

CENTRAL ISSUES IN THE FALKLAND ISLANDS / MALVINAS SOVEREIGNTY DISPUTE

Introduction

The Falkland Islands are an archipelago in the South Atlantic Ocean 483 kilometres from the coast of Argentina. They are occupied by the United Kingdom and have a population of approximately 3,000 people, mainly of British descent. Sovereignty over the Islands is disputed between Britain and Argentina, who fought a brief war over the Islands in 1982.

Background

The discovery of the Islands, which were uninhabited, is disputed. France established a colony in 1764, to which title Spain succeeded. Britain established a colony in 1765, abandoning it in 1774. Spain held the Islands until 1811. Argentina attempted several settlements, tainted with piracy, in the 1820s, culminating in mutiny in 1832, when the British arrived, established order, and occupied the Islands. Despite occasional protest by Argentina, which did not pursue international dispute settlement mechanisms, Britain held the Islands until 1982, at which point Argentina invaded the Islands. Britain expelled Argentine forces, and reoccupied the Islands.

Argentina bases its claim primarily on succession and occupation. The United Kingdom bases its claim on discovery, occupation, prescription, and self-determination.

Legal Issues

Succession

Succession is based on the idea that newly formed sovereign states should have the same borders that their preceding dependent area had before independence. Argentina's claim is based on succession to Spain's title. Argentina's position is ambiguous: Spain withdrew from the Islands in 1811, whereas Argentina received its independence in 1816. If Argentina may claim sovereignty despite Spain's abandonment in 1811, then it is conceivable that Britain may claim sovereignty despite its own abandonment in 1774.

Occupation

Occupation requires that the territory be *res nullius* and that the occupation be effective, involving administration and possession. Argentina's claim is based on its settlements in the 1820s. However, its occupation was arguably ineffective. Britain's claim is based on its effective occupation of the Islands beginning in 1833. However, the Islands were arguably not *res nullius* at the time they were occupied.

Prescription

Prescription may be claimed on the basis of acquisitive prescription, in which a state acquiesces to another's occupation; and extinctive prescription, in which a state loses sovereignty due to the long duration of the other state's occupation, during which title is not effectively asserted. Britain's claim for acquisitive prescription is based on the 1850 Arana-Southern Treaty, which did not mention the Islands but purported to settle existing differences. Argentina claims its diplomatic protests are sufficient to undermine claims of acquiescence. Britain's claim for extinctive prescription is based on its nearly uninterrupted occupation of the Islands beginning in 1833, and the fact that despite British entreaties in the 1940s and 1950s, Argentina never sought to assert its title in international arbitration.

Self-Determination

Self-determination is a principle of international law found in several international instruments, notably Article 1, paragraph 2, of the UN Charter and Resolution 1514 (XV), concerning decolonization. Territorial integrity is a principle found in paragraph 6 of that Resolution. In *Western Sahara*, the ICJ determined that the principle of territorial integrity can prevail over the principle of self-determination. Britain's claim is based on the self-determination of the Islanders, as demonstrated by the referendum held in 2013, in which 99.8% of voters favoured remaining under British rule. Argentina claims that the Islanders are not an indigenous population, as, it claims, Argentine settlers were expelled from the Islands in 1833, and thus that the principle of territorial integrity should prevail. Key issues are whether the Islanders are numerous enough to constitute a people, and whether the wishes, in contrast to the mere interests, of a people are to be considered.

Concluding Observations.

As with all territorial disputes, the Falkland/Malvinas often inspires heated debate. There are suggestions that recent potential discoveries of oil and the impact of Brexit may well lead to fresh initiatives to resolve this centuries old issue. Absent an adjudicative form of dispute resolution (ad hoc arbitration or ICJ determination) it seems unlikely that either the UK or Argentina believe it is necessary (nor do they appear willing) to modify their long stated positions.