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The Falkland Islands: Twenty Five Years On

The 25th anniversary of the Falklands Conflict will be commemorated in April-June 2007.

This paper examines the status of the Falkland Islands 25 years after that conflict. Among the issues it looks at are the ongoing dispute between the UK and Argentina over sovereignty of the islands, the progress of the Constitutional Review which was announced in 2000, defence issues associated with the Falkland Islands and the progress that has been made in revitalising its economy.

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Summary of main points

The Falkland Islands are a United Kingdom Overseas Territory by choice. They have internal self-government although supreme authority is vested in Her Majesty The Queen. Defence and foreign affairs, however, remain the responsibility of the British Government. The present Constitution came into force in April 1985 and was amended in 1997 and 1998. The Preamble to Chapter 1 of the Constitution includes the Islanders' right to self-determination.

In 1999 the British Government invited all of its Overseas Territories to review their constitutions and to submit their proposals for modernisation. A Select Committee of the Falkland Islands Legislative Council was established in April 2000 to examine this issue and issued its first report in October 2005. A further report was published in August 2006 and put forward for public consultation. A final report is expected to be submitted to the Foreign and Commonwealth office for consideration at the end of March/ early April 2007.

Successive Argentinean Governments since the mid-1980s have asserted that the Falkland Islands should be reclaimed by diplomatic means. More recently the Argentinean government has adopted a more aggressive stance. In June 2006 the Argentinean Foreign Minister suggested that the right to self-determination was not applicable to the Falkland Islands since the "islanders were a British population transplanted with the intention of setting up a colony". At the end of June the Argentinean Parliament also established a special Congressional Observatory to address the issue of actively reclaiming sovereignty over the Falkland Islands.

The UK has a longstanding obligation to provide for the external defence and security of its overseas territories. As of February 2007 there were approximately 1,450 British military personnel permanently deployed in the Falkland Islands. One of the most pressing defence issues related to the Islands is the UK's ability to meet its obligations under the *Landmines Act 1998*. An estimated 18,000 landmines remain in the Islands as a result of the Falklands Conflict and under the Act the UK has an obligation to clear the islands by 1 March 2009. In 2001 the UK and Argentina signed a Joint Agreement on landmine clearance, although progress has been slow. A detailed minefield survey was begun in November 2006 with the intention of setting out potential options and costs. Due to the unique geography of the Islands it is unclear whether the UK will meet its March 2009 deadline.

In 1976 and 1982 Lord Shackleton produced two reports on the status of the Falkland Islands economy which subsequently became the blueprint for the economic rejuvenation of the Islands. Among the reports' recommendations were several initiatives aimed at moving the Islands away from a reliance on the wool industry and diversifying the economy, with a specific emphasis on fisheries, other forms of agriculture, and tourism. The Falkland Islands Development Corporation was established in order to oversee the implementation of economic development initiatives. In the last 25 years the Falkland Islands has made substantial progress in this area. Fisheries is now the largest source of income for the Islands, while the possibility of oil reserves being located within Falkland Islands territorial waters has led to initial exploration contracts being awarded.

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I Background

A. Constitutional Status and Political System

The Falkland Islands are a United Kingdom Overseas Territory by choice. They have internal self-government although supreme authority is vested in Her Majesty The Queen. That authority is exercised on her behalf by a Governor, with the advice and assistance of the Executive and Legislative Councils, and in accordance with the Falkland Islands Constitution. Defence and foreign affairs, however, remain the responsibility of the British Government. The Falkland Islands are also an Associated Territory of the European Union.

The Constitution of the Falklands rests on a series of Orders in Council made between 1948 and 1985. While the original structure established in 1948 remains essentially unaltered, successive amendments have reduced the number of nominated and ex-officio members of the Legislative Council and replaced them with elected members, chosen by universal adult suffrage with a voting age (since 1977) of 18. The present Constitution came into force in April 1985¹ and was amended by the *Falkland Islands Constitution (Amendment) Order* of 1997 and the *Falkland Islands Constitution (Amendment) Order* of 1998. The Preamble to Chapter 1 of the Constitution includes the Islanders' right to self-determination and thereby the right to determine their own political status. This is in line with Article 1 of the UN Charter and Article 1 of the United Nations International Covenant on Economic, Social and Cultural Rights.²

Under the terms of the present Constitution eight Legislative Councillors³, five from Stanley and three from outlying areas, known as Camp, are elected every four years. All members are elected as independents and do not represent any political party. The Legislative Council (known as LegCo) is chaired by a Speaker (which is a non-elected position, chosen from the community by the Councillors)⁴ and comprises the eight elected Councillors and two ex-officio members, the Chief Executive and Financial Secretary, although they do not have the right to vote. The Attorney General and the Commander British Forces South Atlantic Islands are also entitled to attend but do not have the right to vote. LegCo is authorised to pass legislation for the maintenance of law and order and the government of the Islands and to approve financial provision, subject to the approval of Her Majesty the Queen, acting through her Secretary of State for Foreign Affairs. LegCo meetings are held in public⁵ and are usually held every two months.⁶

¹ SI 1985/444 which came into force on 18 April 1985.

² A copy of this Covenant is available online at: <http://www.hrweb.org/legal/escr.html>. The UN Charter is available at: <http://www.un.org/aboutun/charter/index.html>

³ Under the 1977 Constitution there were only six elected members.

⁴ The Governor previously chaired the Legislative Council until 2003 when the first Speaker was elected at the end of the term of the then Governor.

⁵ Summaries of those meetings are usually reported on by the South Atlantic Remote Territories Media Association: <http://www.sartma.com/index.html>

⁶ See also Falkland Islands Government website at: <http://www.falklands.gov.fk/organisation.php>

Each year the Legislative Councillors elect three of their number to stand as members of the Executive Council (known as ExCo) which is the primary policy making body and whose role is to advise the Governor. ExCo is chaired by the Governor and is composed of the three elected members and two ex-officio members, the Chief Executive and Financial Secretary. As with LegCo, the Commander British Forces South Atlantic Islands and the Attorney General may attend monthly ExCo meetings, and may speak on any matter. At present the Governor has the sole authority to decide the content of Executive Council meetings thereby allowing him to introduce any item of business or refuse to discuss any item of business.

Administration is undertaken through the Falkland Islands Government Civil Service. There are 22 departments of government, the largest being agriculture, fisheries, education, health and social services, minerals, public works and central services (Treasury and Attorney General).

On 17 November 2005 general elections were held in the Falkland Islands to elect a new Legislative Council for a four-year term. Three new Councillors were elected to the Stanley constituency: Andrea Clausen, Richard Davies and Janet Robertson; while Mike Summers and Richard Cockwell retained their seats. Two new Councillors were also elected in the Camp constituency: Mike Rendell and Richard Stevens; while Ian Hansen retained his position in the Council. Voter turnout in the elections was considered to be high, with a 69% turnout in Stanley and an 86% turnout in Camp, compared to an 82.2% turnout in Camp in 2001.

On 25 August 2006 Alan Huckle took up the post of Governor of the Falkland Islands and Commissioner for South Georgia and the South Sandwich Islands.

1. Establishment of a Constitutional Review

On coming to power in 1997, the new Labour Government initiated a review of the relationship between Britain and what were previously called the Dependent Territories. In March 1999, the Government published a White Paper on the subject called *Partnership for Progress and Prosperity: Britain and the Overseas Territories*.⁷ In the foreword, the then Foreign Secretary, Robin Cook, stated that the purpose of the review was to establish a “renewed contract” between Britain and the Overseas Territories. He went on to state that its recommendations were based on the following four principles:

First, our partnership must be founded on self-determination. Our Overseas Territories are British for as long as they wish to remain British. Britain has willingly granted independence where it has been requested; and we will continue to do so where this is an option. It says a lot about the strength of our partnership that all the Overseas Territories want the constitutional link to continue. And Britain remains committed to those territories which choose to retain the British connection.

Second, the partnership creates responsibilities on both sides. Britain is pledged to defend the Overseas Territories, to encourage their sustainable development

⁷ A copy of the White Paper can be accessed online at: <http://www.fco.gov.uk/Files/kfile/OTfull.pdf>

and to look after their interests internationally. In return, Britain has the right to expect the highest standards of probity, law and order, good government and observance of Britain's international commitments.

Third, the people of the Overseas Territories must exercise the greatest possible control over their own lives. We are proud that our Overseas Territories are beacons of democracy. We applaud their achievements, and want them to have the autonomy they need to continue to flourish.

Fourth, Britain will continue to provide help to the Overseas Territories that need it. It is a source of much pride that the effectiveness of their governments' policies has meant that budgetary help is necessary only for Montserrat and St Helena – both for special circumstances.

Specifically the White Paper made recommendations for progress in four key areas:

1. **Constitutional Arrangements** – The paper acknowledged the need to examine and forge a new partnership between the UK and the Overseas Territories. The principle of self determination would remain central to that aim.
2. **British Citizenship** – The paper set out the commitment to offer British citizenship, and thereby the right of abode, to those citizens of the Overseas Territories who did not already have it. However, it also confirmed that those who did not wish to attain British citizenship would have the right to remain as British Dependent Territories' citizens.⁸
3. **Good Governance** – The paper highlighted the need for some territories to make progress in reforming and modernising human rights provisions, most notably judicial corporal punishment, capital punishment and the laws affecting homosexual conduct; and in the regulation of offshore financial service industries in order to meet internationally accepted standards and combat financial crime and regulatory abuse. The need for additional measures to ensure that regulators and law enforcers in the Overseas Territories are able to co-operate with counterparts and provide for tighter audit and financial accountability was also recognised.
4. **Sustainable Development** – The paper set out the UK's intention to continue assisting the Overseas Territories in achieving sustainable development as a means to eliminating poverty. It also set out the commitment of the British Government to establish an Environment Charter in order to clarify the role of the UK and the governments of the Overseas Territories in the area of environmental conservation.

On the basis of the constitutional recommendations of the 1999 White Paper the Government invited all the Overseas Territories to review their constitutions and to

⁸ The *British Overseas Territories Act 2002* extended full British citizenship to all those who were citizens of the Overseas Territories. The right to settle in the UK was also extended. However, citizens of the Falkland Islands had already been granted full British citizenship in 1983 under the *British Nationality (Falkland Islands) Act 1983*, which was repealed upon passage of the 2002 Act.

submit their proposals for modernisation. A special Select Committee of the Falkland Islands Legislative Council was subsequently established in April 2000 to examine the Constitution and make recommendations for change. The Committee also highlighted its intention to concurrently examine ways to streamline Government to provide a more cost effective service. The key issues for consideration by the Committee were identified as follows:

- Ensure that the Constitution of the Falkland Islands is appropriate for its current stage of political and social development;
- That the Constitution properly reflects the principles of partnership set out in the UK White Paper, with which the Falkland Islands Government concurs. The stated principles that underlie that partnership are:
 - The partnership must be founded on self-determination. The Overseas Territories are British for as long as they wish to remain British
 - The partnership creates responsibilities on both sides. Britain has pledged to defend the Overseas Territories, to encourage their sustainable development and to look after their interests internationally. In return Britain has the right to expect the highest standards of probity, law and order, good government and observance of Britain's international commitments.
 - The people of the Overseas Territories must exercise the greatest possible control over their own lives.
 - Britain will continue to provide help to those Overseas Territories that need it.

There is no stated hierarchy in these principles; where they might of themselves deliver different solutions to a particular issue compromise must be found;

- That the structure of Government is appropriate to deliver cost effective and efficient services to the people of the Falkland Islands;
- That the Falkland Islands have appropriate standards of human rights in accordance with the UK's obligations under the ECHR which now forms part of UK law;
- That the principles of openness and transparency are enshrined in the democratic process;
- That the people of the Islands have had full opportunity to participate in the review process and are comfortable with the proposed amendments.⁹

⁹ Falkland Islands Legislative Council, *Second Report of the Select Committee on the Constitution*, August 2006. A copy of this report is available from the International Affairs and Defence Section of the House of Commons Library.

No time constraints were placed on the Committee's review or on the publication of a report of recommendations for consideration by the British Government.

In answer to a Parliamentary Question in July 2001 the Foreign Office confirmed that the Government would carefully consider "any suggestions for which there is evidence of extensive local consultation and support".¹⁰

With this constitutional review in mind, however, an FCO Memorandum submitted to the Foreign Affairs Select Committee in October 2003 by the then FCO Minister responsible for the Overseas Territories, Bill Rammell, outlined:

[We have an] over-riding responsibility to ensure the good governance of the territories and compliance with applicable international obligations. The complexity of Government business, particularly following the terrorist attacks of 11 September, is in fact tending increasingly to blur the distinction between domestic and foreign policy, requiring greater UK involvement in some areas which hitherto territory governments may have considered to be their own preserve. Moreover, whilst standards in governance in some territories are high, in others there is room for improvement—and some of the smaller territories lack the institutional capacity and experience to cope well with the increasing demands on Government. Equally, the lack of a developed civil society, strong legislature, and vibrant media in some territories also means that many of the usual checks on the Executive can be weaker than normal.

This has convinced me that, whilst OTs retain their link with the UK (and whether they do so or not is entirely up to them, except when HMG's international legal obligations dictate otherwise, as in Gibraltar), we shall have to strike a better balance between their natural desire for greater autonomy and our need to be sufficiently involved to safeguard our responsibility for the good governance of the territories and their compliance with international obligations, not least to minimise our contingent liabilities. I intend therefore to use the December OTCC meeting to underline the role that we expect Governors to play, in partnership with territory Governments, to achieve this.

This does not signal a major change in the relationship or an attempt to assume new powers for the UK Government or Governors. But I shall want to emphasise that we expect Governors to exercise a broad overview of what is going on in the Territories. In most, this will mean just that; in others, Governors may have to be more proactive in working with OT governments to improve standards. And, in the context of the constitutional reviews, I shall have to make it clear that we shall look very cautiously at any proposal to reduce our reserved powers or that might undermine the political neutrality of the public service or independence of the judiciary in the OTs.

¹⁰ HC Deb 11 July 2001, c523W

B. Argentine Sovereignty Claims since 1989

1. The Menem Presidency

Carlos Menem became President of Argentina in July 1989, succeeding Raúl Alfonsín, who had been in power since the collapse of the military junta in 1983, at the end of the Falklands conflict. President Menem's Peronist Justicialist Party (PJ) had promoted nationalism, salary increases for the poor and tax breaks for business. When President Menem took office Argentina was in the middle of an economic crisis, with inflation at 28,000 per cent. Putting aside Peronist orthodoxy, President Menem reduced subsidies for the poor, privatised previously state-owned companies, reduced government regulation on businesses and brought down hyperinflation. He also pardoned military officers convicted of human rights violations in the 1970s and 80s and pursued better relations with Britain and the United States. In 2001 Mr Menem was indicted for allegedly leading a conspiracy to smuggle arms to Croatia and Ecuador during his presidency, but the Argentine Supreme Court ruled that there was a lack of evidence for the charges.

a. Restoration of Diplomatic Relations and the "Sovereignty Umbrella"

The 1990s marked the beginning of renewed diplomatic relations between the UK and Argentina, which had been broken off since the beginning of the Falklands conflict in 1982.¹¹ In October 1989 talks opened in Madrid between British and Argentine delegations led by senior diplomats. A Joint Statement was agreed in October 1989 which established a framework within which the two sides could discuss matters of mutual interest. The so-called "sovereignty umbrella" would protect each country's legal position with regard to the sovereignty dispute. Issues discussed within this framework would not be treated as a step towards sovereignty negotiations.

The two governments also agreed to re-establish consular links, resume air and maritime communications, lift all remaining commercial restrictions imposed in 1982, and set up a working group to look at fisheries co-operation and conservation in the South Atlantic.¹² Mutual diplomatic relations were formally restored in 1990 in a Joint Statement in which the two Governments also agreed to work towards dropping visa requirements for visiting nationals of the other country, allow next-of-kin visits under the auspices of the Red Cross to the Argentine Cemetery at Darwin in the Falklands, and co-operate in certain spheres within the South Atlantic, including joint search and rescue missions.¹³ In another Joint Statement in 1990, the two governments agreed to establish the South Atlantic Fisheries Commission (SAFC) as the forum for regular discussions on the management and conservation of fish stocks in the South West Atlantic.¹⁴

¹¹ UK-Argentinean relations in the immediate post-conflict period and throughout the 1980s are discussed in Standard Note SN/IA/1863, *The Falkland Islands and Anglo-Argentine Relations Twenty Years On* 24 May 2002.

¹² For full text of Joint Statement "Re-establishing Consular Relations Between Britain and Argentina, and Agreeing a Framework on Sovereignty Which Would Allow Further Talks" and related documents see *Falklands.info* at <http://www.falklands.info/history/1989agreement.html>

¹³ Full text available at <http://www.falklands.info/history/1990agreement.html>

¹⁴ Full text of the SAFC Agreement is available at <http://www.falklands.info/history/90fishjoint.html>. The SAFC meets normally twice a year under the "sovereignty umbrella", and includes a Falkland Islands Government representative in the UK delegation. The last SAFC meeting took place in Buenos Aires in

In 1991 President Menem pledged to work towards recovering the Falklands by diplomatic means. In an address to the Argentine armed forces he said that Argentina was “formulating, perhaps for the first time in the light of new experiences, a new Antarctic policy in accordance with the requirements of a new decade” which would “attempt to revive, in accordance with the specific international treaty, our sovereignty and our presence in that region”.¹⁵

According to one commentator, President Menem “sought to combine rhetorical promises of the recovery of the Malvinas with a strategy of cooperation with the British and Falkland Islands governments”.¹⁶ Indeed, during the 1990s President Menem met both Conservative and Labour government representatives, and a range of issues, with the exception of sovereignty, were discussed. The then Foreign Secretary, Douglas Hurd, visited Buenos Aires in 1993, and in May 1994 Mr Hurd expressed optimism about Anglo-Argentine relations:

We continue to make good progress in many fields. For example in trade, British exports grew by 50 per cent in 1993 and there are good investment opportunities. We continue to disagree about sovereignty over the Falkland Islands, but we have an agreement on fisheries conservation and we expect to meet the Argentines in July to discuss oil. We also co-operate internationally: for example, British and Argentine troops are working side by side in UN peacekeeping operations in the former Yugoslavia and in Cyprus.¹⁷

In early October 1994 a MORI opinion poll commissioned by a group of Argentine businessmen asked Falkland Islanders about their views on the sovereignty of the Islands. Among the questions asked were: “What do you think Britain should do now about the Falkland Islands?” and “How much confidence do you have in the Argentineans keeping their promises about the islands if there is some kind of compromise over sovereignty?” The majority (57%) of islanders supported the then Conservative Government's policy of talking to Argentina about everything except sovereignty and only 4% thought that there should be negotiations about sovereignty. 78% said that they would have no confidence in any promises given by Argentina should sovereignty be compromised. 47% said that they would not agree to Argentine sovereignty in any circumstances.¹⁸ The poll caused some alarm in the Falklands as to possible Argentinean intentions in conducting it and there was a suggestion that the Argentine Government had offered Falklanders cash compensation of £925 per person in return for acceptance of Argentinean sovereignty.¹⁹ Letters to *The Times* in November 1994 from the Argentine Foreign Minister, Guido di Tella, and the Chairman of MORI, Robert Worcester, attempted to clear up misunderstandings as to the motives for the poll and dispel rumours of a hidden agenda. Falklanders' suspicions were not allayed, partly in view of reciprocal high level visits between the UK and Argentina towards the end of 1994.

December 2005, but no agreement was reached on the agenda and the Argentine Government cancelled the pre-SAFC scientific meeting to share data on fish stocks.

¹⁵ *BBC Summary of World Broadcasts*, ME/1118, 8 July 1991.

¹⁶ “Towards rapprochement? Anglo-Argentine relations and the Falklands/Malvinas in the late 1990s”, *International Affairs* Vol 74 issue 3 1998

¹⁷ HC Deb, 4 May 1994, c711

¹⁸ *The Times*, 4 November 1994

¹⁹ 4 November 1994, "Bewilderment over the 'missing question' in opinion poll"

b. Amendment to the Argentinean Constitution

Amendments to the Argentinean Constitution, which came into effect in August 1994, contained a specific statement of Argentina's peaceful claim to the Falkland Islands:

The Argentine Nation ratifies its legitimate and non-prescribing sovereignty over the Malvinas, Georgias del Sur and Sandwich del Sur Islands and over the corresponding maritime and insular zones, as they are an integral part of the National territory.

The recovery of said territories and the full exercise of sovereignty, respectful of the way of life of their inhabitants and according to the principles of international law, are a permanent and unrelinquished goal of the Argentine people.²⁰

On 9 February 1995 President Menem said that the recovery of Argentine sovereignty of the Malvinas was a top priority for his Government, that the Islands would be Argentinean in the year 2000, and that he did not rule out the possibility of holding talks with the UK on a tripartite government for the Falklands between Argentina, the UK and the United Nations.²¹ The Argentine Ambassador to the UK, Rogelio Pfirter, supported the President's view and also the suggestion that former Prime Minister Margaret Thatcher should be extradited to Argentina for having ordered the sinking of the cruiser, the General Belgrano, during the 1982 conflict.²²

c. New Bilateral Agreements and Diplomatic Progress

President Menem and the British Prime Minister, John Major, met in New York on 23 October 1995 at the 50th anniversary of the United Nations. A possible fishing agreement was discussed, although sovereignty issues were put on hold until another occasion when, Mr Menem hoped, "all topics can be discussed."²³ At the end of October 1995 Mr Di Tella assured the Senate Foreign Relations Committee that the Falkland Islands were Argentinean, but that "the protection umbrella for the time being limits expressions that are not calm and prudent."²⁴

Since 1992 Britain and Argentina had discussed oil and gas exploration under the "sovereignty umbrella" and in 1995 they agreed to create a South West Atlantic Hydrocarbons Commission to pursue areas of joint interest. In September 1995 the two governments agreed to designate part of the South West Atlantic as an Area of Special Co-operation and to co-operate through a Joint Hydrocarbons Commission to encourage the exploration and exploitation of hydrocarbons in the area by the offshore gas and oil industry.²⁵

²⁰ http://www.argentina.gov.ar/argentina/portal/documentos/constitucion_ingles.pdf

²¹ *BBC Summary of World Broadcasts*, 13 February 1995.

²² *BBC Summary of World Broadcasts*, 8 February 1995.

²³ *BBC SWB*, 26 October 1995.

²⁴ *BBC SWB*, 30 October 1995.

²⁵ The full text of the Hydrocarbons Agreement is available at <http://www.falklands.info/history/95agree.html>. The Special Co-operation Area is examined in greater detail in section II D

In January 1996 Argentina co-operated in setting up an air link between the Falkland Islands and the Chilean capital Santiago, which helped to reduce the Islands' isolation from the rest of South America.

Richard Ralph CVO took over as Governor of the Falklands in January 1996, succeeding David Tatham who left in December 1995. One of the last diplomatic gestures carried out by Mr Tatham was to grant a visit to the Islands in October/November 1996 to twelve relatives of five members of the Argentine Air Force killed during the Falklands war.

d. British Parliamentary and Government Views

In 1996 the Foreign Affairs Committee reported on the *Development of United Kingdom Interests and Links in Latin America*, noting:

Argentina's 1994 Constitution maintains its long-standing historic claim to the Falkland Islands, but commits Argentina to pursuing this only by peaceful means. The Argentines are keen to build closer links with the Falklands. While Argentina does not accept the Falklands' right to self-determination, we were assured at a very high level that Argentina accepted that any settlement of the sovereignty question unacceptable to the Islanders would be inconceivable.

We hope this latter assurance will have a positive effect in further reducing tension in the South Atlantic. There remains a fundamental difference of view between the parties in this dispute. The "umbrella" formula of 1990 has provided, and for the foreseeable future should continue to provide, a pragmatic basis for tackling practical issues, such as fisheries and oil exploration.²⁶

In its memorandum to the Committee Report the FCO recognised that Falklanders were "naturally suspicious of moves improving bilateral relations with Argentina. Argentine passport-holders are denied entry to the Islands, and there is currently no wish by the majority of Islanders to restore direct air links to Argentina".²⁷

President Menem's prediction at the end of 1996 that Argentina would gain at least shared sovereignty of the Falklands by the end of the century was rejected by the then Defence Secretary Michael Portillo in a speech in Port Stanley on 2 January 1997. He did, however, emphasise that the Government wanted to improve commercial relations with Argentina. Secret discussions on shared sovereignty were reported to have taken place between the Foreign Secretary, Malcolm Rifkind, and Mr Di Tella in January 1997, although Mr Rifkind had apparently been under the impression that the talks were to focus on an Argentine proposal to abandon its sovereignty claim to the Islands.²⁸ A report in the *Falkland Islands Newsletter* described how two Falklands Executive Council members delegated to the London meeting left when they realised that its purpose was not the abandonment of the sovereignty claim but a proposal for joint sovereignty.²⁹ The proposal would have involved Argentinean representation on the Falklands Council and the Argentine flag flying alongside

²⁶ HC 73, 1996-97, paragraphs 98 and 99:

²⁷ *ibid* p. 19

²⁸ *Falkland Islands Newsletter*, February 1997.

²⁹ "Duplicitous Diplomacy at 'Secret' Meeting: Argentines Reneged on Offer to Abandon Claim", *Falkland Islands Newsletter*, February 1997

the British flag on the Islands. It resembled earlier proposals put forward and rejected by the British Government during the 1982 conflict and in 1995. The talks continued, however, and progress was made on the hitherto stalled negotiations on fisheries conservation.

e. *The New Labour Government*

In December 1996 the then shadow Foreign Office Minister, Tony Lloyd, refuted an article in the *Times* on 9 December 1996 under the headline “Falkland Islands fear for future under Labour”, saying that the article had misrepresented Labour policy on the Falklands and that British policy toward the Falklands would not change under a Labour government.³⁰ Speaking on the *BBC World Service* in January 1998, the new Prime Minister, Tony Blair, assured the Islanders that the Labour Government would “not pursue any relations or development with Argentina at the expense of the Falklanders” and that he was committed to protecting their right to choose their own way of life and to ensuring their security. He paid tribute to the resolve of the Islanders and assured them that the Labour Government would be equally resolute. At the same time he wanted to develop an “open and constructive” relationship with Argentina in the area of trade.³¹

As a visit to the UK by President Menem drew nearer, Falkland Islanders’ fears and suspicions about the possible repercussions grew. Reports before Mr Menem’s arrival emphasised that sovereignty discussions were not on the agenda, but some Falklanders feared that the visit might foster closer Anglo-Argentine relations, leading to the acceptance of joint sovereignty. Mr Menem visited the UK in October 1998, and he and Prince Andrew laid a wreath at the monument in St Paul’s Cathedral honouring those who died in the Falklands war. The then British Defence Secretary, George Robertson, and his Argentine counterpart, Jorge Dominguez, signed a Defence Memorandum of Understanding covering existing bilateral activities and setting out areas where there would be mutual benefit in doing more together.

In a New Year letter to the Falkland Islanders, Tony Blair called on the Islanders to re-open communications with Argentina as a way of improving relations in a spirit of reconciliation, while reassuring them that the sovereignty of the Falklands and the right to self-determination were not negotiable.

f. *United States-Argentine Relations*

The Argentine daily *El Clarín* reported on 10 January 1999 that in an interview just before President Menem visited the US, President Clinton had said he would encourage “his two close friends” (Carlos Menem and Tony Blair) to overcome their differences and reach agreement on the Falkland Islands. Mr Clinton thought Mr Menem’s recent visit to London had been “a milestone and a very positive step”, and he respected the Argentine President, “not only for his economic reforms and his role in the consolidation of democracy”, but also as “a leader on the path towards a new relationship between the United States and Latin America”. This led the Argentine press to be optimistic that President Clinton would intercede on behalf of Argentina in reaching a definitive

³⁰ Letter to the *Times*, 12 December 1996.

³¹ *Times*, 3 January 1998.

settlement of the Falklands question. However, US Secretary of State Madeleine Albright said later that the Falklands issue was “an issue between Argentina and the United Kingdom. It is not appropriate for us to get involved”.³² The US and Argentine Governments signed defence agreements (a confidentiality agreement and a military assistance and logistics service abroad agreement).

g. New Anglo-Argentine Agreement

On 20 January 1999 the Foreign Secretary, Robin Cook, met Guido di Tella in London. The latter was reported to have told Mr Cook that the Argentine Government and opposition were united in their view on the Argentine claim to the Falklands. A solution to the question was, he maintained, “necessary, possible and very important”. He also ruled out suggestions that the Falklanders might participate in talks on the Islands, on the grounds that the dispute was between the UK and Argentina and was a “two-way discussion process”.³³ On 19-20 May 1999 Mr di Tella and Robin Cook met again to discuss bilateral relations. Falkland Islands representatives participated in further talks held on 25-27 May 1999, marking the first such contacts since the end of the Falklands war in 1982. The talks resulted in a joint statement signed on 14 July 1999 by the British and Argentine Foreign Ministers and approved by the Falkland Islands Government. The main points of the Agreement were:

- The Falkland Islands and Argentina would enhance co-operation on fishing conservation issues and agree a co-ordinated programme to tackle poaching.
- The weekly flight between Santiago in Chile and the Falkland Islands, suspended in March 1999, would resume, and from October 1999 would include two stops a month (one each way) in Argentina.
- Argentinean passport holders would be allowed entry into the Islands. All visitors would have to comply with Falkland Islands Government entry requirements.
- The UK and Argentine Governments would continue to work together to evaluate the feasibility and cost of clearing landmines still present in the Falkland Islands.
- A memorial to the Argentine servicemen who lost their lives in 1982 would be constructed in the Argentine cemetery in the Islands.
- The Argentine Government would review the Spanish place names it used for Falkland Islands locations.³⁴

³² *BBC SWB*, 15 January 1999.

³³ *BBC SWB*, 23 January 1999.

³⁴ See UK/Argentine Joint Statement 1999 at <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394365&a=KArticle&aid=1078995295947> and exchange of letters at

There was a mixed reaction to the Agreement from the Falkland Islanders, who thus far had only received visits to grave sites by Argentinean next-of-kin. There were demonstrations and flag burning on the Islands, particularly when an Argentinean tourist laid the Argentine flag at a 1982 memorial site. The Falkland Island councillors who had participated in the negotiations defended it on the grounds that Argentina was no longer ruled by a military dictatorship but by a democratic government. They commented:

Access by Argentine passport holders is a very difficult pill to swallow. ... We believe it is a necessary step to take in order to retain the support of the British public and Parliament. ... This agreement contains elements which are difficult. But there are significant elements too which are positive in developing the security of our economy and enhancing our rights. ... We believe we have secured ... a good deal for the Falkland Islands. ... However, this agreement will only work and the wider process will only prosper if the present and future governments of Argentina demonstrate, by full implementation of the whole package, that they too are willing to join in building a new relationship of confidence and mutual trust.³⁵

The then Falkland Islands Governor, Donald Lamont, thought that although it was not easy for the Islanders, the Agreement would “enhance confidence and relations”, that it was a “very important step forward for everyone and that there would be “no discrimination against Argentines”.³⁶

President Menem described the Agreement as a “great success” and was “very pleased with the results”,³⁷ while Foreign Minister di Tella thought it was “proof ... that dialogue and trust can improve relations”, and “the beginning of a process that offers great opportunities if we continue with imagination, goodwill and respect.”³⁸ However, the Argentine 1982 War Veterans’ Federation declared “absolute rejection of and annoyance at the agreement”, maintaining:

The only parties to benefit are the British, who have succeeded in taking the shackles off their conflictive zone for economic interests; and the Islanders who have taken a new step towards gaining their independence.³⁹

2. The de la Rúa Presidency

Argentina held general elections on 24 October 1999, which ended a decade of Peronist rule. The Peronist candidate, Eduardo Duhalde, was beaten by Fernando de la Rúa, of the Alliance Party, who, to the relief of the international community, pledged to continue with the economic reforms put in place by Carlos Menem.⁴⁰ For the new President recovering the Falklands was not a priority. The British Prime Minister and the Argentine President-elect met in Paris at the Socialist International Congress on 8 November 1999

<http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029391629&a=KArticle&aid=1013618398965>

³⁵ *Falkland Islands Newsletter*, October 1999

³⁶ *ibid*

³⁷ *ibid*

³⁸ *ibid*

³⁹ *Falkland Islands Newsletter*, October 1999.

⁴⁰ At the time, the new leadership pleased the international economic community, which feared a descent into economic chaos and political instability in the country. This happened a few years later.

and agreed to continue to talk about the future of the Falklands with a view to a peaceful settlement of the sovereignty dispute. At the same time the Mr di Tella was insistent that the matter would be settled with some kind of “transaction”, involving “a great deal of work”.⁴¹ He told a local radio station that “the time is ripe for making great strides in the coming years” on the sovereignty issue.⁴²

The new Argentine Foreign Minister, Adalberto Rodriguez Giavarini, told the UN Security Council on 9 February 2000 that Argentina would insist on its claim to sovereignty over the Falklands:

We have taken up the issue with UN Secretary-General Kofi Annan. We told him that relations between Argentina and Britain have reached a remarkable degree of development but that we insist on the fact that the issue of sovereignty must be discussed once again. We are willing to broach the issue as soon as the United Kingdom expresses the will to do so.⁴³

Mr Giavarini said his Government was “pursuing a cross-party policy mandated by the constitution, which entails the claim to sovereignty by diplomatic means, while taking into account the interests of the inhabitants of the islands”.⁴⁴ On 3 April 2000 the Foreign Minister said his strategy was to talk to the UK “while undoubtedly taking into account the interests of the islanders, but being fully aware of the fact that the constitution has mapped out this cross-party policy, which is absolutely clear.”⁴⁵

At ceremonies in Argentina to mark the 18th anniversary of the “repossession” of the Falklands, President de la Rúa said that the “Malvinas cause” was “above partisan considerations and constitutes a frame of reference for the common patriotism by which our actions must be guided”. That patriotism, he continued,

... should be translated into joint action to regain sovereignty over the islands, where the bodies of so many young Argentines are buried. ... Today we have come to tell them that just as the bark of a tree develops continually, respect and affection for those who gave up their lives for our homeland on the yet unredeemed islands, goes increasingly deeper in the heart of all Argentines.⁴⁶

In August 2001 Tony Blair became the first British Prime Minister to visit Argentina since the Falklands War. President de la Rúa assured him that Argentina’s continued claim to the Falklands would be pursued “absolutely peacefully”⁴⁷

In 2001 Argentina entered a period of severe economic and social instability, which culminated in riots and demonstrations at the end of the year.

⁴¹ BBC SWB, 11 November 1999

⁴² *ibid*

⁴³ BBC SWB, 10 February 2000

⁴⁴ *ibid*

⁴⁵ BBC SWB, 3 April 2000

⁴⁶ *ibid*

⁴⁷ *Financial Times*, 2 August 2001.

3. The Duhalde Presidency

President de la Rúa resigned in December 2001 and, after initial attempts at appointing an interim President failed, Eduardo Duhalde, the Peronist opposition leader, took over the Presidency (as the Peronists controlled both houses of Congress). Mr Duhalde formed a “government of national salvation” to resolve the country’s crisis and take it through to the next scheduled elections in 2003. The *Independent* reported fears that President Duhalde would blame the economic crisis on the Menem/de al Rúa reforms in the 1990s and take Argentina backwards, not forwards.⁴⁸ There were concerns that economic and political instability might lead to military intervention:

For 50 years before democracy returned in 1983, the military stepped in whenever there was a political stalemate. Between 9,000 and 30,000 people were estimated to have been murdered in the last experiment with military rule. Until now, the conventional wisdom was that the military had no chance of returning to power. The military government today has no defenders, having left the country in an economic morass and amid military defeat in the Falklands. It is highly unlikely the generals would even want to take over a country in such disarray. Yet the depth of the economic crisis has some international officials concerned that democracy may be in danger.⁴⁹

The Falklands rhetoric continued in spite of the economic turmoil. According to a report in the *Herald Sun* in January 2002, the Argentine Foreign Minister, Carlos Ruckauf, said in a communiqué that the “Argentine Government and people reaffirm their inalienable rights to the Malvinas Islands, Georgia Islands del Sur, Sandwich Islands del Sur and their maritime waters” but that sovereignty would be re-established “through conflict resolution under international law”.⁵⁰ Another report cited an Argentine Foreign Ministry statement that “the resumption of negotiations over the issue of sovereignty along the lines of several and permanent calls from the international community, will contribute to creating a propitious framework to achieve a fair and definite solution to the dispute.”⁵¹ On 22 January 2002 the then Foreign Office minister, Denis MacShane, twice confirmed that sovereignty over the Falklands was not open to negotiation.⁵²

As reports on Argentina described an increase in lawlessness and gun crime,⁵³ and the country’s economic problems continued to cause social instability, the Duhalde Government sought to rouse feelings of national solidarity among Argentines. At the beginning of May 2002 the Argentine Defence Minister, Horacio Jaunarena, attended ceremonies to commemorate those who had died in the Falklands conflict. He stressed the need for pride and solidarity and emphasised that on this occasion “there is a strong feeling of being Argentine, at this very difficult time for our country”⁵⁴ On 2 May, in a ceremony to mark the 20th anniversary of the sinking of the General Belgrano, in which

⁴⁸ *Independent*, 3 January 2002.

⁴⁹ *Financial Times*, 2 January 2002.

⁵⁰ *Herald Sun*, 5 January 2002.

⁵¹ *Buenos Aires Herald* website, 4 January 2002 at:

http://www.buenosairesherald.com/0_home/home-page/ba_home-2002-01-04.html.

⁵² HC Deb, 22 January 2002 c 767W. See also HC Deb, 22 January 2002, c771W

⁵³ See, for example, *Washington Times*, 9 May 2002.

⁵⁴ *BBC Monitoring Latin America*, Telam News Agency, 1 May 2002.

323 Argentineans died, commemorative medals were presented to the relatives of those killed, and to some survivors.⁵⁵ The Captain of the *Belgrano*, Captain Hector Bonzo, recalled the heroism of those on the ship and drew attention to the “indomitable solidarity” and patriotism at that time.⁵⁶ He called for the same “sense of mission” in Argentina’s present social and economic crisis.⁵⁷

⁵⁵ The sinking of the *Belgrano* is considered in Argentina to be a war crime, since the ship was attacked when it was outside the 150-mile Exclusion Zone around the Islands that had been set by the UK.

⁵⁶ *Financial Times*, 2 May 2002.

⁵⁷ *ibid.*

II The Falkland Islands Twenty Five Years On

A. Argentina under the Kirchner Presidency

1. Argentine Malvinas Rhetoric and Action

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

For President Kirchner, as for previous presidents, the recovery of the Falklands is Argentine state policy and a constitutional mandate. The Government's position on the Falklands is set out on the Foreign Ministry website, *Secretaría de Relaciones Exteriores*.⁵⁸ In November 2003, shortly after taking office, President Kirchner withdrew permission for charter flights to the Falklands to overfly Argentine airspace. Since then, in a number of areas, the Argentine government has indicated that it cannot make progress on issues like this, unless it is linked to progress towards sovereignty negotiations.

2. Argentina Aligns Itself with the New Latin American Left

President Kirchner suspended Argentina's earlier policy of automatic alignment with the US and has sought closer relations with other Latin American countries. At the UN Argentina no longer supports the UN Commission on Human Rights' annual resolution criticising Cuba, but has decided instead to abstain. Since meeting the Bolivian President, Evo Morales, at the 2003 Ibero-American Summit, President Kirchner has actively supported political and economic stability in Bolivia. The Bolivian Interior Minister, Rafael Puente Calvo, has allegedly criticised the Organization of American States (OAS) for not helping Argentina with regard to its Falklands claim. In an address to the OAS in June 2005, the Argentine Foreign Minister, Rafael Bielsa, called on the British Government to start negotiations on ceding the Falklands. He accused Britain of refusing to negotiate and of antagonising Argentina with unilateral actions, including the issuing of fishing and oil licences. Mr Bielsa insisted that the Argentine Government had reiterated explicitly its willingness to negotiate but that the UK persisted in a "negative attitude of rejection".⁵⁹ He complained about the British military base on the Falklands,

⁵⁸ At: <http://www.cancilleria.gov.ar/>. Click on ingles for English version.

⁵⁹ UN Press release GA/COL/3122, 15 June 2005 at <http://www.un.org/news/Press/docs/2005/gacol3122.doc.htm>

which, he said, had "an operational capacity beyond the disputed area" and about what he called British attempts to establish "an international presence to the islands as an entity separate from our country".⁶⁰ Mr Bielsa raised the issue again in a document on 10 June 2005 and again on 15 June in a speech to the United Nations Special Committee on Decolonisation.⁶¹

The *Mercado del Sur* or *Mercosur*, which aims to form a Latin American trade bloc, has become central to Argentine foreign policy. In the 2006 UN Security Council election of non-permanent Security Council members, Argentina joined Mercosur countries in supporting the candidacy of Venezuela (a Mercosur member) over Guatemala (not a member) for the seat. President Kirchner and his Venezuelan counterpart, Hugo Chavez, have cooperated in foreign policy issues, including the question of the Falklands. The *Guardian* reported:

[President Kirchner] has embarked on a renewed push for the islands and enlisted the support of other left-leaning leaders, from Cuba's Fidel Castro to Venezuela's Hugo Chávez. For Mr Kirchner it is personal as well as political. He was born in, and became mayor of, the southern Patagonian port of Río Gallegos, a city that sits directly across from the Falklands and from where Argentinean troops embarked for their failed invasion.

"Kirchner views the Malvinas question with a Patagonian eye, a view hardened by the geographic proximity and the war," according to a Buenos Aires-based political analyst, Rosendo Fraga. "I don't think it was Kirchner's original intention but the sovereignty issue has provided a rallying point to gather left-leaning Latin American governments into an anti-colonial bloc."⁶²

President Chavez has supported the Argentinean claim, asserting in February 2006 that the British Prime Minister should return the Islands to Argentina. The *Daily Telegraph* reported on Mr Chavez's comments:

"We have to remember the Malvinas; how they were taken away from the Argentines," President Hugo Chavez said, using the Argentine term for the islands. "Mr Blair, return the Malvinas to Argentina."

Along with Fidel Castro, the socialist leader has long been the most vocal critic of President George W Bush in Latin America. But Mr Blair has now been added to his list of "imperialists" after the Prime Minister advised him this week to "abide by the rules of the international community". "Mr Tony Blair you have no moral right to tell anyone to respect international laws, as you have shown no respect for them, aligning yourself with 'Mr Danger' [President Bush] and trampling on the people of Iraq," said Mr Chavez. "Do you think we still live in the times of the British Empire or colonialism?"

[...]

⁶⁰ UN Press release GA/COL/3122, 15 June 2005 at <http://www.un.org/news/Press/docs/2005/gacol3122.doc.htm>

⁶¹ See Press Release GA/COL/3122, 15 June 2005, Special Committee on Decolonization, 8th Meeting, Decolonization Committee requests Argentina, United Kingdom to resume negotiations on Falkland Islands (Malvinas) at: <http://www.un.org/News/Press/docs/2005/gacol3122.doc.htm>

⁶² *Guardian Unlimited* 1 July 2006 at <http://www.guardian.co.uk/argentina/story/0,,1810296,00.html>

Mr Blair's official spokesman responded to the Venezuelan salvo by saying: "I don't think it is to anybody's benefit to get into a war of words on this. "The position of the Falkland Islands has been stated many times. That remains the position."[...] Mr Chavez has long accused Washington of trying to overthrow his regime. But he now appears convinced that Britain too is part of "a plan of imperial aggression" against his oil-rich nation. "I'm going to be closely watching what you say and what you do," he told Mr Blair. "Because the British Government has no moral standing, and even less yourself, to get involved in Venezuela's affairs".⁶³

The then Leader of the House, Geoff Hoon, responded to an Early Day Motion and a question in the House on the Venezuelan President's remarks by saying he strongly supported "the continuation of the Falkland Islands as part of this country's heritage. It is something that we maintained absolutely as a priority in government, and we will continue to do so."⁶⁴ On 14 May 2006 President Chavez visited the UK but did not meet Tony Blair. This was widely reported as an indication of the tensions between the two leaders.

On 4 July 2006 President Chavez met Nestor Kirchner and signed a document urging Argentina and Britain to renew talks aimed at resolving the Falklands dispute. Venezuela urged a "peaceful, fair and definitive solution to the sovereignty dispute in accordance with the pertinent resolutions of the United Nations and the Organization of American States, including the principle of territorial integrity."⁶⁵ It further stated that Argentina and Britain should "renew the negotiations with the aim of finding a solution as soon as possible".

3. Fisheries Issues

Fishing rights in the waters surrounding the Falkland Islands has caused tensions between the British, Argentine and Falkland Islands Governments. The catalyst for the renewed Argentinean sovereignty campaign is 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, rather than by annual renewal. The new system came into effect in July 2006, in spite of protests from the Argentine Government that Britain had no right to award fishing rights over what it deemed to be disputed waters.⁶⁶ Environmental groups believe that over-fishing in these waters will devastate the squid population and they have 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 Argentine authorities claimed had been fishing illegally in the Argentine economic exclusion zone. The British Embassy in Buenos Aires maintained the trawler had been in

⁶³ *The Daily Telegraph*, 11 February 2006

⁶⁴ HC Deb 16 February 2006 c1566

⁶⁵ *Guardian Unlimited* 6 July 2006 at <http://www.guardian.co.uk/falklands/story/0,,1813660,00.html>

⁶⁶ 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.

neutral international waters. This was the first time a British vessel had been seized. The Argentine Chamber of Fishing Industries (ACFI) called for strong penalties to be imposed. The vessel and its 100 tons of catch were detained, pending a decision by the Argentine authorities. The British Government maintained contact with the Argentine Government throughout the period and after paying an administrative penalty, the fishing vessel was released.

In his state of the nation address in March 2006, President Nestor Kirchner emphasised that his government has "unwaveringly upheld our claims of sovereignty over the Malvinas, South Georgia and South Sandwich Islands as well as their surrounding areas."⁶⁷ 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."⁶⁸ 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.⁶⁹

4. Representations to the United Nations

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 taken their sovereignty arguments to 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 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 Argentinean campaign has gathered pace, Falklands Islanders have taken the debate a step further, with talk of independence. Falklands Councillor Richard Davies believes the possibility of full independence can no longer be ruled out, since the Islands had achieved a high degree of self-government, strong democratic institutions and are financially self-sufficient.

At the UN Decolonisation Committee in June 2006 the new Argentine Foreign Minister, Jorge Taiana, said the right to self-determination was not applicable to the Falkland Islands since the Islanders were "a British population transplanted with the intention of setting up a colony".⁷⁰ He also accused the British Government of refusing to comply with calls to open negotiations on the sovereignty of the islands and of continuing to carry out unilateral actions in the disputed area, in contravention of UN General Assembly Resolution 31/49 of 1976 (specifically relating to the granting of oil and fishing licences

⁶⁷ *BBC Monitoring* Latin America, 5 March 2006

⁶⁸ *The Guardian* 1 July 2006

⁶⁹ *The Independent* 3 April 2006

⁷⁰ Press release from the UN General Assembly, Special Committee on Decolonisation, 15 June 2006

and the upgrading of the British military base on the Islands).⁷¹ As on previous such occasions, the Resolution was sponsored by Chile and testimonies were heard by two Argentinean petitioners. Mr Taiana's speech to the UN was summarised as follows:

Jorge Enrique Taiana [...] focused on the applicability of the principle of territorial integrity and on the United Kingdom's refusal to heed the calls of the international community over the Malvinas question. Argentina supported the principle of self-determination for all peoples subjugated to colonial rule in all cases deemed applicable by the United Nations. General Assembly resolution 1514 (XV) guided the United Nations work in that regard, but applying the principle of self-determination in the case of the Malvinas would be inappropriate. The islands were part of an independent State, Argentina, which had been separated against their inhabitants' will by an act of force by the United Kingdom, and Argentina had protested that situation ever since. Moreover, the native population had been removed by that act of force, with no chance to return, and replaced by subjects of the occupying Power.

Applying the principle of self-determination to a Territory inhabited by nationals of the colonial Power would, in effect, put that Territory under the control of the occupying Power by force, he continued. That violated international law, and the fundamental principle of international self-determination must not be used to transform illegitimate possession into full sovereignty. The objective of resolution 1514 was to end colonialism, not to perpetrate a colonial situation to the detriment of the legitimate rights of the Argentine people. General Assembly resolution 2065 (XX) of 1965 expressly established that the Malvinas question was a special one involving a dispute between Argentina and the United Kingdom as sole parties. It also confirmed that the right to self-determination was not applicable to the islanders since they were a British population transplanted with the intention of setting up a colony. That population had never been subjugated to a colonial Power as required by resolution 1514. It was a colonial Territory, not a colonized people.

Stressing the need to resume negotiations for a peaceful, just and lasting solution to the sovereignty dispute, he said the United Kingdom had refused to comply with calls for negotiations contained in 10 General Assembly resolution and 41 Special Committee resolutions since 1965. That lengthy lack of progress was cause for concern, and the Secretary-General must continue to assist the parties in complying with those requests. However, the United Kingdom had continued to carry out unilateral actions in the disputed area, contradicting resolution 31/49 (1976) and the international community's mandate. In 2005, Argentina had submitted 15 notes to the United Kingdom rejecting such illegitimate acts, as carrying out seismic surveying for hydrocarbons, granting licences for exploration and exploitation of minerals and aeromagnetic surveying activities, and upgrading British military bases on the Malvinas.

Argentina had warned the United Kingdom on several occasions that it would reject any unilateral measures harming the fishing resources in the maritime areas surrounding the islands, he said. Such measures would negatively impact bilateral cooperation on fisheries as called for in the 1990 Joint Declaration establishing the South Atlantic Fisheries Commission. But despite such

⁷¹ See <http://www.falklands.info/history/resolution3149.html> for full text of resolution

warnings, the United Kingdom was granting property rights on fisheries of up to 25 years in the area. Argentina had rejected that and informed the Organization of American States (OAS), as well as relevant United Nations bodies. Argentina was not averse to cooperating with the United Kingdom on practical aspects deriving from the de facto situation, under due juridical safeguards, provided that cooperation was equitable for both parties and helped to create the proper conditions to resume negotiations on sovereignty issues, in line with United Nations resolutions.⁷²

Richard Davies, for the Falklands, thought that passing yet another resolution calling for UK-Argentinean dialogue “would accomplish nothing” because:

Argentina’s claim of territorial integrity had no historical, legal or other basis. The claim that the people of the Falkland Islands had no political rights was unjust and contrary to the principles on which the United Nations was based. The people had made a free and informed choice to associate themselves with a Member State. In the process of decolonization, there was no alternative to self-determination and, therefore, no reason to treat the Falkland Islands differently. The draft resolution was “fundamentally flawed” as it made no reference to self-determination.

He outlined the history of Argentina’s claim to the Falklands, maintaining that when Britain and Spain had claimed the Islands in the 18th Century, Argentina had not even existed and they had not been ceded to Argentina by Spain. He ventured that the UK’s relationship with the Falklands was not colonial, but a “voluntary association reflecting the views of the majority of the people and should be respected”. The draft resolution, he said, was incompatible with the United Nations Charter, and supporting it would not move the decolonisation process forward. It was an annual ritual which ignored the rights of the people of the Falklands and betrayed their right to self-determination. He thought the Special Committee should not approve the draft resolution, but accept the rights of the Falkland Islanders and insist on their right to self-determination.⁷³

The Committee subsequently adopted the draft resolution without a vote. It reiterated that a peaceful and negotiated settlement was the way to end “the special and particular colonial situation” in the Falkland Islands. The Special Committee also reiterated its support for the UN Secretary-General’s mission of good offices in order to assist Britain and Argentina in complying with General Assembly resolutions on the Falkland Islands. It requested the Argentine and British Governments to consolidate the current process of dialogue and cooperation through the resumption of negotiations, in order to find a peaceful solution to the sovereignty dispute as soon as possible. The text also took note of President Kirchner’s views expressed at the General Assembly’s 60th session and expressed regret that, despite widespread international support for bilateral negotiations on the future of the Islands, GA resolutions 2065 (XX), 3160 (XXVIII), 31/49, 37/9, 38/12, 39/6, 40/21, 41/40, 42/19 and 43/25 had not been implemented.⁷⁴

⁷² UN General Assembly GA/COL/3140, press release, 15 June 2006, at <http://www.un.org/News/Press/docs/2006/gacol3140.doc.htm>

⁷³ UN General Assembly GA/COL/3140, press release, 15 June 2006 : <http://www.un.org/News/Press/docs/2006/gacol3140.doc.htm>

⁷⁴ *ibid*

In September 2006 President Kirchner told the UN General Assembly:

The General Assembly and the Special committee on Decolonization have defined this question as a particular and special case that differs from traditional colonial situations in that it involves a sovereignty dispute that needs to be resolved by means of bilateral negotiations between my country and the United Kingdom, in accordance with what was established in Resolution 2065 and other relevant Resolutions.

We cannot but point out that the government of the United Kingdom persists in ignoring this General Assembly resolutions.

I would nevertheless like to reaffirm once more the permanent readiness of our country for a constructive dialogue with the United Kingdom and to call upon them to promptly heed the request to the international community to resume the negotiations.

In conclusion, we would like to express our firm believe in the existence of perspectives for an international cooperation that can make the world move towards peace.⁷⁵

5. Increasing Argentine Criticism of the UK

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”.⁷⁶ Mr 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 British Government for the failure to establish direct scheduled air services between the Islands and the Argentinean mainland, which, he claimed, Argentina had proposed three years earlier.

In July 2006 the *Guardian* reported on the extent to which President Kirchner’s renewed sovereignty campaign had caught the public imagination:

Mr Kirchner's approach represents a marked change in the conciliatory, passive approach that Argentina has been more or less pursuing since the fall of the late dictator General Leopoldo Galtieri in the aftermath of the war. The strategy of trying to woo the islanders reached its height under the presidency of Mr

⁷⁵ 20 September 2006 at <http://www.un.org/webcast/ga/61/pdfs/argentina-e.pdf>

⁷⁶ *BBC Monitoring Latin America – Political, BBC Worldwide Monitoring*, 12 July 2006

Kirchner's predecessor, Carlos Menem: Argentinians still cringe over his decision to mail islanders, as a Christmas present, copies of Winnie the Pooh. Cooperation between Argentina, Britain and the Falklands has broken down in various areas: fishing agreements, oil exploration, joint scientific cruises and air links between the Falklands and Latin America.

Mr Kirchner succinctly summed up the new approach on April 2 when he spoke at the annual remembrance service for the dead of the 1982 war: "The Malvinas must be a national objective of all Argentinians, and with dialogue, diplomacy and peace we must recover them for our homeland. But dialogue, diplomacy and peace do not mean we have to live with our head bowed."

The new mood is reflected in the streets. The Argentinian war cry *Las Malvinas son Argentinas* (the Falklands are Argentinian) has resurfaced in graffiti and posters round Buenos Aires. The Malvinas are a matter of wounded pride, not over the calamitous end of the war, which is universally dismissed as the last lunatic act of a floundering dictatorship, but over the original British occupation of the islands in 1833.⁷⁷

It was reported in September 2006 that a new history book describing how Britain had illegally "colonised" the Falkland Islands would be distributed to every secondary school pupil in Argentina.⁷⁸

6. The Congressional Observatory

At the end of June 2006 the Argentine Parliament had 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 is headed by Jorge Arguello, the chairman of the Lower House Foreign Affairs Committee. According to the Argentine Foreign Ministry, its tasks are to gather viewpoints and multiply scenarios through liaising with foreign governments on the issue of the Falkland Islands, although elsewhere it is believed that the group's remit is to build Argentina's case for the Falklands and to promote it abroad. The *Guardian* reported on the British Government's reaction to the new body:

British government officials are privately dismissive, 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. One of the officials said yesterday that about 200 diplomats, journalists, ex-combatants and legislators took part in Thursday's commission launch "but it contained few surprises, just the usual rhetoric from firebrands about the islands, depicting the UK as the Evil One".

The British government, while far from alarmed, is expecting the rumbling to continue and become louder as the [2007] election draws closer.⁷⁹

⁷⁷ *Guardian Unlimited* 1 July 2006 at <http://www.guardian.co.uk/argentina/story/0,,1810296,00.html>

⁷⁸ *Guardian Unlimited* 27 September 2006 at <http://www.guardian.co.uk/argentina/story/0,,1881785,00.html>

⁷⁹ *The Guardian* 1 July 2006

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”.⁸⁰ The report based its conclusion on Falkland Island census 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.⁸¹

Asked about the Government’s views on the new body in September 2006, Geoff Hoon replied:

The Argentine Congressional Observatory on the Falkland Islands was established on 29 June, with the purpose of bringing together Argentine academics and legislators to promote communication and dialogue about the Falkland Islands. The Government and the Falkland Islands Government remain ready to explore ways of improving practical co-operation with Argentina on issues of mutual benefit. However, we have made consistently clear to the Argentine Government that there can be no negotiations on sovereignty unless and until such time as the Falkland Islanders so wish.⁸²

7. Argentina’s Recent Military Developments

Since 2000 the size of the Argentine Armed Forces has remained relatively static. The size of the Army, the Air Force and the Argentinean Paramilitary has remained consistent at 41,400, 12,500 and 31,240 personnel respectively; while the size of the Argentinean Navy has fluctuated, albeit by only a relatively small number. In 2000 the Navy consisted of approximately 17,200 personnel which decreased in 2001 and 2002 to 16,200 and 16,000 respectively. In 2003, however, the size of the Navy increased to 17,500 and remained at that level until 2006. In 2007 the Navy has once again seen a modest increase in its size and now stands at 17,755 personnel.⁸³

In line with the recent recovery of the Argentinean economy since its collapse in 2001-02 (the Argentine economy is estimated to have grown by one quarter in the last five years),⁸⁴ the Argentinean defence budget has also seen relatively sizeable increases in the last five years:

⁸⁰ <http://www.mercopress.com/Detalle.asp?NUM=8439>

⁸¹ 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.

⁸² HC Deb 4 September 2006 c2044W

⁸³ Figures provided by the International Institute for Strategic Studies, *Military Balance*, 2000-2006

⁸⁴ International Institute for Strategic Studies, *Strategic Survey 2006*, p. 114-5

Argentinian Defence Budget

	Peso (bn)	US Dollar (bn)
2002	3.4	1.1
2003	4.5	1.5
2004	4.8	1.6
2005	5.2	1.8
2006	5.7	1.9

Source: The Military Balance, International Institute for Strategic Studies

The focus for this additional military spending has been on the development of military capabilities, although progress in this area has been relatively limited thus far. In his State of the Nation address in March 2006 President Kirchner identified several key ongoing projects:

A new profile for acquiring means of defence is being prioritized so as to recover defence production and research capabilities in keeping with national economic, social and technological development objectives.

Within this framework we are developing concrete actions for retooling military equipment and developing national technology such as the construction in Argentine shipyards of five high-sea patrol boats through a regional project together with the navies of Argentina, Brazil, Chile, Uruguay and Venezuela. This project was conceived based on a common engineering base with similar equipment [...]

An air space surveillance and control system is also being developed attending to both general commercial and passenger air traffic as well as for the prevention of the violation of the Argentine air space." For this reason we are "negotiating contracts for the manufacture of 11 secondary radars and for the modernization of three wide-range mobile radars. The development of technology for military purposes and for civilian use is also being promoted.⁸⁵

According to the Stockholm International Peace Research Institute (SIPRI), Argentina has also procured in the last five years:

- An unspecified number of AIM-9L Sidewinder missiles from the United States to equip its A-4AR Skyhawk combat aircraft;
- One SA-315B Lama light helicopter (second hand) and two Hughes 300/ TH-55 light helicopters from the United States;
- One Amphibious Assault Landing Ship (ex-French);
- Three AN/TPS-43 air surveillance radar (ex-United States);
- 20 Bell 205/UH-1 helicopters from the US (19 are expected to be assembled in Argentina).⁸⁶

⁸⁵ "Argentine President reviews achievements in state-of-the-nation address", *BBC Monitoring Americas*, 5 March 2006

⁸⁶ SIPRI, FIRST Database (Available at: <http://first.sipri.org>)

Talks have also been conducted with France over the purchase of a second amphibious assault ship, with delivery expected at some point during 2007, and other assets including Mirage 2000C/Bs combat aircraft, MICA air-to-air missiles, MICA VL air defence missiles and an unspecified number of Exocet MM40 Block-II anti-ship missiles. The procurement of Exocet AM-39 anti-ship missiles with added land-attack capabilities is also reportedly under consideration. As a recent article in *Jane's Navy International* commented:

Fuelled by its fast-recovering economy, Argentina is poised to start a wide and far-reaching process of modernisation of its military equipment, including naval assets.

Argentina's Minister of Defence Nilda Garre has recently visited Paris to discuss buying amphibious ships and missiles.

The emerging investments are driven mainly by an urgent need to replace several platforms and systems. But another factor is a perceived need to catch up with recent defence spending undertaken by Chile, which shares a long border and a tumultuous history with its neighbour.⁸⁷

More recently Argentina has reportedly been in talks with Russia over the possible procurement of medium transport helicopters, armoured personnel carriers and air surveillance radars to replace the second hand TPS-43 radar procured from the US, and with the Ukraine over the possible procurement of transport aircraft.⁸⁸

8. Argentine Plans for 2007

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 2006.⁸⁹ 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".⁹⁰

In February 2007 the Argentine Government rejected a UK invitation for a joint commemoration to honour the dead on both sides of the 1982 conflict. The Argentine response was that the invitation was in the framework of the UK's 25th Falklands anniversary victory celebrations, and both countries are organising separate anniversary ceremonies to remember the conflict.

⁸⁷ "Argentina prepares for military spending spree", *Jane's Navy International*, 1 December 2006

⁸⁸ "Argentina poised for military build up", *Jane's Defence Weekly*, 29 November 2006

⁸⁹ *Mercopress* 2 March 2007 at: <http://www.falkland-malvinas.com/vernoticia.do?id=9980&formato=HTML> and <http://www.presidencia.gov.ar/>.

⁹⁰ "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

B. Progress of the Falkland Islands Constitutional Review

In October 2005 the first formal report of the Falkland Islands Select Committee on the Constitution was published. Reflecting the principles of partnership and good governance set down in the UK's 1999 White Paper on the Overseas Territories, the report outlined the initial thinking of the committee and set out a number of detailed recommendations on the role of the Governor, the structure of the Executive Council, the right to self determination and the powers and procedures of the Legislative Council.⁹¹ The report also acknowledged that several issues had yet to be resolved, including how an ombudsman, also acting as a Human Rights Commission, would be financed and whether a Public Accounts Committee should be established.

Following the general election in November 2005, the Select Committee reconvened to enable the new Legislative Council to consider the October report, propose any amendments to it and to further consider those issues that remained outstanding. A second formal report of the Select Committee was subsequently published for public consultation in August 2006.⁹²

1. Proposed Amendments to the Constitution

The following proposals for constitutional amendment have been put forward by the Committee. All of these amendments and new provisions to the Constitution would, however, require approval by the British Government.

a. *Chapter I – Protection of Fundamental Rights and Freedoms of the Individual*

One major change to the Constitution proposed by the Committee is to include the right to self-determination in the main body of Chapter I, rather than just as part of the Preamble.⁹³ The Committee concluded:

The Select Committee has received varying legal advice on whether the right to self determination has greater effect in the body as opposed to the preamble; but all appear to agree that if there is a greater effect it will be in the body. Select Committee therefore takes the view that that is where it should be. Despite some initial resistance to this from FCO it is difficult to see how there could be a sustainable objection, given the prominence HMG gives to the right to self determination and given its adherence to the provisions of the Charter of the United Nations...⁹⁴

⁹¹ A summary of the main conclusions of the October 2005 was issued as a press release by the Chair of the Committee, Councillor Mike Summers. The press release also highlighted a number of issues that remained to be resolved. A copy of that press release is available at:

<http://www.falklands.info/background/creview.html>

⁹² A copy of this report is available from the International Affairs and Defence section of the House of Commons Library (ref: P997.11-FAL)

⁹³ Comments from the Falkland Islands Councillors to the UN Committee on Decolonisation are outlined in section II A.

⁹⁴ Falkland Islands Legislative Council, *Second Report of the Select Committee on the Constitution*, August 2006, p.7

Many of the additional proposed amendments to Chapter I are intended to bring the Constitution into line with the UK's obligations under the European Convention on Human Rights. Specifically, those amendments include:

- The abolition of the death penalty for treason;
- The abolition of the right to intentionally take a person's life in the defence of property;
- Prohibition of imprisonment on account of the inability to pay a debt;
- To provide for the protection of the right to an education and enable the law on compulsory education and parental authority to be altered in the future;
- The introduction of a new provision allowing, when required in the interests of justice, for an accused to be provided with a defence lawyer at public expense if he/she cannot afford legal representation;
- The introduction of a new provision conferring upon a person, charged on information or indictment in the Supreme Court, the right to be tried by jury or before a judge sitting alone;
- The introduction of a new provision setting out the constitutional right to compensation in certain cases where there has been a miscarriage of justice;
- For provision to be made so that a person suffering from a mental illness or disorder, which cannot be treated in the Falkland Islands, can be sent to the UK without their consent for treatment or secure detention;
- The introduction of a new provision giving protection of the right to marry and the right not to be forced to marry and providing for equal rights and responsibilities to spouses as between themselves and as regards their children;
- The introduction of a new provision allowing for religious communities or denominations to provide religious instruction in their own place of education;
- The introduction of a new provision which would require the Supreme Court to take into account judgements and decisions of the European Commission of Human Rights,⁹⁵ the Committee of Ministers of the Council of Europe and the superior courts in the UK in relation to the interpretation or application of the European Convention on Human Rights.

The Committee has also proposed that amendments be drafted to reflect recent provisions in UK law allowing for persons acquitted of a crime to be tried again for that offence should newly discovered facts or a fundamental defect in the proceedings be discovered;⁹⁶ and for the detention of suspected terrorists. However, the Committee acknowledged that further advice would have to be sought from the Foreign Office with regard to these matters.

b. Chapter II – The Governor

At present the Constitution provides that the question of whether the Governor has in any matter complied with instructions given by Her Majesty through a Secretary of State

⁹⁵ The Commission was merged into the European Court of Human Rights in 1998.

⁹⁶ These provisions are set out in UK law in sections 75-97 of the *Criminal Justice Act 2003* and section 54-56 of the *Criminal Procedure and Investigations Act 1996*.

shall not be enquired into in any Court of Law. In its October 2005 report the Committee concluded that they “can see no reason why the Governor in the execution of his duties should not be subject to the due process of law, as is every other public servant. This has been put to the FCO for justification, modification or removal”.⁹⁷ In its subsequent report in August 2006 the Committee stated:

The advice received to date is that provided the Governor acted lawfully (or indeed unlawfully) the question as to whether he had acted in accordance with the advice of Executive Council would be irrelevant. A further reason for the provision is to avoid confidential advice to the Governor, such as would normally be given in Executive Council, having to be disclosed and examined in Court.⁹⁸

The Committee concluded that further discussion with the Foreign Office would be required on this point.

The Committee also proposes that the Constitution be amended in order to make it clear that the police and the Falkland Islands Defence Force are the responsibility of the Chief Executive, and not the Governor, in the same way as other public servants.

c. Chapter III – The Legislature

The Committee proposes for the age at which an elector can stand for election to the Legislative Council be reduced from 21 to 18 to reflect modern trends and practice. In addition, the Committee recommended that qualifications for electors should be removed from the Constitution to the Electoral Ordinance. However, the Committee did take the opportunity in its report to set out the differing arguments over the current requirement for electors to be Commonwealth citizens and suggested that this issue be addressed within the context of possible removal of this section of the Constitution. In the interim it was acknowledged that provisions would have to remain in the Constitution on a temporary basis until the necessary legislation could be enacted. This is examined in section 2 below.

d. Chapter IV – The Powers and Procedures of the Legislative Council

Since 2003 the meetings of the Legislative Council have been presided over by the Speaker as opposed to the Governor. As such the Committee has recommended that several amendments be made to the Constitution to reflect this fact. In particular it proposes that the Governor should be removed from the list of those entitled to attend the Legislative Council and that the Governor’s powers to determine the business of the Legislative Council should also be removed.

However, the Committee acknowledges that the Governor’s reserved powers (set out in Section 49 of the Constitution), which allow the Governor to intervene in the business of the Council if he believes that it is acting or intending to act improperly or in a way that is prejudicial to HM Government, should remain, albeit in a manner which places limitations

⁹⁷ <http://www.falklands.info/background/creview.html>

⁹⁸ Falkland Islands Legislative Council, *Second Report of the Select Committee on the Constitution*, August 2006, p.15

on the circumstances in which those powers can be exercised. In particular the Committee proposes that the Governor's power to enact a Bill or other measure which has been presented to, but rejected by the Council, should be amended so as to place an obligation on the Governor to first advise the Council of any intention to invoke this course of action, his reasons for doing so and to allow for the Legislative Council to respond.

In addition, the Committee also considered that the Governor's powers to refuse assent to a Bill should be reviewed and called for further discussion with the Foreign Office on this issue. In its report the Committee stated:

Section 46 (2) makes provision for the Governor, acting in his discretion but subject to the provisions of the Constitution, to refuse to assent a Bill. Select Committee understand the need for such a provision in order that Her Majesty's Government can protect its position. However Select Committee is of the view that if refusal to assent to any Bill were contemplated there should be full consultation with and advice given to Legislative Council on the reasons, and a defined process of appeal to be followed if legislative Council still did not agree with the Governor's decision. This matter will need to be discussed with the FCO.⁹⁹

e. Chapter V – The Executive

In its October 2005 report the Select Committee initially recommended that the interests of the Falkland Islands would best be served by having all eight elected members as members of the Executive Council, supported by an enhanced committee system with limited delegated powers. However, on further consultation the Committee in its Second Report of August 2006 concluded that three members retained on the Executive Council, with portfolio responsibilities divided between the remaining five non ExCo members, would be a preferable option.¹⁰⁰ This system would also be supported by a revised committee system with limited delegated powers. The five portfolio structure is set out in Annex 2 of the Committee's August 2006 report.

In contrast to current practice, the Committee also recommends that both the Governor and every elected member of the Executive Council should have the power to introduce any item of business and put questions to the Council.

Other recommendations include establishing a quorum for meetings of the Executive Council of three elected members, with provision that in extreme circumstances where there were for any reason insufficient members to vote on an issue, electronic communication should be used to register the votes of absent members if the business was of the utmost urgency and could not be deferred.

⁹⁹ Falkland Islands Legislative Council, *Second Report of the Select Committee on the Constitution*, August 2006, p.19

¹⁰⁰ This structure was chosen out of a number of options discussed, including maintaining the status quo; retaining three elected members of the Council and assigning them "super portfolios"; retaining three Executive Council members with portfolio responsibility sitting with the remaining five non-exco members; or having all eight elected members on the Council. A detailed assessment of the advantages and disadvantages of each option is set out in Annex 1 of the Second Report.

The Committee also proposes an amendment that would place an obligation on the Governor, in those circumstances where he is not required to consult with the Council,¹⁰¹ to communicate to the Executive Council the measures he has adopted and the reasons for those decisions. In its 2006 report the Committee concluded that “it cannot be right in a democratic society, where the promotion of internal self government is one of the priorities, that the Governor is free to act without advising Executive Council”.¹⁰²

f. Chapter VII – Public Service

Under the current structure the power to make appointments and constitute offices is vested exclusively in the Governor. By contrast, the Committee recommends that the authority to make, confirm and terminate appointments to the Civil Service below the level of Director, and the ability to exercise disciplinary control, should be delegated to the Chief Executive working to the Management Code, a document formally approved by the Executive Council and by the Foreign Office. A limited role for the Executive Council in appointments should also be established.¹⁰³

Consequently an appointments hierarchy is proposed. Under this structure the Governor would have the sole discretion to make appointments (in consultation with the Foreign Office) with regard to Senior Magistrates and Principal Auditors. The Chief Executive, Attorney General, Financial Secretary, Chief of Police, Commanding Officer of the Falkland Islands Defence Force and the Director of Civil Aviation would be appointed by the Governor, following consultation with the Executive Council. However, the Governor would not be obliged to take their advice. The appointment of Heads of Department would be made by the Chief Executive after consultation with the Executive Council (although he would not be obliged to take their advice); while all other public servants would be appointed solely by the Chief Executive.

g. Outstanding Issues

The Committee’s Second Report highlights a number of issues that have yet to be resolved.

1. **Ombudsman** – There is general agreement that provision should be made for the establishment of an ombudsman, or complaints commissioner. It has yet to be agreed, however, how such an office should be set up and resourced. It has been acknowledged that this could be done outside the framework of the Constitution, although the Committee has stated a preference for a provision to be included. It is anticipated that this office would also act as the Human Rights Commission.

¹⁰¹ These are listed in Section 61 of the current Constitution.

¹⁰² Falkland Islands Legislative Council, *Second Report of the Select Committee on the Constitution*, August 2006, p.23

¹⁰³ The establishment of a Public Service Commission to make public service appointments was also considered. The Committee failed to reach agreement over whether such a body could make a useful or cost effective contribution to the running of government, although agreed to consider the issue further.

2. **Public Accounts Committee** – It is proposed that a body be set up as an instrument of either the Executive Council or the Standing Finance Committee, for the purpose of investigating value for money and other issues put to it. It would not be a standing committee, nor would it necessarily have a permanent membership, but would be convened only when required by either of those bodies.
3. **Internal Self-Government** – The 2006 report ends by noting that:

There is a need to solidify, and in some cases codify, the extent of internal self-government, which underpins the right to self-determination. A clearer description of the role of the Governor as head of the Public Service and the role of the Chief Executive as head of the Civil Service is hopefully achieved by the proposed amendments [...] However the circumstances in which the Governor may intervene in domestic affairs in the name of 'good governance' is an issue that has concerned all Overseas Territories in recent years. Good governance is something to which we all collectively aspire; it is not the preserve of a single person or group of persons, and should not be confused with cultural or political differences. It remains the concern of this Select Committee (and its successors) to ensure that the balance between the UK's legitimate interests and the maximisation of internal self government is properly maintained.¹⁰⁴

2. Related Proposals Requiring Constitutional Change

The Committee also examined in its reports a number of proposals relating to internal self government in the Islands, which could be implemented without constitutional change. Some of those measures have already been adopted.¹⁰⁵ However, several issues remain outstanding due to their close relation to the outcome of the Constitutional Review and the need either for references to be removed from the existing Constitution or for new references to be inserted:

1. **A Single Constituency** – A referendum held in 2001 attempted to determine the level of support for a single constituency and revised voting system. The majority of votes in both Camp and Stanley were against the idea of a single constituency and therefore no action was subsequently taken. However, in its deliberations on the Constitution, the Select Committee considered that at the time the issue had been overly complicated by the proposals for a revised voting system. Therefore in order for the issue of a single constituency to be addressed at a future date the Committee proposed in its recent report for the matter of constituencies to be removed from the Constitution and set out within the Electoral Ordinance. However, it also stated its preference for any future decision on a single constituency to be first put to a referendum.

¹⁰⁴ Falkland Islands Legislative Council, *Second Report of the Select Committee on the Constitution*, August 2006, p.26

¹⁰⁵ Including the amendment of Legislative Council Standing Rules and Orders.

2. **The Speaker** – Since 2003 the Legislative Council has been presided over by the Speaker, who is elected by Legislative Councillors. The 2006 report recommends that provision be made in the constitution for a Deputy Speaker, and since the Speaker is elected only for the life of the Council, transitional arrangements from one Council to the next should also be made.
3. **The Principal Auditor** – The requirement for audit of Government's finances is included in the existing Constitution, although it is considered to be in terms that are too brief and lacking in clarity. In addition, no reference is made to the appointment of external auditors. The provisions therefore do not reflect current arrangements which have been developed over time and take account of advice from the UK District Audit Service. These are now contained in the terms of appointment of the Principal Auditor but the Committee recommends that they should more properly be enshrined in minor amendments to the wording of the Constitution.
4. **Public Service Management Code** – A new modern management code for the Civil Service has been introduced, replacing the old General Orders and making Colonial Regulations redundant. The Committee felt it necessary that the Code should be reviewed regularly to ensure it remains appropriate and up-to-date, and that it should have status under the Constitution.

The Select Committee on the Constitution met on 2 February 2007 to clear up final issues relating to the constitutional review. In a summary of the meeting it was suggested that a third and final report of the Committee could be completed by the end of March 2007 and would then be forwarded to the Foreign and Commonwealth Office for the British Government's response.¹⁰⁶ At present the timing of any response by the British Government, or its position on any of the issues and proposals raised by the Constitution Select Committee, is unclear.

C. Defence Issues

The UK has a longstanding obligation to provide for the external defence and security of its Overseas Territories, including the provision of support and assistance to the civil authorities of those territories. This obligation was reiterated in the 2003 Defence White Paper, *Delivering Security in a Changing World*, as one of the UK's Standing Overseas Commitments (Military Task 3.1).¹⁰⁷

As part of that commitment the export of goods on the Military List from the UK to Argentina is restricted where there is a possibility that they could either now, or in the future, put the security of the Overseas Territories in the South Atlantic or British forces operating there, at risk. This was set out in a Ministerial Statement in December 1998 following the lifting of the UK arms embargo against Argentina:

¹⁰⁶ "Nearly there: FCO to receive draft constitution", *Falkland Islands News Network*, 6 February 2007

¹⁰⁷ Cm 6041-II, Session 2003-04

Since 3 April 1982 the UK has maintained a national arms embargo on Argentina. It has been the policy of the UK to deny all applications for licences to export goods specified in Part III of Schedule I to the Export of Goods (Control) Order 1994, commonly known as the Military List. We have decided to replace this embargo with new arrangements, with immediate effect.

Licences will only be granted for exports that we are satisfied would not, now or in the foreseeable future, put at risk the security of our Overseas Territories in the South Atlantic or our forces operating there. We will assess all applications for licences to export goods to Argentina on a case-by-case basis against our national export licensing criteria and those in the EU Code of Conduct on Arms Exports. This will also be the case with applications for advance approvals for promotion prior to formal application for an export licence.¹⁰⁸

1. **Current British Military Presence in the Falklands**

As of February 2007 there were approximately 1,450 Armed Forces personnel serving in the Falkland Islands.¹⁰⁹ Of those forces approximately 350 are permanently posted.¹¹⁰ Four citizens of the Falkland Islands are also currently serving in the British Army.¹¹¹

Local support is also provided to British military personnel by the Falkland Islands Defence Force. Funded by the Falkland Islands Government, the Defence Force is recognised as a skilled and effective Territorial Army unit, not only forming an integral part of the Islands' defence operation, but also carrying out search and rescue operations.

a. *RAF*

The RAF currently has 905 Expeditionary Air Wing based at Mount Pleasant airfield, which comprises:

- No.1435 flight with four Tornado F3 fighter aircraft
- No.1312 Flight with one VC10 tanker aircraft
- One Hercules C130 aircraft providing airborne maritime patrol capability, including fisheries patrolling. The C130 can also be used for air transport or medical evacuation if required.
- No.78 Squadron which provides two Sea King helicopters for search and rescue coverage
- A Rapier Squadron of surface-to-air missiles from the RAF regiment

¹⁰⁸ HC Deb 17 December 1998, c721-22

¹⁰⁹ HC Deb 19 February 2007, c216W

¹¹⁰ At the end of 2006 those permanently posted personnel include 70 naval personnel and 250 Army personnel. Due to the introduction of a new Personnel Administration System for the RAF, RAF location data is not available. However, the number of RAF personnel posted in the Falklands has over the last few years varied between 40 and 50 personnel (DASA TSP 6, Global Location of UK Regular Forces).

¹¹¹ HC Deb 5 June 2006, c34-6W

In addition two Sikorski S61 helicopters, operated by British International, are based at Mount Pleasant for the routine movement of personnel and freight. Air traffic control, fire and meteorological services are also present.

Remotely deployed early warning radars also provide an air defence framework.

In July 2006 the MOD announced that the Chinook CH-47 helicopter usually based in the Falklands would be re-deployed to Afghanistan to support the British deployment in that country.¹¹² In November 2006 the MOD confirmed that the:

Return of the Chinook (removed from the Falkland Islands to help meet a requirement in Afghanistan) remains under review in the context of wider defence commitments and the higher priority currently attached to this type of aircraft tasking elsewhere. In addition, a review of how to deliver the continued heavy lift capability and transport needs in the Falklands is underway.¹¹³

b. Royal Navy

Atlantic Patrol Task South (APTS) is the standing naval commitment to provide either a Destroyer or a Frigate and an RFA support vessel to the South Atlantic and the West African region. The vessel is present in the Falkland Islands area for the majority of the year, including through the southern winter, and is at a maximum of 14 days notice from the islands for the remainder of the year.

Additionally, the Falkland Islands Patrol Vessel is permanently stationed in the region. Atlantic Patrol Task South is also supplemented, on occasion, by a nuclear-powered attack submarine. Naval assets in the region are supported by a Naval Engineering unit.

At present the APTS ship is the Type 42 destroyer HMS *Edinburgh* supported by the small fleet tanker RFA *Gold Rover*. The current Falkland Islands Patrol Vessel is HMS *Dumbarton Castle*. However, HMS *Clyde* is scheduled to deploy as the Falkland Islands Patrol Vessel from summer 2007 (see below).

HMS *Endurance*, a Class 1 Icebreaker, is also deployed to the Antarctic and South Atlantic for seven months of the year.

c. British Army

The British Army also has an Infantry company of approximately 500 personnel permanently stationed in the Falkland Islands. This is done on a rotational basis. At present a detachment of the 1st Battalion, The Royal Welsh (Royal Welch Fusiliers) has deployed from its permanent base in Cyprus to the Falklands.¹¹⁴

¹¹² HC Deb 24 July 2006, c595

¹¹³ HC Deb 7 November 2006, c1444W

¹¹⁴ In September 2008 the regiment is due to return to the UK permanently.

d. Joint Units

Armed Forces personnel and assets based in the Falkland Islands are also supported by a number of joint units, including:

- Falkland Islands Joint Logistics Unit
- Falkland Islands Support Unit
- Joint Communications Unit Falkland Islands
- Joint Services Provost and Security Unit
- Joint Services signals Unit.

The cost of maintaining British forces in the Falkland Islands over the last five years has been as follows:¹¹⁵

<i>Financial year</i>	<i>Costs (£ million)</i>
2005-06	143.3
2004-05	113.1
2003-04	110.6
2002-03	119.8
2001-02	115.3

2. Future Offshore Patrol Vessel

A new offshore patrol vessel (HMS *Clyde*) is planned to replace the Castle-class patrol vessels currently deployed in the Falkland Islands role from summer 2007. The vessel is an enhanced version of the River-class patrol vessel currently deployed in a fisheries protection role in UK territorial waters, with the main difference being a flight deck capable of accepting a Merlin helicopter. A 30mm gun and an air/surface surveillance radar are also being fitted to the vessel specifically for the South Atlantic patrol role.

Unlike the existing Castle-class ship which has to return to the UK every three years for major repairs, HMS *Clyde* will be able to remain deployed in the South Atlantic until at least 2012. The vessel will initially be operated during this period under charter from the VT Group who will remain responsible for support and maintenance of the ship. The MOD will, however, retain the option of extending the charter when it comes up for renewal in 2012, purchasing the vessel outright or returning it to VT.

HMS *Clyde* was launched in September 2006, began sea trials in December 2006 and formally entered service in February 2007. It is expected to be deployed in the South Atlantic in summer 2007.

¹¹⁵ HC Deb 5 December 2006, c362W

3. Landmines

Estimates of the total number of landmines laid during the Falklands Conflict by both parties vary. In 1994 the US State Department estimated that 25-30,000 anti-tank and anti-personnel mines had been laid;¹¹⁶ while the British Government estimated that Argentine Armed Forces laid 18,000 mines of all types, including 14,000 anti-personnel mines. However, the Government acknowledged that this estimate was not reliable.¹¹⁷

Immediately following the conflict the UK cleared approximately 1,400 mines although further clearance was halted after several injuries were sustained by the personnel involved. There are now 101 remaining minefields on the islands which are marked and fenced, and are believed to cover approximately 20 square kilometres.¹¹⁸ The main areas affected by mines are in and around Port Stanley, Port Howard, Port Fitzroy, Fox Bay, Darwin and Goose Green. Thus far, however, there have been no civilian casualties sustained from landmines since the end of the Falklands conflict.

Clearance of the remaining mines has proven to be difficult because of the prevailing geographical conditions including the shifting nature of the peat soil and sand dunes where many of the mines were laid. According to *Jane's Intelligence Review*:

The minefields in the Falklands will defeat most rapid mine-clearance techniques and equipment. In many areas, the soft peat is littered with large boulders. The rocks will not permit the use of rollers, flails or ploughs, and in any case, for most of the year the ground would not support the heavy vehicles required to use such devices. The wet sand, peat and vegetation in the Falklands tend to mask any thermal signature and attempts at overhead imaging have been largely unsuccessful.¹¹⁹

Furthermore, many of the mines are plastic Italian SB-33 anti-personnel and SB-81 anti-tank mines, which have blast resistant mechanisms that can withstand the use of overpressure methods of mine-clearance. However, British forces do make regular patrols and destroy any mines which become exposed on the surface of the ground.

The cost of mine clearance and concern over the potential casualties arising from any de-mining operation had also reportedly prompted the Falkland Islanders to call for a suspension of work until clearance can "be guaranteed to be 100 per cent effective".¹²⁰

a. ***Meeting the Obligations of the Landmines Act 1998***

The *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction* (the Ottawa Convention) was given

¹¹⁶ US Department of State, *Hidden Killers: The Global Landmine Crisis*, December 1994, p.22

¹¹⁷ Foreign and Commonwealth Office, Falkland Islands Country Profile, last updated 9 November 2006.

¹¹⁸ International Campaign to Ban Landmines, *Landmine Monitor Report 2006*

¹¹⁹ "The Mine Conundrum: The threat to mine-clearance operations", *Jane's Intelligence Review Special Report No.8*

¹²⁰ Foreign and Commonwealth Office, Country Profile, Last updated November 2006.

authority in the UK under the *Landmines Act 1998*.¹²¹ Clause 29 of the *Landmines Act* extends its provisions to any Crown Dependency or colony, making the UK responsible for enforcing the Ottawa Convention in the Falkland Islands.

Under Article 5 of the Convention, Britain must find and destroy all mines on its territory within 10 years of the Convention entering into force. As such, the UK has an obligation to ensure the destruction of all anti-personnel landmines in the Falkland Islands by no later than 1 March 2009. Under the provisions of the Convention, however, the UK does have the option of extending this period for humanitarian, geographical or technical reasons, although many consider that to do so would send the wrong signal to other States party to the Convention who also need to meet this deadline.

In 1993 the Argentine Government offered to assist with the process of mine-clearance which prompted a request from the United Kingdom in 1998 for help in funding “a British-led study to assess the feasibility and cost of de-mining the Falklands.”¹²² On 14 July 1999 the British and Argentine Governments confirmed that commitment to cooperate on mine clearance in a Joint Statement:

As agreed in October 1998 by the president of the Argentine Republic and the Prime Minister of the United Kingdom, the two governments will continue to work together to evaluate the feasibility and the cost of the removal of the landmines still present in the Malvinas Islands.¹²³

This was also the subject of a Parliamentary exchange in November 1999:

Mr. Crausby: To ask the Secretary of State for Foreign and Commonwealth Affairs if he will request a contribution from Argentina towards the cost of clearing landmines in the Falkland Islands.

Mr. Battle: In December 1993, the Argentine Government offered to meet the cost of clearing landmines in the Falkland Islands. We welcomed this offer and sought to explore it further.

During President Menem's visit to the UK in October 1998, we agreed as a first step to work with Argentina to evaluate the feasibility and cost of clearing the landmines still present in the Falkland Islands. Work on a Memorandum of Understanding setting out how this feasibility study will be carried out is under way. Both Governments reaffirmed their commitment to co-operate on mine clearance in the Joint Statement of 14 July 1999.

We are fully committed to the Ottawa Convention, which requires us to clear all anti-personnel mines from the Falkland Islands within 10 years of entry, unless we can show good reasons why an extension should be granted. Such reasons may include humanitarian, environmental and technical considerations. Mine

¹²¹ The Convention came into force on 1 March 1999. For background on the Bill see: *The Landmines Bill*, Research Paper 98/74, 9 July 1998.

¹²² HC Deb 21 May 1998, c531w

¹²³ *La Nación*, 15 July 1999, p. 3.

clearance in the Falkland Islands is both difficult and dangerous and we shall be keeping these points in mind.¹²⁴

Acknowledging that the negotiation process had been complicated by the sovereignty dispute over the Falkland Islands, the governments of the UK and Argentina signed an Exchange of Notes Agreement on the clearance of landmines on the islands in 2001. Under that agreement a Joint Working Party consisting of British and Argentinean diplomats and experts was established in order to carry out the proposed feasibility study. Costs of the study are expected to be shared by both countries, although those costs will be determined by the proportion of mines laid by each party during the conflict. Consequently it is expected that Argentina would be responsible for the majority of the financial costs, while the UK would take care of the main technical aspects of the study.

As part of the feasibility study a contract was let in November 2006 to conduct a detailed survey of the Falkland Islands' minefields. The principal aims of that survey are to identify the options for anti-personnel mine clearance, what the environmental impact of clearance may be and provide a broad estimate of the costs involved. In answer to a Parliamentary Question on 31 January 2007 the MOD confirmed that "until the results of the survey are known, and the Feasibility Study is completed later this year, no decisions on funding allocation will be made".¹²⁵ On that basis, it is unclear at present whether the UK will meet its Ottawa obligations by March 2009.

4. 25th Anniversary of the Falklands Conflict

On 2 April 1982 Argentina invaded the Falkland Islands. The Conflict lasted 74 days (Argentina surrendered on 14 June 1982) and claimed the lives of 255 British and 652 Argentine servicemen,¹²⁶ and three civilian Falklanders. The UK lost six ships and thirty four aircraft.¹²⁷

Events to commemorate the 25th anniversary of the Falklands Conflict will take place in the UK and the Falkland Islands from 14-17 June 2007.

Details of those events were set out by the Minister for Veterans, Derek Twigg, in a Written Ministerial Statement on 16 November 2006:

I am pleased to be able to provide further details of our plans to commemorate the 25th anniversary of the Falklands conflict in June 2007.

The commemorations will provide us with an opportunity to reflect on the events of 25 years ago. We will take time to remember those who gave their lives to

¹²⁴ HC Deb 30 November 1999, c159W

¹²⁵ HC Deb 31 January 2007, c319W

¹²⁶ The exact number of Argentine Service personnel lost in the conflict is unknown. The figure of 652 was put forward by the Argentinean Government after the Conflict.

¹²⁷ A summary of the conflict and a timeline of key events are available from the MOD website at: <http://www.mod.uk/DefenceInternet/DefenceNews/HistoryAndHonour/ABriefHistoryOfThe1982Conflict.htm>. A summary of debates on the Falklands Campaign in the House of Commons is available in *The Falklands Campaign*, published by Her Majesty's Stationery Office in 1982. A copy of this digest is available in the House of Commons Library. Further information is also available from the [RAF website](#), the [Royal Navy website](#) and the [British Army website](#).

defend the freedom of the Falkland Islands. As well as the principal events in London, Pangbourne and Stanley, we anticipate that local communities and veterans' groups around the country may wish to organise their own smaller scale events.

Our relationship with Argentina has come a long way in recent years and, in addition to remembering the sacrifices of our forces, we will recognise their losses too. Our commemorations will not be triumphalist.

Official events begin on Liberation Day Thursday 14 June at the Falkland Islands Memorial Chapel in the grounds of Pangbourne Nautical College, Berkshire. This service of commemoration and remembrance is held annually on behalf of the Falklands Families Association, but will have special significance in 2007 when it will be attended by senior members of the royal family, and carried live on BBC.

Later that day (UK time) attention will turn to the Falkland Islands and the first of a series of live link-ups with the islands. A service at Christchurch Cathedral, Stanley will be followed by an Act of Commemoration at the Falklands War Memorial, and British Forces currently based on the islands will parade through Stanley exercising the freedom that was bestowed on them by the Falkland Islands Government in 2002.

The showpiece event of these commemorations will be on Sunday 17 June. This will consist of a high impact visual event on Horse Guards parade followed by a march past of veterans and their modern day service counterparts up the Mall to Buckingham palace to witness a fly past of aircraft from the Falklands era as well as some of those flown by the same squadrons today. Central to the event will be the personal recollections of veterans and islanders as they tell their stories in their own words.

The events will be focussed on the veterans and their families and we are working closely with the South Atlantic Medal Association 82—the principal association for those involved in 'Operation Corporate', along with a wide range of veterans and families organisations. I hope that as many as possible of the campaign's veterans will be able to attend the event on Horse Guards parade. Space in the audience will be limited, so tickets will initially be restricted to veterans (military and civilian), widows, their guests and families. Details can be found on the Veterans Agency's website at: www.veteransagency.mod.uk or by contacting the Veterans' Agency helpline on 0800 169 2277.

A limited number of seats for the Horse Guards event are available to hon. Members; the Speaker's Office will issue tickets in due course.¹²⁸

Further information on the planned commemorative events is also available from the official 25th anniversary website (<http://www.falklands25.com/>) and the South Atlantic Medal Association website (<http://www.sama82.org/>).

The Argentinean government confirmed at the end of February 2007 that it will not participate in the commemorations. Labelling the planned events by the UK as having

¹²⁸ HC Deb 16 November 2006, c2-3WS. Details on eligibility for tickets, the order of priority and how to apply is available at: <http://www.veteransagency.mod.uk/falklands25/falklands25.html>

the “character of a victory celebration”, the Argentinean Foreign Minister, Jorge Taiana, stated:

On that basis, we cannot take part. We consider the Malvinas to be an archaic colonial situation and the in the 21st century the persistence of this situation is difficult to explain.¹²⁹

In response a spokesman from the British Embassy in Buenos Aires commented:

We regret that so far we have not been able to agree on a joint commemoration. We hope the Argentine government will reconsider and we will find a way forward to commemorate all the dead from both sides.¹³⁰

A full list of honours awarded following the Falklands campaign, including two posthumous Victoria Crosses,¹³¹ can be found in *Official History of the Falklands Campaign, Vol.2* by Lawrence Freedman.¹³²

D. The Falkland Islands Economy

In the mid-1970s, the Falkland Islands were in economic decline. Consequently the British Government invited Lord Shackleton to report on the state of the Falklands economy and make recommendations for its economic development. His initial report was published in 1976. However, few of the recommendations of that report were sufficiently implemented prior to the onset of the Falklands Conflict and in May 1982 the Government tasked Lord Shackleton with producing an updated report in light of the altered circumstances. That report was published as Command Paper 8653 in September 1982. It largely built on the recommendations of the previous report and became the blueprint for the Islands’ subsequent economic development. Among its main recommendations were the establishment of a Falkland Islands Development Agency (subsequently called the Falkland Islands Development Corporation); the diversification of its industries, with particular emphasis on agriculture, fisheries, tourism and knitwear; the establishment of a 200-mile fisheries zone around the Falkland Islands, Georgia and the South Sandwich Islands; the establishment of an external air and shipping service and associated infrastructure, and the expansion of the Falkland Islands Government in order to support these development objectives.¹³³

In order to assist the Falkland Islands in meeting these objectives the British Government provided two aid packages: £15m for the reconstruction of infrastructure and £31m for development. In 1983 the Falkland Islands Development Corporation (FIDC) was created for the promotion of economic diversification, a rural development policy and for ensuring that the social and environmental impact of development would

¹²⁹ “Argentina in Falklands service snub”, *The Daily Telegraph*, 28 February 2007

¹³⁰ “Argentine/UK controversy over Falklands’ war commemoration”, *Merco Press*, 27 February 2007

¹³¹ Only 13 Victoria Crosses have been awarded since 1946.

¹³² A copy of this book is available in the House of Commons Library.

¹³³ *Falkland Islands Economic Study 1982*, Cm 8653, September 1982, section 2

be positive. Since its inception, it has provided over £30m in financial help to more than 1,500 projects.¹³⁴

In 1986, the Falklands Islands Government declared a 150 mile radius Fisheries Conservation and Management Zone around the Islands¹³⁵ and established a system of fisheries licensing. This is examined in greater detail below.

1. The Islands Plan

The Islands Plan was introduced by the Falkland Islands Government in 2001. It is a rolling programme whose objective is sustainable economic growth while ensuring the preservation of the Falklands' environment and culture. The Plan is reviewed each year and has nine overarching themes:

- Ensuring, in partnership with the UK, the Islands' right to self-determination and British Sovereignty;
- Management of the economy to allow all sectors of society to prosper;
- Providing all residents with the opportunity to develop their skills and abilities through education and training in a way that suits them and the needs of society;
- Working to develop infrastructure, particularly transport and communications, to meet the economic and social development needs of the Islanders;
- Building a healthy and fit society;
- Improving efficiency of Government Services to the community and ensuring that Government reserves are held at sensible levels;
- Camp to remain viable as a well populated and economically and socially self-sustaining community;
- Protecting and treasuring the unspoiled nature of the environment;
- Ensuring a well-housed, well-served and safe community.

An important part of the Islands Plan is economic diversification with the aim of reducing reliance on income from wool. In order to meet this objective an agricultural business plan has been developed. Among its aims have been the development of a meat processing industry that meets European standards and a restructuring of the fisheries licensing system in order to encourage the development of the industry including establishing services onshore and related industries such as mussel farms and freezer plants. In addition, investment in communications and tourism has become a central theme of the Islands Plan with particular emphasis being given to the development of land-based tourism, in addition to cruise ship tourism.

2. Current Economic Situation

According to the FCO website:

In the past, economic development was hindered by the lack of natural resources, the small size of the population and the remoteness of external

¹³⁴ <http://www.fidc.co.fk/>

¹³⁵ This was increased to 200 miles in 1990.

markets. Wool was the traditional mainstay of the economy but the price of wool fell dramatically in real terms during the twentieth century. Since 1982 the economy has grown rapidly, initially as a result of UK aid but more recently from the development of fisheries. The Falkland Islands Government is working hard to ensure a diverse and sustainable economy for the future.

In 2002 the GDP of the Falkland Islands was around £70 million and GDP per head was £24,000.¹³⁶ The Islands are economically self-sufficient, except in the area of defence. Since the publication of the Shackleton reports, the Falkland Islands Government has made significant progress in diversifying the economy. Fisheries and tourism have become increasingly important, while the possibility of oil reserves being located within the territorial waters of the Islands has led to initial exploration of the Falkland Plateau. These issues are examined in greater detail below.

The Falkland Islands workforce is around 2,000 strong, according to the 2001 Census. The Falkland Islands Government is the largest employer with 600 employees. Around 300 people run their own businesses on either a full or part-time basis. For jobs which cannot be filled by residents, workers are recruited from outside the Islands, often from the UK, St Helena, Australia or New Zealand. Work permits are required. Wages are comparable to the UK.¹³⁷

The state of the Islands' economy and the extent of support from the UK have been the subject of a number of PQs in the last few years:

Sir Nicholas Winterton: To ask the Secretary of State for Foreign and Commonwealth Affairs what assessment he has made of the effect of recent economic development measures on the Falkland Islands; what steps have been taken to improve the economic viability of the Falkland Islands; and if he will make a statement. [38306]

Mr. Douglas Alexander: The management of the economy of the Falkland Islands is the responsibility of the Falkland Island Government. With the exception of Defence costs, the Islands are fully economically self-sufficient. The Foreign and Commonwealth Office contribution is limited to small grants for individual projects from the economic diversification programme budget.¹³⁸

Mr. Frank Field: To ask the Secretary of State for Foreign and Commonwealth Affairs if he will list the amount of support from public funds to the Falkland Islanders in each of the last 10 years. [175206]

Mr. Rammell: The Falkland Islands are now economically self-sufficient in all areas, except defence. The economy of the Falkland Islands has grown rapidly since 1982 and the Falkland Islands Government continue to look to ensure that the economy remains diverse and sustainable for the future.

The Ministry of Defence retains responsibility for defence of the Falkland Islands while the Foreign and Commonwealth Office (FCO) offers some programme

¹³⁶ <http://www.falklands.gov.fk/background.php> These are the most recent available figures.

¹³⁷ <http://www.falklands.gov.fk/employment.htm>

¹³⁸ HC Deb 20 December 2005 c2847W

assistance towards small-scale projects. Examples of FCO funding towards such projects for the Financial Year 2003–04 were £64,800 towards good governance, £45,000 to assist with economic diversification projects and £48,000 towards environmental projects.

Given that many Government Departments have provided financial support to the Falkland Islands over the past 10 years, to provide the information requested would incur disproportionate costs.¹³⁹

Mr. Ben Chapman: To ask the Secretary of State for Foreign and Commonwealth Affairs if he will make a statement on the sustainability of the economy of the Falkland Islands. [159873]

Mr. Rammell: Through careful management of its fishery industry, the Falkland Island Government generates over £20 million per annum in licence fees. Other sectors such as agricultural production also remain important. The Falklands economy has grown rapidly since 1982 and the Falkland Island Government continues to work to ensure that it remains diverse and sustainable for the future. This includes the continued development of sectors such as tourism and mineral resources. With the exception of defence costs, the Falkland Islands receive no grant in aid from Her Majesty's Government.¹⁴⁰

In his annual address to the nation in May 2006, the then Governor of the Falkland Islands, Howard Pearce, suggested that the current transport links provided by the MOD between Mount Pleasant airfield and RAF Brize Norton were no longer sufficient to sustain the pace of economic development in the islands. He stated:

Islanders have also relied heavily for many years on the airbridge operated by the Ministry of Defence between Mount Pleasant and RAF Brize Norton. I should like to express on behalf of Falkland Islanders our gratitude for the access we have had to this service since the 1980s. However, the Falklands economy has developed to the point where the airbridge as it currently operates no longer meets the Islands' needs. Given our inability to develop our South American links, it is no exaggeration to say that the operation in its current form is an obstacle to economic development. It is of course not only Islanders who have an interest in the Islands' economic development. This is an important United Kingdom interest too, since the stronger the Islands' economy the more we can contribute to the costs of our defence and the less the Islands represent a contingent liability to the UK Government.

FIDC has therefore been examining alternative and better ways of meeting the needs of the civilian community for modern air communications while ensuring that the needs of the Ministry of Defence continue to be met as well or even better, and at no greater cost. Meeting the military's needs is of course an essential interest for the civilian community too. This is important work, and I hope it will prove possible for representatives of the Falkland Islands Government, the Foreign and Commonwealth Office and the Ministry of Defence to sit down together soon to examine ways of taking it forward.¹⁴¹

¹³⁹ HC Deb 7 June 2004 c57W

¹⁴⁰ HC Deb 11 March 2004 c1702W

¹⁴¹ The Governor's Annual Address to the Nation, 24 May 2006

a. Fisheries

Since 1986 all fishing within 150 nautical miles (extended to 200 nautical miles in 1990) of the Falklands has been subject to licensing by the Falkland Islands Government and has been a major source of income for the Islands, moving the economy away from its reliance on wool.

The Falklands Islands Government website describes the fishing industry in the Falklands as follows:

Falklands waters are noted for their squid production. Squid usually account for around 75% of annual catches of some 200,000 tonnes, and are destined for markets in Europe and the Far East. The balance of catches consist of various finfish species including Blue Whiting, Hake, Hoki and Toothfish.

Illex argentinus squid are fished principally by specialist squid jigging vessels from the Far East. *Loligo gahi* squid are fished mainly by trawlers registered in the Falklands and owned jointly by Falklands and European companies. There are over 25 ocean going fishing vessels registered in Stanley.

Revenue from the sale of fishing licenses has been as high as £20-25M. More recently revenue has declined to £12-15M per annum as a result of several very poor *Illex* seasons. As a consequence the *Illex* fishery has been closed early to protect stocks and a significant proportion of the license fees have been refunded. Squid stocks can be quite volatile due to their one year life cycle. Some £6M of fisheries income is spent each year on fisheries protection and research.¹⁴²

The volume of fish caught varies from year to year. 2002 and 2004, however, saw some of the smallest catches of the last fifteen years, leading to expressions of concern regarding over-fishing. As the following table shows, in the 1990s the catch varied between 200,000 and 400,000 tonnes but was only 127,000 tonnes in 2004. This was largely due to the poor performance of the *illex* squid fishery.¹⁴³

¹⁴² <http://www.falklands.gov.fk/fisheries.php>

¹⁴³ Falkland Islands Government Fisheries Department, *Fishery Statistics, Volume 10 (1996-2005)*.

Total catch	
<i>thousands of tonnes</i>	
1989	427
1990	285
1991	305
1992	315
1993	252
1994	197
1995	245
1996	195
1997	230
1998	231
1999	377
2000	319
2001	265
2002	101
2003	209
2004	103
2005	127

Source: Falkland Islands Government
Fisheries Statistics (vol 10)

In April 2006, however, it was reported that catches of *ill*ex were at their highest level for a number of years.¹⁴⁴

Management and conservation of fish stocks is carried out by the Falklands Islands Government. There has recently been a major review of fisheries policy in the Falklands leading to three significant policy initiatives:

- The development of port infrastructure and services to enable more fishing vessels to use Stanley as their home port, and to develop the range of fishing related activities that could be undertaken ashore, such as services to vessels and storage and processing of catch;
- The development of aquaculture and marine farming, introducing specific legislation to facilitate and regulate development;
- The introduction of a system of transferable rights in the fishery, which will have similarities with the Individual Transferable Quota schemes used elsewhere, but continue to be based on fishing effort. The security and flexibility this will give the industry should lead to significant development making this probably the most fundamental change in the fishery since the introduction of the fisheries zone.¹⁴⁵

In 2005 Falkland Islands fisheries law was substantially revised, the first time a major revision of legislation had been undertaken since the introduction of the fisheries zone in 1986. Under the new legislation a new system of transferable fishing rights has been

¹⁴⁴ Falkland Islands Government Press Release, *Ill*ex catches on the rise, 13 April 2006, <http://www.falklands.gov.fk/news/index.htm>

¹⁴⁵ <http://www.falklands.gov.fk/fisheries.php>

introduced. It has also provided the opportunity to update fisheries law incorporating a number of international developments particularly in relation to the conservation of marine resources.

The then Governor of the Falkland Islands, Howard Pearce, commented on the importance of the fishing industry in his annual address to the nation in May 2006:

The fishing industry continues to overshadow every other sector in value terms. Income from licence fees and, more recently, corporation tax paid by the Falklands fishing companies provide the largest slice of Government's income and determine whether the Financial Secretary is a happy man [...]

Perhaps the most important development in the Falklands fisheries during the year has taken place not at sea but in this legislative chamber. The new Fisheries Ordinance, passed by Legislative Council in August 2005, radically restructures the way in which we manage our fishing industry. At the heart of the new structures is the decision to replace the system of short term licences with long term property rights of up to 25 years in duration. This brings three key potential benefits: it increases the incentive for responsible and sustainable long term conservation of our fishery resources; it paves the way for long term investment by the fishing companies in more efficient management practices and infrastructure; and it makes it possible to expand the involvement of Falklands companies in the industry, with consequential benefits for local employment and the exchequer. The new structures will be brought into effect progressively over the next few months.¹⁴⁶

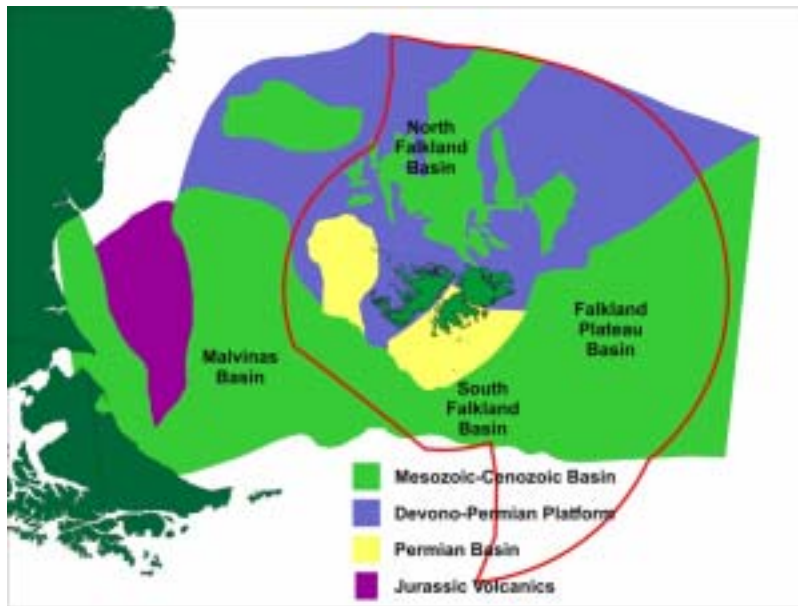
Since 1990 Britain and Argentina have worked together to manage fish stocks through a UK/Argentine South Atlantic Fisheries Commission. Fishing has, however, continued to be a source of dispute between the UK and Argentina.¹⁴⁷

b. Oil

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

¹⁴⁶ <http://www.falklands.gov.fk/media/governors-legco-speech-2006.htm>

¹⁴⁷ Recent altercations between the UK and Argentina over fishing rights are outlined in section II A.



Source: Falkland Islands Government Department of Mineral Resources

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. To date, this is the only basin in Falkland territorial waters that has been drilled.

In the last few years a number of production licences have been granted for the three southern basins, although exploration is at an early stage. None of the basins has been drilled in Falkland waters, although approximately 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 which has been 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.



Source: Falkland Islands Government Department of Mineral Resources

However, progress in licensing the SCA has been minimal. According to the Foreign Office:

In 1995 the UK and Argentina signed a Hydrocarbons Agreement committing both sides to co-operation in hydrocarbons exploration in a region known as the Special Co-operation Area (SCA) to the south-west of the Islands. A South-West Atlantic Hydrocarbons Commission was created under the Agreement which met until 2000, when the Argentine side announced it needed time for reflection before holding new talks. The UK stands ready to resume co-operation in the SCA with Argentina.¹⁴⁸

Despite the limited success of oil exploration, thus far, assessments of the region have indicated a significant untapped oil reserve. According to the Falkland Islands Government briefing document, *Falkland Islands: Sustaining a Secure Future* (2002):

Oil companies' analysis suggests that in excess of 60 billion barrels of oil have been generated in the Basin. The British Geological Survey in Edinburgh, FIG's consultants, have made similar calculations. Further exploration activity is now required to trace to where the hydrocarbons may have migrated and oil companies are expressing interest in exploring offshore areas again.¹⁴⁹

The issue of oil reserves around the Falklands has also been the subject of a number of PQs:

Mr. Hoyle: To ask the Secretary of State for Foreign and Commonwealth Affairs what estimate she has made of the reserves of oil and gas in Falkland Islands waters. [79611]

Mr. Hoon: Only further exploratory drilling will allow for a dependable estimate on the size of the reserves of oil and gas in Falkland Islands waters. Initial exploratory drilling was unable to ascertain the level of oil and gas reserves and is unlikely to restart before 2007.¹⁵⁰

Mr. Hoyle: To ask the Secretary of State for Foreign and Commonwealth Affairs whether the British Government will play a role in supporting the secure development of oil and gas exploration facilities in the Falkland Islands waters. [79700]

Mr. Hoon: The Government will play a role in supporting the secure development of oil and gas exploration facilities in the Falkland Islands territorial sea and continental shelf. The Government are responsible for the external security and defence of the Falkland Islands. The provision of routine security and policing of oilrigs is a matter for the Falkland Islands Government and the oil exploration companies.¹⁵¹

¹⁴⁸ Foreign and Commonwealth Office:

<http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394365&a=KCountryProfile&aid=1018965238550>

¹⁴⁹ Falkland Islands Government, *Sustaining a Secure Future*, 2002:

<http://www.falklands.gov.fk/SustainingASecureFuture.pdf>

¹⁵⁰ HC Deb 29 June 2006 c575W

¹⁵¹ HC Deb 5 July 2006 1157W

Mr. Hoyle: To ask the Secretary of State for Foreign and Commonwealth Affairs what discussions the Government have held with (a) the Falkland Islands Government and (b) the Argentine Government on exploration for oil and gas in Falkland Islands waters. [79698]

Mr. Hoon: The Government hold regular discussions with the Falkland Islands Government on the exploration for oil and gas in Falkland Islands waters. Most recently these included a meeting between both the Foreign and Commonwealth Office's Director General for Defence and Intelligence and the Overseas Territories Department, with representatives of the Falkland Islands Government, on 15 June.

There have been no discussions with the Argentine Government on the exploration for oil and gas in Falkland Islands waters since the South West Atlantic Hydro Carbons Commission ceased to meet in July 2000.¹⁵²

Further information on the progress of oil exploration in the Falklands is available at: <http://www.falklands-oil.com/>

c. *Agriculture*

Before the introduction of the fishing zone in 1986, sheep farming and the export of wool provided the mainstay of the Falklands economy. Despite fishing licences now being the main source of income for the Islands, sheep farming remains the main form of land use. Diversification into other types of farming has proven limited because of the relatively infertile nature of the soil, the geography and the climate of the islands.

There are over one million hectares of farmland and around 600,000 sheep and 5,000 cattle. Prior to 1979, there were 36 farms but following a Government-sponsored policy to increase the number of locally owned and operated farms which resulted in the division of some of the larger 'corporate' farms, there are now around 90 with an average size of 10,000 hectares.

In 1991, four large farms, equating to about 25% of the total farm land in the Islands, were purchased by the Falkland Islands Government from the Falkland Islands Company, demonstrating the Government's commitment to agriculture in the Islands. The Falkland Landholdings Corporation was established as a statutory organisation to run these farms, which total 308,000 ha, with 180,000 sheep and approximately 900 head of cattle.

d. *Tourism*

The Falkland Islands Tourist Board (FITB) is responsible for the development of tourism. According to the Falkland Islands Government, around 55,000 visitors from 40 cruise

¹⁵² HC Deb 28 June 2006 c435W

ships are expected to visit the islands in 2006-07 – an increase of nearly 20% on the previous year.¹⁵³ In response to a series of Parliamentary Questions the FCO revealed:

Andrew Rosindell: To ask the Secretary of State for Foreign and Commonwealth Affairs what funds have been allocated to promoting tourism in the Falklands. [33897]

Mr. Douglas Alexander: The promotion of Tourism in the Falkland Islands is the responsibility of the Government of the Falkland Islands. We have been informed that the Falkland Islands tourist board's budget for tourism development is £220,000.¹⁵⁴

Andrew Rosindell: To ask the Secretary of State for Foreign and Commonwealth Affairs what steps are being taken to promote tourism to the Falkland Islands. [33865]

Mr. Douglas Alexander: Falkland Islands Tourist Board is actively promoting the Falklands as a cruise and land based visitor destination. This is done by representation at international travel fairs and by direct promotion with international tourism companies. This is reflected in the numbers of approximately 40,000 cruise visitors and 1,000 land based visitors who are expected for the coming season.¹⁵⁵

3. UK Trade with the Falklands

UK trade with the Falklands is shown in the table below. UK exports to the Falklands in 2006 were worth £26.6 million and imports from the Falklands were worth £8.3 million.

UK exports to the Falkland Islands, 2006

£000s

Total exports	26,560
<i>of which</i>	
Instruments and appliances used in topography, hydrography, oceanography etc	7,429
Structures and parts of structures (eg bridges and bridge sections, roofs, doors and windows)	2,905
Vessels	2,353

Source: www.uktradeinfo.com

UK imports from the Falkland Islands, 2006

£000s

Total imports	8,335
<i>of which</i>	
Wool	2,018
Instruments and appliances used in topography, hydrography, oceanography etc	528
Meat of sheep or goats (Fresh, chilled or frozen)	480

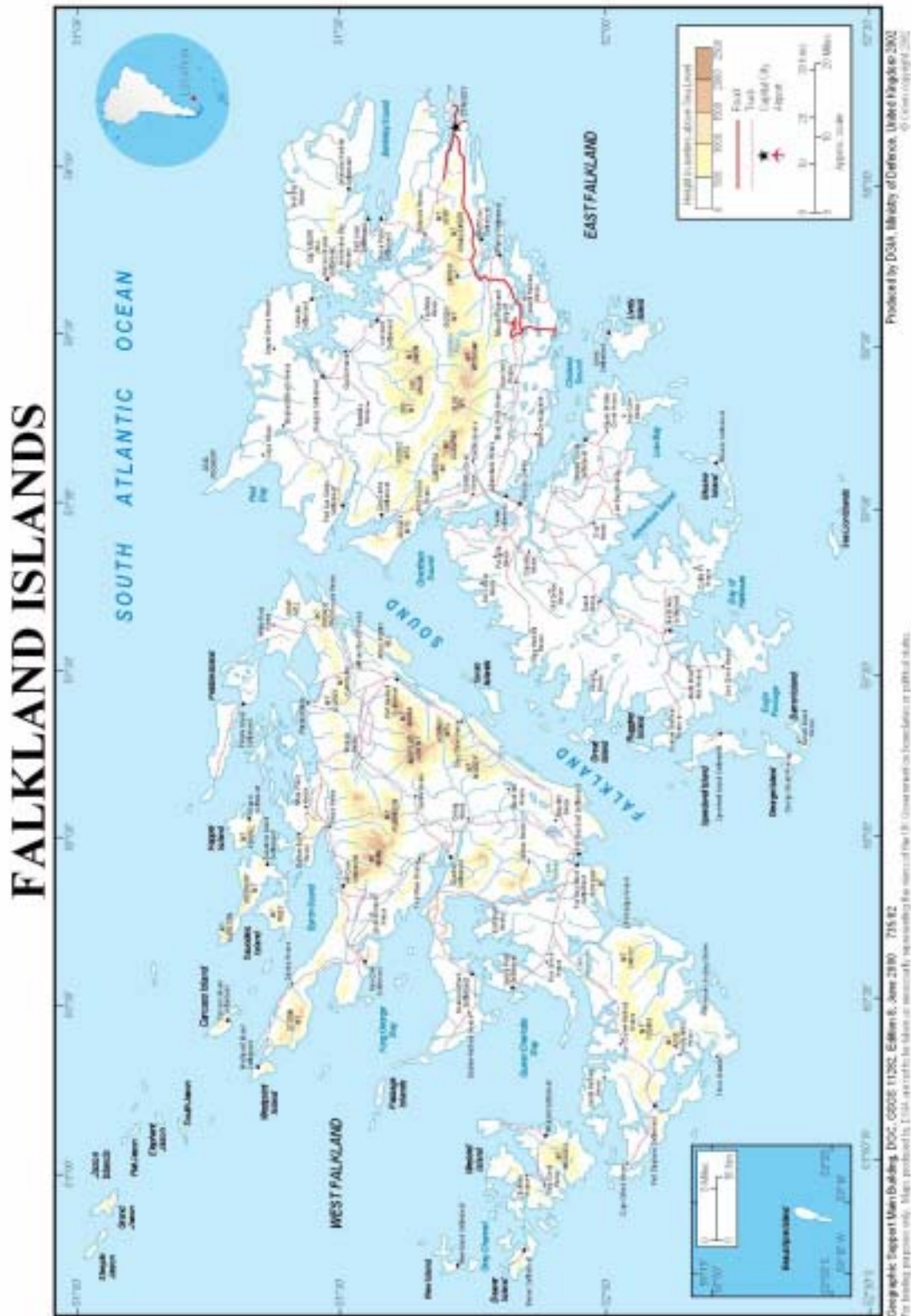
Source: www.uktradeinfo.com

¹⁵³ Falkland Islands Government Press Release, "Falklands Expect Record Number of Cruise Visits", 23 October 2006,

¹⁵⁴ HC Deb 12 December 2005 c1647W

¹⁵⁵ HC Deb 7 December 2005 cc1391-2W

Appendix One – Map of the Falkland Islands



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Please note: Map intended for briefing purposes only and should be taken as necessarily representing the views of the UK Government on boundaries or political status.