



EMERGENCE OF UNCLOS III : THE FALKLAND ISLANDS DISPUTE

By Dibya Prakash Lahiri
From Vivekananda Institute of Professional Studies, GGSIP University, New Delhi

ABSTRACT

The United Nations convention on law of Sea was introduced with the induction of maritime laws for the accession of countries over the water bodies. The waters have always been mired with disputes and have been witness to power wars based on navel strengths of competing nations. The question remains on how successful the charter has been in retaining harmony and dignity among the countries. The paper takes a peek into the history of the dispute of Falkland Islands and presents the status quo. It also focuses on the inception of the Convention on the law of the Sea and also shows the importance of the Convention in relation to the dispute between the two countries. Further, it also provides insights on the loopholes in the convention, its implementation and importance.

1.INTRODUCTION

1.1-History of Falkland Islands

The Falkland islands have always garnered attention for being a nodal centre of dispute and associated with pride for the United Kingdom and the Argentine Republic.¹ France was the first country to establish de facto control in the Falkland Islands, with the

foundation of Port Saint Louis in East Falkland by French explorer Louis Antoine de Bougainville in 1764. The French colony consisted of a small fort and some settlements with an initial population of around 250 people. The Islands were named after the Breton port of St. Malo as the *Îles Malouines*, which remains the French name for the islands. In 1766, France agreed to leave the islands to Spain, with Spain reimbursing de Bougainville and the St. Malo Company for the cost of the settlement. France insisted that Spain maintain the colony in Port Louis to prevent Britain from claiming the title to the Islands, and Spain agreed.²

After the agreement, Spain took over the control of the islands claiming it to be a part of Treaty of Utrecht wherein with the colonisation provided for the benefit of the failure of the French king Louis XIV's nephew Philippe of Orleans.³ With the take-over by the Spanish monarch, the decision was made to change the name of Port Saint Louis to Port Soledad in 1767.⁴

After the annexation, a Spanish expedition expelled the British colony at Port Egmont, and Spain took de facto control of the Islands. Spain and Great Britain came close to a war over the issue but instead, concluded a treaty on 22nd January 1771, allowing the British to return to Port Egmont with neither side relinquishing sovereignty claims.⁵ However, after a while, the British again left Port Egmont in the year 1774, leaving behind

¹ Calvert, Peter (July 1983). "[Sovereignty and the Falklands crisis](#)". *International Affairs*. Chatham House RIIA. **59** (3): 406. [ISSN 0020-5850](#)

² Laver, Roberto C. [The Falklands/Malvinas Case Breaking The Deadlock in the Anglo-Argentine Sovereignty Dispute, Developments in International Law, V. 40 \(Book 40\)](#)

³ *Queen Anne: The Politics of Passion*. Harper Press. p. 470. [ISBN 978-0007203765](#).

⁴ Utrecht charter Article XX.

⁵ Harris, Chris (27 May 2002). "[Declarations signed by Masserano and Rochford January 22nd 1771](#)". *The history of the Falkland Islands*. Archived from [the original](#)



a flag to mark it as a British land. Subsequently, the freedom of Argentina from the Spanish Colonialism marked the birth of a triangular dispute in the Falkland island dispute.

The Argentine Republic in 1824 granted permission to a Buenos Aires based businessman to trade on a piece of land on the East Falkland island.⁶ Subsequently, the ship had to return following failure of measures to establish trade. Similarly, after the sanction from the British Government, the Argentine Government again tried to create an establishment. However, lack of proper availability of resources created a vacuum resulting in the withdrawal of the troops and the civilians. The 1850 Convention of Settlement, otherwise known as the Arana-Southern Treaty, which did not mention the islands, agreed to restore "perfect relations of friendship" between the two countries.

There were no further protests until 1885, when Argentina included the Falkland Islands in an officially sponsored map.⁷ This resulted in a tense region witnessing protests and flexing of muscles by both sides. However, with the onset of the World War II, the British commenced on a journey to lose out on the colonies in Asia, Africa and Europe. At this juncture, the Argentine Republic sought the opportunity to gain control under the banner of the ruler Juan Paron by claiming its stake on the Falkland Islands at the United Nations. Following the claim, the United Kingdom decided to ask the Republic of Argentina to take up the matter

in International Court of Justice which was eventually rejected by the former.

In 1965, the United Nations passed a resolution calling on the UK and Argentina to proceed with negotiations on seeking a peaceful solution to the big sovereignty question which would be "bearing in mind the provisions and objectives of the Charter of the United Nations and of General Assembly resolution 1514 (XV) and the interests of the population of the Falkland Islands (Malvinas)."⁸ After the two nations signed the Communications Agreement of 1971,^[49] whereby external communications would be provided to the Falkland Islands by Argentina, the Argentine Air Force broke the islands' airways isolation by opening an air route with an amphibious flight from Comodoro Rivadavia with Grumman HU-16B Albatross aircraft operated by LADE, Argentina's military airline.

In 1972, after an Argentine request, the United Kingdom agreed to allow Argentina to construct a temporary air strip near Stanley. On 15th November 1972, a temporary runway was inaugurated with the first arrival of a Fokker F-27; subsequent flights arrived twice weekly. Flight services improved in 1978 with the arrival of Fokker F-28 jets, after the completion of a permanent runway funded by the British Government. This service, the only air connection to the islands, was maintained until the 1982 war.⁹

1.2-The War of 1982

In the period leading up to the war—and, in particular, following the transfer of power

⁶ Jorge Pacheco, Buenos Aires, 1823

⁷ Charter Article 3, 1850.

⁸ ["UN 2065 \(XX\). Question of the Falkland Islands \(Malvinas\)". Resolutions adopted on the reports of the](#)

Fourth Committee. United Nations. 16 December 1965.

⁹ [H.Cámara de Diputados de la Nación Archived](#) 29 November 2012 at [Archive.today](#). Ciudad Autónoma de Buenos Aires. 25 August 2006



between the military dictators General Jorge Rafael Videla and General Roberto Eduardo Viola late in March 1981—Argentina had been in the midst of devastating economic stagnation and large-scale civil unrest against the military *junta* that had been governing the country since 1976.¹⁰ Later on in December 1981, there was a further change in the Argentine military regime, with the takeover by a new *junta* headed by General Leopoldo Galtieri (acting president), Air Brigadier Basilio Lami Dozo and Admiral Jorge Anaya. Anaya was the main architect and supporter of a military solution for the long-standing claim over the islands,^[13] calculating that the United Kingdom would never respond militarily.

In December 1981, a new military junta led by General Leopoldo Galtieri determined that the islands should be retaken by the 150th anniversary of this event, if necessary, by force. Though the British government had shown little interest in the islands, it stood by a commitment to the islanders, made first in 1968, that gave them the final say over whether sovereignty should be transferred to Argentina.¹¹ The island of South Georgia, uninhabited other than by the British Antarctic Survey, was administratively linked to the Falklands and also claimed by Argentina, although its constitutional history was quite different.

An Argentine scrap metal merchant had a legitimate contract to clear up an old whaling station.¹² His men were taken to the island by the Argentine Navy avoiding any formalities that would have acknowledged Britain's sovereignty. Their aim was to establish a long-term presence as a means of asserting

Argentina's sovereignty. This incident triggered a full-blown crisis. The junta was convinced that the British would use the crisis to reinforce their naval presence in the South Atlantic, thwarting any later attempts to take the Falklands. They decided to implement their occupation plans at once.

On 2nd April, the Falklands was seized followed by South Georgia a few days later, after spirited resistance from the small Royal Marines garrison. A plea by US President Reagan to General Galtieri not to go ahead was ignored. This was a critical moment for British Prime Minister Margaret Thatcher. She had gained a reputation for being tough yet was about to preside over the loss of sovereign territory. The Royal Navy came to her rescue. The First Sea Lord, Sir Henry Leach, insisted it would be possible to send a task force to retrieve the islands and that it could leave in a few days. The fact that this proved to be the case was testament to an extraordinary effort by the armed forces to pull together people and equipment at great speed and equal measure. It also reflected poor Argentine timing, because they had picked a moment before British naval cuts agreed in 1981 had taken effect, and when one chunk of the fleet was gathered close to Gibraltar for exercises while the rest was back at port.

The fact that the Prime Minister could announce that a task force was sailing meant that political attention soon moved on from the humiliation of being caught (helped by the resignation of foreign secretary Lord Carrington) and on to the campaign. The initial assumption was that sending a task force would create conditions for a

¹⁰ Boughton, James M. (2001). "[Silent Revolution: The IMF 1979–1989](#)" (PDF). IMF. pp. 328–329. Retrieved 28 June 2019.

¹¹ <https://www.historyextra.com/period/20th-century/falklands-war-history-facts-what-happened/>

¹² General Jaltu's diary of impugny p.209



diplomatic settlement. The US Secretary of State Alexander Haig shuttled between London and Buenos Aires trying to strike a deal. Later, even after serious fighting had begun, the UN Secretary General Javier Perez de Cuellar also tried. The British agreed to substantial concessions, including a measure of Argentine influence over an interim administration while talks over the long-term future of the islands went ahead. The junta, however, could not bring itself in the end to concede that the talks might not end with a transfer of sovereignty.

Diplomatic activity filled the weeks as the British task force sailed down south. Meanwhile, the Argentine navy sought to catch the British fleet in a pincer movement. Woodward's hope had been that a British submarine would be able to attack the sole Argentine aircraft carrier but it had not been found. Meanwhile, the old Argentine cruiser; the General Belgrano, had been found by a submarine, HMS Conqueror. As this was outside the "exclusion zone" around the Falklands, within which the British had warned that any Argentine vessel could be sunk, a change in the rules of engagement was needed to permit an attack. This was agreed and the Belgrano was torpedoed by Conqueror on 2nd May even though the Argentine pincer movement had by then been called off and the cruiser had turned away. This, and the loss of 323 lives in the attack led to a controversy later, including erroneous claims that the torpedo strike was really about scuppering a new peace initiative. The military effect was exactly as intended, as the Argentine navy never again ventured out. Argentina gained revenge on 4th

May when the Super-Etendard aircraft executed an Exocet missile attack on HMS Sheffield.

The next most deadly bout of fighting came on 21st May when 5 Commando Brigade landed at Port San Carlos. The initial landing was unopposed, but soon waves of Argentine aircraft came in. Over the next few days, the ships of the task force took a battering, with four of them sunk and others damaged. By the end of the month, many men and equipments were ashore and the fight switched from being a water borne one to one on the land. The first battle for Darwin and Goose Green settlements was extremely hard fought and led to the death of the commanding officer of 2 Para, Colonel "H" Jones.¹³ The British launched their final push in a series of short but intense battles until the collapse of the Argentinian will. On 14th June 1982, the Argentine garrison surrendered.

The war cost the lives of around 650 Argentinian and 253 British folks and did not settle the dispute: Argentina still lays its claim over the Falklands. Had the Falklands been left to fend for themselves in 1982, the de-population would have eventually made the place unviable. Instead the victory led to firmer British commitment, resulting in a more prosperous and secure Falkland than ever before.

2. THE UN CONVENTIONS ON THE LAW OF THE SEA

2.1- History

The oceans had long been subject to the freedom-of-the-seas doctrine; a principle put

¹³ The night of Falkland massacre, 1982. R Jones, 1988. P. 104



forth in the seventeenth century to essentially limit the national rights and jurisdiction over the oceans to a narrow belt of sea surrounding a nation's coastline. The remainder of the seas was proclaimed to be free to all and belonging to none. While this situation prevailed till the twentieth century, there was an impetus to extend national claims over offshore resources by the mid-century. There was growing concern over the toll taken on coastal fish stocks by long-distance fishing fleets and the threat from pollution and wastes from transport ships and oil tankers carrying noxious cargoes that plied sea routes across the globe. The hazard of pollution was ever present, threatening coastal resorts and all forms of ocean life. The navies of the maritime powers were competing to maintain their presence across the globe on the surface waters and even under the sea. The onset of sea trade further increased the use of waters which began to be prioritised over land. With the waters becoming nodal power centres, the need to facilitate the ongoing power tussle became even more vigorous. The countries subsequently decided to use the waters for their tactical purposes and annexed over various other sovereign states.

The sea also became a battleground resulting in misuse of nature and thereby creating disharmony amongst the nations. A tangle of claims, widespread pollution, competing demands for lucrative fish stocks in coastal waters and adjacent seas, growing tension between coastal nations over rights to these resources and those of distant-water fishermen, the prospects of a rich harvest of resources on the sea floor, the increased presence of maritime powers and the

pressures of long-distance navigation and a seemingly outdated, if not inherently conflicting, freedom-of-the-seas doctrine - all these were threatening to transform the oceans into another arena for conflict and instability.¹⁴

Due to such benefits of the waters, various countries started indulging in creation of such rifts. In 1945, President Harry S Truman, responding in part to pressure from domestic oil interests, unilaterally extended United States jurisdiction over all the natural resources on that nation's continental shelf - oil, gas, minerals, among others. This was the first major challenge to the freedom-of-the-seas doctrine. Other nations followed suit soon. In October 1946, Argentina claimed its shelf and the epicontinental sea above it. Following which, Chile and Peru in 1947 and Ecuador in 1950, asserted sovereign rights over a 200-mile zone, hoping thereby to limit the access of distant-water fishing fleets and to control the depletion of fish stocks in their adjacent seas. The failure to adhere to the notions and boundaries in furtherance increased the possibility of successfully waging war through waters instead of land which was evidential during the times of Cuban missile crisis that eventually would have led to another world war if not controlled at that point of time.¹⁵

On 1st November 1967, Malta's Ambassador to the United Nations, Arvid Pardo, asked the nations of the world to look around them and open their eyes to a looming conflict that could devastate oceans, the lifeline of man's very survival. In a speech at the United Nations General Assembly, he

¹⁴https://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm#Historical%20Perspective

¹⁵ Cuban missile crisis



spoke of the Superpower rivalry that was spreading to the oceans, of the pollution that was poisoning the seas, of the conflicting legal claims and their implications for a stable order and of the rich potential that lay on the seabed. Pardo ended with a call for "an effective international regime over the seabed and the ocean floor beyond a clearly defined national jurisdiction". He had added, "it is the only alternative by which we can hope to avoid the escalating tensions that will be inevitable if the present situation is allowed to continue".¹⁶ Subsequently, in total, three conventions were held in due course of time which consequentially resulted in drafting and then passing of a resolution on the charter of laws related to the sea.

2.3- The Convention

Navigational rights, territorial sea limits, economic jurisdiction, legal status of resources on the seabed beyond the limits of national jurisdiction, passage of ships through narrow straits, conservation and management of living marine resources, protection of the marine environment, a marine research regime and a more unique feature of a binding procedure for settlement of disputes between States - these are among the important features of the treaty. In short, the Convention is an unprecedented attempt by the international community to regulate all aspects of the resources of the sea and uses of the ocean, and thus bring about a stable order to mankind's very source of life.

"Possibly the most significant legal instrument of this century" is how the United Nations Secretary-General described the treaty after its signing. The Convention was

adopted as a "Package deal", to be accepted as a whole in all its parts without reservation on any aspect. The signature of the Convention by Governments carries the undertaking not to take any action that might defeat its objects and purposes. Ratification of, or accession to the Convention expresses the consent of a State to be bound by its provisions. The Convention came into force on 16th November 1994, one year after Guyana became the 60th State to adhere to it.

Across the globe, Governments have taken steps to bring their extended areas of adjacent ocean within their jurisdiction. They are making steps to exercise their rights over neighboring seas, to assess the resources of their waters and on the floor of the continental shelf. The practice of States has in nearly all respects been carried out in a manner consistent with the Convention, particularly after its entry into force and its rapid acceptance by the international community as the basis for all actions dealing with the oceans and the law of the sea.

The definition of the territorial sea has brought relief from conflicting claims. Navigation through the territorial sea and narrow straits is now based on legal principles. Coastal States are already reaping the benefits of provisions giving them extensive economic rights over a 200-mile wide zone along their shores. The right of landlocked countries of access to and from the sea is now stipulated unequivocally. The right to conduct marine scientific research is now based on accepted principles and cannot be unreasonably denied. The International

¹⁶https://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm#Historical%20Perspective



Seabed Authority, which organizes and controls activities in the deep seabed beyond national jurisdiction with a view to administer its resources is already established and functioning and so is the International Tribunal for the Law of the Sea, which has competence to settle ocean related disputes arising from the application or interpretation of the Convention.

Wider understanding of the Convention will bring wider application. Stability promises order and harmonious development. However, Part XI, which deals with mining of minerals lying on the deep ocean floor outside of nationally regulated ocean areas, in what is commonly known as the international seabed area, had raised many concerns especially from industrialized States. The Secretary General, in an attempt to achieve universal participation in the Convention, initiated a series of informal consultations among States in order to resolve those areas of concern. The consultations successfully achieved in July 1998, an Agreement Related to the Implementation of Part XI of the Convention. The Agreement, which is part of the Convention, is now deemed to have paved the way for all States to become parties to the Convention.

3. IMPORTANCE OF THE CONVENTION TO THE DISPUTE

The Convention has codified and defined the various aspects and sub-sections of the varied laws. The Falkland island has earned a specific geographical tag for its supply of rare breed fish which is a big boon. This can boost

the economy of both the countries in dispute. The island is also strategically located in terms of political warfare with its connection to the south of America and Western Africa, which in turn is advantageous for economical trade.

3.1- Judgement by the United Nations

The UN Commission on the limits of the continental shelf life sided with Argentina, ratifying the country's 2009 report fixing the limit of its territory at 200 to 350 miles from its coast.¹⁷ The Argentine foreign ministry said its waters had increased by 1.7 million square km (0.66 million square miles) and the decision will be the key in its dispute with Britain over the islands. With the coming in of the amendment, the decision was made by the Argentine Government to further increase the territorial terrain and thereby the economic benefits. With the oil industries coming up and millions of dollars being invested into the island, the territorial control will rapidly help Argentina in increasing the economic strength. However, many islanders remain concerned about Argentina's claim as well as the potential for problems from rapid changes ushered in by the new industry. This decision has also subsequently resulted in a diplomatic comment by the British Government wherein it stated that the Sovereignty of the Falkland island must be retained and the people cannot be impounded with the Argentine laws unless consented by the people themselves. The dispute per se is still intact and the war of words have been sufficient enough. Subsequently though, the war has not got any colder.

¹⁷<https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/index.html>



4. IMPLEMENTATION AND LOOPHOLES OF THE CONVENTION

The Conventions on Law of Seas that was signed in 1982 and came into effect in 1994 was successfully signed by 157 countries as parties to the third Convention. The clarity in terms of specifying the borders and places meant for economical purposes has successfully been able to work on paper and has also benefitted countries in terms of providing peace and a defined border which was previously a stress inducer amongst the nations and resulted in cross border disputes on water. Furthermore, the nations could freely indulge in financial trade on the waters, thus helping them attain economic independence.

However, the Convention was not completely successful in terms of implementation of the rules and regulations which led to a paradoxical paradise for a few countries. While the Convention systematically officiated the boundaries, it however failed to mention the semi-boundaries wherein the borders were shared with common water bodies. The South China Sea dispute epitomises the conflict and so does the Japan and Laos rift, which subsequently resulted in the intervention of the United States Government. The Mediterranean crisis of Turkey's dispute in furtherance caused the indispensable dispute with Azerbaijan and Cyprus. Thus, the Convention did fail in specifying the semi-border dispute.

5. CONCLUSION

The Convention has successfully been able to reduce the increasing disparities amongst the countries and has come in as a revolutionary ideal with the belief of creating an

environment ushering the betterment of nations. The waters have successfully been used as tools of progress by nations and the Convention has helped retain peace and sovereignty amongst the countries. The Falkland Island war cannot be taken off the charts completely as the dispute still exists in various parts of the world. However, the Convention has definitely helped set limits that have in turn aided the Court to identify and distinguish on certain key matters. Thus, the dispute needs to be handled carefully and understood in accordance to the choice of the people; as the need of the hour is to usher in peace and harmony around the world as well as for the people residing in the islands, instead of the spotlight being on the pride of the nations in conflict.
