1 of the Ordinance incorporate provisions similar to those of the *Antarctic Minerals Act*, 1989, the UK Act passed to implement the requirements of the *Convention on the Regulation of Antarctic Mineral Resource Activities*, 1988. Section 16 deals with offshore oil pollution.
- **Part 3** provides for Health and Safety at Work in the offshore industry. Many provisions are based on UK legislation, some parts of which were brought in during 1992, following the Piper Alpha catastrophe.

- **Part 4** deals with submarine pipelines that become necessary to gather oil and gas from offshore and carry it to offshore or shore-based terminals for processing and onshipping, and its sections are again based on analogous UK legislation – in this case the *Petroleum and Submarine Pipelines Act, 1975*. Sections 40-42 provide power for the Government to insist that companies share pipelines, or to design pipeline systems with the capacity for future developments to avoid the construction of a multiplicity of lines on the ocean floor.
- **Part 5** provides for the decommissioning or abandonment of facilities when surplus to requirements.
- **Part 6** deals with a number of other environmental matters. Section 61, for example provides for the liquefaction of natural gas (this is based on equivalent provisions in the UK *Energy Act 1976*), section 62 for flaring of gas. Section 63 deals with planning considerations, and 64 and 65 with requirements for environmental impact assessments.

There is a good deal of other environmental legislation that applies, in whole or in part, to the offshore area of the Falklands; these include the provisions of the *Marine Environment (Offshore Protection) Ordinance, 1995*. All marine mammals are protected under the *Marine Mammals Protection Ordinance, 1992*. Other enactments are in prospect.

The *Offshore Minerals Ordinance, 1994* has to be considered with the appropriate subsidiary legislation. The *Petroleum Survey Licences (Model Clauses) Regulations, 1992*, which were made under the former *Continental Shelf Ordinance, 1992* have been continued in force by the 1994 Ordinance; these have been supplemented by the *Offshore Petroleum (Licensing) Regulations, 1995*, which themselves have a number of schedules, giving for example, the precise form for an application for a licence, and clauses to be incorporated in a licence.

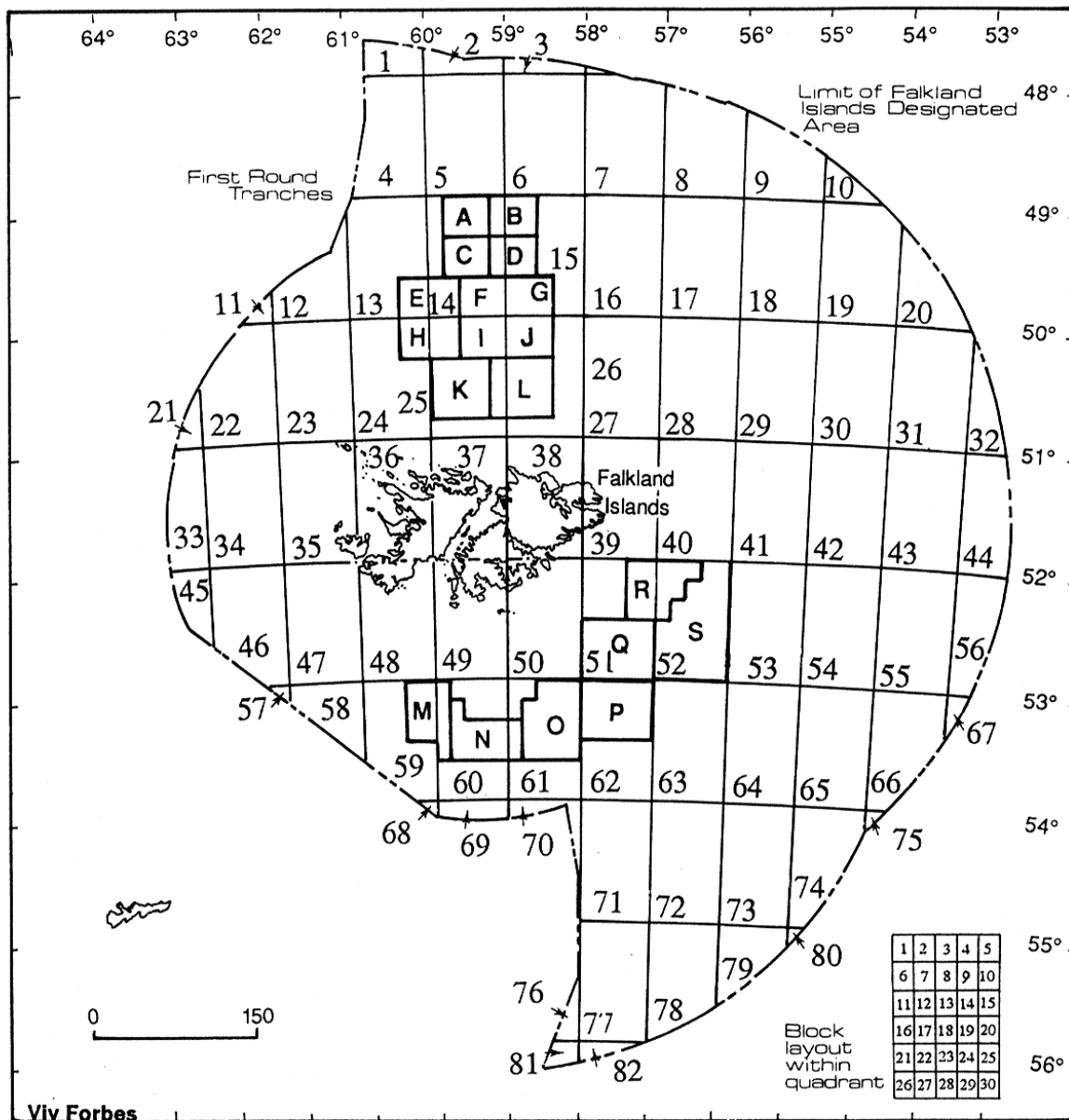
## 5.2 The Licensing Round of October 1995

The first round of oil licensing in the Falkland Islands opened on 11 October 1995, closing on 2 July 1996. Nineteen tranches were offered, twelve in the vicinity of the North Falklands Basin (A to L), in quadrants 13, 14, 15, 24, 25 and 26, and a further seven (M to S) in the South Falklands Basin, in quadrants 51, 52, 59, 60, 61 and 62 with a combined total area of 44,000km<sup>2</sup>. Most of the tranches consisted of from six to twelve blocks, although in the South Falklands area there were a few of 15 blocks (O, P, Q), and one of 24 (S, most of quadrant 52) (see Figure 7). The aim has been to offer a spread in terms of acreage, water depth and type of geology. The licensing round was run as a competition based on planned work programmes, and the experience of the company or group.

The award of the licences was announced in Stanley and in London on 28 October 1996. Thirteen companies, associated into five operating groups, were successful:



**Figure 7: The Falkland Islands “Designated Area”**  
 (Showing the division into quadrants and blocks; the distribution of the tranches in the October 1995 licensing round is also shown)



- **Tranche A** Amerada Hess Falklands Ltd (as Operator) with Fina Exploration Atlantic BV, Murphy South Atlantic Oil Company, Teikoku Oil Co Ltd, Argos Evergreen Ltd.
- **Tranche B** Shell Exploration BV (as Operator) with Agip Exploration BV.
- **Tranches C & D** LASMO International Ltd (as Operator) with Clyde Expro plc and Desire Petroleum Ltd.
- **Tranche F** International Petroleum Corporation (as Operator) with Sands Petroleum AB.

Interestingly, none of the tranches to the south of the Islands was taken up, companies presumably feeling that the water was too deep, the geological information too poor and the risks too high at this stage.

Although an alliance between British Gas plc and YPF submitted a bid, it was not successful.

### **5.3 Financial Arrangements**

There is a £5,000 fee payable for each production licence applied for. In addition acreage rentals are payable for each km<sup>2</sup> during the exploration phases, at the rate of US\$30 per km<sup>2</sup> for the first five years; thereafter rentals increase appreciably, but there are substantial discounts allowed in relation to the number of wells drilled. Once a field has been proved, and permission been received for its development, the exploration acreage rental for that portion of a licence area is replaced by a fixed rental of US\$350,000 per annum, paid until the first royalties are paid from production.

These production royalties are to be paid at the rate of nine percent of the market value of petroleum won. In addition corporation tax will be levied at the current rate (at present 32.5%); this will be payable by both oil companies and contractor companies providing services in the islands. However substantial allowances for the costs of drilling and similar expenses are to be given. Tax returns may be prepared either in sterling or US dollars.

The Falkland Islands Government and their advisors regard this as a reasonably 'company friendly' taxation regime, which will encourage oil firms to make a substantial commitment to the Islands' development. It is expected that the total Government take (in royalties, fees and taxes) will be 40-50%, and it is felt that this compares favourably with rates in other jurisdictions.<sup>27</sup>

### **5.4 The Argentine Position**

What UK and FIG official papers seldom emphasise is that investment in the Falklands involves a certain measure of political risk. Despite the considerable improvement in relations since the 1982 conflict, and despite the fact that the complex legal framework has been developed with little reference to the South American mainland neighbour, Argentina still claims the islands, as she has done for well over a century. This claim naturally includes the territorial waters, exclusive economic zone and offshore continental shelf of what Argentine publications continue to call the *Islas Malvinas* (Figure 6).

Indeed from time to time the claim is strenuously asserted by Argentinian politicians. Possibly such remarks, including the oft-voiced aspiration that the Malvinas will be back under the Argentinian flag by the year 2000, are to be seen part of the local (i.e. Argentinian) political process. But in view of the fact that Argentina continues to pass legislation pertaining to the islands, and in 1995 certain sources implied that Argentina might attempt to devise taxes on companies benefiting from any future Falklands oil bonanza, companies with substantial investments in Argentina will be cautious.

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<sup>27</sup> *Ibid.*

It may also be noted that persons travelling on Argentinian passports are still not allowed onto the islands, and an applicant group with more than 49% Argentinian interests will not be granted licences.

## 6. Moving Towards Cooperation

In the years immediately following 1982, diplomatic relations between Britain and Argentina were exceedingly cool, but by 1990 had warmed appreciably. Following a meeting of British and Argentinian delegations in Madrid on 14 and 15 February, 1990, the delegates issued a *Joint Statement* which provided for “*an interim reciprocal and consultation system*” on the movement of armed forces, the establishment of a communications link between the Islands and the mainland, cooperation over air-sea rescue and in the field of maritime navigation.

Then on 28 November 1990, following a further series of meetings, the *Joint Statement on the Conservation of Fisheries* was issued. In this it was agreed that the two governments would cooperate over the conservation of fish stocks in the South Atlantic Ocean between 45°S and 60°S. Fishing was to be controlled in certain waters around the Falkland Islands and by Proclamation (No.2 of 1990), dated 20 December 1990 the Governor of the Islands was partially to give legal effect to that agreement in the Falklands (see Section 4.1). In the schedule to the proclamation the “*outer zone*” was on its eastern side; the line uniting points 8 and 9 or this (56°14'S, 58°31'W and 47°42'S, 60°41'W) is defined as:

*...a line drawn anti-clockwise 200 nautical miles from the nearest points on the baseline of the territorial sea of the Falkland Islands.*

This instrument thus contains one of the first references to the newly defined baselines mentioned above (Section 4.2).

Interestingly the *Joint Statement* on which it is based, in the same context refers to:

*...a line drawn anti-clockwise along the maximum limit of jurisdiction over fisheries in accordance with international law.*

It should be noted in passing that, initially at least, this fisheries agreement was not very successful, and only following pressure from the UK Foreign Secretary's visit to Argentina in January 1993 were any steps taken towards the long-term management of the squid fishery, and the reduction of poaching in Argentine waters. A briefing issued in Stanley in January 1993 referred to, “*the low place conservation holds in Argentine planning*”, “*signs of a 'hidden agenda' in Argentine fishing policy*” and “*the ineffectiveness of Argentine fishery protection.*” The spirit of rapprochement clearly takes some time to penetrate.

All these negotiations were conducted “*without prejudice*” in relation to sovereignty, over either the islands themselves, or the surrounding maritime area. Thus the *Joint Statement on the Conservation of Fisheries*, 1990, Article 1(1) reads:

*Nothing in the conduct or content of the present meeting or of any subsequent meetings shall be interpreted as:*

(a) *A change in the position of the United Kingdom with regard to the sovereignty or territorial or maritime jurisdiction over the Falkland Islands, South Georgia, the South Sandwich Islands and the surrounding maritime areas.*

(b) *A change in the position of the Argentine Republic with regard to the sovereignty or territorial or maritime jurisdiction over the Falkland Islands, South Georgia, the South Sandwich Islands and the surrounding maritime areas.*

(c) *Recognition or support for the position of the United Kingdom or the Argentine Republic with regard to the sovereignty or territorial or maritime jurisdiction over the Falkland Islands, South Georgia, the South Sandwich Islands and the surrounding maritime areas.*

There is a strong analogy with the wording of Article 4 of the *Antarctic Treaty*, 1959, in which the contracting parties agree that nothing in the Treaty, or any acts done during the period it remains in force shall be the basis of a claim, shall amount to the renunciation of a claim, or the recognition of a claim in Antarctica.

Meetings between the UK and Argentine governments continued, and on 27 September 1995 a *Joint Declaration on Cooperation over Offshore Activities in the South West Atlantic* was issued (Appendix II). This contains a “*without prejudice*” Article similar to those of earlier dates (Article 1), and in (Article 2) an agreement “*to co-operate in order to encourage offshore activities in the South West Atlantic.*” In particular “*a Joint Commission, composed of delegations from the two sides*” will coordinate activities. Particularly close cooperation is planned for: “*in up to 6 tranches, each of about 3,500 square kilometres, the first ones to be situated within the sedimentary structure as identified in the Annex*” (Article 2b).

The Special Area, as designated by the complex set of coordinates given in the Annex to the Declaration, is shown in Figure 3. The coordination of activities within this Area is to be overseen by “*a sub-committee,...subordinate to the Commission*” (Article 4b).

Other concerns of the Joint Commission and the sub-committee, will include: the submission of recommendations to both Governments for standards for the protection of the marine environment (Article 4a); the encouragement of commercial activities by means of joint ventures and consortia from the two sides (Article 4b(i)); the seeking of cooperation in the matter of fees, royalties, charges and taxes, and “*the harmonisation of timing, commercial terms and conditions*” (Article 4b(iv)), and to generally encourage the search for hydrocarbons in the South West Atlantic. The parties agree to “*communicate to each other relevant information relating to the conduct of exploration*”, and to “*abstain from taking action or imposing conditions tending to inhibit or frustrate the possibility of carrying out hydrocarbons development*” in the region (Article 6).

## 7. Concluding Comments

Taking a long view, in the face of rivalry extending over two centuries, it has been argued that the conflict of 1982 was inevitable: it has already been remarked that it was foreseen, even if somewhat jokingly, by Charles Darwin in the 1830s. It is, perhaps, the improvement in relations between Argentina and the UK since 1982 that is as surprising as it is encouraging. The rapprochement since 1990 is particularly heartening.

Of special note, amongst the general provisions for cooperation and harmonisation in the search for offshore hydrocarbons in the South Atlantic is the appearance in the Joint Declaration, in the “*Special Area*” designated in Article 2(b) and in the Annex of the agreement, of the concept of the *Zone of Cooperation* or *Joint Development Zone*.

This tool for dispute resolution has been enthusiastically adopted as a mechanism for development of resources, particularly but not exclusively mineral resources, in East and Southeast Asia. This region of the world provides several instances of where exploration for resources close to or astride a disputed boundary has been able to continue despite the absence of a final agreement on the location of the boundary.

Examples of this type of agreement exist between Japan and South Korea, and between Malaysia and Thailand. Perhaps the most striking, and the most detailed, is the *Timor Gap Agreement* between Australia and Indonesia, so called as for many years the offshore boundary between the two countries was undetermined in the region of the former Portuguese colony of East Timor.<sup>28</sup> This entered into force on 11 February 1991. It established a Zone of Cooperation (ZOC) in the Timor Sea, and created a two-level administrative arrangement composed of a Ministerial Council and a Joint Development Authority (Articles 5-10), the latter having responsibility for the day-to-day administration of Area A, the actual Area of Joint Control and Development (AJCD).

The benefits from any development in Area A are to be shared equally between Australia and Indonesia, thus companies operating in the area will be required to submit returns to both revenue authorities, each allowing a fifty percent rebate. In Area B Australian Law applies, subject to sharing with Indonesia ten percent of Australia’s Resource Rent Tax. In Area C Indonesian law applies, subject to sharing with Australia ten percent of Indonesia’s Contractors’ Income Tax (Articles 2, 29). The treaty is a detailed one, and the functions, composition and administrative structures of the Council and the JDA are spelled out in some detail. The distinctive feature could be said to be the creation of a sovereignty neutral regime for Area A. The other Asian instances differ in degree from the Timor Gap Treaty.

One is immediately tempted to make comparisons between, for example, the Indonesia-Australia agreement and the UK-Argentine Joint Declaration. Both emphasise cooperation, both express concern for environmental issues at least in principle, both make provision for taxation matters and both purport to establish a two-level administrative structure. The Zone of Cooperation in the Australia-Indonesia treaty has its analogue in the Special Area proposed in the Anglo-Argentine Joint Declaration.

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<sup>28</sup> The full title is: *Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in the area of the Indonesian Province of East Timor and Northern Australia*, 11 December 1989. See also: Auburn, *et al.*, 1994, together with Forbes and Auburn, 1991.

But there are significant differences – exploration in the Falkland Islands Designated Area is at a much earlier stage than in the Arafura Sea, and the Declaration is a much less detailed document. There is no dispute over the sovereignty of adjacent land masses between Australia and Indonesia, so no ‘without prejudice’ provisions are necessary. Nor is there any mention of criminal jurisdiction in the Special Area; elaborate provisions are made for this in the agreement between Indonesia and Australia (as it is in other comparable agreements): perhaps going back to the Port Louis murders of the 1830s, the matter is too much of a sore point between Britain and Argentina! Of course if development in the South Atlantic proceeds successfully more complex arrangements will develop.

The point is often made that finance from outside sources for massively expensive projects will only be forthcoming if it is believed that they are legally secure. It is perhaps of note that a British Government Declaration (see Appendix III), with regard to the Joint Declaration, dated 27 September 1995, besides affirming the British position in relation to the Falklands, has as its penultimate sentence:

*We welcome the understanding as a beneficial factor which will reassure the oil industry and improve the climate for exploration for hydrocarbons in a frontier area.*

## **Appendix I:**

### **Argentina: Declaration Made Upon Ratification of the United Nations Convention on the Law of the Sea**

[Original: Spanish]  
Carlos Saúl Menem  
President of the Argentine Nation

#### **Whereas:**

By Act No. 24.543, the United Nations Convention on the Law of the Sea, adopted in New York, United States of America, on 30 April 1982, and the Agreement concerning the Application of Part XI of the United Nations Convention on the Law of the Sea, adopted in New York, United States of America, on 28 July 1994, have been approved,

#### **Therefore:**

I hereby ratify, on behalf of and as the representative of the Argentine Government, the aforementioned Convention and Agreement, and make the following declarations:

(a) “With regard to those provisions of the Convention which deal with innocent passage through the territorial sea, it is the intention of the Government of the Argentine Republic to continue to apply the regime currently in force to the passage of foreign warships through the Argentine territorial sea, since that regime is totally compatible with the provisions of the Convention.”

(b) “With regard to Part III of the Convention, the Argentine Government declares that in the Treaty of Peace and Friendship signed with the Republic of Chile on 29 November 1984, which entered into force on 2 May 1985 and was registered with the United Nations Secretariat in accordance with Article 102 of the Charter of the United Nations,<sup>29</sup> both States reaffirmed the validity of article V of the Boundary Treaty of 1881 whereby the Strait of Magellan (Estrecho de Magallanes) is neutralised forever with free navigation assured for the flags of all nations. The aforementioned Treaty of Peace and Friendship also contains specific provisions and a special annex on navigation which includes regulations for vessels flying the flags of third countries in the Beagle Channel and other straits and channels of the Tierra del Fuego archipelago.”

(c) “The Argentine Republic accepts the provisions on the conservation and management of the living resources of the high seas, but considers that they are insufficient, particularly the provisions relating to straddling fish stocks or highly migratory fish stocks, and that they should be supplemented by an effective and binding multilateral regime which, *inter alia*, would facilitate cooperation to prevent and avoid overfishing, and would permit the monitoring of the activities of fishing vessels on the high seas and of the use of fishing methods and gear.”

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<sup>29</sup> United Nations, *Treaty Series*, Vol.1399, No.1-23392.

“The Argentine Government, bearing in mind its priority interest in conserving the resources of its exclusive economic zone and the area of the high seas adjacent thereto, considers that, in accordance with the provisions of the Convention, where the same stock or stocks of associated species occur both within the exclusive economic zone and in the area of the high seas adjacent thereto, the Argentine Republic, as the coastal State, and other States fishing for such stocks in the area adjacent to its exclusive economic zone should agree upon the measures necessary for the conservation of those stocks or stocks of associated species in the high seas.”

“Independently of this, it is the understanding of the Argentine Government that, in order to comply with the obligation laid down in the Convention concerning the conservation of the living resources in its exclusive economic zone and the area adjacent thereto, it is authorised to adopt, in accordance with international law, all the measures it may deem necessary for the purpose.”

(d) “The ratification of the Convention by the Argentine Government does not imply acceptance of the Final Act of the Third United Nations Conference on the Law of the Sea. In that regard, the Argentine Republic, as in its written statement of 8 December 1982 (A/CONF.62/WS/35), places on record its reservation to the effect that resolution III, in annex I to the Final Act, in no way affects the ‘Question of the Falkland Islands (Malvinas)’, which is governed by the following specific resolutions of the General Assembly: 2065 (XX), 3160 (XXVIII), 31/49, 37/9, 38/12, 39/6, 40/21, 41/40, 42/19, 43/25, [and decisions] 44/406, 45/424, 46/406, 47/408 and 48/408, adopted within the framework of the decolonisation process.

“In this connection, and bearing in mind that the Malvinas and the South Sandwich and South Georgia Islands form an integral part of Argentine territory, the Argentine Government declares that it neither recognises nor will recognise the title of any other State, community or entity or the exercise by it of any right of maritime jurisdiction which is claimed to be protected under any interpretation of resolution III that violates the rights of Argentina over the Malvinas and the South Sandwich and South Georgia Islands and their respective maritime zones. Consequently, it likewise neither recognises nor will recognise and will consider null and void any activity or measure that may be carried out or adopted without its consent with regard to this question, which the Argentine Government considers to be of major importance.”

“The Argentine Government will accordingly interpret the occurrence of acts of the kind referred to above as contrary to the aforementioned resolutions adopted by the United Nations, the objective of which is the peaceful settlement of the sovereignty dispute concerning the islands by means of bilateral negotiations and through the good offices of the Secretary-General of the United Nations.

The Argentine Republic reaffirms its legitimate and inalienable sovereignty over the Malvinas and the South Georgia and South Sandwich Islands and their respective maritime and island zones, which form an integral part of its national territory. The recovery of those territories and the full exercise of sovereignty, respecting the way of life of the inhabitants of the territories and in accordance with the principles of international law, constitute a permanent objective of the Argentine people that cannot be renounced.



“Furthermore, it is the understanding of the Argentine Republic that the Final Act, in referring in paragraph 42 to the Convention together with resolutions I to IV as forming an integral whole, is merely describing the procedure that was followed at the Conference to avoid a series of separate votes on the Convention and the resolutions. The Convention itself clearly establishes in article 318 that only the Annexes form an integral part of the Convention; thus, any other instrument or document, even one adopted by the Conference, does not form an integral part of the United Nations Convention on the Law of the Sea.”

(e) “The Argentine Republic fully respects the right of free navigation as embodied in the Convention; however, it considers that the transit by sea of vessels carrying highly radioactive substances must be duly regulated.”

“The Argentine Government accepts the provisions on prevention of pollution of the marine environment contained in Part XII of the Convention, but considers that, in the light of events subsequent to the adoption of that international instrument, the measures to prevent, control and minimise the effects of the pollution of the sea by noxious and potentially dangerous substances and highly active radioactive substances must be supplemented and reinforced.”

(f) “In accordance with the provisions of article 287, the Argentine Government declares that it accepts, in order of preference, the following means for the settlement of disputes concerning the interpretation or application of the Convention: (a) the International Tribunal for the Law of the Sea; (b) an arbitral tribunal constituted in accordance with Annex VIII for questions relating to fisheries, protection and preservation of the marine environment, marine scientific research, and navigation, in accordance with Annex VIII, article 1. The Argentine Government also declares that it does not accept the procedures provided for in Part XV, section 2, with respect to the disputes specified in article 298, paragraph 1 (a), (b) and (c).”

IN WITNESS WHEREOF, I have signed the present Instrument of Ratification authorised with the seal of the Republic and countersigned by the Minister for Foreign Affairs, International Trade and Worship, Mr. Guido José Mario DI TELLA.

DONE in Buenos Aires, Capital of the Argentine Republic, on 18 October 1995.

(Signed) MENEM.

## **Appendix II: UK-Argentine Joint Declaration**

### **Cooperation over Offshore Activities in the South West Atlantic**

1. The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Argentine Republic agreed that the following formula on sovereignty, based on that contained in the Joint Statement issued at Madrid on 19 October 1989, applies to this Joint Declaration and its results:

- (1) Nothing in the content of the present Joint Declaration or of any similar subsequent joint statements and meetings shall be interpreted as:
  - a) a change in the position of the United Kingdom with regard to sovereignty or territorial and maritime jurisdiction over the Falkland Islands, South Georgia and the South Sandwich Islands and the surrounding maritime areas;
  - b) a change in the position of the Argentine Republic with regard to sovereignty or territorial and maritime jurisdiction over the Falkland Islands, South Georgia and the South Sandwich Islands and the surrounding maritime areas;
  - c) recognition of or support for the position of the United Kingdom or the Argentine Republic with regard to sovereignty or territorial and maritime jurisdiction over the Falkland Islands, South Georgia and the South Sandwich Islands and the surrounding maritime areas.
- (2) No act or activity carried out by the United Kingdom, the Argentine Republic or third parties as a consequence and in implementation of anything agreed to in the present Joint Declaration or in any similar subsequent Joint Statements and meetings shall constitute a basis for affirming, supporting, or denying the position of the United Kingdom or the Argentine Republic regarding the sovereignty or territorial and maritime jurisdiction over the Falkland Islands, South Georgia and the South Sandwich Islands and the surrounding maritime areas. The areas subject to the controversy on sovereignty and jurisdiction will not be extended in any way as a consequence of this Joint Declaration or its implementation.

This Joint Declaration does not apply to the maritime areas surrounding South Georgia and the South Sandwich Islands.

2. The two Governments agreed to cooperate in order to encourage offshore activities in the South West Atlantic in accordance with the provisions contained herein. Exploration for and exploitation of hydrocarbons by the offshore oil and gas industry will be carried out in accordance with sound commercial principles and good oil field practice, drawing upon the Governments' experience both in the South West Atlantic and in the North Sea. Cooperation will be furthered:

- (a) by means of the establishment of a Joint Commission, composed of delegations from both sides;

- (b) by means of coordinated activities in up to 6 tranches, each of about 3,500km<sup>2</sup>, the first ones to be situated within the sedimentary structure as identified in the Annex.
3. The Commission will be composed of a delegation from each of the two states, and will meet at least twice a year. Recommendations shall be reached by mutual agreement.
4. The Commission will have the following functions:
- (a) to submit to both Governments recommendations and proposed standards for the protection of the marine environment of the South West Atlantic, taking into account relevant international conventions and recommendations of competent international organisations;
  - (b) to coordinate activities in the tranches referred to in paragraph 2 (b) above, as areas for special cooperation. This will be done by the establishment of a sub-committee which shall meet regularly, subordinate to the commission, charged with:
    - (i) encouraging commercial activities in each tranche by means such as joint ventures and consortia from the two sides;
    - (ii) seeking nominations from companies for each tranche, to be offered upon terms appropriate for a challenging environment;
    - (iii) making recommendations on proposals made to the two Governments by companies for development projects in each tranche, including the limits of the tranches.
    - (iv) seeking close coordination in regard to all aspects of future operations, including the overall level of fees, royalties, charges and taxes, the harmonisation of timing, commercial terms and conditions, and compliance with recommended standards;
    - (v) recommending on the basis of geological data known to both sides, additional tranches either within the sedimentary structure referred to in the Annex or in a further area to be agreed by the Governments on the recommendation of the Commission;
  - (c) to promote the exploration for and exploitation of hydrocarbons in maritime areas of the South West Atlantic subject to a controversy on sovereignty and jurisdiction, and to this end:
    - (i) to promote cooperation between industry on both sides, including the formation of joint ventures and the elaboration of joint projects for exploration, production and use of infrastructure;
    - (ii) to receive from both sides and from operating companies the available information on scientific research, development of activities and commercial operations relating to the seabed, whilst respecting commercial confidentiality;

- (iii) to propose to both Governments coordinated research work by commercial undertakings;
- (iv) to submit to both Governments recommendations for standards for offshore activities in safety, health and monitoring;

Both governments will take the appropriate measures in order to ensure that the companies will keep the Commission informed on the development of their activities;

- (d) on the basis of geological data known to both sides, to propose to the two Governments at the appropriate time further areas of special cooperation, on terms similar to those contained in paragraph 4 (b) above;
  - (e) to consider and submit recommendations to the two Governments on any related matter which may arise in the future, including the possible need to agree on the unitisation of any discoveries in accordance with good oil field practice, on pipeline operations and on the efficient use of infrastructure.
5. The arrangements regarding search and rescue set out in the Joint Statements of 25 September 1991 and 12 July 1993 or any future arrangements between the Parties on the same subject will apply to offshore activities. Civilian helicopter traffic will be the subject of future discussion.
6. Each Government will take the appropriately related administrative measures in accordance with this Joint Declaration for the exploration for an exploitation of hydrocarbons in the areas referred to in paragraph 4 above. They agreed that such measures regulating the activities of companies would be subject to the formula on sovereignty in paragraph 1 above. The Parties will create the conditions for substantial participation in the activities by companies from the two sides. The Parties will communicate to each other relevant information relating to the conduct of exploration and exploitation activities in the areas. Both Parties agreed to abstain from taking action or imposing conditions designed or tending to inhibit or frustrate the possibility of carrying out the hydrocarbons development in the areas.
7. In order to implement the different arrangements in this Joint Declaration, which form an interdependent whole, the two Governments agreed to cooperate throughout the different stages of offshore activities undertaken by commercial operators, including the regime for the eventual abandonment of installations.

## Annex to Joint Declaration Dated 27 September 1995

### Special Area

The area is bounded by lines of the type described in Column 2 joining the points defined to the nearest minute of arc by co-ordinates of latitude and longitude on WGS 72 Datum specified in Column 1.

Column 1 Co-ordinates of Latitude and Longitude		Column 2 Line Type
1.	52°00'S, 63°36'W	1-2 meridian
2.	53°10'S, 63°36'W	2-3 parallel of latitude
3.	53°10'S, 62°48'W	3-4 meridian
4.	53°25'S, 62°48'W	4-5 parallel of latitude
5.	53°25'S, 61°48'W	5-6 meridian
6.	53°40'S, 61°48'W	6-7 parallel of latitude
7.	53°40'S, 61°00'W	7-8 meridian
8.	53°00'S, 61°00'W	8-9 parallel of latitude
9.	53°00'S, 62°00'W	9-10 meridian
10.	52°30'S, 62°00'W	10-11 parallel of latitude
11.	52°30'S, 62°36'W	11-12 meridian
12.	52°00'S, 62°36'W	12-13 parallel of latitude
13.	52°00'S, 63°36'W	

### **Appendix III**

#### **Declaration of the British Government with regard to the Joint Declaration Signed by the British and Argentine Foreign Ministers On Cooperation Over Offshore Activities in the South West Atlantic**

The British Government welcomes the understanding reached with Argentina on cooperation over offshore activities in the South West Atlantic.

The understanding will facilitate mutually beneficial cooperation, promoting the development of hydrocarbons. It will further improve relations with Argentina since the Madrid Joint Statement of February 1990. At the same time, it will offer commercial opportunities to British companies, as well as to the Falkland Islands which will launch a licensing round in October.

The Joint Declaration safeguards British sovereignty and jurisdiction over the Falkland Islands and the surrounding maritime areas. HMG have no doubts about the sovereignty and jurisdiction of the UK.

HMG are aware that Argentina proposes to enact legislation purporting to impose charges on companies working in maritime areas surrounding the Falkland Islands. HMG do not accept any Argentine claim to impose such charges on companies by reason only of their activities on the continental shelf around the Falkland Islands under Falklands licence. HMG will be working with the Falkland Islands Government in the development of the forthcoming Licensing Round. We welcome the understanding as a beneficial factor which will reassure the oil industry and improve the climate for exploration for and exploitation of hydrocarbons in a frontier area.

Appropriate legislation will be introduced in order to take account of the Joint Declaration, including a new Ordinance in the Falkland Islands.

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### **Summary list of the main statutory and similar materials referred to in the text:**

#### *UK Acts of Parliament:*

- Antarctic Minerals Act, 1989
- Colonial Boundaries Act, 1895
- Energy Act, 1975
- Petroleum and Submarine Pipelines Act, 1975

#### *UK Order:*

- Falkland Islands (Territorial Sea) Order, 1989

#### *Falkland Island Ordinances:*

- Continental Shelf Ordinance, 1991
- Fisheries (Conservation and Management) Ordinance, 1986
- Marine Environment (Offshore Protection) Ordinance, 1995
- Marine Mammals Protection Ordinance, 1992
- Offshore Minerals Ordinance, 1994

#### *Falkland Island Regulations:*

- Continental Shelf Petroleum Survey Licences (Model Clauses) Regulations, 1992
- Offshore Petroleum (Licensing) Regulations, 1995

#### *Falkland Islands Proclamations:*

- No 4 of 1986 (Fisheries Conservation and Management)
- No 2 of 1990 (Outer Fisheries Zone)
- No 1 of 1991 (Continental Shelf)

#### *International Agreements:*

- Antarctic Treaty, 1959
- Convention on the Regulation of Antarctic Mineral Resource Activities, 1988
- Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in the area of the Indonesia Province of East Timor and Northern Australia, 1989
- United Nations Convention of the Law of the Sea, 1982



*Agreements of the UK and Argentine Governments:*

Joint Statement of British and Argentine Governments (Marine matters), 1990  
Joint Statement on the Conservation of Fisheries, 1990  
Joint Declaration (Cooperation over Offshore Activities in the South West Atlantic),  
1995

*Argentine Legal Materials:*

Law of Hydrocarbons, 17.319  
Law of Baselines, 23.968

**Other Sources:**

In addition to the sources, published and unpublished, listed in the Notes, the authors made use of a variety of newspapers and magazines (British, Australian and Falkland Islands) including: *Daily Telegraph*, *Weekly Telegraph*, *Financial Times*, *The Bulletin*, *Penguin News*, *Teaberry Express*, *Falkland Islands Newsletter*, as well as a number of Falklands Islands Government official and semi-official publications and circulars.