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Anglo-Argentine Rivalry After the Falklands/Malvinas War: Laws, Geopolitics, and the Antarctic Connection

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ANGLO-ARGENTINE RIVALRY AFTER THE FALKLANDS/MALVINAS WAR: LAWS, GEOPOLITICS, AND THE ANTARCTIC CONNECTION

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I. INTRODUCTION

The so-called Falkland Islands War of April-June 1982 generated great polemic and debate over military, political, economic and legal issues.[1] Even so, scant serious attention has been focused upon possible geo-strategic implications or likely insinuations arising from the conflict. This appears to be the case particularly with the situation in the Antarctic — a region wherein both Great Britain and Argentina have espoused inherently conflicting territorial claims of sovereignty and purported administrative jurisdiction.[2] Accordingly, several salient questions are begged: given the Falklands military crisis of 1982, what geopolitical ramifications, if any, should be inferred about ongoing Anglo-Argentinian activities in and around the Antarctic continent? What justifications under international law have been proferred for each state's respective territorial claims in the region, and to what extent are their legal positions incompatible with each other? What genuine merits to legal title have been accrued to Great Britain and Argentina vis-à-vis their respective claims over portions of Antarctica and select circumjacent island groups? Is the Antarctic regime currently in place sufficiently stable to withstand the political challenge of a disruptive outbreak of Anglo-Argentinian rivalry over Antarctica? Finally, what likelihood exists for such a conflictual eventuality, and what factors could operate either to precipitate or to deter a possible military confrontation between the two powers? This article seeks to address these queries by examining both Argentina's and Great Britain's historical experiences in the Antarctic region, ascertaining the nature of their territorial claims there, and assessing the relative prospects for cooperation or confrontation in the wake of the 1982 Falkland Islands War. From this analysis, hopefully, a better understanding can be gleaned about the historical nuances and legal complexities earmarking Anglo-Argentinian rivalry in the region — not only for the Falkland Islands situation in particular, but also for the broader Antarctic context.

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1. Franck, *Dulce et Decorum Est: The Strategic Role of Legal Principles in the Falklands War*, 77 AM. J. INT'L L. 109(1983); Hassan, *The Sovereignty Dispute Over the Falkland Islands*, 23 VA. J. INT'L L. 53(1982); Moorer & Cottrell, *In the Wake of the Falklands Battle*, 10 STRATEGIC REV. 23(1982); and Freedman, *The War of the Falkland Islands, 1982*, 61 FOREIGN AFF. 196(1982); Calvert, *Sovereignty and the Falklands Crisis*, 59 INT'L AFF. 405 (1983); Dunnett, *Self Determination and the Falklands*, 59 INT'L AFF. 415 (1983); Reisman, *The Struggle for the Falklands*, 93 YALE L.J. 287 (1983).

2. *See* the discussion at notes 40-85 and 114-152 *infra*.

II. ARGENTINA'S ANTARCTICAN EXPERIENCES, 1834-1958

A. Exploration and Development Activities

It is clear that Argentina has historically regarded the Antarctic region to be strategically significant.[3] Serious concern persists about the ostensible need to protect the Argentinian mainland's southern flank from attack or possible blockade.[4] Put tersely, the South Atlantic Ocean in general and the Antarctic continent in particular are seen not merely as distant, frigid, ice-covered wastelands; rather, they are perceived as embodying in all too proximitious springboard from which hostile military activity someday could be posed to threaten Argentina's national security.[5]

No doubt, Argentina's security anxieties stem not only from geographical realities, but also from historical experience in the area — perhaps most emphatically, the long-standing dispute with Great Britain over, *inter alia*, the Falkland (Malvinas) Islands.[6] Since British occupation of the Falklands in 1834, the Argentine Government has neither been willing to recognize legally Great Britain's presence[7] nor to accept politically any proclaimed British administration over territorial claims in the area.[8] Indeed, for Argentina especially, the disputes with Great Britain over the Falkland Islands and portions of Antarctica are viewed in effect as one and the same, a perception quite evident in the Argentine literature.[9] In this connection, it warrants notation that the Islas

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3. *See, e.g.*, P. DE MONES RUIZ, ANTÁRTIDA ARGENTINA, ISLAS OCEÁNICAS, MAR ARGENTINO (1948); Alavraqui, *La Antártida*, 27 REVISTA GEOGRÁFICA AMERICANA 71(1947); R. MORENO, SOBERANÍA ANTÁRTICA ARGENTINA (1951); Moreno, *El Continente Antartico, El Sector Argentino . . . es el mas importante de la Antártida*, 29 REVISTA GEOGRÁFICA AMERICANA 1(1948); *El Porvenir de la Artártida*, 30 REVISTA GEOGRÁFICA AMERICANA 193(1948).

4. *See generally* J. PUIG, LA ANTÁRTIDA ARGENTINA ANTE EL DERECHO (1960); J. FRAGA, EL MAR Y LA ANTÁRTIDA EN LA GEOPOLÍTICA ARGENTINA 197-220 (1980).

5. *But compare* Moneta, *Antarctica, Latin America, and the International System in the 1980s: Toward a New Antartic Order?*, 23 J. INTERAM. STUD. & WORLD AFF. 29(1981).

6. *See, e.g.*, J. GOEBEL, THE STRUGGLE FOR THE FALKLAND ISLANDS: A STUDY IN LEGAL AND DIPLOMATIC HISTORY (1927); R. CAILLET-BOIS, UNA TIERRA ARGENTINA: LAS ISLAS MALVINAS (1948); C. COSTA, EL PROBLEMA DE LAS ISLAS MALVINAS (1964); E. FITTE, LA DISPUTA CON GRAN BRETAÑA POR LAS ISLAS DEL ATLANTICO SUR (1968).

7. British occupation of the Falkland (Malvinas) Islands in 1833-34 was actually a resettlement. The United Kingdom had evacuated the islands in 1774.

8. For early correspondence between Buenos Aires and Great Britain over claims to the Falkland (Malvinas) Islands, *see* 20 BRIT. FOREIGN & ST. PAPERS 346-47 (1832-33), and 22 BRIT. FOREIGN & ST. PAPERS 366-94 (1833-34).

9. *See, e.g.*, ARGENTINA MINISTRY OF EDUCATION, SOBERANÍA ARGENTINA EN EL ARCHIPIÉLAGO DE LAS MALVINAS Y EN LA ANTÁRTIDA (1951); E.D. MOLANO AND E. HOMET, TIERRAS AUSTRALES ARGENTINAS MALVINAS-ANTÁRTIDA (1948); J. MORENO, NUESTRAS MALVINAS, LA

Malvinas (and other Antarctic-related claims) have been treated politically and legally by Argentina as if they were sovereign national territory.[10] For example, school children are taught from early ages that these areas are integral facets of the Argentinian homeland;[11] the population of these regions — particularly the Malvinas (Falklands) — are included in Argentina's national census returns;[12] and, island residents visiting Argentina are treated as Argentine citizens, being liable for call into the military service and required to carry Argentinian passports.[13]

Prior to 1900, Argentina expressed only passing interest in the Antarctic.[14] In 1903, however, the Argentinian gunboat *Uruguay* successfully completed that state's first voyage through Antarctic waters, and in the process, rescued the Nordenskjöld expedition from the Snow Hill Islands.[15] The following year, in February 1904, at the invitation of the Scottish National Antarctic Expedition, Argentina assumed official control over the meteorological observatory on Laurie Island in the South Orkneys, and has maintained its operation continuously since then.[16]

Although Argentine Antarctic activities remained dormant over the next two decades,[17] in 1927 two events reinvigorated inter-

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ANTÁRTIDA (1948).

10. *See* M. HIDALGO NIETO, LA CUESTION DE LAS MALVINAS (1947); S. COMERCI, LA SOBERANÍA ARGENTINA EN EL ANTÁRTICO (1977); V. LEBEDEN, LA ANTÁRTIDA (1965).

11. *See, e.g.*, G. ALBORNOZ DE VIDELA, Evita, LIBRO DE LECTURA PARA PRIMER GRADO INFERIOR 24-25 (1953).

12. E. CHRISTIE, THE ANTARCTIC PROBLEM 265 (1951).

13. *Id.*

14. Argentina's interest in the Antarctic region was first chronicled in 1890 when it proposed to Great Britain the possibility of erecting a lighthouse in the South Shetlands. The proposal, however, was dropped, reportedly because the British "viewed this project with disfavor." *Id.*

15. Hanessian, Jr., *National Interests in Antarctica*, in ANTARCTICA 11 (T. Hatherton ed. 1965).

16. DECREE No. 3,073 (Authorizing the Argentine Meteorological Office to take over the Meteorological Station on the South Orkney Islands), in U.S. DEP'T. STATE, HISTORY AND CURRENT STATUS OF CLAIMS IN ANTARCTICA (OIR Dept. No. 4,296), at 29. *See also* J. MONETA, CUATRO AÑOS EN LAS ORCADAS DEL SUR (1939). *Cf.* Waldock, *Disputed Sovereignty in the Falkland Islands Dependencies*, 25 BRIT. Y.B. INT'L L. 330-32 (1948), and CHRISTIE, *supra* note 12, at 266.

17. Of note during the interim period, however, was a series of negotiations during 1913-1914, between Argentina and Great Britain aimed at securing a treaty concerning cession of the South Orkney Islands. *See* BRIT. FOREIGN OFF., FILE NO. AM. GEN./47990/169/1913 in PUB. REL. OFF., FILE NO. F0371/1871 (Argentine Draft of a Convention with the United Kingdom concerning the cession of the South Orkney Islands), *reprinted in* 1 ANTARCTICA AND INTERNATIONAL LAW: A COLLECTION OF INTER-STATE AND NATIONAL DOCUMENTS 575(W. Bush compl. 1982) [hereinafter cited as ANTARCTICA & INT'L L.].

est in the region. During that year a radio transmitter was installed at Laurie Island,[18] and coincidentally, Argentina first enunciated its claims officially in a statement delivered to the Universal Postal Union:

> With reference to your circular letter 2122/53 of March 22nd last, regarding our request for reports on the territorial jurisdiction of each Administration of the Postal Union, I have the honour to request you to cause the different offices of the said Postal Union to be informed that Argentine territorial jurisdiction extends *de jure* and *de facto* over the continental surface, territorial sea and islands situated off the maritime coast, to a portion of the Islands of Tierra del Fuego, the Archipelago of Staten, New Year, South Georgia, South Orkneys and polar territory not delimited.[19]

Argentina initiated more extensive Antarctic-related endeavors during the 1940's, beginning with the creation, by government decree, of a permanent National Commission on the Antarctic (*Comisión Nacional del Antártico*) on April 30, 1940.[20] Two years later, the Argentinian naval transport *Primero de Mayo* (or *1° de Mayo*) undertook a highly visible Antarctica expedition, visiting Deception Island, Melchin Island, and Winter Island en route.[21] Of greater legal significance, the *Primero de Mayo* deposited on these islands bronze tablets bearing inscriptions which proclaimed Argentinian annexation of all lands lying within the area south of latitude 60° South and between longitudes 25° West and 68° 34' West.[22]

The election of Juan Peron in 1946 stabilized Argentina's do-

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18. Argentine Note to the United Kingdom affirming Sovereignty over the South Orkney Islands, (Dec. 15, 1927), BRIT. FOREIGN OFF., FILE NO. A384/128/2/1928, IN PUB. REL. OFF., FILE No. F0371/12735, at 107-08, *reprinted in* ANTARCTICA & INT'L L., *supra* note 17, at 586-87.

19. Letter to the Director General of the Universal Postal Union (14 Sept. 1927), *reprinted in* U.S. NAVAL WAR COLLEGE, 46 INT'L L. DOCS. 218-19(1948-49).

20. DECREE No. 61,852-M.97 (Establishing the National Antarctic Commission) (April 30, 1940); Argentina, BOLETÍN OFICIAL, 8 Nov. 1941, at 2, *translated and reprinted* in 4 POLAR REC. 414-415(1946) and U.S. NAVAL WAR COLLEGE, 46 INT'L L. DOCS. 219-20(1948-49).

21. Hayton, *The "American" Antarctic*, 50 AM. J. INT'L L. 583,589(1956); CHRISTIE, *supra* note 12, at 268-69.

22. Hayton, *supra* note 21, at 589. Interestingly enough, the British Ambassador in Buenos Aires returned one of these bronze plaques to the Government of Argentina on February 11, 1943, thereby sparking what became a protracted exchange of diplomatic correspondence between the two states. *Id.* and CHRISTIE, *supra* note 12, at 269. For reprinted examples of the correspondence, see *Id.* at 305-16. The Latin American view is supplied in C. ALZÉRRECA, HISTORIA DE LA ANTÁRTIDA 213-34, 263-79, 293-305 and 329-56(1949).

mestic situation and perforce allowed the government an opportunity to elevate Antarctica as a principal focus of Argentina's political, military and diplomatic concern.[23] That year, a significant governmental expeditionary program was initiated in Graham's Land (later Palmer Peninsula), and concurrently, a vigorous publicity campaign was launched domestically to make the Argentinian people more Antarctica-conscious.[24] Thus, by November 1946, sufficient cartographical evidence had been accumulated to suggest that Argentina tacitly had accepted sectorization of its claim to the Antarctic continent,[25] consisting of a territorial wedge emanating outward from the South Pole between 25° and 74° West Longitude, bounded to the north by the 60° parallel.[26]

Argentina's policy posture in negotiating the Inter-American Treaty of Reciprocal Assistance (the Rio Treaty) in 1947 was also significant.[27] Perusal of this regional security compact reveals at least three very interesting pertinent provisions. First, "an armed attack by any State against an American State [would] be considered as an attack against all the American States."[28] Second, the area applicable for the Treaty's designated jurisdiction specifically included the South Pole,[29] as well as longitudinal boundaries designed to encompass Argentina's Antarctic claims.[30] Third, the Peron Government appended to the Treaty text a formal reservation which retained Argentina's national rights over claims in the Antarctic-circumpolar region.[31] As a consequence, the "American

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23. *See, e.g.*, DECREE No. 8,944 (Prohibiting the Publication of Maps of the Argentine Republic which do not Show in their Full Extent the Continental and Insular Area of the Nation) (Sept. 2, 1946); Argentina, BOLETÍN OFICIAL, 19 Nov. 1946, at 2-3, *translated in* BRIT. FOREIGN OFF. FILE No. A396/24/2/1938, in PUB. REL. OFF., FILE No. F0371/21408, at 24, *reprinted in* 1 ANTARCTICA & INT'L L., *supra* note 17, at 619.

24. Hanessian, *supra* note 15, at 11.

25. HAYTON, NATIONAL INTERESTS IN ANTARCTICA 7(1959); U.S. DEP'T OF STATE, *supra* note 16, at 34.

26. These sector coordinates were depicted on a map published in December, 1946 under authority of Decree No. 8944 by the Instituto Geográfico Militar. For discussion, see 1 ANTARCTICA & INT'L L., *supra* note 17, at 627-31.

27. *Done* at Rio de Janeiro, Sept. 2, 1947, 62 STAT. 1681 T.I.A.S.No. 1838, 21 U.N.T.S. 77 [hereinafter cited as Rio Treaty].

28. *Id.* art 3(1).

29. *Id.* art 4.

30. *Id.*

31. The Argentine statement read as follows:

> The Argentine Delegation declares that within the waters adjacent to the South American Continent, along the coasts belonging to the Argentine Republic in the Security Zone, it does not recognize the existence of colonies or possessions of European countries and it adds that it especially reserves and maintains intact

Antarctic" effectively became subsumed under the Rio Treaty's security perview.[32] Moreover, a commitment was agreed to by the parties, including the United States, to resist "aggression" against Argentina by any "extracontinental Power," (ostensibly read by the Argentinian Government to mean "Great Britain").[33]

Antedating inception of the current Antarctic Treaty Regime in 1961, Argentina's activities involving the circumpolar region during the 1950's assumed an increasingly nationalistic hue. In 1951, the Antarctic Institute (*Instituto Antárctico Argentina*) was created and placed under the policy aegis of the Ministry of the Army.[34] Four years later, on June 28, 1955, new national legislation, the "Provincialization of the National Territories," was promulgated.[35] As avowed, this new law formally incorporated Argentina's South Atlantic territories into provinces of the national federal domain.[36] Relatedly, on February 28, 1957, the Argentinian Government officially proclaimed establishment of "The National Territory of Tierra del Fuego, the Antarctic and the Islands of the South Atlantic."[37] Including the Islas Malvinas, this new national territory was reaffirmed as an integral part of the Argentinian

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> the legitimate titles and rights of the Argentine Republic to the Falkland (Malvinas) Islands, the South Georgian Islands, the South Sandwich Islands, and the lands included in the Argentine Antarctic sector, over which the Republic exercises the corresponding sovereignty.

21 U.N.T.S. 1173; 17 DEP'T ST. BULL. 21,572 (1947). In a similar statement, Chile declared its non-recognition of European possessions in the Security Zone. *See* 21 U.N.T.S. 175, 17 DEP'T ST. BULL. 21,572 (1947).

32. Argentina later declared the Antarctic to be officially within its national security zones. *See* DECREE No. 31,813 (Extending Security Zones to the Antarctic Region) (Oct. 13, 1948), *reprinted in* 5 POLAR REC. 480-81(1950). Chile has also indicated that an "American Antarctic" exists and that it is considered an integral part of the Western Hemisphere. *See* El Mercurio (Santiago), Feb. 19, 1958; La Nación (Santiago), Feb. 19, 1958.

33. Rio Treaty, *supra* note 27, at art. 6; Hayton, *supra* note 21, at 593.

34. DECREE No. 7,338 (April 17, 1951); Argentina, BOLETÍN OFICIAL, Apr. 23, 1951, *translated in* 7 POLAR REC. 80-81(1954); Hanessian, *supra* note 15, at 11. The Argentine Antarctic Institute was elevated in status by DECREE-LAW No. 1,311 (Jan. 26, 1956); Argentina, BOLETÍN OFICIAL, Feb. 2, 1956, at 1.

35. LAW No. 14,408; Argentina, BOLETÍN OFICIAL, June 30, 1955; Hayton, *supra* note 21, at 590.

36. The southern-most province created was described as:

> bounded on the north by the parallel 46°; on the east by the Atlantic Ocean; on the west by the line of delimitation with the Republic of Chile, and to the south, with the Pole, including Tierra del Fuego, the islands of the South Atlantic and the Argentine Antarctic Sector.

LAW No. 14, 408, *supra* note 35, at art. 1(c).

37. DECREE-LAW No. 2,191(Feb. 28, 1959); Argentina, BOLETÍN OFICIAL, Mar. 19, 1957, *translated in* 9 POLAR REC. 52-53(1958).

homeland,[38] and, supposedly, would be administered from its provincial capital of Ushuaia in Tierra del Fuego.[39]

B. Argentina's Claims to Legal Title

In light of the above observations, Argentina's assertions to legal title over territories in the South Atlantic-Antarctic are predicated upon certain historical, geographical and geological considerations peculiar to the area.

Respecting history, often cited by Argentina to substantiate its claims to selected lands in the Antarctic, is the Laurie Island facility in the South Orkneys. In the Argentinian view, then, uninterrupted maintenance since February 22, 1904, of this weather station constitutes sufficient effective occupation under international law to advance a bona fide claim meriting territorial sovereignty in the region.[40] Reinforcing this claim is the allegation that certain symbolic acts were performed during the course of Argentina's receiving the Laurie Island outpost from Scottish jurisdiction in 1904. Namely, after completing formal transfer, the Argentinian flag was raised over the station as a gesture of national ownership.[41] In addition, an Argentinian citizen present at the occasion performed a stamp cancellation ceremony, purportedly to demonstrate establishment there of a post office,[42] a factor which under international law generally is considered to indicate administrative jurisdiction and sovereign control over a territory.[43]

Argentina's longevous and consistent operation of the Laurie Island facility are not at issue. However, serious questions do arise as to whether such continuous presence on a single relatively insignificant islet can constitute such a degree of *effective* occupation that it serves to legitimate Argentina's concomitant claims to the Malvinas/Falklands, South Georgia, the South Shetlands, and the

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38. *Id.* art 2.

39. *Id.* art 4.

40. DE MONES RUIZ, *supra* note 3, at 44. In addition, February 22 is a national Argentine holiday. *See* note 50 *infra*.

41. Dispatch from G. Grahame, British Minister in Buenos Aires to Marquess of Lansdowne (July 7, 1904), BRIT. PUB. REL. OFF., File No. F083/1976, at 254, *reprinted in* 1 ANTARCTICA & INT'L L., *supra* note 17, at 558.

42. CHRISTIE, *supra* note 12, at 266. *See also* 1 ANTARCTICA & INT'L L. *supra* note 17, at 555-56.

43. *See* Taubenfeld, *A Treaty for Antarctica*, 531 INT'L CONCILIATION 245,252 (1961) and Bagshewe & Goldup, *The Postal History of the Antarctic 1904-1949*, 6 POLAR REC. 45(1951).

South Sandwich group, as well as some 400,000 square miles of land space on the Antarctic mainland.[44] Logically, logistically, and legally, one can not but harbor grave doubts about such an assertion.

Absent actual prolonged settlement, no legal credibility is attached to symbolic acts.[45] Argentina has gone to considerable lengths to highlight its claims in the circumpolar area by performing several intermittent ceremonial acts implying administration, including dispositing property plaques,[46] designating postmasters,[47] coroners and local magistrates,[48] issuing postage stamps commemorating the claimed territories,[49] birthing children there,[50] and declaring a national "Antarctic" holiday.[51] International law, nevertheless, regards such activities as mere forms of "fictitious occupation," without any real legal foundation.[52] Consequently, Argentina's symbolic acts of sovereignty in the region are regarded by most legal commentators as just that: symbolic acts, not actual facts.

Perhaps more interesting, from the legal historian's vantage point, is Argentina's espoused reliance upon the Latin American doctrine of *uti possidetis juris*[53] to bolster its Antarctic-related claims. This notion asserts that legal title to possessions in the

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44. For "firm land" claimed in Argentina sector, the areal figure of 1,000,000 square kilometers has been posited. FRAGA, *supra* note 4, at 215 and 216 (Map: Figure 25). On the validity of Argentina's sector claims, *see also* A. QUARANTA, EL SEXTO CONTINENTE: APUNTES PARA EL ESTUDIO DE LA ANTÁRTIDA ARGENTINA 129-32, 181-203(1950) and L. CANEPA, HISTORIA ANTÁRTICA ARGENTINA, NUESTROS DERECHOS 5-8(1948).

45. Van der Heydte, *Discovery, Symbolic Annexation and Virtual Effectiveness in International Law*, 29 AM. J. INT'L L. 461(1935).

46. *See* the discussion at note 22 *supra*.

47. *See* Argentina, National Commission on the Antarctic, *Acts of Argentine Civil Administration in the Antarctic* 360-61 (1964).

48. Note, *Thaw in International Law? Rights in Antarctica under the Law of Common Spaces*, 87 YALE L.J. 819(1978).

49. *See* II M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 1258-59(1963); Wilson, *National Interests and Claims in the Antarctic*, 17 ARCTIC 15,23(1964); Bagshewe & Goldup, *supra* note 43, at 45.

50. *Antarctica's first baby warmly welcomed*, 8 ANTARCTIC 169-70(1978).

51. In 1964, Argentina declared February 22 to be "Argentine Antarctic Day." DECREE No. 1,032 (Feb. 18, 1965), Argentina, BOLETÍN OFICIAL, 21 Feb. 1964.

52. *See* A. KELLER, O. LISSITZYN, & F. MANN, CREATION OF RIGHTS OF SOVEREIGNTY THROUGH SYMBOLIC ACTS 1400-1800 (1938) and J. KISH, THE LAW OF INTERNATIONAL SPACES 52(1973).

53. J. Daniel, *Conflict of Sovereignty in the Antarctic*, 3 Y.B. WORLD AFF. 262-66(1949). *See also* Y. BLUM, HISTORIC TITLES IN INTERNATIONAL LAW 341-42(1965); O. PINOCHET, CHILEAN SOVEREIGNTY IN ANTARCTICA(1955), "The 'Uti Possidetis' of 1810 and the Antarctic Rights of the Republic," at 63-67.

Western Hemisphere does not spring from occupation and settlement of *res nullius* lands in the New World, simply because appropriate legal title already had been allocated by the Pope to the Spanish throne in the fifteenth century.[54] In 1493, Pope Alexander VI issued his famous Bull *Inter Caetera*, wherein a line was drawn from Pole to Pole, extending 370 leagues from the Cape Verde Islands.[55] Concurrently, the Pope declared that all lands lying west of 46° Longitude belonged to Spain, and those situated east of the demarcation belonged to Portugal.[56] Not unimportant, too, was that this papal division of the New World was formally agreed to by Spain and Portugal in 1494 in the Treaty of Tordesillas.[57] In effect, then, modern legal titles over territories in Latin America are deemed to have been transferred from the Spanish and Portuguese Empires to their legitimate heirs, who were created through attaining national independence.[58] In sum, the historical essence of *uti possidetis juris* has been aptly described as follows:

> When the Spanish colonies of Central and South America proclaimed their independence in the second decade of the Nineteenth Century, they adopted a principle of Constitutional and International Law to which they gave the name of *uti possidetis juris of 1810.* The principle laid down the rule that the boundaries of the newly established republics would be the frontiers of the Spanish provinces which they were succeeding. This general principle offered the advantage of establishing the absolute rule that in law no territory of old Spanish America was without an owner. To be sure, there were many regions that had not been

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54. As C.H.M. Waldock has observed,

> The Papal Bull, Inter Caetera, in 1493 and the Spanish-Portuguese Treaty of Tordesillas in 1494 purported to give all lands discovered or to be discovered west of a line 370 leagues west of the Cape Verde Islands to Spain and all lands to the east of that line to Portugal. The precise longitude of the dividing-line is disputed but even the longitude most favourable to Spain would place South Georgia and the South Sandwich Islands outside the Spanish sphere of interest, though it might be said to include the South Orkneys and Antarctic territory to the west of these islands. The relevance of the Bull Inter Caetera, and of any discoveries made under it, lies in Argentina's pretension to succeed to Spain's rights in the area by 'inheritance.'

Waldock, *supra* note 16, at 319.

55. This Bull and others contemporary to that period are reproduced in 1 EUROPEAN TREATIES BEARING ON THE HISTORY OF THE UNITED STATES AND ITS DEPENDENCIES 72-88 (F. Davenport ed. 1917).

56. The original line in 1493 was 100 leagues from the Cape Verde Islands, but it was revised in 1496. Daniel, *supra* note 53, at 249, n. 37. *See also* GOEBEL, *supra* note 6, at 49.

57. C. HYDE, INTERNATIONAL LAW 165(1922).

58. PINOCHET, *supra* note 53, at 40-43; *Beagle Channel Arbitration*, 17 I.L.M. 632,642(1978).

> occupied by the Spaniards and many regions that were unexplored or inhabited by uncivilised natives, but these sections were regarded as belonging in law to the respective republics that had succeeded the Spanish provinces to which these lands were connected by virtue of old Royal decrees of the Spanish mother country. These territories, although not occupied in fact, were by common agreement considered as being occupied in law by the new republics from the very beginning. Encroachments and ill-timed efforts at colonisation beyond the frontiers, as well as occupations in fact, became invalid and ineffective in law. The principle also had the advantage, it was hoped, of doing away with boundary disputes between the new States. Finally it put an end to the designs of the colonising States of Europe against lands which otherwise they could have sought to proclaim as *res nullius*.[59]

Thus, Argentina avers that its title to territories claimed in the South Atlantic and Antarctica flows directly and irrefutably from the uncontested Spanish title, recognized and sanctioned by Pope Alexander VI in 1493-1494.

The doctrine of *uti possidetis juris* is of questionable applicability as a tenet of contemporary international law. As one study curtly put it, "[B]ecause modern international law does not recognize the authority of fifteenth-century pontiffs to bind nations five centuries later, this theory carries little weight today."[60] Nevermind that the Papal Bull of 1493 long antedated creation of the sovereign nation-state system and the Eurocentric corpus of international law. The fact remains that *uti possidetis juris* fails to square properly with the legal establishment of non-Hispanic states in the New World, as well as the more recently evolved principles of decolonization[61] and self-determination.[62] Further, save for Latin American states, succession from original Spanish rights has neither commanded widespread respect nor attracted international acceptance, either in practice or in principle. Hence, this ap-

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59. This quotation is from the dictum of the Federal Council of Switzerland which served as arbiter in the Colombia-Venezuela boundary dispute, *as quoted in* Scott, *The Swiss Decision in the Boundary Dispute between Colombia and Venezuela*, 16 AM. J. INT'L L. 428(1922).

60. Note, *supra* note 48, at 814, n. 43. *Also see* Hayton, *supra* note 21, at 603.

61. *See generally*, Y. EL-AYOUTY, THE UNITED NATIONS AND RECOLONIZATION: THE ROLE OF AFRO-ASIA (1971); L. BUCHHEIT, SECESSION: THE LEGITIMACY OF SELF-DETERMINATION (1978).

62. Y. ALEXANDER & R. FRIEDLANDER, SELF-DETERMINATION: NATIONAL, REGIONAL AND GLOBAL DIMENSIONS(1980); W. OFUATEY-KODJE, THE PRINCIPLE OF SELF-DETERMINATION IN INTERNATIONAL LAW (1977); and Emerson, *Self-Determination*, 65 AM. J. INT'L L. 459(1971).

parent dearth of contemporary legal appreciation strongly intimates that *uti possidetis juris* contributes but a modicum, if indeed any, legal support to Argentina's position of valid title over either its South Atlantic or Antarctic claims.[63]

Turning to factors of geography, Argentina (as well as Chile)[64] has advanced the contention that a state's propinquity (i.e., proximity or contiguity) may enhance its claims to legal title elsewhere.[65] Since Argentina is the closest state to various South Atlantic islands and Antarctic lands, Argentina argues, that it has a special right vis-à-vis legal possession — particularly when the notion of sectorization is applied to national claims on the continent.[66] The sector theory — adapted from the Arctic experience[67] — defines claimants' territorial boundaries according to longitudinal lines that converge on the South Pole from baselines originating from two sources: either from mainland perimeters of the claimant state (e.g., Argentina) or from a section of the Antarctic coast "discovered" or "occupied" by a claimant state (e.g., Great Britain).[68] Though not recognized internationally, sectorization accordingly has been adopted and implemented by claimants to Antarctica as a means of neatly dividing up the continent.[69]

Nevertheless, while Argentina's proximity to the Antarctic is geographically evident, employing that rationale for justifying any resultant legal title fails to measure up. Mere propinquity is not, nor is it likely to be, respectfully regarded in international law as a

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63. L. BLOOMFIELD, THE BRITISH HONDURAS-GUATEMALA DISPUTE 94(1953). As F. M. Auburn put it,

> *Uti possidetis* can only apply to territory over which Spain had title in 1810, and there is little evidence of a Spanish claim to any part of Antarctica. It may be concluded that *uti possidetis* is a valid rule of intra-American customary international law, although its extension to the Antarctic is objectively dubious — but no more questionable, it might be argued, than the sector principle which it resembles in a number of ways.

F. AUBURN, ANTARCTIC LAW & POLITICS 50(1982)(footnote omitted).

64. U.S. DEP'T ST., *Conference on Antarctica* 17 (Pub. No. 7060, 1959). For comprehensive treatments of Chile's view, see PINOCHET, *supra* note 53; E. VICUÑA, TERRA AUSTRAILIS (1948); and, Chile, Ministry of Foreign Affairs, *Derechos Indiscutibles de Chile Sobre la Antártica Chilena*, 1 REVISTA GEOGRÁFICA DE CHILE 155(1948).

65. Bernhardt, *Sovereignty in Antarctica*, 5 CAL. W. INT'L L.J. 297,331(1975).

66. *Id.* at 331-38.

67. *See* Lakhtine, *Rights Over the Arctic*, 24 AM. J. INT'L L. 703(1930) and G. SMEDAL, ACQUISITION OF SOVEREIGNTY OVER POLAR REGIONS 58-80(1931).

68. Note, *supra* note 48, at 822-23. *See also* Svarlien, *The Sector Principle in Law and Practice*, 10 POLAR REC. 248(1960-61).

69. Hayton, *supra* note 21, at 603-607.

definitive criterion for asserting legal title to sovereignty.[70] Moreover, while resort to the sector theory to demarcate claims in Antarctica (and the Arctic as well) admittedly has been utilized by claimant states as a convenient apportionment device, it has not been accepted as a universal principle or even a rule of law.[71] Expressed another way, legal opinion overwhelmingly concurs that polar sectorization through propinquity serves primarily as a political convenience for the involved parties;[72] as a steadfast, acknowledged norm of international law, sectorization and its basis for title has been, in substantial measure, repudiated.[73]

A third aspect of Argentina's legal argument aims at justifying claims to portions of the circumpolar region upon geological and geomorphological grounds. Put simply, scientific scrutiny has prompted geologists to conclude that "the highlands of Antarctica must be regarded as a continuation of the Andes."[74] Geomorphological evidence actually has revealed that a regionally submerged mountain chain does exist, of which the Falkland Islands, Shag Rocks, South Georgia, the South Sandwich Islands, and Graham Land are parts protruding above water.[75] This so-called "Antillan Loop" is thus believed to be an integral segment of the Andean

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70. Note, *supra* note 48, at 815-16; Bernhardt, *supra* note 65, at 332. Robert Hayton expressed the situation aptly when he observed:

> It cannot be presumed that the rest of the international community has given up to states which are accidentally the closest all rights to unoccupied lands of possible strategic importance, whether or not currently susceptible of settlement or exploitation. Therefore severe limitations must be placed on the use in international law of any concept involving 'region of attraction,' propinquity or contiguity. As an obvious consequence of the decentralized, semi-anarchical conditions of nation-state life, every state is concerned defensively, economically and otherwise with the area (land or sea) adjacent to its present territory. But if applied generally, the absurdity, even the impossibility of such a principle *in law*, seems clear. Argentina or Chile cannot claim Antarctic territories *merely* for reasons of 'attraction.' If the territory in question is *terra nullius*, then the ordinary mode of acquisition must be employed, though the *motivation* for presenting such acquisition may well reflect strategic considerations. If it is not *terra nullius*, the sovereign is not displaced because of another's contiguity. 'Attraction' of itself yields no title in the Antarctic or elsewhere.

Hayton, *supra* note 21, at 604 (footnote omitted, italics in original).

71. *See* AUBURN, *supra* note 63, at 23-31; Bernhardt, *supra* note 65, at 338; Hayton, *supra* note 21, at 605-06.

72. Note, *supra* note 48, at 823; AUBURN, *supra* note 63, at 27-31.

73. Jain, *Antarctica: Geopolitics and International Law*, 17 INDIAN Y.B. OF WORLD AFF. 249,266(1974). As Professor Auburn tersely asserted, "A sector is itself an admission of the failure to comply with the general standards of the law of nations." AUBURN, *supra* note 63, at 31.

74. Ellsworth, *My Flight Across Antarctica*, 70 NAT'L GEOGRAPHIC MAG. 35(1936).

75. F. MILIA, LA ATLANTÁRTIDA 248(1978).

chain, linking together Tierra del Fuego with the mountains in Graham Land.[76] Perhaps not surprisingly, the Argentinian legal view holds that Graham Land geologically is an intimate extension of the Andes system, and, moreover, that the various island groups associated with it are joined to South America by a prolonged continental shelf area.[77] Consequently, Argentina believes that naturally it should accrue prior claims of sovereignty over these juxtaposed territories.[78]

While Argentina's geomorphological reasoning may be appealing, its legal deduction proves fallacious — at least by the international community's espoused standards. While not discounting theoretical contingencies, practice in international law has mandated that efficacy — rather than purported geological contiguity — should be the overriding determinant of legal title. As affirmed by Professor Van der Heydte:

> The natural boundary lines of any application of the rule of contiguity are drawn, precisely, by its very origin from the general principle of effectiveness. Admitting the existence of such a rule, we only assert the existence of an individual case of applying the principle of virtual effectiveness as defined above. It is proper, therefore, to speak of contiguity only as far as one can speak also off virtual effectiveness.[79]

Thus, to accept the notion that Argentina's continental shelf prolongation legally constitutes appropriate contiguity vis-à-vis circumpolar territories not only undercuts the traditional international legal framework affecting territorial sovereignty over land;[80] it also displaces relevant considerations in the law of the sea, particularly those principles concerning territorial delimitation of coastal states,[81] the exclusive economic zone,[82] the legal status of

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76. J. FRAGA, INTRODUCCIÓN A LA GEOPOLITICA ANTÁRTICA 25(1978); CHRISTIE, *supra* note 12, at 263.

77. MILIA, *supra* note 75, at 248.

78. *Id.*

79. Van der Heydte, *supra* note 45, at 470.

80. *See generally* N. HILL, CLAIMS TO TERRITORY IN INTERNATIONAL LAW AND RELATIONS (1945); R. JENNINGS, THE ACQUISITION OF TERRITORY IN INTERNATIONAL LAW (1963).

81. This conflictual situation becomes even more readily apparent upon scrutiny of the recently concluded Convention by the Third United Nations Conference on the Law of the Sea. *See* United Nations Convention on the Law of the Sea, *done* at Montego Bay, Dec. 10, 1982. U.N. Doc. A/CONF. 62/122(Oct. 7, 1982), *reprinted in* 21 I.L.M. 1261-1354(1982). [Hereinafter cited as UNCLOS III Convention]. *See Id.* at arts. 2-33 and 76-85.

82. *Id.* arts 55-75. For commentary, see Joyner, *The Exclusive Economic Zone and Antarctica*, 21 VA. J. INT'L L. 691(1981).

islands,[83] and also variant high seas freedoms.[84] Additionally, application of Argentina's geological contiguity position tends to disregard an obvious fact of geography: *viz.*, the lack of sufficient adjacency implicitedly required to legally exercise a claim of contiguity. It is at best difficult to accept that Argentina can really qualify as a state "adjacent" to Antarctica, unless some four hundred and fifty miles of ocean space and pack ice are construed to be a transcontinental bridge.[85] In short, J. Peter Berngardt put it well when he concluded, "Applying the contiguity principle to the Antarctic would be an unwarranted extension of an already overstretched idea."[86]

C. Concluding Observations

Argentina historically has manifested considerable national interest in the Antarctic, and since the early 1900's, the Government has often attempted to demonstrate legitimacy of its claims through manifold symbolic displays of sovereignty. Further, beginning in the 1940's, the Antarctica-Falklands issue has assumed high saliency in Argentine domestic politics; coincidentally in the process it has engendered at times an ultranationalist attitude. Not expectantly, especially sensitive and acute for Argentinians is the issue of foreign colonialist domination, which persistantly has been personified in the perceived intervention by European powers (i.e., Great Britain) into Western Hemispheric affairs (i.e., Argentina's territorial claims in the region). As a diplomatic counterpoise to the British presence in the South Atlantic-Antarctic, Argentina contends that its valid legal claims to title have been acquired regionally through succession from the fifteenth century Spanish Empire, relative proximity to the area, and geomorphological contiguity of the Andes chain transoceanically with the Antarctic Mountains. Nonetheless, when viewed within the context of contemporary international law, Argentina's claims to sovereignty at best appear to be tenuous, anarchoristic and polemical; at worst, they may be challenged on grounds of being perfunctory, contentious, and perhaps, even nugatory.

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83. UNCLOS III Convention, *supra* note 81, art. 5 at 121. *See generally*, D. BOWETT, THE LEGAL REGIME OF ISLANDS (1979).

84. UNCLOS III Convention, *supra* note 81, at arts. 86-119.

85. *See Major Air and Land Routes, 1976/77* (Map), in CENTRAL INTELLIGENCE AGENCY, POLAR REGIONS ATLAS 49(1978) [hereinafter cited as CIA POLAR ATLAS].

86. Bernhardt, *supra* note 65, at 342.

III. GREAT BRITAIN'S ANTARCTICAN EXPERIENCES, 1675-1962

A. Exploration and Development Activities

There is no doubt that Great Britain's presence in the Antarctic has been evident for more than two centuries.[87] The earliest discovery of land in the area is believed to have been South Georgia in 1675 by the British merchant, Anthony de la Roche.[88] A century later, the island was "rediscovered" by the English Captain James Cook, who on January 17, 1775, claimed its possession for King George III and named it South Georgia in the King's honor.[89] In that same month Captain Cook also reportedly discovered and claimed the South Sandwich Island group for Great Britain.[90]

The early nineteenth century witnessed numerous exploration forays into the Antarctic by British expeditions. In February 1819, William Smith discovered the South Shetlands and claimed them for the British Crown.[91] The first sighting of the Antarctic coast — probably along the northern extremity known as Trinity Peninsula on Graham Land — is credited to Edward Bransfield, a Royal Navy officer, in 1820.[92] The South Orkney Islands were discovered and claimed for Great Britain by George Powell in December 1821.[93] Captain Henry Foster of the Royal Navy explored and claimed parts of the Antarctic mainland in 1828-1829, and deposited a copper cylinder on Hoseason Island, and declared its possession in the name of King George IV.[94] Three years thereafter, on February 21, 1832, Captain John Biscoe circumnavigated the continent and visited part of the Palmer archipelago.[95] Claiming the area in the name of King William IV, Captain Biscoe mistakenly called it Graham Land, apparently convinced that he had actually discovered portions of the mainland.[96] Between 1841 and 1843, Sir

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87. *See generally*, Antarctica Cases (U.K. v. Argen.)(U.K. v. Chile) 1956 I.C.J. Pleadings 11, ff.; Brown, *Political Claims in the Antarctic*, 1 WORLD AFFRS. 393(1947); Daniel, *supra* note 53; Waldock, *supra* note 16; and CHRISTIE, *supra* note 12.

88. Antarctica Cases, *supra* note 87, at 11.

89. *Id.*

90. *Id. See generally* J. COOK, A VOYAGE TOWARDS THE SOUTH POLE AND ROUND THE WORLD (3rd ed. 1779).

91. Antarctica Cases, *supra* note 87, at 11.

92. *Id.* at 12.

93. *Id.* at 11.

94. *Id.* at 12.

95. *Id.*

96. *Id.*

James Clark Ross circumnavigated the continent, charted some 500 miles of coastline in Victoria Land, and discovered Ross Island and the Northern edge of the Ross Ice Shelf.[97] On January 6, 1843, Sir Ross landed on the eastern shore of Palmer peninsula, and claimed Ross Island and all "contiguous lands" for the British crown.[98]

Save for whalers, scant British interest was shown in Antarctica over the next fifty years. Between 1895 and 1905, however, seven major national expeditions set out for Antarctica,[99] of which two were British-sponsored: the British Antarctic Expedition of 1898-1900 under C.E. Borchgrevink[100] and the larger British National Antarctic Expedition of 1901-04, led by Captain R.F. Scott.[101] In the following years, private expeditions by British subjects contributed much in the way of scientific discovery and Antarctic cartography. Foremost among these were Captain Scott's second expedition (1910-13) in the Ross Dependency[102] and the exploits of Sir Ernest Shackleton (1907-09, 1914-17 and 1921-22) who claimed possession of the Ross Dependency for Great Britain.[103] Relatedly important to note is that during this "Heroic Age of Antarctic Exploration," Great Britain formally announced its claims to portions of the Antarctic: In 1908[104] and 1917,[105] Letters Patent were promulgated by the British government, setting out boundary delimitations for British claim assertions, subsequently known as the Falkland Islands Dependencies.[106]

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97. *Id.*

98. *Id.*

99. For detailed enumeration of Antarctic expeditions, see Roberts, *Chronological List of Antarctic Expeditions*, 9 POLAR REC. 97-134, 199-239(1958).

100. Bogen, *Main Events in the History of Antarctic Exploration*, NORSK HVALFANGST TIDENDE 218(1957).

101. *See* R. SCOTT, THE VOYAGE OF THE 'DISCOVERY' (1905).

102. F. AUBURN, THE ROSS DEPENDENCY (1972).

103. BRITISH INFORMATION SERVICE, THE ANTARCTIC 4(1966). *See* E. SHACKLETON, SOUTH: THE STORY OF SHACKLETON'S LAST EXPEDITION, 1914-1917 (1920).

104. British letters patent appointing the Governor of the Colony of the Falkland Islands to be Governor of South Georgia, the South Orkneys, the South Shetlands, the Sandwich Islands, and Graham's Land, and providing for the Government thereof as Dependencies of the Colony — Westminster, July 21, 1908, *reprinted in* 101 BRIT. FOREIGN & ST. PAPERS 76(1909) [hereinafter cited as Letters Patent of July 21, 1908].

105. British letters patent, passed under the Great Seal of the United Kingdom, providing for the further Definition and Administration of certain Islands and Territories as Dependencies of the Colony of the Falkland Islands — Westminster, March 28, 1917, *reprinted in* 111 BRIT. FOREIGN & ST. PAPERS 16(1919) [hereinafter cited as Letters Patent of Mar. 28, 1917].

106. For appropriate commentary, *see* Waldock, *supra* note 16.

From 1923-1939, the Discovery Committee — a British-based organization — operated to produce more accurate maps of the Dependencies and to gather information useful to Great Britain's whaling industry.[107] Significantly, a series of survey voyages also were sponsored under the committee's direction, leading to enhanced oceanographical studies of the Southern Ocean, two circumnavigations of the Antarctic continent, and re-charting the coasts of South Georgia, the South Orkneys, the South Sheltands and the South Sandwich Islands.[108]

British appreciation of the Antarctic's strategic importance was accentuated by World War II. Accordingly, during 1943-45, "Operation Tabarin" was undertaken to secure military bases at Deception Island and Graham Land, ostensibly to preclude an "Antarctic coup" by either Argentine or German forces.[109] In 1945, these stations were transformed jurisdictionally into the Falkland Islands Dependencies Survey[110] — renamed the British Antarctic Survey in 1967[111] — under whose aegis British exploration and scientific activities in the region has since been conducted.[112]

Finally, in terms of regional experience historically, in 1962, Britain established, through an Order-in-Council, the British Antarctic Territory.[113] Effective since March 3, 1962, the territory as designated would comprise all lands and islands lying south of 60°S latitude and between 20° and 80°W longitudes (i.e., encompassing all British-claimed territories within the area set out in the Antarctic Treaty of 1959).[114] The "Falkland Islands Dependencies" therefore were reduced in size to only South Georgia, the South Sandwich group, and various oceanic rock formations — all located north of the Antarctic Treaty perimeter.

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107. CHRISTIE, *supra* note 12, at 212-219.

108. *See The Discovery Committee,* THE DISCOVERY REPORTS (24 vols. 1929-47).

109. CHRISTIE, *supra* note 12, at 247-51.

110. *Id.* at 251-62.

111. *British Antarctic Territory,* in A YEARBOOK OF THE COMMONWEALTH 1982, 429(1982).

112. *Id.* at 429-30.

113. British Antarctic Territory Order in Council, 1962, Statutory Instrument, 1962, No. 400,71 Falkland Islands Gazette, Mar. 2, 1962, at 50-53, *reprinted in* 11 POLAR REC. 306-11(1962-63).

114. British Antarctic Treaty Order in Council, 1962, Statutory Instrument, 1962, No. 401,71 Falkland Islands Gazette, Mar. 2, 1962, at 54-59, *reprinted in* 11 POLAR REC. 310-13(1962-63).

B. Great Britain's Claims to Legal Title

Of all states indicating serious interest in the South Atlantic-Antarctic area prior to 1900, none was more active than Great Britain. To be sure, the historical record speaks for itself, particularly in terms of British discovery and exploration efforts. Certainly, also important is the fact that those explorers who had laid claim to various territories in the South Atlantic and Antarctic for Great Britain were officers in the Royal Navy, duly commissioned and officially assigned to make these voyages in the name of the King. This realization undeniably imparts some measure of governmental legitimacy to British claims made in the region. Even so, the issue to be addressed here is the extent to which British allegations of sovereign control over Antarctic territories merit valid title under international law.

Generally speaking, under contemporary international law, six methods of acquiring title to territory are recognized by states: occupation, accretion, prescription, voluntary cession, conquest, and treaties of peace.[115] Historically, discovery represented the paramount means of securing title to vacant lands (i.e., *terre nullius*).[116] Since the eighteenth century, however, discovery alone has been deemed insufficient to effect a claim of valid legal title; it must be followed by "effective" occupation (*occupatio*),[117] ostensibly demonstrated through permanent settlement and responsible administrative jurisdiction.[118] It is largely on the grounds of discovery and consequent effective occupation that Great Britain's claims to Antarctic territories are predicated.[119]

As formally posited, Great Britain's claim has been summarily stated as follows:

> . . .that by reason of historic British discoveries of certain territories in the Antarctic and sub-Antarctic; by reason of the long-continued and peaceful display of British sovereignty from the date of those discoveries onwards in, and in regard to, the territories concerned; by reason of the incorporation of these territories in the dominions of the British Crown; by virtue of their

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115. G. VON GLAHN, LAW AMONG NATIONS 315-27(4th ed. 1981).

116. *Id.* at 316.

117. *Legal Status of Eastern Greenland* (Den. v. Nor.), 1933 P.C.I.J. ser A/B, No. 53, at 46.

118. Bernhardt, *supra* note 65, at 322-26; II M. WHITEMAN, DIGEST OF INT'L L. 1030-1232(1963).

119. *See* Antarctica Cases, *supra* note 87, at 11-13.

> formal constitution in the Royal Letters Patent of 1908 and 1917 as the British Possession called the Falkland Islands Dependencies; the United Kingdom possesses, and at all material dates has possessed, the sovereignty over the territories of the Falkland Islands Dependencies, and in particular the South Sandwich Islands, South Georgia, the South Orkneys, South Shetlands, Graham Land and Coats Land.[120]

The central question therefore becomes how effective Great Britain's occupation has been, and whether or not it has been sufficient to warrant legal recognition as full and complete sovereign control. When set against the accepted criteria for effective occupation, the recorded British experience since 1675 in the region leaves room for doubt as to whether legal conditions for conferring British sovereignty have been fully met.

That Great Britain possesses legitimate deed to discovering the aforementioned lands seems historically true and accurate. The crux of the issue, however, lies couched in the efficacy of British occupation. International law, through state practice, has established such effectiveness to be "the objective manifestation of a continuous development of control commencing with discovery and subsequent inchoate title and continuing by permanent settlement and administration."[121] If this is so, the British claim suffers noticeably from the profound absence of any permanent settlement on all save one of their territories, *viz.*, the Falkland Islands (which has a local population of some 1800).[122] South Georgia and the South Sandwich Islands are virtually uninhabited, and the South Shetland Islands, the South Orkneys, and Graham's Land are populated only by a chain of small meteorological stations.[123] The paucity of "residents" there are neither indigenous peoples nor British colonists; they are scientists assigned to operated the facilities.

The point should be made, nonetheless, that the South Polar area climatically is incredibly inhospitable; in fact, the Antarctic environs can be aptly described as one of extremes, being the coldest, driest, windiest, and remotest place on earth.[124] Given

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120. *Id.* at 37.

121. Bernhardt, *supra* note 65, at 322.

122. THE WORLD ALMANAC & BOOK OF FACTS 574 (H. Lane ed. 1983).

123. *Id.*

124. As described by F.M. Auburn,

> Antarctica has the highest average elevation of all the continents (2.5 km). Combined with a number of other factors, such as the degree of radiation reflec-

these extraordinary harsh environmental conditions, suggestion has been made that perhaps special or exceptional consideration ought to be made for Antarctica-based claims; i.e., because normal "effective occupation" as usually applied to perfect title is essentially impossible in Antarctic conditions, less stringent degrees of effectiveness should be entertained there.[125] Here is not the place to debate the "exceptions" polemic; others have done that more authoritatively, without universally conclusive results.[126] What must be posited, though, is that at minimum, effective control for securing recognized sovereign title in the Antarctic would necessitate "actual continuous and peaceful display of state functions,"[127] — if not directly through permanent settlement, then, conceivably, indirectly through "effective" administrative purview.

Administratively, British claims to legal title were clearly spelled out in the King's Letters Patent of 1908.[128] This royal proclamation publicly declared formal organization of the Falkland Islands Dependencies, consisting of the Falkland Islands, South Georgia, the South Orkneys, the South Shetlands, the South Sandwich Islands, and Graham's Land.[129] As British commentators are quick to note, the Letters Patent did not posit a claim of British

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> tion from snow surfaces, this makes it the coldest region on earth. The mean temperature of the plateau of East Antarctica is -56°C. Temperatures in coastal areas are less severe, although the most favoured regions of the Antarctic Peninsula only have mean summer readings above freezing for four months. Steady winds of over 100 km. per hour are not uncommon in winter. Most of Antarctica — the high plateau — is the world's largest and driest desert. At the South Pole, there is precipitation (usually snow) of less than 5 cm. each year, and Antarctica's only river, the Onyx, flows in summer from the melt waters of the Wright Glacier in the Ross Dependency over a course of 30 km. There are no land vertebrates. It is the sole continent without trees, and all its three flowering plants are recent and marginal invaders.

AUBURN, *supra* note 63, at 1-2 (footnotes omitted). On July 21, 1983, Soviet polar researchers reported a record low temperature of -129°F at a research station in Antarctica. Washington Post, July 24, 1983, at A23, col. 1.

125. This so-called "minimal control" theory has engendered mixed conclusions by legal commentators. *Compare* M. LINDLEY, THE ACQUISITION AND GOVERNMENT OF BACKWARD TERRITORY IN INTERNATIONAL LAW 158(1926); Hyde, *Acquisition of Sovereignty in Polar Areas*, 19 IOWA L. REV. 286-88(1934); Johnson, *Consolidation as a Root of Title in International Law*, CAMBRIDGE L.J. 215-22(1955); Daniel, *supra* note 53, at 252; and Taubenfeld, *supra* note 43, at 252.

126. *E.g., compare* the following series of international cases and arbitral decisions: Legal Status of Eastern Greenland (Den. v. Nor.), 1933 P.C.I.J.22, ser. A/B, No. 53; Clipperton Island Arbitral Award (Fr. v. Mex.), January 28, 1931; Minquiers and Ecrehos (U.K. v. Fr.) 1953 I.C.J.47; and Island of Palmas Case, (Perm.Ct.Arb.) 2 U.N.R.I.A.A. 829 (1929).

127. Island of Palmas Case (Perm.Ct.Arb.) 2 U.N.R.I.A.A.829 (1928).

128. Letters Patent of July 21, 1908, *supra* note 104, at 76-77.

129. *Id.*

sovereignty; such an assertion was presumed already extant and deemed legitimized, principally because no overt foreign challenge to it had been forthcoming during the nineteenth century.[130] The statement, it is argued, simply confirmed Great Britain's previous circumpolar claims and consolidated them under a unitary administrative structure.[131]

In terms of being a suitable vehicle for substantiating British sovereign control in the Antarctic, the Letters Patent of 1908 evinces some critical deficiencies. First, although predicated upon title to territory secured by discovery, portions of some lands included in the Letters Patent clearly had been discovered or initially surveyed by nationals from states other than Great Britain. For example, Admiral Thaddeus Bellingshausen of Russia extensively explored the South Sandwich group during 1819-21.[132] In 1838-40, a French expedition under Dumont d'Urville surveyed and charted the South Orkneys, South Shetlands and Graham's Land.[133] Additionally, the Belgian Antarctic Expedition commanded by Adrien de Gerlache in 1897-99,[134] the Swedish Polar Expedition of 1901-04, led by Otto Nordenskjöld,[135] and the French Antarctic Expedition of 1903-05, under J.B. Charcot[136] all performed noteworthy explorations in the Graham Land area. Hence, considerable foreign discovery and exploration occurred in British-claimed areas, apparently without seeking or securing official British advice, consent or permission in the process.

A second difficulty associated with the Letters Patent of 1908 is that such a unilateral declaration, *ipso facto*, looms inadequate for demonstrating national sovereignty over a territory. The proclamation was merely a Royal Prerogative, designed to modify administrative boundaries of a non-self-governing territory, and to set up an appropriate supervisory structure.[137] Hence, the Letters

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130. CHRISTIE, *supra* note 12, at 240.

131. *Id.*

132. *See* T. BELLINGSHAUSEN, THE VOYAGE OF CAPTAIN BELLINGSHAUSEN TO THE ANTARCTIC SEAS, 1819-1821 (F. Debenham ed. 1945).

133. *See* J. DUMONT D'URVILLE, VOYAGE AU PÔLE SUD ET DANS L'OCÉANIC SUR LES CORVETTES L'ASTROLABE ET LA ZÉLÉÉ (1841).

134. *See* A. DE GERLACHE, QUINZE MOIS DANS L'ANTARCTIQUE (1902).

135. *See* O. NORDENSKJÖLD & J. ANDERSSON, ANTARCTICA (1905).

136. *See* J. CHARCOT, AUTOUR DU PÔLE SUD, EXPEDITION DU 'FRANCOIS', 1903-1905 (1906).

137. The Letters Patent of 1908 provided for establishing the Governor of the Falkland Islands conjointly to be Governor of "South Georgia, the South Orkneys, the South Shetlands, and the Sandwich Islands, and the territory of Graham's Land" (i.e., "the De-

Patent of 1908, must be viewed purely as a domestic measure, intended to facilitate Great Britain's governance of claimed lands more than 8000 miles away. Obviously, such an intention presupposes the legal right to govern. However, the Letters Patent neither substantiated the claim nor validated sovereign title. Legally, it merely presumed the claims' validity and was accordingly proclaimed as a product of those claims' believed existence.

Third, as stated in the 1908 Letters Patent, the enumerated "Dominion" island groups are described as being "situated in the South Atlantic Ocean to the south of the 50th Parallel of South latitude and lying between the 20th and 80th degrees of West longitude."[138] Interestingly, if interpreted literally, those geographical coordinates would encompass several islands offshore Chile and Argentina, more precisely in the lower Patagonian zone, south of the 50th Parallel.[139] In order to assuage possible political misunderstandings, particularly by Argentina, a second Letters Patent was issued on March 28, 1917.[140] This proclamation, while reaffirming the intent of the 1908 document, clarified Great Britain's claim to include

> all islands and territories whatsoever between the twentieth degree of west longitude and the fiftieth degree of west longitude which are situated south of the 50th Parallel of south latitude; and all islands and territories whatsoever between the fiftieth degree of west longitude and the eightieth degree of west longitude which are situated south of the 58th Parallel of south latitude.[141]

Hence, island groups or rocks located within the territorial waters of Argentina and Chile thereby were disqualified from any possible misconceived British appropriation. Even so, like its predecessor, the 1917 Letters Patent must be regarded in international law as only providing a domestic declaration of policy. Accordingly, it did not either validate or substantiate Great Britain's claims to sovereign title over these territories.

Also relevant to Great Britain's allegation of title is the fact that its claims to the Ross Dependency and Australian Antarctic

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pendencies"). Letters Patent of July 21, 1908, *supra* note 104, at para. 2. Also provided for was creation of an "Executive Council for the Dependencies," *Id.* at para. 4.

138. *Id.* at preambular para.

139. *See Antarctic Reference Map*, in CIA POLAR ATLAS, *supra* note 85, at back cover.

140. Letters Patent of Mar. 28, 1917, *supra* note 105, at 16-17.

141. *Id.* at para. 1.

Territory were asserted by Orders in Council in 1923[142] and 1933,[143] respectively. At that time, the former territory was placed under the jurisdiction of New Zealand[144] and the latter under the governor of the Commonwealth of Australia.[145] Parenthetically, it is interesting indeed to speculate on the legal complications which would be generated if Great Britain's claims to its Antarctic territories were someday adjudged by an international tribunal to have never been legally extant. In great likelihood, New Zealand's and Australia's claims to territory in Antarctica coincidentally could then become liable to challenge, and their legal status would essentially become relegated to that of adopted offspring, spawned from an illegitimate parentage.

Notwithstanding the above critique, no doubt persists that during this century the British government has evinced substantial confidence in the accepted legality of its claims in the Antarctic region. Clearly, this preeminent self-assurance was manifest in December 1947, when Great Britain offerred, though to no avail, the opportunity to Argentina (and concurrently, Chile) of adjudicating rightful title through the International Court of Justice.[146] Similarly, in April 1951[147] and again in February 1953,[148] Great Britain renewed its offer to Argentina (and Chile), but these, too, proved fruitless. Finally, in May 1955, the British government submitted a unilateral application to the Court.[149] Directed specifically at Ar-

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142. Order in Council No. 974 of 30 July 1923, New Zealand Statutory Rules and Orders 712-13 (1924), New Zealand Gazette (Wellington) Aug. 6, 1923, at 2211, *reprinted in* U.S. Naval War College, 46 INT'L L. DOCS. 236-37(1948-49).

143. Order in Council Placing Certain Territory in the Antarctic seas under the Authority of the Commonwealth of Australia — February 7, 1933, Australia, 2 Statutory Rules and Orders Revised 1034(1948), *reprinted in* Naval War College, 46 INT'L L. Docs 236(1948-49).

144. *See* Regulations for the Ross Dependency of 14 Nov. 1923, New Zealand Gazette (Wellington), Nov. 15, 1923, at 2815. But *cf.* AUBURN, *supra* note 63, at 294, who maintains that "New Zealand has not produced any evidence of the transfer of the Ross Dependency to its sovereignty since 1923."

145. Australian Antarctic Territory Acceptance Act, June 13, 1933, Act No. 8 of 1933 in Australia, 1 Commonwealth Acts 1901-1950, at 227.

146. Antarctica Cases, *supra* note 87, at 35. *See also* Note from British Ambassador Sir R. Leeper to Argentine Foreign Minister Dr. Bramuglia (Dec. 17, 1947), *reprinted in* 5 POLAR REC. 229-31(1948).

147. Antarctica Cases, *supra* note 87, at 35; Note from British Ambassador Sir H. Mack to Argentine Foreign Minister Dr. Paz (April 30, 1951), *reprinted in* 6 POLAR REC. 413-14(1952).

148. Antarctica Cases, *supra* note 87, at 35; Note from British Ambassador Sir H. Mack to Argentine Acting Foreign Minister Gen. S. Molina (Feb. 16, 1953), *reprinted in* 7 POLAR REC. 219-20(1954).

149. Antarctica Cases, *supra* note 87.

gentina (and Chile), the British Antarctica Cases Application, in relevant part, averred:

> (1) . . .;
> (2) that the legal titles of the United Kingdom to the Falkland Islands Dependencies, and in particular to the South Sandwich Islands, South Georgia, the South Orkneys, South Shetlands, Graham Land and Coats Land, are, and at all material dates have been, superior to the claims of any other State, and in particular to those of the Republic of Argentina;
> (3) that, in consequence, the pretensions of the Republic of Argentina to the South Sandwich Islands, South Georgia, the South Orkneys, South Shetlands, Graham Land and Coats Land, and her encroachments and pretended acts of sovereignty in those territories are, under international law, illegal and invalid.[150]

Not surprisingly, Argentina[151] (and Chile)[152] refused to accept the International Court's jurisdiction in the matter, and Great Britain's petition subsequently was removed from the Court's consideration.[153]

C. Concluding Observations

Great Britain's historical interest in both the South Atlantic and the Antarctic has been suitably evident, clearly ample and impressively long-standing. British subjects were among the first to discover lands in the area, as well as among the earliest and most active to explore and to chart new-found regions there. In terms of pre-1900 discovery and exploration accomplishments, then, Great Britain must rank extremely high, if not paramount, among states attracted for whatever purposes to the area.

Valid title and justifiable sovereign claims, however, under modern international law are not predicated upon discovery and exploration alone. Substantial settlement, augmented by a genuine intention to occupy the region permanently, are requisite for a state to perfect legal claim and sovereign title to territory. These essential conditions appear to be missing in Great Britain's juris-

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150. *Id.* at 37.

151. *See* Argentine Letter to the International Court of Justice (Aug. 1, 1955), *reprinted in* 8 POLAR REC. 50-51(1956) and Antarctica Cases, *supra* note 87, at 82-83.

152. *See* Chilean Letter to the International Court of Justice (July 15, 1955), *reprinted in* 8 POLAR REC. 48-50(1956) and Antarctica Cases, *supra* note 87, at 94-96.

153. 1956 ICJ Reports, at 12.

dictional performance throughout much of the South Atlantic and Antarctic lands. Admittedly, the British government has historically regarded selected parts of the Antarctic duly and legally as theirs; that government also has acted administratively since 1908, in an apparently responsible fashion that portrays a resolute, legitimate title to those territories. Nevertheless, these administrative actions presuppose the reality of a clearly recognized, uncontested British title to those lands — a fact which simply never has been acknowledged unequivocably by the international community, even up to the present day. Thus, in sum, Great Britain's claims in the Antarctic region suffer legally from three obvious shortcomings: (1) these lands never have been permanently settled; (2) consequently, they never have been effectively occupied; and (3) finally, they never have been legally recognized. When viewed within the context of contemporary international law, South Georgia, the South Shetlands, the South Sandwich Islands, the South Orkneys, and Graham's Land therefore might be regarded as *terre nullius* more so than as bona fide British territorial possessions.

IV. The Antarctic Treaty Regime, 1961-Present

A. The Antarctic Treaty

The regime presently governing activities on and around the Antarctic continent was created in 1959 by the Antarctic Treaty.[154] A diplomatic outgrowth of the 1958 International Geophysical Year,[155] the Antarctic Treaty entered into force on June 23, 1961, after ratification by all twelve signatory states. Importantly, seven of these states (*viz.*, Argentina, Australia, Chile, France, Great Britain, New Zealand and Norway) had made prior legal claims to the region;[156] the remaining five (*viz.*, Belgium, Japan, South Africa, the Soviet Union and the United States) had espoused neither claim nor the intention to declare any.[157] Significant, too, is that

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154. Antarctic Treaty, Dec. 1, 1959. 12 U.S.T. 794, T.I.A.S. No. 4780, 402 U.N.T.S. 71 (*entered into force* June 23, 1961).

155. *See generally* S. Chapman, IGY: Year of Discovery (1959).

156. For discussion, *see* Auburn, *supra* note 63, at 48-61; Bernhardt, *supra* note 65; Note, *supra* note 48; and Joyner, *supra* note 82, at 704-11.

157. *See* Auburn *supra* note 63, at 61-83. *But cf.* Burton, *New Stresses on the Antarctic Treaty: Toward International Legal Institutions Governing Antarctic Resources*, 65 Va. L. Rev. 421(1979) and Bilder, *The Present Legal and Political Situation in Antarctica*, in The New Nationalism and the Use of Common Spaces 167 (J. Charney ed. 1982) [hereinafter cited as Charney].

the treaty has functioned well since 1961, and is highly regarded as a milestone in Cold War diplomacy.

The Antarctic Treaty provides for demilitarization,[158] denuclearization,[159] and peaceful use only of the continent.[160] Moreover, freedom of scientific research, information exchange, and cooperation,[161] as well as on site inspection[162] and the obligation to settle disputes peacefully[163] were also purposefully included.

Perhaps most important for this study, however, is article IV, which relates specifically to territorial claims. This provision directs that no acts or activities occurring while the treaty is in force shall "constitute a basis for asserting, supporting, or denying a claim to territorial sovereignty," or "create any rights of territorial sovereignty" on the continent.[164] Furthermore, new claims, or enlargement of existing claims to sovereignty should not be asserted while the treaty remains in effect.[165] Finally, albeit surely not least, existing claims and interests are safeguarded by a proviso that nothing contained in the treaty should be interpreted as a "renunciation" by any party of "previously asserted rights," "claims" or "basis of claim to territorial sovereignty in the Antarctic."[166] Stated succinctly, article IV, in effect, legally froze the status quo ante of various sector claims made to Antarctic territory south of 60° South Latitude,[167] without either qualifying or clarifying the legitimacy of the claims' character under international law. Today, that precise situation persists for the overlapping set of Argentinian and British claims to the region.

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158. Antarctica Treaty, *supra* note 154, at art. I.

159. *Id.* at art. V.

160. *Id.* at art. I.

161. *Id.* at arts. II and III.

162. *Id.* at arts. VII and VIII.

163. *Id.* at art. XI.

164. *Id.* at art. IV(2).

165. *Id.*

166. *Id.* at art. IV(1).

167. Article VI sets the Treaty's applicability to "the area south of 60° South Latitude, including all ice shelves," albeit without any prejudice to "the rights, or the exercise of the rights, of any State under international law with regard to the high seas within that area." *Id.* at art. VI.

B. Potential Sources of Anglo-Argentinian Rivalry in Antarctica

The Antarctic rather aptly can be described as a vast frigid desert — in essence a windswept, barren, ice-clad wasteland.[168] Why, then, should anyone really care about activities in the region, much less about possible Anglo-Argentinian rivalries there? Undoubtedly, this is a view commonly shared by the vast majority of laymen, and indeed, by a considerable number of government policy makers as well. Even so, the answer to this query rests in the potential presence of natural resources, both living and non-living, and the prospects for their eventual commercial exploitation during the remainder of this century.

Regarding non-living resources in the Antarctic, most information concerning the availability of substantial mineral deposits is primarily geological speculation, predicated upon theoretical likelihood. That is, if the geoscientific notion popularly labeled "continental drift" is accurate — and the earth's land masses accordingly were at one time conjoined into a "super-continent" (i.e., the so-called Gondwanaland)[169] — then various minerals found in the southern portions of South America, Africa, India, Australia and several associated Pacific island chains conceivably could exist in Antarctica as well.[170] Admittedly, at present only trace findings of these minerals have been discovered.[171] Nonetheless, several studies have conjectured that, very possibly, Antarctica may contain commercially recoverable deposits of coal, copper, gold, uranium, silver, nickel, manganese, cobalt, tin, beryl, platinum, molybdenum, and phosphates.[172] In addition, great interest has also been

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168. *See supra* note 124.

169. *See* Frakes & Crowell, *The Position of Antarctica in Gondwanaland*, in RESEARCH IN THE ANTARCTIC 731 (L. Quam ed. 1971); Craddock, *Antarctica and Gondwanaland*, in POLAR RESEARCH 63 (M. McWhinnie ed. 1978); Craddock, *Antarctic Geology and Gondwanaland*, in FROZEN FUTURE 101,102 (R. Lewis & P. Smith, eds. 1973).

170. Zumberge, *Mineral Resources and Geopolitics in Antarctica*, 67 AM. SCIENTIST 68,71 (1979). Zumberge, *Potential Mineral Resource Availability and Possible Environmental Problems in Antarctica*, in Charney, *supra* note 157, at 127 [hereinafter cited as Zumberge, in Charney].

171. Zumberge, in Charney, *supra* note 157, at 125-27. Professor Zumberge rather pessimistically concludes that because of prohibitively expensive extraction costs and logistical difficulties, "[t]here is a good possibility that no mineral resources on [Antarctic] land will be mined in the foreseeable future, if ever." *Id.* at 127. *But compare* M. HOLDGATE & J. TINKER, OIL AND OTHER MINERALS IN THE ANTARCTIC (1979).

172. *See* Craddock, *Antarctic Geology and Mineral Resources*, in FRAMEWORK FOR ASSESSING ENVIRONMENTAL IMPACTS ON POSSIBLE ANTARCTIC MINERAL DEVELOPMENT, at A-7 (D.

focused on the probability that potential hydrocarbon fields are located within Antarctica's continental shelf,[173] particularly beneath the Weddell Sea.[174] As early as 1974, at least one U.S. government study reportedly suggested that as much as 45 billion barrels of oil and 115 trillion cubic feet of natural gas might potentially be found there.[175] Of special salience to this study, the Weddell Sea lies at the center of the sectorial region claimed by both Argentina and Great Britain.[176]

Similarly, with respect to living resources, the South Atlantic-Antarctic ecosystems teem with marine life. Significant stocks of seals, whales, fin fish, squid and penguins can be found in the circumpolar waters.[177] Nevertheless, the predominant creature for lucrative harvest is a small shrimp-like crustacean called krill

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Elliot ed. 1977); and International Institute for Environment and Development, *The Future of Antarctica* (Earthscan Press Briefing Doc. No. 5, 1978) *reprinted in Exploitation of Antarctic Resources & Hearings before the Subcomm. on Arms Control, Oceans, and the International Environment of the Senate Comm. on Foreign Relations*, 95th Cong. 2d Sess. 189-205(1978).

173. McIver, *Hydrocarbon Gases in Canned Core Samples from Leg 28 Sites 271, 272, and 273, Ross Sea*, in 28 INITIAL REPORTS OF THE DEEP SEA DRILLING PROJECT 815 (D. Hayes & L. Frakes eds. 1975); Splettstoesser, *Offshore Development for Oil and Gas in Antarctica*, in PROCEEDINGS OF THE FOURTH INTERNATIONAL CONFERENCE ON PORT AND OCEAN ENGINEERING UNDER ARCTIC CONDITIONS 811,813(1978); *Antarctic Resources* in *U.S. Antarctic Policy: U.S. Policy with Respect to Mineral Exploration and Exploitation in the Antarctic: Hearing Before the Subcomm. on Oceans and International Environment of the Senate Comm. on Foreign Relations*, 94th Cong., 1st Sess. 74(1975).

174. Deuser, *Lake Maracaibo and Weddell Sea: Comparison in Petroleum Geology*, 55 AM. A. OF PETROLEUM GEOLOGISTS BULL. 705,708(1971); and AUBURN, *supra* note 63, at 247.

175. Spivak, *Frozen Assets?*, Wall St. J., Feb. 21, 1974, at 1. *See also* Auburn, *Offshore Oil and Gas in Antarctica*, 22 GER. Y.B. INT'L L. 139(1977) and HOLDGATE & TINKER, *supra* note 171, at 17-19; B. MITCHELL, FROZEN STAKES: THE FUTURE OF ANTARCTIC MINERALS (1983). NOTWITHSTANDING THE LOGIC OF THESE SPECULATIONS, IT IS IMPERATIVE TO NOTE THAT AS OF 1984, "NO PETROLEUM RESOURCES ARE KNOWN IN ANTARCTICA AND THE PETROLEUM INDUSTRY IS NOT PARTICULARLY INTERESTED AT PRESENT . . . ." BEHRENDT, *Are There Petroleum Resources in Antarctica?*, in *Petroleum and Mineral Resources of Antaretica*, 3, 22 (J. Behrendt ed. 1983) (U.S. Geological Survey Circular 909).

176. *See Territorial Claims* (Map) in CIA POLAR ATLAS, *supra* note 85, at 43.

177. *See generally* U.S. DEP'T ST., FINAL ENVIRONMENTAL IMPACT STATEMENT FOR A POSSIBLE REGIME FOR CONSERVATION OF ANTARCTIC MARINE LIVING RESOURCES (1978); I. EVERSON, THE LIVING RESOURCES OF THE SOUTHERN OCEAN (U.N. Doc. UNDP/FAOGLO/SO/77/1 (1977); ANTARCTIC ECOLOGY (M. Holdgate ed. 1970); *Antarctic Living Resources Negotiations: Hearings before the National Ocean Policy Study Subcomm. of the Senate Comm. on Commerce, Science and Transportation*, 95th Cong., 2d Sess. (1978); Llano, *Ecology of the Southern Ocean Region*, 33 U. MIAMI L. REV. 357(1978); Scully, *The Marine Living Resources of the Southern Ocean*, 33 U. MIAMI L. REV. 341(1978); B. MITCHELL & J. TINKER, ANTARCTICA AND ITS RESOURCES (1980); B. MITCHELL & R. SANDBROOK, THE MANAGEMENT OF THE SOUTHERN OCEAN (1980).

(*Euphasia superba*).[178] With authoritative projections for annual harvests approaching 100 million metric tons,[179] krill supplies would contribute a great deal towards satiating the world's burgeoning demand for more protein.[180] The realization that the most extensive krill concentrations swarm around certain circumpolar island formations, namely, Bouvet Island, the South Shetlands, the South Orkneys, South Georgia, and the South Sandwich congregation is of critical relevance here.[181] Save for Bouvet (which is claimed extensively by Norway), the other island groups are claimed jointly, and as aforementioned, contentiously, by both Argentina and Great Britain.[182] In sum, Antarctica's resource base, though at present precisely indeterminate, is, arguably, believed to be potentially superabundant. Relatedly, due to harsh environmental conditions, attendant difficulties of technological access and extraction, and high operational costs, these resources remain literally entrapped and undeveloped.[183] Finally, it is worth noting that a significant amount of Antarctica's natural resources are situated seaward from the South Pole at 25° through 75° West Longitude, north to 60° South Latitude — virtually coincident to the disputed territories historically and legally claimed by both Argentina and Great Britain.[184] The point here looms curt and blunt: Should exploitation of Antarctica's living and/or non-living natural resources eventually become commercially profitable, the stakes of Anglo-Argentinian rivalry in the region could rise accordingly. Interestingly enough, in 1982, serious intimations were reported that suspected petroleum deposits offshore the Falkland Islands might

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178. *See generally* G. GRANTHAM, THE UTILIZATION OF KRILL (1977); K. GREEN, ROLE OF KRILL IN THE ANTARCTIC MARINE ECOSYSTEM (1977); TETRA TECH., THE ANTARCTIC KRILL RESOURCE: PROSPECTS FOR COMMERCIAL EXPLOITATION (1978).

179. TETRA TECH. *supra* note 178, at 121; Mitchell, *The Politics of Antarctica*, 22 ENVIRONMENT 12,13(1980).

180. *See* AUBURN, *supra* note 63, at 205-08.

181. *See Major Concentration of Krill* (Map), in CIA POLAR ATLAS, *supra* note 85, at 54; and AUBURN *supra* note 63, at 216-24 ("Krill: Sovereignty").

182. *See supra* the discussion at notes 146-53. Significantly, however, the threat of impending large scale exploitation during the 1970s motivated the Antarctic Treaty Consultative Parties (*see infra* notes 190-98) to conclude a Convention on the Conservation of Antarctic Marine Living Resources, *done* May 20, 1980 at Canberra. *Reprinted in* 19 I.L.M. 841-59 (1980), entered into force April 7, 1982 [hereinafter cited as Marine Living Resources Convention].

183. Pontecorvo, *The Economics of the Resources of Antarctica*, in Charney, *supra* note 157, at 155-65; Zumberge, in Charney, *supra* note 170, at 145-47.

184. *See Known Mineral Occurrences* (Map), in CIA POLAR ATLAS, *supra* note 85, at 57. *See also* Joyner, *Antarctica and the Law of the Sea: An Introductory Overview*, 13 OCEAN DEV. & INT'L L. 277 (1983).

have played a significant role in precipitating the Falklands Islands crisis.[185]

Granting this resource base, if past national behavior is any prologue to future international relations, the unraveling of Anglo-Argentinian rivalry over Antarctic natural resources would not come as any great surprise. Indeed, given their rather protracted, highly sensitive territorial dispute over South Atlantic and Antarctic territories, patently exacerbated by the recent Falkland Islands military conflict,[186] some casual commentators might regard such a British-Argentine confrontation as logically being inevitable in the near future.[187] Nonetheless, for the foreseeable term, such a resource competition-war scenario involving Great Britain and Argentina seems quite unlikely to occur. Obviously, deterring such a conflict situation is the continued, surfeit availability of relatively inexpensive mineral commodities, hydrocarbons, and fishery protein from traditional, non-Antarctic sources.[188] Additionally, the stark inaccessibility of Antarctic resources, complicated by the harsh physical environment, in combination make present commercial exploitation of the region economically unattractive, and will likely continue to do so throughout the rest of this century.[189] Yet, perhaps paramount in dissuading Anglo-Argentinian resource competition in the circumpolar region is the political character of the contemporary Antarctic Treaty regime and the respective roles each government has assumed in maintaining it. The study now turns to examine this consideration.

C. The Consultative Party Mechanism

The consultative party system is integral to sustaining Anglo-Argentinian peaceful co-existence in the Southern Ocean, as well

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185. Anderson, *Argentina Eyes Antarctica Too*, Washington Post, Apr. 12, 1982, at 15. *See also* ECONOMIST INTELLIGENCE UNIT, ECONOMIC SURVEY OF THE FALKLAND ISLANDS (1976); and *The Shackleton Incident Could Profit International Law*, 259 NATURE 435 (1976).

186. *See supra* the sources in note 1.

187. *See* Anderson, *supra* note 185; *Malvinas recovery seen as a way to Reaffirm South Pole Region*, La Prensa (Buenos Aires), Apr. 6, 1982; The Economist, June 12, 1982, at 13. *Compare* Beck, *Britain's Antarctic Dimension*, 59 INT'L AFF. 429 (1983) and Van Sant Hall, *Argentine Policy Motivations in the Falklands War and the Aftermath*, 34 NAVAL WAR L. REV. 21 (1983).

188. *See* Pontecorvo, *supra* note 183.

189. Zumberge in Charney, *supra* note 170, at 127. *See also* Joyner, *Oceanic Pollution and the Southern Ocean: Rethinking the International Legal Implications for Antarctica*, 24 NAT. RESOURCES J. (1984); Boczek, *The Protection of the Antarctica Ecosystem: A Study in International Environmental Law*, 13 OCEAN DEV. & INT'L L. 347 (1983).

as the Antarctic Treaty regime's operation in general. As provided for in article IX of the Treaty,[190] the Consultative Party group is comprised of the twelve original parties to the Treaty,[191] plus four new entrants, Poland in 1977,[192] the Federal Republic of Germany in 1981[193] and both Brazil and India in September 1983.[194] The Consultative Parties meet biennially to hammer out regional policies, which are arrived at through consensus in the form of "recommendations".[195] To the extent one is evinced, the Antarctic Consultative Party Group serves as the governing body for the Treaty regime.[196] Of note is the fact that Argentina and Great Britain are both principal actors in this consultative process.

Both Argentina and Great Britain have enjoyed Consultative Party status since the Treaty's entry into force in 1961, and together they have participated regularly and actively—even during

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190. Antarctic Treaty, *supra* note 154, at art. IX.

191. *Id.* at art IX(1) (Referring to "the Contracting Parties named in the preamble to the present Treaty," viz., "The Governments of Argentina, Australia, Belgium, Chile, the French Republic, Japan, New Zealand, Norway, the Union of South Africa, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. . . .").

192. Final Report of the First Special Antarctic Treaty Consultative Meeting, Doc. ANT/SCM/6 (London, July 29, 1977), *reprinted in* 1 ANTARCTICA & INT'L L., *supra* note 17, at 331-33.

193. Final Report of the Third Special Antarctic Treaty Consultative Meeting (Buenos Aires, March 3, 1981), Doc. ANT(81) IIIRCE/2, *reprinted in* 1 ANTARCTICA & INT'L L., *supra* note 17, at 432-33.

194. International Institute for Environment and Development, Up-Date on Antarctic Development-1983 (Oct. 17, 1983)(mimeo).

195. As provided for in article IX of the Treaty. Specifically, article IX designates consultations and recommendations by the Consultative Parties on measures regarding:

(a) use of Antarctica for peaceful purposes only;
(b) facilitation of scientific research in Antarctica;
(c) facilitation of international scientific co-operation in Antarctica;
(d) facilitation of the exercise of the rights of inspection provided for in Article VII of the Treaty;
(e) questions relating to the exercise of jurisdiction in Antarctica;
(f) preservation and conservation of living resources in Antarctica.

Antarctic Treaty, *supra* note 154, at art. IX(1)(a-f). A compilation of the Consultative Parties' first 118 recommendations through 1978 is found in U.S. DEP'T ST., HANDBOOK OF MEASURES IN FURTHERANCE OF THE PRINCIPLES AND OBJECTIVES OF THE ANTARCTIC TREATY (2d ed. 1979). The subsequent 12 recommendations are found in *Report and Recommendations of the Tenth Antarctic Treaty Consultative Meeting* (Washington, D.C. Sept. 17-Oct. 5, 1979), Doc. ANT/X/49 (Rev. 1 of 5 Oct. 1979), *reprinted in* 20 POLAR REC. 88-99(1980); *Report and Recommendations of the Eleventh Antarctic Treaty Consultative Meeting* (Buenos Aires, June 23-July 7, 1981), Doc. ANT/XI/34/Add. 1, *reprinted in* 20 POLAR REC. 590-93(1981). For discussion, *see* AUBURN, *supra* note 63, at 165-70.

196. *See* Guyer, *The Antarctic System*, 139 REC. DES COURS 149(1973); and AUBURN, *supra* note 63, at 147-83.

the 1982 Falklands conflict[197] — to fashion policy recommendations under the Treaty's auspices.[198] Importantly, moreover, present indications suggest that they will continue to convene jointly and cooperate together in Consultative Party negotiations,[199] in spite of the vehement territorial dispute in the area that has clouded Anglo-Argentinian relations for over a century.

Given the climate of discord, especially in the aftermath of the Falklands War, one is prompted to speculate why either Argentina or Great Britain should continue to sit down with each other at the same negotiating table and participate in discussions aimed at effecting oversight policies for territories which they both claim as legally being their own. The answer to this seemingly paradoxical conundrum is found, simply, in political pragmatism: the current Consultative Party system serves both Argentina's and Great Britain's national interests in the region better than no formal regime at all. Perhaps even more telling, the present system appears to them far more preferable than other conceivable alternative regimes.[200] Very likely, included among these less desirable options would be internationalization of the Antarctic into a portion of "the Common Heritage of Mankind;"[201] transition of the region into a trusteeship territory under the United Nations' aegis;[202] or, even permitting the continent to be declared *terra nullius*, and thereby opened to national claim and unrestricted exploitation by any or all states.[203]

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197. Report of the First Session of the Special Consultative Meeting on Antarctic Mineral Resources (Wellington, June 14-15, 1982), Doc. AMR/SCM/21/Rev. 1/Corr. 1, at 1(1982); Shapley, *Antarctica: Up for Grabs*, 211 SCI. 75 (Nov. 1982).

198. *See supra* note 195. Among recent accomplishments of the Antarctic Treaty Consultative Parties was the promulgation of a special multilateral accord, The Convention on the Conservation of Antarctic Marine Living Resources, in 1980, which entered into force in April 1982. For discussion, *see* Frank, *The Convention on the Conservation of Antarctic Marine Living Resources*, 13 OCEAN DEV. & INT'L L. 291 (1983).

199. *See* L. Kimball, Report on Antarctic Events; 1983, prepared for the International Institute for Environment and Development (June, 1983).

200. *See* Joyner, *Antarctica and the Law of the Sea: Rethinking the Current Legal Dilemmas*, 18 SAN DIEGO L. REV. 415,435(1981).

201. *Id.* at 439; Joyner, *supra* note 82, at 722. *Also see* Larschan & Brennan, *The Common Heritage of Mankind Principle in International Law*, 21 COLUM. J. TRANSNAT'L L. 305,331-34(1983).

202. Joyner, *supra* note 200, at 438. *Cf.* Barnes, *The Emerging Convention on the Conservation of Antarctic Marine Living Resources: An Attempt to Meet the New Realities of Resource Exploitation in the Southern Ocean*, in Charney, *supra* note 157, at 239,269.

203. The prospects for such a *terra nullius* scenario occurring seem virtually nil, given that (a) at least seven states now formally claim title to territory in the Antarctic area and (b) natural resources may exist there in commercially exploitable quantities. *But compare*

Thus, Argentina and Great Britain, for the time being, appear politically willing and governmentally content with the status quo situation operative under the Treaty regime. They each reap full diplomatic benefits of Consultative Party status (i.e., priority assessment, policy input and direction, representative voice and concensus vote)[204] without incurring ostensible risks or costs associated with open bilateral disputes. Further, they are each members of a relatively small decision-making body (of sixteen) who have self-assumed legal responsibility for political and environmental husbandry over the Antarctic.[205] This status, in itself, conveys a certain international clout, particularly in realizing that the vast majority of the world community remains estranged from ever gaining — or even seeking to attain — Consultative Party membership.[206] The ultimate consequence is that for the remainder of the 1980s, both Argentina and Great Britain are likely to perceive greater political liabilities to their respective Antarctic-related claims absent the present Treaty regime. Past exploration investments, declarations of title, and strategic considerations notwith-

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Rose, *Antarctic Condominium: Building a New Legal Order for Commercial Interests*, MARINE TECH. SOC'Y J. 19 (1976) and Joyner, *supra* note 82, at 721.

204. Antarctic Treaty, *supra* note 154, at art. IX.

205. This self-assertion appears evident by the Consultative Parties' concerted unilateral negotiation of the Marine Living Resources Convention, *supra* note 182, as well as their more recent attention to a future regional minerals regime. *See* Colson, *The Antarctic Treaty System: The Mineral Issue*, 12 L. & POLICY IN INT'L BUS. 841(1980); Charney, *Future Strategies for an Antarctic Mineral Resource Regime — Can the Environment Be Protected?*, in Charney, *supra* note 157, at 206; and AUBURN, *supra* note 63, at 241-67.

206. *See* Auburn, *Consultative Status under the Antarctic Treaty*, 28 INT'L & COMP. L.Q. 514 (1979). Professor Auburn has observed elsewhere that

> [t]here is no indication that the Consultative Parties may be willing to relinquish their monopoly of Antarctic decision-making; if anything, the trend is in the opposite direction. Resource regimes have been negotiated in detail, and although the two Conferences held so far, for seals and living resources, have been outside the Treaty framework the draft articles previously prepared by the Consultative Parties have been insisted upon in all vital respects. Maintenance of control by the Antarctic Treaty countries is ensured by the narrow limits on invitations to third parties and the assertion of a veto over the admission of such nations to the equivalent of Consultative status under the new regime.

AUBURN, *supra* note 63, at 292. More recently, however, Lee Kimball has posited she detects the unfolding of a " 'gradualist' approach" by the Consultative Parties to expand outside observer participation in and documents availability from Consultative Meetings. Kimball, *supra* note 199, at 11. Relatedly, the United Nations has recently acquired an interest in Antarctica's legal status and the future exploitation of its resources, ostensibly with a view towards considering the region a portion of "the common heritage of mankind." *See* Berlin, *U.N. Launches Debate on Antarctia*, Washington Post, Dec. 1, 1983, at A33, Col. 1. It seems safe to assume that neither Argentina nor Great Britain would favor such a radical change from the current Antarctic Treaty regime.

standing, the Consultative Party process today is deemed more palatable by Argentina and Great Britain than other imaginable schemes; and, barring some dramatically unsettling political development, this pragmatic attitude seems unlikely to change before the Treaty becomes eligible for review in 1991.[207] In short, the Consultative Party process remains the strongest administrative cement sustaining pacific Anglo-Argentinian coexistence in the Antarctic. In so doing, it concomitantly has worked to ameliorate nationalistic tensions and antipathies over disputed territories, albeit at the cost of leaving those claims' status in legal limbo.

V. Conclusion

The Falkland Islands War in 1982, clearly highlighted the "volatility" and tensions between Argentina and Great Britain over the South Atlantic territories. Coincident with this fact, however, the realization that Anglo-Argentinian rivalry in the region supercedes the realm of the Falklands/Malvinas archipelago also surfaced. In actuality, this conflict revealed that the dispute reaches farther into the Southern Ocean to encompass the islands of South Georgia, the South Orkneys, the South Shetlands, the South Sandwich group, as well as a substantial segment of Antarctica. Salient, too, in this connection, is that Anglo-Argentinian rivalry is neither of recent vintage nor of fleeting duration. Historically, it has been protracted, steadfast, and intransigent, as well as ultranationalistic, vituperative, and at times, militarily confrontational. Stated forthrightly, the seeds for future conflict between Argentina and Great Britain may have been sown in Antarctica's frozen turf.

Respective to international law, both Argentina and Great Britain have each purposively designed legal arguments substantiating their claims to sovereign title over selected territories in the region. Even so, this study must conclude that neither argument is sufficiently compelling or definitively convincing to warrant the award of clear and unequivocal title to either party. Indeed, given the politico-legal arrangement for the Antarctic operating during the past two decades, both Argentina and Great Britain appear willing to accept the status quo situation and forego pressing the legitimacy of their own claims. To do contrariwise, it should be noted, could likely unravel the Antarctic Treaty regime and

207. *Accord*, Antarctic Treaty, *supra* note 154, at art. XII 2(a).

thereby denigrate the quasi-privileged Consultative Party status each state now enjoys.

In the final analysis, the Falkland Islands War of 1982 manifestly revealed that, at least for Argentina and Great Britain, lands in the South Atlantic are worth expending a considerable measure of military, economic, diplomatic, and human capital. For the foreseeable future, it seems safe to posit that equivalent stakes probably will not be attached either by Argentina or Great Britain to Antarctica and its indigenous resources. Nevertheless, one abiding observation also seems certain: as worldwide industrialization proceeds and burgeoning population growth persists, finite natural resources will dwindle; consequently, commercial interest in exploiting Antarctica's resource potential will, most likely appreciate accordingly, not only by Argentina and Great Britain, but also by the international community as a whole. Cognizant of the sensitive historical antipathy and the professed vested interests in the Antarctic area, one cannot help but wonder in what ways Argentina and Great Britain will respond to that eventual situation. Whatever emanates as their reaction, it should undeniably greatly affect any future opportunities for exploitation in the Southern Ocean. More importantly, it will signal realistic prospects for geopolitical conflict or peaceful legal accommodation over the cold continent. Hopefully, the diplomatic road traveled by Anglo-Argentinian dealings will prove to follow the latter course.