

cal level remain to be explored. Professor McKnight's introduction has, however, illustratively sketched the outlines and the magnitude of the topic. It is to be hoped that his book will stimulate further research in this field.

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Julius Goebel

The Struggle for the Falkland Islands, A Study in Legal and Diplomatic History

With a Preface and an Introduction by J. C. J. Metford, New Haven & London: Yale University Press, 1982, pp xxx, 482, £ 10.95 (Cloth), 5.95 (Paper)

Argentina's invasion of the Falkland Islands represents the first attempt by a third-world nation in an intermediate stage of industrial development to wrest by force a colonial possession from a Permanent Member of the United Nations Security Council. Argentina's military action was widely held to be in clear violation of Article Two of the UN Charter proscribing the use of force for the resolution of international disputes. It was for this reason that the United Kingdom could seek and obtain support in particular from the United States but also from the other members of the European Communities. The conflicting claims of both Britain and Argentina pose, however, problems far exceeding the ambit of Article Two UN Charter as each of the two states purports to be the rightful sovereign in respect of the islands, a controversy which is as bitter emotionally as it is of long standing in the history of diplomacy and international law. Its early stages locked Spain, Britain and, to a lesser extent, France in a protracted diplomatic dispute and decisively shaped the legal backdrop to the eviction of the Argentine garrison from Port Luis on East Falkland by a superior British force in January 1833.

The islands today known as the Falklands were first settled by the French under Antoine de Bougainville who with the consent of the French government undertook a privately financed expedition there and, in April 1764, took possession of the entire group of islands in the name of his king. These islands were known in France as »Les Malouines«, after the sailors of St Malo who had frequently made voyages to this part of the South Atlantic.

The Spanish considered this as another menace to their dominions in the Americas which had been under constant pressure from rival European powers and had been further diminished by the Treaty of Paris concluding the Seven Years' War. After the establishment of the French colony on East Falkland the British who had long been interested in the group sent John Byron, the grandfather of the poet, to the South Atlantic where he, in late January 1765, being ignorant of the anterior French presence, in his turn purported to take possession of the islands for Britain. The alliance between Spain and France of 1761, the so-called Family Compact, smoothed the way for Madrid to obtaining the formal cession of the French acquisition in the Falklands. This transaction

was completed in 1767 and the islands were placed under the ultimate administration of the Spanish captain general at Buenos Aires.

Dr Goebel has demonstrated in rich detail that during the period from 1764 to 1767 only effective occupation gave rise to sovereign rights under the international law of the time. No mere discovery, in the sense of sighting and perhaps briefly surveying a territory, could confer any valid title. In this context he also highlights the momentous consequences for later international law of Vattel's statement in 1758, not representative of the law then, on the import of mere discovery in the above sense for the creation of title.¹

Meanwhile talks between Spain and Britain on a possible evacuation of the settlement at Port Egmont had brought no results. When the Spanish were interfered with during their survey of the islands by members of the British settlement they proceeded after mutual claims of sovereignty to dislodge the British from their colony. The British establishment was forcibly closed by Spain and its members removed from the islands in June 1770.

Immediately after this complete reoccupation of the entire Falkland Islands by Spain there commenced lengthy negotiations between Spain and Britain, with the participation of France as a - most circumspect - ally of Spain under the Family Compact, and continuous sabre-rattling on the part of Spain and Britain. The British seem to have recognised early on Spain's better position in law with regard to sovereignty and the issue became from the start one of satisfaction to the honour of the British Crown, insulted by the removal *manu militari* of its official presence at Port Egmont. The Spaniards consented to a formula whereby possession of the settlement would be restored to the British to satisfy the outraged honour of George III while expressly leaving the question of right with respect to the islands in the precise state of the time prior to the expulsion of the British, *scil.* where the Spanish title derived from the French as the earliest occupants was superior to that of the British who had indisputably arrived after de Bougainville.

Much of the debate in later times has turned on the point of whether or not the British negotiators verbally and unofficially indicated that, possession once restored and satisfaction thus given, the settlement would in the near future be abandoned. Dr Goebel has not been able to produce direct proof of such an undertaking but the circumstantial evidence which he has painstakingly assembled mostly from primary sources strongly suggests that a »secret promise« had indeed been made.

In any event the parleys eventually culminated on 22 January 1771 in the exchange of declarations between Spain and Britain wherein the former conceded and the latter accepted repossession by the British of Port Egmont. By virtue of a statement to that effect in the Spanish declaration the position on sovereignty would revert to the *status quo ante*. Subsequent to this another round of negotiations continued for several years in which the Spanish sought to move the British to definitely abandon their settlement at Port Egmont. Britain, attempting to maximise her gains from the lack of a verifiable undertaking to depart, stalled, ostensibly for considerations of domestic policy, but in 1774 the

1 For the development of the law during the period under consideration here, cf. Keller, Lissitzin, Mann, *Creation of Rights of Sovereignty through Symbolic Acts 1400-1800*, 1938, pp. 148-149.

settlement was in fact dismantled, officially for reasons of economy. A leaden plaque was left on the blockhouse announcing that the isles now relinquished were still »the sole right and property of his Most Sacred Majesty George the Third«.

The Spanish government through the agency of its colonial administrators continued to govern the Falkland Islands. It specifically exercised sovereignty over West Falkland by having the remaining buildings at Port Egmont destroyed upon an official order. Dr Goebel records no British protests against these acts, and any British title that may have survived the evacuation of Port Egmont would by such silence already have been lost through acquiescence.

Moreover several years later Spanish sovereignty was clearly recognised by Britain in the Nootka Sound Convention signed between the two countries in 1790. This convention had as its immediate object rights over territory on the western coast of North America. In it, however, the British side acknowledged that her subjects would not form any establishment on those coasts and adjacent islands of South America already occupied by Spain. The last vestige of a possible British title was thus extinguished.

The last Spanish governor remained on the islands at least until June 1806. The colony established on the Falkland Islands continued until 1811 when its settlers were also evacuated in view of the revolts in the Viceroyalty of Buenos Aires against metropolitan Spain. Spanish administration was not restored in the archipelago thereafter.

No other country instated official authority in the Falklands until the United Provinces of the Rio de la Plata dispatched their governor in 1820. After the destruction of the Argentine settlement by Commander Slacum of the USS Lexington in December 1831 a new governor was sent from Buenos Aires on the Argentine schooner Sarandi. It was this vessel which, shortly after quelling a revolt on the islands that had led to the murder of the newly arrived governor, had to face the British warships Clio and Tyne. Their commander landed at Port Luis in the first days of January 1833, hauled down the Argentine flag and ran up the Union Jack. Outnumbered and outgunned the Argentines left. The Falklands, despite Argentine protests, have remained in British hands ever since, the brief interlude of April/May 1982 apart.

Dr Goebel's deeply learned legal and historical study concludes at the end of the Argentine presence on the islands. Nothing of equal calibre has been written on the period from 1833 to the present. It can fairly be said that until the invasion by the British of the settlement of the newly formed Argentine Republic this entity had in international law validly succeeded to that part of Spain which it then controlled, or had acquired it as res nullius. Sovereignty over the Falklands was therefore rightfully Argentina's. Argentina has protested in 1833, 1842, 1849, 1888, 1937, 1939, and 1951 against the British occupation of the islands.² In accordance with Resolution 2065 of 1965 of the UN General Assembly Britain and Argentina resumed talks on a peaceful resolution of the conflict. These negotiations had remained without result until the recent sanguinary escapade of the Galtieri dictatorship; they are not likely to recommence in the near future.

2 Ch. Nöll, VRÜ 4/1978, pp. 451–454.

The republication of Dr Goebel's weighty investigation is thus most welcome, however regrettable the occasion which prompted the publisher's step. Unfortunately the new edition has been stripped of the plates of the 1927 original. These plates were quite attractive, giving a visual idea of the modest and primitive installations which in those days had to serve as outposts in the inhospitable surroundings of the South Atlantic.

It is more to be regretted that a scholarly work of such substance has been subjected in its re-edition to a »preface« and »introduction« by someone patently unsuited to the task. Mr J. C. M. Metford, introduced on the back cover of the book as an »emeritus professor of Spanish at the University of Bristol«, displays scant concern for consistency, let alone legal erudition, in his occasionally rather annoying prefatory productions.

Prof. Metford seems singularly undecided on the importance of the Falklands in modern times: At the end of his »preface«, after a professorial attempt at Palmerstonian hauteur (»There is also another problem which Latin American and other nations should not overlook . . .«), he grandly proclaims that the master of the Falklands »will control the development of that area [scil., the South Atlantic and Antarctica] for the rest of this century«. In conclusion of his longer exposition, the »introduction«, he opines on the contrary that Argentine aspirations to the Falklands may yet be fulfilled as the islands are »scarcely worth retaining« to the »realistic official mind«. Take your pick, Latin American and other nations.

Dr Goebel, while occasionally indulging his sympathy for the Spanish and later Argentinian cause by gleeful accounts on British officials,³ always endeavoured to marshal detailed evidence for his conclusions. J. C. J. Metford is rather more generous to himself – the 1965 UN resolution on the peaceful resolution of the Falklands issue is the product of the General Assembly »yielding« to »unremitting Argentine lobbying« and, never mind the legal relevance of it all, even Pope Alexander VI must take the blame for being a Spaniard, »notoriously beholden to Ferdinand and Isabella« to boot.

But apart from gratuitous jibes unaccompanied by solid reasoning Mr Metford also exhibits more serious misapprehensions of international law, the primary subject of the book he was asked to preface.

In the absurdly telescoped summary of the negotiations which led to the mutual Hispano-British declarations of 1771, Metford omits the all-important proviso in the Spanish statement on the persisting position on sovereignty and, after unduly emphasising the significance of the plaque left by the British at Port Egmont in 1774, goes on to say that Spain thereafter »left West Falkland alone«, without confronting the contrary facts related by Dr Goebel on the destruction of the buildings at the settlement there.⁴

He seems equally little conversant with the legal concepts applicable to this plaque, treating it, with touching simplicity, as »asserting their rights«. He also chooses quite unjustifiably not even to mention the Nootka Sound Convention of 1790 and its bearing on

3 He relates twice, pp. 330 & 373, how Lord North, in a state of considerable inebriation, received the French chargé at London.

4 P 424 of the work reviewed here.

the Falkland problem. In his triumphant demolition – quite beside the point – of the applicability of the rule of *uti possidetis* to the Anglo-Argentinian controversy he conveniently overlooks the other grounds on which Argentinian sovereignty may be founded – state succession or acquisition of a *res nullius* before the British intrusion of 1833. Argentine, or United Provinces, succession to Spanish rights, or original acquisition, were by no means a mere »statement of intention« as Metford would have us believe: The nature of the Argentine presence in 1833 has been outlined above.

Metford further disregard the international law of that period when he alleges that the United Provinces in 1820 lacked the incidents of statehood for want of diplomatic recognition by other states, Britain's having been »granted« only in 1825. The law as practised then did not require such recognition for achieving statehood if only the other attributes existed.⁵ Metford cites the Argentinian Minister in London as »admitting« the insufficiency of mere discovery without acts of possession as a basis for sovereign title. It was, on the contrary, the British side which in Lord Egmont's note of 1765 claimed such discovery as a foundation of a Claim to the islands.⁶

The professor of Spanish treats his readers to various personal aperçus of patriotic outbursts in Argentina over the Falklands during the heyday of General Perón. He notes in passing that the Falklands' history or the British invasion of Buenos Aires in 1806 are »scarcely ever mentioned in English history books, but they loom large in the minds of the people of Argentina«. The historic dimension of this split image of the past reaches far beyond Argentina as Chinese reaction to recent British assertions on the validity of the Treaty of Nanking clearly demonstrates. Three pages after his insightful observation of the mood of an Argentinian crowd the author has regrettably repaired to his cosy timewarp, to address »Latin American and other nations« like a stern schoolmaster. This reviewer would have preferred the plates to Professor Metford's rambling postures and inaccuracies.

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5 Note (2), above.

6 P 236 of the work reviewed here.