



Argentina and the Falkland Islands

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This Note looks briefly at the government in Argentina under Cristina Fernandez de Kirchner, who has pursued the Argentinean claim to sovereignty of the Falkland Islands as a constitutional mandate.

The arguments on the Argentinean and British sides have not changed with a change of government, while recent developments such as changes to the way in which fishing licences are issued and oil exploration around the Falklands, are continuing to affect bilateral relations.

The Falklands/Malvinas are regularly debated at the United Nations Committee on Decolonization, at which a resolution is adopted calling on the two sides to talk about the issues.

Successive UK governments have insisted that it is the Falkland Islanders themselves who have the right to decide on their destiny. Argentina maintains that the UN principle of the right to self-determination does not apply in the case of the Falklanders. Both the UK and Argentina accuse each other of colonialism.

See Standard Note 6201 for information on the defence of the Falklands.

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1 The Argentinean Government

The Kirchners belonged to Argentina's Peronist party, which they developed into their own brand of left-wing populism, known as 'Kirchnerism'. It tends towards nationalism, emphasises increased public spending and is against foreign capital. 'Kirchnerism' is similar to the classic 'Peronism' of the late 1940s and early 1950s, and has also been criticised for being authoritarian. Nestor Kirchner died in October 2010, while Cristina Kirchner was re-elected in October 2011.

1.1 Néstor Kirchner Government

Néstor Kirchner, a left-wing Peronist from the Justicialist Party, won presidential elections in April 2003. With a weak and divided opposition in Congress, he was described at the time as the most powerful Argentinean president since the end of military rule in 1983. Néstor Kirchner was also one of the most popular, according to opinion polls, and in Congressional elections in late 2005 he consolidated his 2003 election victory. The Justicialist Party had broken up and his "Front for Victory" (FpV) party won 69 seats (54% of those contested). Managing Argentina's foreign debt crisis and ensuring the support of the International Monetary Fund (IMF) were his key challenges. Under President Kirchner Argentina saw economic growth and a restructuring of the national debt. In January 2006 Argentina repaid its \$84 million debt to the IMF. Human rights were also high on the agenda and the Kirchner government overturned amnesty laws for military officers accused of rights abuses under military rule in the 1970 and 80s.

For President Néstor Kirchner, as for previous Argentinean presidents, the recovery of the Falklands was Argentine state policy and a constitutional mandate. In November 2003, shortly after taking office, President Kirchner withdrew permission for charter flights to the Falklands to overfly Argentine airspace, and afterwards the Argentine Government indicated that it could not make progress on this and other issues, unless it was linked to progress towards sovereignty negotiations. Néstor Kirchner suspended Argentina's earlier policy of automatic alignment with the US and sought closer relations with other Latin American countries. For example, at the UN Argentina no longer supported the UN Commission on Human Rights' annual resolution criticising Cuba, but decided instead to abstain.

In his state of the nation address in March 2006, President Kirchner emphasised that his government had "unwaveringly upheld our claims of sovereignty over the Malvinas, South Georgia and South Sandwich Islands as well as their surrounding areas."¹ In April 2006 President Kirchner marked the anniversary of the start of the Falklands war by maintaining that the Islands "must be a national objective of all Argentines, and with dialogue, diplomacy and peace we must recover them for our homeland". This, he said, did "not mean we have to live with our head bowed."² He also described Argentina's invasion of the Falkland Islands as "a crime committed by a cowardly military dictatorship" and went on to criticise the former government's motives.³

On 11 July 2006 the deputy chairman of the Argentinean Senate Foreign Relations Committee, Rodolfo Terragno, was reported in the Argentinean press (*Telam*) to have described as a "farce" the British claim that Falkland Islanders have the right to self-determination. He cited 1983 and 2000 British legislation recognising Falklands residents as British subjects and accused the British Government of taking refuge behind the principle of self-determination "in support of its decision to disregard the mandate of international organisations, which have urged it to resume talks with Argentina about the sovereignty of the Falkland Islands".⁴ Terragno said that in 2005 Argentina had submitted 15 notes of protest to the UK, rejecting what it described as "illegitimate acts in the Malvinas" (which included surveying for hydrocarbons and granting licences for the exploration and exploitation of minerals). He condemned the continued military presence and upgrading of the British military base. He also blamed the UK Government for the failure to establish direct scheduled air services between the Islands and the Argentine mainland, which, he claimed, Argentina had proposed three years earlier.

At the end of June 2006 the Argentine Parliament established a special commission, the Congressional Observatory, to address the issue of reclaiming sovereignty of the Falkland Islands. The Observatory has a fourteen member council, seven Congress members representing the range of political parties and seven academics, together with an honorary Council comprising Malvinas experts, former diplomats and officials. It was headed by Jorge Arguello (now Argentina's Ambassador to the UN), the chairman of the Lower House Foreign Affairs Committee. According to the Argentine Foreign Ministry, its tasks were to gather viewpoints and multiply scenarios through liaising with foreign governments on the issue of the Falkland Islands, although elsewhere it was believed that the group's remit was to build Argentina's case for the Falklands and to promote it abroad. The *Guardian* reported that British Government officials were "privately dismissive" of the new body, "seeing the sudden renewed interest in the islands as little more than a piece of political cynicism, motivated by Mr Kirchner's drive for re-election next year".⁵ At the beginning of August 2006 the Congressional Observatory issued its first report, entitled *The Fallacy of Self-Determination*, which built on the theory already put forward by the Argentine Government at the UN that Britain was not entitled to claim the self-determination principle in the Islands, since the population was "implanted".⁶ The report based its conclusion on Falkland Island census

¹ *BBC Monitoring Latin America*, 5 March 2006

² *The Guardian* 1 July 2006

³ *The Independent* 3 April 2006

⁴ *BBC Monitoring Latin America – Political, BBC Worldwide Monitoring*, 12 July 2006

⁵ *The Guardian* 1 July 2006

⁶ <http://www.mercopress.com/Detalle.asp?NUM=8439>

figures from 2001, which suggested that the local population did not originate from the Islands and therefore did not have a right to decide on the territory's sovereignty.⁷

Opening the 125th legislature in a joint session of the two Congressional Houses, President Kirchner set the tone for 2007, saying that Argentina would not yield its "legitimate aspiration of recovering" the Falklands/Malvinas through peaceful means, and that this would be one of the main foreign policy issues in 2007, as it had been in 2006.⁸ In January 2007 the *Washington Post* reported that "President Nestor Kirchner's government in the past year has issued official complaints concerning rights to the islands at a rate of more than one per month".⁹ In February 2007 the Argentinean Government rejected a UK invitation for a joint commemoration to honour the dead on both sides of the 1982 conflict. The Argentinean response was that the invitation was in the framework of the UK's 25th Falklands anniversary victory celebrations, and both countries organised separate anniversary ceremonies to remember the conflict.

1.2 Cristina Fernández de Kirchner Government

In October 2007 Cristina Fernández de Kirchner¹⁰ of the centre-left FpV, wife of the outgoing late President, Néstor Kirchner, won presidential elections with 45% of the vote, enough to avoid a run-off. On 10 December 2007 Ms Fernández became Argentina's first elected female head of state (Isabel Perón was not elected and Eva Perón, 'Evita', did not hold formal office).

Her honeymoon period was brief, as she faced several immediate challenges, including energy shortages and inflation pressure. She had the support of the political alliance that her husband had built up and on 14 May 2008 Néstor Kirchner became the leader of the *Partido Justicialista* (PJ). It was thought this would boost the Kirchners' position in Congress, where the opposition was weak and divided.

Argentina held mid-term elections on 28 June 2009 (brought forward from 25 October 2009), when half the 256 seats in the Chamber of Deputies and a third of the 72 seats in the Senate were contested. The ruling FpV lost its absolute majority in both houses of Congress, losing a further 24 seats in the Lower House and four in the Senate. Nestor Kirchner lost his bid for a seat in the Lower House in the province of Buenos Aires to a dissident Peronist businessman, Francisco de Narvaez. The FpV narrowly won overall but opposition coalitions were strengthened, particularly the centre-right *Unión Pro*, the centre-left Civic Coalition and the left-wing *Proyecto Sur*. The new seats were taken up on 11 December 2009. The *Economist* reported:

- In a mid-term election on June 28th not only did the first couple lose those majorities but they also lost the political dominance they have exercised over Argentina since 2003. They show few immediate signs of heeding the demand for change.

⁷ The report points out that, according to the 2001 Falklands census, of the total 2,971 inhabitants, 48% were born in Great Britain or Commonwealth members and only 45% originate from the Islands. The remaining 7% were born in third countries. 57% of the population has been 'implanted' with over ten years residence.

⁸ *Mercopress* 2 March 2007 at: <http://www.falkland-malvinas.com/vernoticia.do?id=9980&formato=HTML> and <http://www.presidencia.gov.ar/>.

⁹ "Falkland Islands: an Unsettled Issue 25 Years After War", *Washington Post*, 8 January 2007 at http://www.washingtonpost.com/wp-dyn/content/article/2007/01/07/AR2007010700938_pf.html

¹⁰ See BBC profile at <http://news.bbc.co.uk/1/hi/world/americas/6260752.stm>

- In the lower house, where half the seats were in play, the Kirchners' supporters now have just 115 of the 257 seats. They lost three seats in the Senate, which is now evenly balanced. Across the country, their vote sank to around 30% in an election that Mr Kirchner had framed as a referendum on the first couple's leftist, populist version of Peronism. He stood himself in Buenos Aires province, where nearly 40% of Argentines live, but came second, beaten by a group of dissident, centrist Peronists headed by Francisco de Narváez, a wealthy businessman.
- There were other hugely symbolic defeats, such as in Santa Cruz, the Patagonian province where Mr Kirchner was governor before he became president. Ms Fernández sought solace in the performance of Fernando Solanas, a leftist filmmaker, whose new grouping came second in the capital district, winning 24% (though he campaigned as an opponent). The opposition is split into two broad blocks—the Peronist right and the Radicals, each with rival leaders. But both are now much stronger.¹¹

Argentina held presidential and legislative elections on 23 October 2011. Argentina has a bicameral National Congress comprising the Senate (Senado) with 72 seats and the Chamber of Deputies (Cámara de Diputados) with 257 seats. A third of the Senate is renewable every two years and a half of the Chamber of Deputies is renewable every two years.

The Kirchnerist FPV party regained the majority in Congress which it had lost in 2009. In the presidential elections Cristina Fernández de Kirchner was re-elected as Argentina's President with nearly 54% of the vote. She had campaigned largely on the basis of her late husband Nestor Kirchner's record of reducing poverty and unemployment following the 2001-2002 economic crisis. However, soon after being elected, her popularity dropped to 20% as a result of disputes with farmers and media groups.

Cristina Kirchner did not present detailed economic plans in her election campaign, but later said she would continue with the existing policy mix. The previous Kirchner Government tried to boost short-term growth and employment by applying expansionary fiscal and monetary policies and frequently resorted to ad hoc interventions. Many economists believe this would be unsustainable in the longer term.

The [Economist Intelligence Unit](#) commented on the Argentinean economy 1 November 2011:

The main challenge confronting the government is the deterioration of global economic conditions. Growth has been boosted in recent years by record-high agricultural commodity prices (particularly soya, Argentina's main crop) and booming demand in Brazil and China, the country's main trading partners. Combined with distortions created by the government's hugely expansionary fiscal and monetary policies, doubts about the commodity price trajectory and about demand in Brazil and China are raising speculation over some types of economic adjustment with the potential to generate new social conflicts and complicate policymaking straight away in Ms Fernández's second term. The government's initial response to the global downturn was to deny that it would affect the Argentinian economy (with the president using the much-debated phrase "Argentina está blindada", or "Argentina is shielded", from the crisis). The cabinet chief, Aníbal Fernández, was later forced to recognise that the economy is vulnerable to external shocks. However, there have not as yet

¹¹ 2 July 2009 at http://www.economist.com/displayStory.cfm?story_id=13961653

been any signals as to how precisely the government intends to respond to the worsening global situation (although the Economist Intelligence Unit expects some currency weakening, as well as some fiscal adjustment, in an attempt to rein in inflation).

2 UK relations with Argentina

The UK's relations with Argentina have been affected since the 1980s by the sovereignty dispute and conflict over the Falkland Islands, subsequent oil exploration and fisheries issues. Notwithstanding the Falklands issue, historically, Britain and Argentina have had good cultural, trade and business relations. The FCO has summarised the UK's historical and more recent relations as follows:

- Argentina has long historic links with the UK. British companies played a vital role in Argentina's commercial development during the 19th century. The railways, food processing plant and many of the financial services were developed and managed by British firms. A wide range of UK manufactured goods was exported to Argentina and the UK in turn was a major destination for Argentine products.
- Diplomatic relations were restored in 1990 after an 8-year gap following the Falklands conflict. In 2007, the 25th anniversary of the conflict was commemorated with events in London and Stanley as well as in Argentina. Since 1990, South Atlantic issues have been discussed with the Argentine Government under a 'sovereignty umbrella' arrangement, which allows the UK and Argentina to protect their respective positions on sovereignty while seeking to make progress on practical matters of common interest such as fisheries and de-mining. The British Government's position is that there will be no negotiations over sovereignty unless and until that is the wish of the Islanders themselves. We remain committed to the right of the Falkland Islanders to determine their own future. The islands will be British for as long as their inhabitants wish to remain so.¹²

Giving evidence to the Trade and Industry Committee in May 2007, the Argentinean Ambassador to the UK outlined UK-Argentine relations as follows:

- Argentina shares two centuries of fruitful and strong cultural cooperation and economic links with the United Kingdom. Since mid-nineteen century to mid-twentieth century British investments and bilateral trade with Argentina were very significant. Only as an example it is worth to remember that most of the 40,000 kilometres net of Argentine railways was built and operated by British companies. Banking and Agriculture were also sectors with deep British influence. In 1943, during the Second World War, 70% of British import of linen came from Argentina, as well as 14% of wheat, 29% of preserved beef and 35% of leather.
- As for 1990, relevant British firms have invested in Argentina, with a slowdown due to the economic crisis. The following are some of the British firms which have invested in that period and are currently operating in Argentina: BG; Shell; BP; Cadbury Schweppes Plc.; Ladbroke Group International; BAE Systems; Knight Piesold Ltd; Unilever; Tesco; Diageo; Anglian Water International; United Utilities; Glaxo Wellcome Plc.; Halcrow

¹² <http://www.fco.gov.uk/en/about-the-fco/country-profiles/south-america/argentina/?profile=all>

Holdings Ltd; ICI; HSBC; Rio Tinto; P&O, Sea Containers; BAT Industries Plc.; Clear Channel International; Mersey Docks & Harbour.

- Since the economic crisis British exports to Argentina, in particular of capital goods, and Argentine exports to the UK have been steadily increasing. Argentine exports to the UK are mainly agri-food products but also some industrial products, like machinery, steel products, cosmetics, glassware, rubber, etc. It is expected that bilateral trade will be, in 2006, near its highest level since 1990.
- Argentina and the United Kingdom have signed recently several bilateral agreements with the purpose to foster cooperation, trade and investments.
- Bilateral economic agreements
- Agreement for the Promotion and Protection of Investments (1990).
- Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital (1996).
- UK/Argentina Partnership, Action Agenda (1998).
- Memorandum of Understanding on Cooperation on Trade and Investments (1998).
- Inter-Institutional Memorandum of Understanding on Co-operation in the Transport Sector (1998).
- Notwithstanding, recent British investments in Argentina, in relative terms, are behind those of Spain, France, Germany, Italy and Netherlands, whose business are actively engaged, including through increased high level official visits to Argentina, in taking advantage of the very favourable economic conditions and future prospects. In that context it would be beneficiary for both, the bilateral relation and British businesses to see a more active support of UKTI, including through business missions to Argentina.¹³

¹³ Ev 50 at <http://www.parliament.the-stationery-office.com/pa/cm200607/cmselect/cmtrdind/208/208ii.pdf>

3 The Falkland Islands



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3.1 UK Government's position on Falklands sovereignty

The UK Government's position on sovereignty of the Falklands has traditionally been as follows:

The British Government has no doubt about Britain's sovereignty over the Falkland Islands. With the exception of the 2 months of illegal occupation in 1982, the Falklands have been continuously, peacefully and effectively inhabited and administered by Britain since 1833. Argentina's claim to the Falklands is based on the grounds that, at the time of British repossession of the Islands in 1833, Argentina had sovereignty over them through her inheritance, upon independence, of Spain's possessory title (*uti possedetis*), through her attempts to settle the Islands between 1826 and 1833, and through the concept of territorial contiguity. However, *uti possedetis* is not accepted as a general principle of international law. Moreover Spain's title to the Islands was disputed and in 1811 the Spanish settlement was evacuated, leaving the Islands without inhabitants or any form of government. Argentina's subsequent attempts at settlement were sporadic and ineffectual. As for territorial contiguity, this has never been a determinant for title to islands (otherwise the Canary Islands, for example, might be Moroccan) and should not be used to overrule the right of self-determination. The Argentine Government has argued that the Falkland Islanders do not enjoy the right of self-determination, on the (false) basis that they replaced an indigenous Argentine population expelled by force. However there was no indigenous or settled population on the Islands until British settlement.

The people who live in the Falklands now are not a transitory population. Many can trace their origins in the Islands back to the early 19th century. Britain is committed to defend their right to choose their own future. The Islanders are fully entitled to enjoy the right of self-determination. It is a right which cannot be applied selectively or be open to negotiation, and one which is recognised in

¹⁴ Source: Wikimedia at http://commons.wikimedia.org/wiki/Atlas_of_Falkland_Islands#Notes_and_references

the UN Charter and the International Covenant on Civil and Political Rights. Self-determination does not necessarily mean independence. Britain has willingly granted independence where it has been requested, and will continue to do so where it is an option, while remaining committed to those of its Overseas Territories which choose to retain the British connection. In exercise of their right of self-determination, the Falkland Islanders have repeatedly made known their wish to remain British. An Argentine-inspired poll, conducted in 1994, revealed that 87% of them would be against any form of discussion with Argentina over sovereignty, under any circumstances.

In 1960 the United Nations General Assembly adopted its Declaration of the Granting of Independence to Colonial Countries and Peoples (GAR 1514). A committee was set up to oversee implementation of this resolution. This Committee, which became known as the Committee of Twenty-four, considered the question of the Falklands for the first time in 1964. Following its recommendations, the General Assembly adopted Resolution 2065 in 1965. The Resolution invited the British and Argentine Governments to begin negotiations 'with a view to finding a peaceful solution to the problem, bearing in mind the provisions and objectives of the UN Charter and of GAR 1514 and the interests of the population of the Falkland Islands (Malvinas).' During 1967 and 1968 Britain entered into negotiations with Argentina based on a willingness to transfer sovereignty. Although the British Government had no doubt about British sovereignty of the Falklands, they were concerned by the difficulty of defending the Islands, and by the threat to the Islands' economy from declining world demand for wool and from their isolation without links to the mainland. However, Britain maintained throughout that any transfer of sovereignty must be subject to the wishes of the Islanders. It was on this issue that negotiations foundered.

After the 1982 conflict, Britain sought ways to restore normal relations with Argentina while upholding her commitment to the Falkland Islanders. Diplomatic relations were re-established in February 1990, less than a year after Dr Carlos Menem was elected President of Argentina. The resumption of links followed a series of talks in Madrid, in which the two sides agreed a formula to protect their respective positions on sovereignty and maritime jurisdiction over the Falkland Islands, South Georgia and the South Sandwich Islands. The formula has enabled the two governments to make progress in many fields. Nonetheless, Argentina continued to claim sovereignty over the Falklands. President Menem asserted that the Islands would be Argentine by the year 2000 and suggested shared sovereignty as a possible intermediate step. His Foreign Minister, Dr Guido di Tella, also suggested other possible forms of association between the Falklands and Argentina.

In 1994, the Argentine Constitution was amended to include a clause asserting sovereignty over the Islands, which would be pursued 'in accordance with international law'. Argentina continued to ask the United Nations to call for negotiations on the issue of sovereignty. Although the United Nations General Assembly has not debated the question of the Falklands since 1988, the Committee of Twenty-four has continued to adopt resolutions calling for negotiations between Britain and Argentina. These resolutions are flawed because they make no reference to the Islanders' right to choose their own future. Several members of the Committee have acknowledged this omission. The principle of self-determination is included in every other resolution considered by the Committee. The British position that sovereignty is not for

negotiation remains unaltered. There will be no change in the status of the Falklands without the Islanders' consent.¹⁵

3.2 Argentinean views on sovereignty of the Malvinas

In March 2008 Cristina Fernández de Kirchner met the then British Prime Minister, Gordon Brown, in Santiago de Chile, after which negotiations began to allow family members of Argentinean soldiers killed in 1982 to travel to the Falkland Islands for the official inauguration of the Memorial at the Argentine Cemetery at Darwin in October 2009. The negotiations were the responsibility of the Malvinas and South Atlantic Desk at the Argentine Foreign Affairs Ministry under Ambassador Eduardo Airaldi. The original number of 649 next-of-kin was subsequently limited to 375, allegedly because of Argentine government cuts in the Foreign Affairs Ministry.¹⁶

Cristina Fernández called for sovereignty talks with Britain in a speech at the Argentinean Embassy in London at the time of the G20 summit on 2 April 2009 - “Malvinas Day” in Argentina, the anniversary of the 1982 occupation of the Falklands.¹⁷ In Argentina the press reported that British diplomats were keen to prevent the issue from disrupting the G20 summit on the global economic crisis, and although Gordon Brown was reported to have briefly discussed the Falklands with President Fernández on the sidelines of a pre-G20 meeting in Chile, he was said to have dismissed her demand for sovereignty talks. He did, however, suggest they could discuss unblocking commercial flights between the Islands and mainland Argentina.¹⁸

The Falkland Islands Government has accused the Argentinean Government of deliberately obstructing the Falklands' three main industries – fishing, tourism and oil and gas exploration – by withdrawing from a commission to manage fisheries; stopping charter planes from flying from Chile to the Falklands by banning their flight over Argentinean airspace (this means cruise ship passengers and crew cannot easily reach the Falklands, which is hampering their ability to capitalise on the south Atlantic cruise ship business); and through a presidential decree that prevents anyone working in the hydrocarbons industry in Argentina from doing so in the Falklands.¹⁹ Falklands Councillor Mike Summers accused Argentina of “economic warfare”. Resumption of these measures has been made conditional upon the UK resuming talks on Argentina's sovereignty claims over the Falklands.

An article in thetrumpet.com on 1 November 2011 looked at the President's “increasingly combative” stand on the Falklands:

When she first became Argentina's president in 2007, Cristina Kirchner said that her nation's “sovereignty” over the Falkland Islands was non-negotiable, and in the four years since then her stance on the issue has only become more combative. Last week, she won a landslide reelection which will further bolster her government's attempts at bringing Britain to the negotiating table with international pressure.

¹⁵ FCO, 6 September 2011

¹⁶ See *Mercopress* 11 September 2009 at <http://en.mercopress.com/2009/09/11/number-of-malvinas-families-next-of-kin-traveling-to-falklands-is-375>

¹⁷ Speech available in Spanish at http://www.casarosada.gov.ar/index.php?option=com_content&task=view&id=5772&Itemid=66

¹⁸ *Guardian* 28 March 2009 at <http://www.guardian.co.uk/uk/2009/mar/28/falkland-islands-sovereignty-argentina> and *Mercopress*, 29 March 2009 at <http://en.mercopress.com/2009/03/29/brown-cristina-agree-they-have-differences-of-opinion-on-falklandsmalvinas>

Back in 2008, Kirchner gave a speech marking the 26th anniversary of Argentina's failed attempt to conquer the Falklands, saying her country's claim to the islands was "inalienable." Vice President Julio Cobos elaborated: "We must recover this territory that is ours, that belongs to us." The following year, Argentina put measures in place to economically squeeze the Falklands into submission, and a spokesman for Argentina's Foreign Ministry said they would remain in place until Britain agreed to enter into talks on Argentina's claim of sovereignty over the islands.

In February 2010, the tensions increased when Kirchner decreed that any ships sailing from Argentina to the Falklands would have to obtain a special permit. The law was part of Argentina's reaction to news that British firms were planning to drill for oil in waters near the Falklands, which have since been confirmed to hold significant resources. In January of this year, Brazil blocked a British Royal Navy ship from docking in Rio de Janeiro in a move designed to show Brazil's support for Argentina's claim to the Falklands.

Then in June, Kirchner lashed out at British Prime Minister David Cameron and called Britain "a crude colonial power in decline" after Cameron said British sovereignty of the Falklands was not up for discussion. The same month, the Organization of American States, which represents North and South American nations, called for negotiations on the sovereignty of the Falklands. In September, Kirchner told the General Assembly of the United Nations that Argentina would never surrender its "inexhaustible" claim to the islands. Kirchner's stance on the Falklands has grown increasingly combative, and while her victory in the recent election was attributed primarily to the strong economic growth Argentina has enjoyed during her first term, it is also viewed by many as an endorsement of her combative approach to Britain.

On 9 December 2009 the Argentinean Government enacted law 26.552, which purported to include within a province of Argentina the Falkland Islands, South Georgia and the South Sandwich Islands, and the British Antarctic Territory. The former FCO Minister, Chris Bryant, said in a statement in January 2010:

The UK has no doubt about its sovereignty over the Falkland Islands, South Georgia and the South Sandwich Islands and the surrounding maritime areas. The UK also has no doubt about its sovereignty over the British Antarctic Territory (south of latitude 60°S and bounded by longitudes 20°W and 80°W).

The Foreign and Commonwealth Office has delivered a Note Verbale to the Argentine Charge d'Affaires in London outlining the UK's rejection.²⁰

3.3 The Falklands at the United Nations

The United Nations Decolonization Committee (C 24)

The UK and Argentina have each drawn on principles of international law to support their sovereignty claims over the Falkland Islands, and successive Argentine, British and Falkland Islands governments have argued about sovereignty claims at United Nations fora. Argentina has relied on the "territorial integrity" principle, while the UK arguments have been based on the principle of "self-determination", according to which the people of territories such as the Falklands should determine their own future and status. Thus, before the UN Special Committee on Decolonisation, where since 1984 a Resolution on peacefully resolving the

¹⁹ *Guardian.co.uk*, 14 June 2009 at <http://www.guardian.co.uk/uk/2009/jun/14/falklands-islands-argentina-economy-industry>

²⁰ HC Deb 18 January 2010 c 4WS

Falklands/Malvinas question has been passed unanimously, the Argentine Government has emphasised the geographical link of the Falklands with Argentina, while the British Government has maintained that any change in the constitutional status of the Falkland Islands would have to be approved by the Falkland Islanders.

As the UN General Assembly and the Decolonization Committee omit direct reference to the principle of self-determination in resolutions on the question of the Falklands/Malvinas, it is not obvious where support for this principle comes from. However, support for the Falklanders' right to self-determination appears to have come from Sierra Leone, Grenada and Fiji, and the Russian Federation delegate said in 2008 that it "consistently supported effective realization of the Non-Self-Governing Territories' right to self-determination and independence".²¹ Grenada has also taken the view that there are contending rights of self-determination and sovereignty in the case of the Falklands. Latin American countries generally, and all those in MERCOSUR (Argentina, Brazil, Paraguay and Uruguay, with associate members Bolivia, Chile, Colombia, Ecuador, Venezuela and Peru) support Argentina's claims in the sovereignty dispute (although Guatemala also supports the principle of self-determination), along with China, Syria, Tunisia, Congo and Russia. Many delegates on the UN Committee have expressed support for territorial integrity along with protecting the best interests of the territory's population. Indonesia, for example, in principle in favour of self-determination, held a different view on the Falklands: "In view of the historical background, the principle of territorial integrity should be the first consideration".²²

In June 2011 the United Nations Special Committee on Decolonization adopted its customary resolution on the Falkland Islands (Malvinas), "[Requesting Argentina, United Kingdom to Resume Talks as Soon as Possible](#)". Roger Edwards, a Member of the Legislative Assembly, made a [statement on the Falkland Islanders' position](#), saying of their relationship with the UK: "We do not feel that we are a downtrodden colony of an old Imperial Britain. We are proud, economically entirely self sufficient and our relationship with Great Britain regarding external affairs and defence is one of consultation, dialogue and partnership".

A letter to the UN Secretary General from the Chargé d'affaires of the Permanent Mission of Argentina to the UN, dated 3 January 2012, outlined the history of the British 'occupation' and the Argentinean claim, calling again for a resumption of talks:

The Argentine Government once again reiterates, on the 179th anniversary of its dispossession, its continued and sincere willingness to resume the process of bilateral negotiations with the United Kingdom, as called for by the international community, in order to find a peaceful and definitive solution to the sovereignty dispute and thus put an end to this anachronistic situation, which is incompatible with developments in the current post-colonial world.²³

3.4 Fisheries

Fishing rights in the waters surrounding the Falkland Islands has caused tensions between the UK, Argentinean and Falkland Islands governments. The catalyst for the renewed Argentinean sovereignty campaign was believed to have arisen as a result of the Falklands decision in 2005 to grant fishing concessions around the Islands over a 25-year period,

²¹ GA/COL/3178 12 June 2008 at <http://www.un.org/News/Press/docs/2008/gacol3178.doc.htm>

²² GA/COL/3140 15 June 2006 at <http://www.un.org/News/Press/docs/2006/gacol3140.doc.htm>

²³ Reproduced in [Telegraph blog](#), 10 January 2012

rather than by annual renewal. The new system came into effect in July 2006, in spite of protests from the Argentinean Government that Britain had no right to award fishing rights over what it deemed to be disputed waters.²⁴

In addition, environmental groups believed that over-fishing in these waters would devastate the squid population and they accused the two governments of using squid as a "sovereignty tool" in the dispute over the Falklands. Catches of *Illex* squid have fallen dramatically since 2001, with allegations of over-fishing on both sides.

In early 2006 Argentina impounded a British trawler, the *John Cheek*, which the Argentinean authorities claimed had been fishing illegally in the Argentinean economic exclusion zone. The British Embassy in Buenos Aires maintained the trawler had been in neutral international waters. The Argentine Chamber of Fishing Industries (ACFI) called for strong penalties to be imposed. The vessel and its catch were detained, and after the British Government had paid an administrative fine, the boat was released.

In early 2007 the Argentinean Government insisted that any discussions on fisheries or conservation had to include talks on sovereignty (i.e. the transfer of sovereignty to Argentina) and in March 2007 Argentina withdrew from the 1995 Anglo-Argentine *Joint Declaration on Co-operation over Offshore Activities in the South West Atlantic*. In 2008 the Argentine Government introduced legislation designed to penalise fishing companies operating in both Argentinean and Falkland Island waters.

In early September 2009 *United press International* reported on Argentina's declining fishing industry:

- A poor squid haul has added to Argentina's economic woes, with growing disquiet in the agriculture and fishing industries eroding the government's popularity.
- The Secretariat of Agriculture, Livestock, Fisheries and Food said the latest squid season in Argentina's waters closed with less than a quarter of the haul recorded in a similar eight-month period in 2008.
- The decrease of more than 75 percent in the yield, from 251,892.7 tons in the January-September period last year to 61,249.4 tons in a comparable period this year, is a major setback to the fishing industry.
- Experts quoted by MercoPress attributed the drop to lack of scientific data about the resource, the extent of spawning during the season and the expected yield.
- Suspension of scientific collaboration between Argentina, Britain and the Falkland Islands contributed to a lack of preparedness about the drop. A downturn in demand in international markets is unlikely to help the situation.²⁵

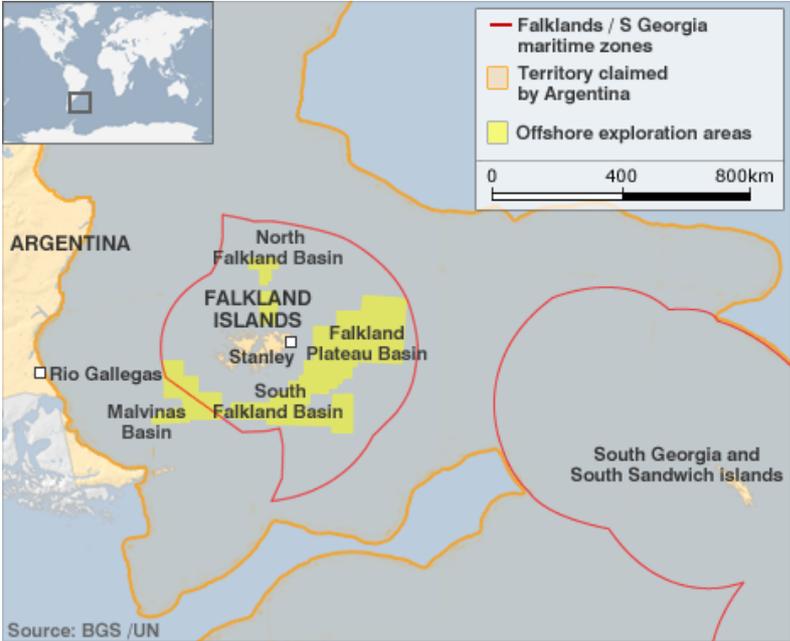
In mid-September 2009 Falklands delegates were invited to an important fisheries conference, the World Summit on Fishing Sustainability, in Baiona, Pontevedra, Spain, which

²⁴ The *Guardian* reported on 27 September 2006 that the foreign affairs committee of the lower house of the Argentinean congress was reported to be drafting a bill that would refuse to recognise the 25-year fishing permits issued by the Falklands Government.

²⁵ [UPI Asia.com, 9 September 2009](#)

infuriated the Argentinean delegation. The Argentineans protested by walking out of the first meeting, and removing the Falklands delegates' flag and nameplates. It was later reported that Argentina had formally accepted apologies from the Spanish Government for committing a "protocol error" by inviting the Falklands delegation to the conference.²⁶

3.5 Oil exploration



There has been speculation since the 1970s that the four offshore basins surrounding the Falkland Islands could contain oil reserves.²⁷

In 1996 the Falkland Islands Government awarded seven oil production licences to allow further exploration of the north Falkland Basin, 150 kilometres north of the islands. Six exploration wells were drilled in 1998 but these did not find commercial amounts of oil. Over several years a number of production licences have been granted for the three southern basins, and around 17 wells have been drilled by Argentina in the Argentine section of the Malvinas basin since 1980. Part of the Malvinas basin is also included within a Special Co-operation Area (SCA) which was set aside for eventual joint licensing between the Falklands/UK and Argentina. The SCA covers approximately 17,854km² and straddles the supposed median line between the Falklands and Argentina.

See Standard Note 5040, "[Antarctica: some international legal issues](#)", 9 April 2009, for further information on sea and territorial claims in this area.

Argentinean perspective

The Argentinean Government has summarised its views as follows:

[Exploration and exploitation of hydrocarbons in the South West Atlantic](#)

²⁶ [Mercopress 16 September 2009](#)

²⁷ Information in this section is adapted from Research Paper 7/29, [The Falkland Islands: Twenty Five Years On](#), 21 March 2007

On 27 March 2007, the Argentine Government notified the UK Government through a note from the Argentine Foreign Minister to the British Foreign Secretary of its decision to terminate the Argentine-British Joint Declaration on "Cooperation in Offshore Activities in the Southwest Atlantic" signed by Argentina and the United Kingdom on 27 September 1995 under the sovereignty safeguard formula and related to the exploration and exploitation of hydrocarbons in the area subject to the sovereignty and jurisdiction dispute.

The substantial divergence between the parties relates to the spatial scope of cooperation for hydrocarbon exploration and exploitation, which, according to the Joint Declaration, had to be carried out in the "maritime areas of the Southwest Atlantic subject to a sovereignty and jurisdiction dispute" (the 430,000 km² area of the Malvinas Islands). The United Kingdom, however, intended to restrict cooperation with Argentina to "a special cooperation area" of only 21,000 km² created pursuant to the agreement and to reserve for its unilateral actions the rest of the disputed area around the Malvinas Islands.

At the last meeting of the Southwest Atlantic Hydrocarbons Commission created by the Joint Declaration, held in July 2000, both Parties produced a written statement referring to the subsistence of their divergent interpretations with regard to the Declaration and agreed to allow time for reflection in an attempt to solve them.

The United Kingdom's repeated unilateral activities in the disputed area, including the award of hydrocarbon exploration blocks, and its reluctance to hold an open dialogue on the provisional agreements, led the Argentine Government to consider the reflection exercise opened in 2000 exhausted and to terminate the agreement.

The Argentine Government's decision to terminate the provisional agreement on hydrocarbons was supported by the twelve countries that participated in the First South American Energy Summit held in Margarita Island, Venezuela, at which Argentina, Uruguay, Colombia, Venezuela, Paraguay, Ecuador, Chile, Guyana, Surinam, Peru, Brazil and Bolivia signed the "Presidential Declaration on the Malvinas Islands" on 17 April 2007.

Furthermore, on 2 February 2010, the Argentine Government submitted a protest note to the United Kingdom, rejecting its attempt to authorize hydrocarbon exploration activities in the areas surrounding the Malvinas Islands by means of the Ocean Guardian platform. Such protest note has circulated as an official document of the United Nations and the OAS.

In this respect, the Special Communiqué on Hydrocarbon Exploration on the Continental Shelf, approved by the Heads of State and Government on the occasion of the Latin American and Caribbean Unity Summit held in Cancun, Mexico, on 22 and 23 February 2010, should be highlighted.

The Argentine Ministry of Foreign Affairs also submitted protests to the countries in whose territories the companies that contributed to the transportation of the Ocean Guardian platform or that received concessions for the exploration works are established. At the same time, letters of discouragement were sent to the companies involved in such activities.

Furthermore, in the context of the specific measures aimed at discouraging and avoiding the illegitimate exploitation of its natural resources, the Argentine Government issued the Presidential Decree No. 256/2010, which applies to the navigation of vessels and naval artefacts between ports located in the mainland and in the disputed islands, and whose Application Regulations were published on 26 April 2010 in the Official Gazette. The aforesaid Presidential Decree is currently in the course of implementation.

Argentina has introduced legislation which prohibits any company operating in Argentina if it is connected to the hydrocarbons sector in the Falkland Islands.

Law No. 26659, passed on 16 March 2011 and published on 13 April 2011 should be recalled, which sets forth the conditions for hydrocarbon exploration and exploitation on the Argentine Continental Shelf and provides for penalties ranging between 5 and 20 years of licence suspension.

On 23 February 2010 Latin America and Caribbean leaders in the Rio Group of 32 countries concluded a two-day summit in Mexico by showing solidarity with Argentina over the Falklands, reaffirming what they called the “legitimate rights of the republic of Argentina in the sovereignty dispute with Great Britain”.²⁸ President Fernández de Kirchner began by reminding the Group of the geographical position of the Falklands/Malvinas, “this Argentine territory is a part of our continental shelf and of Tierra del Fuego, which has recently attained the status of province, the youngest Argentine province”. She recalled UN Plenary and Decolonization Committee resolutions on the issue, the 1982 invasion and the agreement on managing hydrocarbons in the Joint Declaration on Cooperation over Offshore Activities of 27 September 1995, which she accused the UK of immediately breaching, the drilling, she said, “clearly violating each and every one of the UN decisions”. While Cristina Fernández ruled out blockades or military conflict over the drilling by Desire Petroleum's *Ocean Guardian* 60 miles north of the Falklands (“that is ridiculous, cynical because few countries have shown more signs of peaceful intentions than Argentina after the advent of democracy”), she insisted on exerting control over shipping between the mainland and the Islands,²⁹ which the UK has rejected, maintaining that oil exploration off the Falklands was fully within international law.

President Fernández concluded that Argentina would “insist on its democratic vocation of fully respecting international law in its claim and shall adopt, within the framework of its domestic law, all provisions and resolutions that tend to reassert our sovereignty over the Southern Archipelagos”. She referred to the constitutional amendment in 1994, which enshrined the obligation on all governments to continue to claim and reaffirm Argentinean sovereignty over the Malvinas.³⁰

An editorial in *Oilprice.com* thought the revival of the dispute was “artificially engendered” to benefit the political posturing of two embattled leaders, Cristina Fernández de Kirchner and Gordon Brown; it would strengthen the Rio Group “which is consolidating at the expense of the Organization of American States (OAS) and the US’ now almost moribund Monroe Doctrine”, and further the political position of President Hugo Chávez of Venezuela as well.³¹

Jorge Taiana met the UN Secretary-General, Ban Ki-moon, in late February to discuss the drilling issue, after Argentina had announced new shipping controls in Presidential Decree 256/2010 and ‘Disposición’ 14/2010. In March Argentina asked Ban Ki-moon to bring the UK into discussions at the G20 summit, but Gordon Brown rejected the suggestion of talks.

In early May 2010 President Fernández called on the new UK Government to halt all oil exploration in the “disputed” waters around the Falklands and on 18 May, at the EU-Latin America and Caribbean summit, she called on the UK Government to open negotiations on

²⁸ [The Independent 24 February 2010](#)

²⁹ The full text of President Kirchner's speech is on the Argentinean Presidency website.

³⁰ Ibid

³¹ [Oilprice.com “Renewed Battle for the Falkland Islands Suits the Embattled British, Argentine Leaders, and Others”](#)

sovereignty of the Islands. She recalled the UN request for a dialogue on the Falklands, telling a press conference: "The United Kingdom is a very important country among those belonging to the European Union and the United Nations as well, and they should be setting an example and listen to the UN resolutions".³² She spoke out against imposing unilateral decisions, as "Unilateralism has given us too many bad moments and has created a far more insecure world regarding security and also much more uncertain when it comes to economics, and not to mention political uncertainty". She called on the UK to "abide by international law":

"To uphold sovereignty at a distance of 14.000 kilometres is even geographically quite difficult, and this not only means the appropriation of non renewable natural resources, which is in itself a very bad example for a world that claims dialogue, cooperation and abiding by international law".³³

Drilling by Desire Petroleum's *Ocean Guardian* yielded nothing, although another oil and gas company drilling off the coast of the Falklands announced in early May 2010 that it may have struck oil. Rockhopper Exploration³⁴ said that initial data collected from one well, the Sea Lion prospect, "indicated an oil discovery".³⁵

UK Government perspective and progress in exploration

The UK Government maintains it is "keen to foster a constructive relationship with Argentina in the South Atlantic, and both we and the Falkland Islands Government have offered to cooperate with Argentina on mutually beneficial South Atlantic issues, including on specific hydrocarbon-related matters".³⁶ The Government outlined the oil exploration situation in a parliamentary reply in December 2010:

Hydrocarbons exploration resumed in Falkland Islands waters in February 2010. Five wells have so far been drilled. Rockhopper Exploration announced an oil discovery in their Sea Lion prospect in the North Falklands Basin on 6 May 2010. However, thus far, no companies have announced hydrocarbons finds in commercially viable quantities. We will need to wait for the results of the continuing exploration before we can make any assessment about long-term prospects for the industry.³⁷

Current Falklands exploration campaigns are described in the following extract on the [Falkland Islands Department of Mineral Resources website](#):

The current exploration campaign began in October 2009, when Desire Petroleum secured a contract for the Diamond Offshore semi-submersible, *Ocean Guardian*. The rig arrived in the Islands in February 2010 and spudded the first well of the campaign, on Desire's Liz prospect. Since that first well a total of 16 stand-alone wells, two sidetracks and two flow tests have been successfully carried out.

Rockhopper Exploration

Rockhopper Exploration's Sea Lion well (14/10-2) was spudded on 15th April 2010 and was declared an oil discovery after encountering 53m of net

³² [Mercopress 19 May 2010](#)

³³ Ibid

³⁴ For information on Rockhopper, see <http://www.rockhopperexploration.co.uk/>

³⁵ [BBC News, 6 May 2010](#)

³⁶ [HL Deb 11 August 2011 c WA399](#)

³⁷ [HC Deb 20 December 2010 c 960W](#)

hydrocarbon pay and recovering samples of medium gravity crude oil ranging from 26.4° to 29.2° API. The well was suspended for flow-testing and subsequently flowed oil at around 2000 barrels per day (bpd) in a well test in September 2010.

Since its declaration as a discovery area, the Sea Lion prospect has been appraised with 6 further wells and extensive coring. Additionally, a second well test involving an Electric Submerged Pump (ESP) system and Vacuum Insulated Tubing (VIT) resulted in a stabilised flow rate of 5508 barrels per day during the test, and a maximum flow rate of 9036 barrels per day from the upper Sea Lion sandstones.

In addition to providing more information about the Sea Lion Main Complex (SLMC), the company's latest well and respective sidetrack (14/10-9 and 14/10-9z) confirmed a Gas and Oil discovery in the Casper target, with 18m total net hydrocarbon pay, porosity of up to 27% and permeability of 232mD. 14/10-9 also penetrated the Kermit structure (beneath the SLMC), which was found to be water-wet with oil shows.

Rockhopper will now drill a well in PL004, a licence operated by Desire Petroleum and in which Rockhopper has a 7.5% farmed-in working interest. The well, however, will be drilled in a section of PL004 known as Area 1, which is thought to cover part of the Sea Lion field and Desire's Beverley prospect. Under the terms of the farm-in agreement, Rockhopper will take up a 60% interest and overall operatorship of Area 1.

Rockhopper's Ernest and Sea Lion North prospects, drilled in 2010 and early 2011, were plugged and abandoned as a dry well and with oil shows respectively.

Desire Petroleum

Desire Petroleum's first well, Liz (14/19-1), was plugged and abandoned as a gas discovery. The well found 17 m of net hydrocarbon pay within an over pressured, predominantly sandstone, reservoir. In addition, good oil shows were observed within the Liz and Beth fans at 2540 m to 2568m and 2654 m to 2672 m respectively, but both reservoirs were found to be tight.

Desire Petroleum's Rachel and Rachel North prospects were drilled in September - November 2010 by means of two wells (14/15-1 and 14/15-2) and one sidetrack (14/15-1z). The wells had oil shows, but were ultimately plugged and abandoned. Similarly, the company's Dawn/ Jacinta prospect was drilled in December 2010 and ultimately abandoned with gas shows.

Southern basin - Falkland Oil & Gas, Borders & Southern Petroleum

The current campaign has also seen a first well drilled in the South Falklands Basin. The then operator, BHP Billiton, used the Ocean Guardian to drill its Toroa prospect with partners Falkland Oil & Gas Limited. The well did not encounter any reservoir hydrocarbons, but did provide invaluable information for the previously undrilled South Falklands Basin.

BHPB have since relinquished their interest to partners Falkland Oil & Gas, who have become 100% operators in all their licences.

Exploration in the South Falklands Basin is set to ramp up in the first quarter of 2012 with the arrival of the dedicated harsh-environment rig Leiv Eriksson. The

rig is expected to drill two wells for South Falkland Basin operator Borders & Southern Petroleum and a maximum of two wells for Falkland Oil & Gas Limited.

International and regional views

Uruguay

On 15 December 2011 the Uruguayan Government declared in a “political decision” that it would deny access to their ports to ships flying the Falklands flag, and said it was working on the “juridical terms”.³⁸ [President Mujica’s statement](#) is published on the Presidency website in Spanish.

President Mujica said that although Uruguay had joined Argentina in the ban of Falklands flagged ships, Uruguay would never join in a maritime blockade against the Falklanders themselves, which, in his view would not be helpful and would be “in violation of human rights and contrary to creating the necessary conditions for peaceful negotiations”.³⁹

The UK Government responded to the Uruguayan announcement in a [Ministerial Statement on 10 January 2012](#):

Our response has been justifiably robust. The Uruguayan ambassador was formally summoned to the FCO and I spoke twice to the Uruguayan Foreign Minister to underline how seriously we regard this development. Our ambassadors in the region were instructed to call on their host Governments to express our strong objection to the Mercosur statement and to assess the practical implications for vessels operating between the Falklands and south America.

We made it clear that the decision to close ports to ships flying the Falklands flag has no legal basis, and that it would be unacceptable and unbecoming for any Latin American democracy to collaborate in Argentina’s attempts to economically blockade the Falkland Islands. We reiterated our strong support for the rights of the islanders to determine their political future, and also made clear that any attempts to coerce them through economic or other pressures would be resisted by the British Government. Such actions are inconsistent with the principles of the United Nations charter and the rights of the Falkland Islands people to trade openly and without hindrance.

While we do not accept that the decision to refuse entry to vessels flying the Falklands flag has any basis in international law, our priority has been to ensure that the trade and commercial links between the Falklands and south America are not compromised by this political declaration. We have had productive and honest discussions with Uruguay, Chile and Brazil. All three countries have said that they have no intention of participating in an economic blockade of the Falkland Islands and that all Falklands-related commercial shipping will continue to enjoy access to their ports, in accordance with domestic and international law, if they are flying the red ensign or another national flag when docked.

Mercosur

Mercosur’s support for the Argentinean claim goes back to 25 June 1996, when Mercosur Member States, plus Bolivia and Chile, expressed in the *Declaration of Potrero de los Funes*

³⁸ [MercoPress 20 December 2011](#)

³⁹ [MercoPress 20 December 2011](#)

their full support for Argentina's "legitimate rights in the sovereignty dispute related to the Question of the Malvinas Islands". Their support was confirmed in the Asunción Declaration of 15 June 1999 and has been reiterated since then in the Joint Communiqués of the Presidents of Mercosur States Parties and Associated States after the six-monthly meetings of the Mercosur Common Market Council. These communiqués have in recent years included their condemnation of UK/Falklands exploration and exploitation of renewable and non-renewable natural resources on the Argentine continental shelf.

On 20 December 2011, at the 42nd meeting of the Common Market Council and the Summit of Presidents of Mercosur held in Montevideo, the Members and Associated States reiterated the commitment to prevent access to their ports of vessels flying the Falklands flag. They also pointed out that any vessels previously denied access to any port of the region must avoid requesting access to the ports of the other Mercosur States and Associated States while they fly such flag. Otherwise, the measures provided for in the first paragraph of this declaration will be applied to those vessels, pursuant to international law and to the respective domestic laws.

The Mercosur statement is on the [Mercosur website in Spanish](#).

UNASUR and CELAC

A general worsening of diplomatic relations between the UK, the Falklands and Argentina was underlined in a Union of South American Nations (UNASUR) statement about the passage of ships via the Falkland Islands, South Georgia and South Sandwich. The launch of another Latin-American grouping, the Community of Latin American and Caribbean States (CELAC), which has voiced its support for the Argentinean sovereignty claim, has added to the growing number of South American countries and organisations which support the Argentinean position.

CELAC held its first summit on 2 - 3 December 2011 in Caracas, Venezuela, which focussed on the global economic crisis and its effects on the region. According to [MercoPress, 24 February 2010](#), "The alliance ... is seen as an alternative to the Washington-influenced Organisation of American States (OAS), the main regional body set up in 1948 under US guidance as a means of combating communism in the region". Mexico's [La Jornada](#) also emphasised the symbolic importance of the new group's attempt to move away from US hegemony in the region.

At the Rio Group meeting at which CELAC was agreed, it was very clear that the new grouping intended to press for a resumption of UK-Argentina talks about sovereignty of the Falkland Islands, and that CELAC firmly supported the latter's claim. Argentine press reports at that time emphasised the Argentinean Foreign Minister, Jorge Taiana's belief that the support given by the region was "a major diplomatic progress in Argentina's claim over the Falklands".⁴⁰ He had also welcomed the unanimous adoption of a Declaration on the Falklands issue and a Special Communiqué on oil exploration in the region.

On 3 December 2011 CELAC issued a "Special Communiqué Project on the Malvinas Islands" in which members expressed their support for Argentina, and Chile's President Sebastian Piñera was instructed to petition UN Secretary General, Ban Ki-moon, to renew efforts towards a resumption of negotiations between Argentina and the UK over the Falklands/Malvinas. The Special Communiqué Project on the Malvinas Islands reportedly

stated that the members of CELAC support “Argentina’s legitimate rights in the sovereignty dispute over the Falklands/Malvinas, Georgia del Sur and Sandwich del Sur Islands, as well as its surrounding maritime spaces. The text reiterates that Latin America and the Caribbean want the UK to agree to sovereignty talks with Argentina so as to find a peaceful and definitive solution to the dispute.

4 Recent political developments

4.1 Decision not to allow Falkland Island ships into ports

In mid-September 2010 clearance for HMS Gloucester to dock in Montevideo for fuel and supplies en route to the Falkland Islands was withdrawn by the Uruguayan President only hours before the ship was due to arrive. The decision was reported to have been based on the need to make relations with Argentina a priority. However, the late notice for withdrawing diplomatic clearance gave rise to speculation that Argentina had put pressure on Uruguay to deny the British warship access. The Argentinean Defence Ministry published a letter congratulating the Uruguayan Government on its stance, and a video was published showing the Argentinean President, Christina Fernandez de Kirchner, thanking Uruguay for showing solidarity with Argentina over the Falklands.

It was the second time in three years that a British warship had been denied entrance to Uruguay. In 2007 HMS Nottingham was similarly refused access after Argentina asked neighbouring countries not to allow their ports or airports to be used by British ships or planes, in protest at British oil exploration around the Falklands. A similar event also took place in 1999. Brazil has had a ban on ships carrying the Falklands flag since January 2011 and on 3 August 2010 Brazil and Argentina issued a “Joint Declaration of the Malvinas” in which Brazil reiterated its support for Argentina and made the Malvinas sovereignty issue a foreign policy priority.

The FCO Minister, Jeremy Browne, set out the Government’s views on the blockade in a Written Answer on January 2012:

We reject Argentina's attempts to intimidate the Falkland Islands population through economic pressure.

We do not consider Argentina's Presidential Decree 256, passed in February 2010, to be compliant with international law and have repeatedly protested it in private and in public, including in letters circulated at the United Nations General Assembly. The decree does not appear to have had a practical impact on the passage of vessels between the Falkland Islands and South America.

On 15 December the Government of Uruguay declared that it would deny access to its ports to ships flying the Falkland Islands flag. This was followed four days later by a statement from the summit of the Mercosur group of countries (Argentina, Brazil, Paraguay and Uruguay, with associate members including Chile) that echoed the Uruguayan announcement. We have protested strongly this development and held productive and honest discussions with Uruguay, Chile and Brazil about the practical implications. All three countries have said that they have no intention of participating in an economic blockade of the Falkland Islands and that all Falklands-related commercial shipping will continue to enjoy access to their ports, in accordance with domestic and

⁴⁰ [Comunicas 24 February 2010](#)

international law, if they are flying the Red Ensign or another national flag while docked.

The British Government maintain twice weekly flights between the Falkland Islands and the UK and continue to monitor and support other air access routes to and from the Islands. This includes LAN Chile's weekly flight between Punta Arenas and Port Stanley, which President Kirchner threatened in a speech to the United Nations General Assembly in September. We have stressed that support for this or any other move to intimidate an innocent civilian population through economic pressure would be unacceptable and unbecoming for any Latin American democracy. We are not aware of any further action by Argentina to give effect to Mrs Kirchner's threat and continue to monitor developments very closely.⁴¹

President Fernandez told the December 2011 Mercosur summit in her speech on assuming the rotating chair for the next six months: "Malvinas is not an Argentine cause, it's a global cause because they are taking our fisheries and oil resources".⁴²

In May 2010 the Foreign Office Minister, Jeremy Browne, having confirmed the traditional British Government policy that there "cannot be negotiation on sovereignty unless and until the Falkland Islanders so wish".⁴³ said:

"We have no doubt about our sovereignty over the Falkland Islands. The principle of self determination as set out in the UN charter applies. There cannot be negotiation on sovereignty unless and until the Falkland Islanders so wish.

"The Lisbon Treaty clearly reaffirms the EU position that the Falkland Islands is an Overseas Territory of the United Kingdom.

"While we disagree with Argentina over the Falkland Islands, we have a close and productive relationship on a range of other issues, including on economic issues in the G20 and on climate change, sustainable development and counter-proliferation".⁴⁴

On 19 May 2010 the FCO sent a *Note Verbale* to the Argentine *Chargé d'Affaires* in London rejecting Presidential Decree 256/2010 and Disposición 14/2010 which state that all vessels sailing to and from Argentina, the Falklands, South Georgia and South Sandwich Islands must request previous authorisation from the Argentine government.

The United Kingdom of Great Britain and Northern Ireland considers that Presidential Decree 256/2010 and Disposition 14/2010 are not compliant with international law, including the United Nations Convention on the Law of the Sea.

The United Kingdom of Great Britain and Northern Ireland would like to take this opportunity to remind the Government of the Republic of Argentina of its obligations under international law, and that the United Nations Convention on the Law of the Sea provides for ships of all States to enjoy the right of innocent passage through territorial seas, and freedom of navigation in the waters beyond the territorial sea. Furthermore, with respect to the Straits of Magellan,

⁴¹ [HC Deb10 January 2012 c 83W](#)

⁴² [MercoPress 21 December 2011](#)

⁴³ [Foreign and Commonwealth Office press release](#), 18 May 2010

⁴⁴ [Ibid](#)

the rights of international shipping to navigate these waters expeditiously and without obstacle is affirmed in the 1984 Treaty of Peace and Friendship between Chile and Argentina with respect to the Straits of Magellan. Article 10 of the Treaty of Magellan further provides “The Argentine Republic undertakes to maintain, at any time and in whatever circumstances, the right of ships of all flags to navigate expeditiously and without obstacles through its jurisdictional waters to and from the Strait of Megellan”.

The United Kingdom of Great Britain and Northern Ireland has no doubt about its sovereignty over the Falkland Islands, and South Georgia and the South Sandwich Islands, its sovereignty over the adjacent territorial sea of these Islands, and its sovereign rights over the adjacent maritime areas.

The United Kingdom of Great Britain and Northern Ireland also has no doubt that the surrounding maritime areas of the Falkland Islands, and South Georgia and the South Sandwich Islands are not Argentine jurisdictional waters.⁴⁵

In a response delivered to the British Ambassador in Buenos Aires, Shan Morgan, Argentina rejected the UK Government’s complaint and reiterated its condemnation of the “unilateral and illegitimate acts” of the UK regarding hydrocarbons exploitation in the continental shelf of the Malvinas/Falklands, South Georgia and South Sandwich Islands. According to the Argentine Government, the international law norms to which the British Note referred regulate coastal maritime traffic between ports in Argentinean territory, and therefore comply with the Law of the Sea. The Note also reaffirmed Argentinean sovereignty claims and recalled that all Argentinean democratic governments had favoured talks with Britain to reach a peaceful and fair solution to the sovereignty dispute over the Falklands/Malvinas Islands. It invited the new British Government to resume talks.⁴⁶

In early June 2010, in a letter to the Falkland Islands Legislative Council, the newly elected Conservative Prime Minister, David Cameron, stated “I’m proud to lead this historic (British) coalition government”, and emphasised the Government’s support “for the freedom and self determination of the Falkland Islands”.⁴⁷

There has been continuing tension over fishing in the waters around the Falklands, and the UK Government protested against Presidential Decree 256, which is believed to be the basis for Argentinean action against oil exploration in Falklands waters and fishing vessels in the region. The UK Government did not appear to be overly concerned about the shipping blockade, judging from a response in a [Lords debate on March 2011](#):

We are also wholeheartedly committed to the Falkland islanders' right to develop their economy, including a hydrocarbons industry within their waters. We are fully aware that Argentina's neighbours support its call for negotiation over the Falklands' sovereignty. That is nothing new; it just maintains endless persistence. We are in close touch with partners in the region. We are enhancing our relationship with Latin America through forthcoming high-level visits and engagement.

In a recent Lords exchange the Government was similarly robust about its position on relations with Latin America and the flag-flying issue:

⁴⁵ [Note Verbale](#), 19 May 2010

⁴⁶ [Mercopress 26 May 2010](#)

⁴⁷ [Mercopress 8 June 2010](#)

Lord Howell of Guildford: If I might alter slightly what the noble Viscount has said, no action has been taken. Brazil, Chile and Uruguay have all agreed to continue welcoming shipping if it is flying the British Red Ensign flag, which these ships fly. If there is an intention of action, that action has not led to any results at all. As for talking to Argentina, we have said all along that we are anxious to have sensible and creative discussions that could be of assistance to Argentina itself in the longer term, so long as we respect the wishes of the Falkland Islanders, which must be paramount in accordance with international law.

Baroness Hooper: My Lords, what steps are being taken by our splendid ambassadors in the region to counteract the tactics of the president of Argentina's Government in persuading Argentina's neighbours to support its claims of sovereignty in this way? In other words, what advice is the Foreign Office giving to ambassadors on the ground to prevent other countries following suit?

Lord Howell of Guildford: I think we have been a little ahead of the game. Obviously, the intention of Argentina was, sadly, to obstruct the movement of Falkland Islands shipping. Before that could happen we secured, for a start, the full assurance of Brazil, Chile and Uruguay that they would continue to welcome shipping flying the British ensign flag and would not interfere with trade. We have every reason to believe that the same attitude will prevail in all other ports where Falkland Islands shipping may call. However, we have taken action. Our ambassadors have moved very quickly and we are, as I say, ahead of the game.

Lord Liddle: My Lords, following the question of the noble Baroness, Lady Hooper, would the Minister agree that the best form of soft security for the Falkland Islands is very good, strong British relations with the South American neighbours of Argentina? Can he give us an update on what has happened to British relations with those countries and why this matter has come forward as it has in relation to Falkland Island flagged vessels? In particular, what has happened, since the present Government took office and since President Rousseff took office as the new president of Brazil, to the excellent relations that the British Government had with Brazil under the Labour Government and President Lula da Silva?

Lord Howell of Guildford: As far as relations with Latin America generally are concerned, I can safely say that where excellent relations existed before they have been built on and are even more excellent now. Considerable effort has been made in renewing and expanding our relations with Latin America. My right honourable friend the Foreign and Commonwealth Secretary was in Brazil the other day on a highly successful visit. My honourable friend Mr Jeremy Browne, the Minister of State, constantly visits Latin American countries, and visitors have come here with whom I and others have liaised very closely. We feel that we have a very good developing relationship, which includes the expansion of our embassy facilities and capabilities in the region.

There are many theories as to why agitation and tension have arisen over this matter. Many experts point to the possible discovery of commercial deposits of oil around the Falklands. It is a great pity that Argentina bowed out of the hydrocarbons declaration, which would have enabled it to benefit from these developments on the oil front. However, it decided to stand aside from this and, instead, to complain and apparently grow angry at what is happening. That may be one reason.

Lord Wright of Richmond: My Lords, can the noble Lord tell the House what discussions we have had with our European Union colleagues, particularly our Spanish and Portuguese allies, to enlist their support with their Latin American friends to oppose this ban?

Lord Howell of Guildford: We keep in constant touch with all our EU colleagues on this matter and have had considerable understanding and support. Inevitably, there are different perspectives but the general acceptance is that in international law the Falkland Islands people have the right to have their wishes respected and that any development in the future must be guided by those wishes. If they wish that to change, it will change; if they do not wish it to change, it will not change.

Baroness Falkner of Margravine: Will my noble friend tell the House whether the reports are accurate that almost all the ships that are now banned from visiting Mercosur ports while flying the Falklands ensign are owned by Spanish shipping companies? In light of that, are we having discussions with the Spanish about the commercial damage which is clearly being done to them through this ban? Are we having discussions with Chile, as President Kirchner has asked the Chilean Government to ban commercial flights to the Falkland Islands?

Lord Howell of Guildford: We have had discussions with Chile of a thoroughly positive nature. It is one of the countries that has agreed to accept ships flying the British Red Ensign. I cannot comment on the ownership of some of these ships. I have seen rumours in the media but I have no further information on that matter.⁴⁸

However, the Government has also said it wants to take a wider perspective in its relations with Argentina: “we do not want the single issue of the Falkland Islands to dominate our bilateral relationship and continue to look for practical ways to co-operate with Argentina on a range of South Atlantic issues”.⁴⁹

4.2 Anniversary of Falklands conflict

The 30th anniversary in 2012 of the Falkland Islands conflict and the liberation day, 14 June, has been the subject of PQs. The Government said in 2011 that there had been no discussions with Argentina about the anniversary, but that it and the Falkland Islands Government were planning anniversary commemoration events. “There are no plans for a joint Anglo-Argentine commemorative event”.⁵⁰ Prince William will do a six-week tour of duty in the Falkland Islands early in 2012, which Argentina views as a political and provocative.⁵¹

4.3 Accusations of colonialism and intimidation

On 18 January 2012 David Cameron said that recent comments by the Argentinean Government on the Falklands were “far more like colonialism”,⁵² which immediately gave rise to an angry reaction in Argentina. The Interior Minister, Florencio Randazzo, found the remark “totally offensive, especially coming from Great Britain”. The Foreign Minister, Hector Timerman, said Great Britain was a country “synonymous with colonialism”.⁵³ On 20 January

⁴⁸ [HL Deb 24 January 2012, cc 920-22](#)

⁴⁹ [HC Deb 27 October 2011 c 303W](#)

⁵⁰ [HC Deb 19 October 2011 c 1009W](#)

⁵¹ [BBC News 11 November 2011](#)

⁵² [HC Deb 18 January 2012 c 745](#)

⁵³ [BBC News, 19 January 2012](#)

Randazzo received support from all political parties in the Argentinean Congress when he reiterated Argentina's "inalienable" right to the Falklands/Malvinas, and underlined that the Malvinas were a "state policy".⁵⁴

The war of words continued following remarks by the UK Foreign Secretary, William Hague, who wrote in a piece in *The Times* on 21 January that if Argentina was genuinely interested in progress in the South Atlantic, "it should stop these attempts to intimidate a civilian population" and should agree to discuss how, "as democracies, the Falklands, Britain and Argentina can work together in the South Atlantic neighbourhood in our common interest". Argentine Interior Minister Randazzo responded, saying: ""Argentina is not intimidating anyone, only reclaiming an inalienable right to the sovereignty of the Malvinas and that is why we continue to insist through pacific channels and while going down this route, we are full of satisfaction at the support being built by the rest of the world".

4.4 Falkland Islanders at the European Union

The Falkland Islands legislature has asked the EU Commission to ensure that the rights of citizens of Overseas Counties and Territories (OCTs) are not compromised in relations with countries and regional bodies. On 25 January a Falklands delegation presented a joint position on trade issues and regional integration facing all OCTs, having worked closely with delegations from Anguilla, Curacao, Greenland and St. Pierre Miquelon. Baroness Catherine Ashton, the European Union High Representative for Foreign Affairs and Security Policy, has insisted that under Articles 198-204 in Part 4 of the *Treaty on the Functioning of the European Union* (TFEU), the Falkland Islands are a UK overseas territory.⁵⁵

4.5 A new Argentinean Ambassador to London

One of the policy changes flagged up at the end of 2011 was the naming of an Argentinean ambassador to London, a post which had been vacant since 2008. Alicia Castro was named for this post in January 2012.

⁵⁴ [MercoPress 21 January 2012](#)

⁵⁵ [Statement](#), 18 May 2010