DOES THE POPULATION OF THE FALKLAND ISLANDS (MALVINAS) REALLY HAVE THE RIGHT TO SELF-DETERMINATION?

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Abstract

The advent of the right of peoples to self-determination in international law is by no means recent and, nevertheless, in political and legal discourse it is commonplace to highlight its great importance. Nowadays, like in the past, debates about its relevance or applicability to certain situations may reach high levels of emotional intensity. One of these situations is the dispute between the UK and Argentina concerning the Falkland Islands (Malvinas), where claims of self-determination and territorial integrity are opposed to each other. In this article, it is examined whether the right of self-determination is really vested in the population of the Islands (as claimed by the UK and the islanders themselves) and whether the British claim for self-determination can be limited by the Argentinean claim for territorial integrity. The study is made on the basis of the work of the UN General Assembly and the International Court of Justice.

Keywords

Falklands - Malvinas - Self-determination - Territorial integrity

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I. INTRODUCTION

'Welcome to the Falkland Islands. The Falkland Islands is a self-sufficient country with a long history and unique culture. The people of the Falkland Islands have the right to self-determination, enshrined in international law'.

The statement above epitomises the main political aspiration of the vast majority of the population of the Falkland Islands (Malvinas): To remain British. However, at the same time, Argentina claims sovereignty over the Islands. The existence of a sovereignty dispute between the UK and Argentina concerning the Falklands/Malvinas was first noted by the UN General Assembly ('UNGA') in resolution 2065 (XX); and it was reconfirmed in subsequent resolutions. The dispute, which has lasted for about two hundred years now, led both countries to armed conflict in 1982. Moreover, it constitutes an irritating factor in their diplomatic relations. Last days, the conflict heated up up due to alleged problems of defence and security (in the UK's view), or rather to the political climate in the UK in the eve of general elections, as alleged by the Argentine Ambassador to that country.

The Falklands/Malvinas is one of the remaining seventeen Non-Self-Governing-Territories ('NSGTs') to which the Declaration on the Granting of Independence of Colonial Countries and Peoples applies, and it has been on the UN list of NSGTs since 1946. Both, the UK and Argentina, agree that the Islands, being a NSGT, must be decolonized, but they disagree as to how the decolonization process ought to be implemented. The UK insists in claiming the right of the population of the Islands to self-determination and that the right is unlimited, whereas Argentina affirms to have titles to sovereignty over the Islands and maintains the need for immediately launching sovereignty talks.

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1 See the website of the Falklands Islands Government, at www.falklands.gov.fk/ (last accessed on 29 March 2015). Emphasis mine.
2 In the Anglo-Saxon world the islands are known as the Falklands, while in Latin America they are called Malvinas. In this article they are referred to as 'Falklands/Malvinas' or 'the Islands'.
3 See 'Special Committee on Decolonization Approves Text Reiterating Need for Talks as Only Way to Resolve Falkland Islands (Malvinas) Question', 26 June 2014, GA/COL/3271, available at www.un.org/News/Press/docs/2014/gacol3271.doc.htm (last accessed on 29 March 2015).
8 'Argentina poses no military threat to the Malvinas Islands. So why is the UK Ratcheting Up Tension?’, The Independent, 2 April 2015, www.independent.co.uk/voices/comment/argentina-poses-no-military-threat-to-the-malvinas-islands-so-why-is-the-uk-ratcheting-up-tension-10150902.html (accessed on 7 April 2015).
9 UNGA Resolution 1514 (XV), 14 December 1960.
The dispute between both countries was somewhat aggravated by the referendum held in the Islands on 10 and 11 March 2013, in which 98.3% of the electorate voted in favour to maintain their legal status as a British Overseas Territory. The UK supported the referendum, whereas Argentina deemed its organisation and the referendum itself contrary to the text of the relevant UNGA resolutions and a grave misconception of the concept of self-determination.\textsuperscript{12} Against this background, one can easily perceive that the legal dispute between both States is one opposing the right of peoples to self-determination to the principle of territorial integrity of States. In particular, the problem at stake here is twofold: One, whether the population of the Islands qualifies as a ‘people’ entitled to self-determination (Section II) and, two, whether the UK’s claim for self-determination can be limited by Argentina’s claim for territorial integrity (Section III).

The ultimate objective of this article is to promote the peaceful settlement of this old sovereignty dispute. The occasion cannot be timelier, as this year will mark the fiftieth anniversary of the adoption by UNGA of resolution 2065 (XX),\textsuperscript{13} which was the first to refer specifically to the question of the Falklands/Malvinas, to acknowledge the existence of a sovereignty dispute between the UK and Argentina, and to invite both States to settle it by peaceful means.

II. WHETHER THE POPULATION OF THE FALKLANDS/MALVINAS QUALIFIES AS A ‘PEOPLE’ ENTITLED TO SELF-DETERMINATION

The emergence of the right of peoples to self-determination has been one of the major developments in modern international law.\textsuperscript{14} Initially, the policy principle that underlies the right influenced the European community of States throughout the 19th Century, by facilitating the rise and fall of States or the drawing of new frontiers in Europe.\textsuperscript{15} In the next century, the principle of self-determination was powerful enough as to promote and expedite the process of decolonization of trust and non-self-governing territories. The principle gained a very important normative status by becoming on of the UN purposes (‘to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples’);\textsuperscript{16} the principle is further mentioned in articles 55 and 56 UN Charter, as the ultimate objective of international economic and social cooperation among UN members.

But the groundbreaking development of the principle of self-determination was the adoption by UNGA of the Declaration on the Granting of Independence to Colonial Countries and Peoples, as pointed out by the International Court of Justice (‘ICJ’).\textsuperscript{17} The Declaration proclaimed the right of ‘all peoples’ to self-determination, by virtue of which they would ‘determine their political status and freely pursue their economic, social and cultural development’.\textsuperscript{18}

\textsuperscript{12} Idem, paras. 5-6.
\textsuperscript{13} UNGA Resolution 2065 (XX), 16 December 1965.
\textsuperscript{14} Cf. Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010, para. 82.
\textsuperscript{16} Article 1 (2), Charter of the United Nations, 26 June 1945.
\textsuperscript{17} Western Sahara, Advisory Opinion, I.C.J. Reports 1975, para. 57.
\textsuperscript{18} UNGA Resolution 1514 (XV), para. 2.
Envisioned in the UN Charter and in resolution 1514 as a policy principle, self-determination would gradually transform into a right under treaty law and customary law. At the universal level, articles 1 (1) of the International Covenant on Civil and Political Rights (ICCPR) and of the International Covenant on Economic, Social and Cultural Rights (ICESCR) respectively, lay down the human right of peoples to self-determination. Both provisions encapsulate the so-called ‘internal’ dimension of self-determination of peoples, as opposed to the ‘external’ dimension of the right consecrated in resolution 1514. The difference between both dimensions was unambiguously explained by the Committee on the Elimination of Racial Discrimination (‘CERD’). Internal self-determination denotes the right ‘of all peoples to pursue freely their economic, social and cultural development without outside interference. In that respect there exists a link with the right of every citizen to take part in the conduct of public affairs at any level’ and, therefore, “Governments are to represent the whole population without distinction as to race, colour, descent or national or ethnic origin”. External self-determination, in contrast, ‘implies that all peoples have the right to determine freely their political status and their place in the international community based upon the principle of equal right and exemplified by the liberation of peoples from colonialism and by the prohibition to subject peoples to alien subjugation, domination and exploitation’.

In 1970, UNGA adopted the celebrated Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, which constitutes another milestone in the normative development of the right of peoples to self-determination. In the Declaration UNGA referred to both dimensions of self-determination, by proclaiming, ‘all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development’.

At this juncture the question arises as to whether any group of peoples is vested with the right to self-determination. Resolutions 1514 and 2625, as well as the ICCPR and the ICESCR, refer to ‘all peoples’ as right-holders. Still, the term ‘all peoples’ has been interpreted restrictively in international practice. In fact, as explained below, a crucial distinction has been made between certain peoples, on the one hand, and national, religious, or ethnic minorities, on the other. In the context of decolonization, the peoples of mandated territories, trusteeship territories, and NSGTs have been recognized as holders of the right. Outside the context of decolonization, only the peoples under alien domination, subjugation and exploitation have been granted the right.

As far as mandated territories were concerned, Article 22 of the Covenant of the League of Nations stipulated that such territories would be governed by

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21 Ibid.
22 UNGA Resolution 2625 (XXV), UN Doc. A/RES/2625(XXV), 24 October 1970.
23 Idem, Principle of Equal Rights and Self-Determination of Peoples, first paragraph.
‘advanced nations’ that could carry out the task entrusted on account of their resources, experience or geographical position. On this basis, mandated territories such as Iraq, Syria, Lebanon, and Jordan gained independence before the formal end of the mandate system in 1947. With the establishment of the UN, the mandate system of the League of Nations transformed into the ‘UN trusteeship system’, which was established for the administration and supervision of ‘trust territories’ that would be placed under the system by agreements to be concluded between the UN and the administering powers. Pursuant to article 77 UN Charter, the trusteeship system would govern the remaining mandated territories, the territories removed from ‘enemy States’ as a result of the Second World War, and the territories transferred voluntarily by their administering power. The ultimate objective of the system was to promote the political, economic and social development of the trust territories, as well as to lead them to self-determination. It was terminated in 1994, when Palau – the last trust territory by then- gained independence from the US and joined the UN as its 185th Member State. The system proved to be successful, as the eleven territories placed under it became independent States or have voluntary associated themselves with a State, in their exercise of the right to self-determination.

With respect to peoples under alien domination, subjugation or exploitation, their right to self-determination has been acknowledged by UNGA on countless occasions, the negotiating States of Additional Protocol I to the Geneva Conventions of 1949, the Canadian Supreme Court, and the ICJ (with regard to the Palestinian people, in both occasions). Although at present it is undisputed that such category of peoples is entitled to self-determination, controversies may arise as to whether the population of a given territory qualifies as such, as for example with respect to the population of Kosovo. In fact, the assumption by the International Commission on Kosovo that there was a

28 For the list of trust territories that have achieved self-determination see www.un.org/en/decolonization/selfdet.shtml (last accessed on 11 March 2015.)
29 E.g. GA Resolution 3236 (XXIX), UN Doc. A/RES/3236(XXIX), 22 November 1974; GA Resolution 38/16, UN Doc. A/RES/38/16, 22 November 1983.
people of Kosovo' entitled to self-determination\textsuperscript{33} was challenged – implicit or explicitly – by several States in the course of advisory proceedings before ICJ.\textsuperscript{34}

Most importantly with regard to the question of the Falklands/Malvinas, also NSGTs are entitled to self-determination, as stated above. ICJ determined the right of NSGTs to self-determination under customary international law in 1971\textsuperscript{35} and reiterated that legal finding on a number of occasions over the years.\textsuperscript{36} Even though the emergence of the right of NSGTs to self-determination as a rule of customary international law was hardly surprising (resolution 1514 had been adopted by UNGA in order to bring about the speedy end of colonialism in all its forms and manifestations),

The validity of the principle of self-determination, defined as the need to pay regard to the freely expressed will of peoples, is not affected by the fact that in certain cases the General Assembly has dispensed with the requirement of consulting the inhabitants of a given territory. Those instances were based either on the consideration that a certain population did not constitute a “people” entitled to self-determination or on the conviction that a consultation was totally unnecessary, in view of special circumstances.\textsuperscript{37}

In the quote above ICJ insinuates the existence of a definition of the term ‘people’ (for the purpose of the exercise of the right to self-determination) and that recognition as one such group by UNGA would be necessary to be entitled to self-determination.\textsuperscript{38} For this reason, UN’s practice in general and the the work of UNGA in particular are illustrative in that regard. Thus, for example, resolution 1541 set out the principles that should guide UN members in determining whether or not an obligation exists to transmit the information called for in article 73 UN Charter; it also defined the three options for self-determination of a NSGT (emergence as a sovereign independent State; free association with an independent State; and integration with an independent State). Under the resolution, there is an obligation to transmit such information with regard to a territory that is geographically separate and distinct ethnically or culturally from the administering power.\textsuperscript{39} A NSGT would thus be entitled to self-determination.


\textsuperscript{39} UNGA Resolution 1541 (XV), 15 December 1969, Principle IV. Emphasis mine.
only if those two conditions have been met. The question arises as to whether the two conditions are met with respect to the Falklands/Islands.

The Islands are situated in the South Atlantic, about 480 km east of the South American mainland. South Georgia Island, situated about 1,300 km east of the Islands, as well as the South Sandwich Islands, located about 750 km east-south-east of South Georgia, are administered from the Islands. Based on these geographical facts, there is no doubt that the Islands are geographically separate from the administering power (the UK); accordingly, the first condition is met. But, how about the second condition? Is the population of the Falklands/Malvinas distinct ethnically or culturally from the UK?

According to the last census, the total resident population of the Islands amounts to 2,931 inhabitants. The census reveals that merely 47% of the residents was born there, while 28% was born in the UK, 10% in St. Helena, 6% in Chile, and 8% elsewhere. As stated on the website of the Falkland Islands Government, the heart of the community is predominantly of British descent. The UK’s government itself reconfirms this fact. In the light of this data, the population of the Islands is certainly not distinct ethnically or culturally from the administering power and, therefore, it would not qualify as a NSGT entitled to self-determination, on the basis of resolution 1541. It is thus unsurprising that UNGA has never proclaimed or acknowledged the right of the population of the Falklands/Malvinas to self-determination, even if considers and has listed them as a NSGT. UN practice shows that only UNGA (in plenary or through subsidiary organs such as the Committee of 24) has the power to designate which NSGT is entitled to self-determination and which one is not. As far as the current seventeen NSGTs are concerned, UNGA has acknowledged and reaffirmed the right to self-determination of all of them, except for Gibraltar and the Falklands/Malvinas.

For the reasons above, the claim that the population of the Islands is vested with the right to self-determination appears prima facie weak. Moreover, if the population had the right, the exercise of the right would be subject to legal limitations.

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42 Ibid, p. 15.
44 The majority of the population of the Falkland Islands are British by birth or descent and many can trace their family origins in the Islands back to the early nineteenth century. English is the national language and 99 per cent of the population speak English as their mother tongue. There are Anglican, Roman Catholic and non-conformist churches on the Falklands. ‘Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Convention: United Kingdom, the British Overseas Territories, the Crown Dependencies, 29 April 2013, CCPR/C/GBR/7, para. 38.
45 See for example resolution 68/91 on the question of Western Sahara; resolution 68/95 on the questions of American Samoa, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, Saint Helena, the Turks and Caicos Islands, and the United States Virgin Islands; resolution 68/93, on the question of French Polynesia; resolution 68/92, on the question of New Caledonia; resolution 68/94, on the question of Tokelau; and decision 68/523, on the question of Gibraltar. With regard to the Falkland Islands (Malvinas), see section III below.
III. WHETHER THE UK’S CLAIM FOR SELF-DETERMINATION CAN BE LIMITED BY ARGENTINA’S CLAIM FOR TERRITORIAL INTEGRITY

The UK and Argentina agree that the Falklands/Malvinas must be decolonized, but disagree as to how the process of decolonization should be performed. The main cause of divergence seems to be that, as far as the Islands are concerned, the UK conceives of self-determination as an absolute or unlimited right. On the other side, Argentina maintains that the right of peoples to self-determination must be reconciled with another fundamental principle of international law: the principle of territorial integrity. Argentina is also of the view that the principle of self-determination should not be used to transform an illegitimate possession into full sovereignty, under the mantle of protection that would be given by the UN. Hence, the question arises as to whether the right of peoples to self-determination is not subject to legal limitations, as maintained by the UK, or whether it can be limited by the principle of territorial integrity, as alleged by Argentina.

State sovereignty is the cardinal principle of international law upon which the UN is built, and from this principle flow other fundamental, inviolable principles of international law, such as the principle of territorial integrity. Thus, for example, resolution 2625 declares, ‘sovereign equality includes the following elements... (d) the territorial integrity and political independence of the State are inviolable.’ It follows that all States must respect the territorial sovereignty and political independence of each other. Furthermore, it is common knowledge that respect for the principles of State sovereignty and territorial integrity is often demanded not only by States but also by international organizations, and that the sanctity of both principles has been safeguarded by international courts on several occasions. Thus, for example in ICJ’s words, ‘between independent States, respect for territorial sovereignty is an essential foundation of international relations.’

46 On other occasions where the principle of self-determination was at stake, the UK’s government did not inquire into the desire of the people concerned. For example, the population of the Chagos Archipelago (which belonged to Mauritius, by then a UK’s colony) was removed from their territory by the UK without prior consultation, in order to allow the establishment of a US military base in the island of Diego García. For a recent, short account of the removal of the Chagossian population from their territory see In the Matter of the Chagos Marine Area before an Arbitral Tribunal Constituted under Annex VII of the United Nations Convention on the Law of the Sea Between the Republic of Mauritius and the United Kingdom of Great Britain and Northern Ireland, Award, 18 March 2015, pp. 33-37 (see in particular para. 99) and Dissenting and Concurring Opinion of Judges Kateka and Wolfrum, para. 70 et seq. Available at www.pca-cpa.org/showpage.asp?pag_id=1429 (accessed on 25 March 2015).

47 Special Committee on Decolonization Approves Text Reiterating Need for Talks as Only Way to Resolve Falklands Islands (Malvinas) Question, GA/COL/3271, 26 June 2014. See also the speech by Ambassador Ruda before Sub Committee III of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, 9 December 1964. The speech is available at www.mrecic.gov.ar/userfiles/documentos-malvinas/1964_-_alegato_ruda.pdf (last accessed on 25 March 2015).

48 Article 2.1 UN Charter reads as follows: ‘The Organization is based on the principle of the sovereign equality of all its Members.’


50 Corfu Channel Case, Judgment of April 9th 1949, ICJ Reports 1949, p. 35.
On the other hand, State practice and international documents show that, in the exercise of the right to self-determination, territorial integrity is to be respected rather than curtailed. For instance, paragraph 6 of resolution 1514 declares, 51 ‘Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.’ In this regard, it is important to note that during the debates preceding the adoption of the resolution, a number of States declared that paragraph 6 sets a legal limit to the right of self-determination; according to them, the limit aims to safeguard the right of a State to recover territory. Unsurprisingly, States making comments in that sense were experiencing in person the tension between self-determination and territorial integrity, as for example Indonesia and Guatemala with regard to the situations in West New Guinea (West Irian) and Belize respectively. 53

Resolution 2625 sets limits to the right of self-determination to protect the territorial integrity of States, as well: ‘Nothing in the foregoing paragraphs shall be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed, or colour’. 54 This paragraph, so-called ‘safeguard clause’, resulted from a proposal by Italy to include an explicit reference to protecting the territorial integrity of States in relation to the principle of equal rights and self-determination. 55

In the same vein, the Canadian Supreme Court held, ‘the international law principle of self-determination has evolved within a framework of respect for the territorial integrity of existing states. The various international documents that support the existence of a people’s right to self-determination also contain parallel statements supportive of the conclusion that the exercise of such a right must be sufficiently limited to prevent threats to an existing state’s territorial integrity or the stability of relations between sovereign states’. 56

The tension between territorial integrity and self-determination has also found echo in the work of the UN Security Council (‘UNSC’). UNSC practice shows that, in general, UNSC seems to privilege the claims for territorial integrity over claims

51 ‘Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.’
52 UN GAOR (936th, 945th-947th meetings), at 1271.
for self-determination. Thus, for example, in the case of the Kurdish people in Iraq, UNSC affirmed the territorial integrity of this country in resolutions 688 (1991) and Resolution 1546 (2004) without reference to the demands of the Kurdish people for self-determination.57

That the principle of territorial integrity may operate as a limitation to the exercise of the right of peoples to self-determination can also be verified in the work of UNGA. The relevant practice of this UN organ is particularly enlightening because it was UNGA and no other organ that enacted resolution 1514 on the granting of independence to colonial countries and peoples. The approach of UNGA to, for example, the questions of Gibraltar and Ifni, reaffirms the understanding that the right of peoples to self-determination is limited by the principle of territorial integrity.

The territory of Gibraltar is under British administration and has been on the UN list of NSGTs since 1946.58 According to the UK, the sovereignty over the territory of Gibraltar and the attending territorial sea was transferred to it by Spain under the Treaty of Utrecht in 1713.59 The UK maintains that its relationship with this territory is not one of colonialism, that it will not transfer sovereignty over it to Spain against the wishes of the population, and that it will not start sovereignty talks with Spain without the consent of the population either.60 Spain, however, alleges that under the Treaty of Utrecht it has transferred only the city and castle of Gibraltar, its port, defences and fortresses, but not the surrounding waters.61 In Spain’s view, the principle of territorial integrity is the sole principle applicable to the question of Gibraltar and any negotiation on the status of this NSGT must be based on that principle;62 also, although the interests of the population of Gibraltar must be taken into account in any negotiation, the UK – in its capacity as the administering power – should be responsible for the protection of those interests; put differently, the principle of self-determination does not apply to the question at hand.63

In 1965 UNGA invited for the first time the UK and Spain to start negotiations.64 Since then it has urged both States to reconcile their positions, on the basis of the UN Charter and the relevant UNGA resolutions and principles of international law, ‘while listening to the interests and aspirations of Gibraltar that are legitimate under international law’.65 It is important to note that UNGA has never proclaimed or acknowledged the right of the population of Gibraltar to self-

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60 Idem, para. 36.
61 Idem, para. 1.
62 Idem, para. 45.
63 Idem.
64 See UNGA Resolution 2070 (XX), 16 December 1965.
determination, notwithstanding that Gibraltar is a NSGT. Quite to the contrary, UNGA calls periodically upon the UK and Spain to settle the dispute by negotiation, while taking the interests and aspirations (and not the wishes) of the population of Gibraltar into account, as referred to above. Thus, despite that Gibraltar is a NSGT and these are in principle entitled to self-determination, the considerations above reveal that claims based on the right of peoples to self-determination will not necessarily prevail over claims based on the principle of territorial integrity. To sum up, UNGA has not proclaimed or acknowledged the right of the population of Gibraltar to self-determination: It urges both States to reach a negotiated settlement of the dispute.

The former question of Ifni is further evidence that UNGA does not conceive of the right of peoples to self-determination as unlimited, but rather as a right possibly limited by the principle of territorial integrity. The territory of Ifni was the object of a sovereignty dispute between Morocco and Spain. Morocco maintained that Ifni was Moroccan territory unlawfully occupied by Spain, whereas Spain contended that Ifni was a NSGT which would remain under Spanish administration until the population of Ifni was prepared to vote in a referendum of self-determination. In resolution 2229, UNGA reaffirmed the right of the peoples of both NSGTs to self-determination, but set a clear limit to the exercise of the right by the Ifni people: It requested Spain to accelerate the decolonization process; and to establish with Morocco procedures for the transfer of the administering powers, while 'bearing in mind the aspirations of the indigenous population'.

With respect to Spanish Sahara, UNGA invited Spain to organize a referendum 'with a view to enabling the population of the Territory to exercise freely its right to self-determination', in contrast. The radically different approach by UNGA to both situations clearly shows that the right of peoples to self-determination can be limited by territorial claims. In fact, Ifni was transferred by Spain to Morocco in 1969 without consulting the Ifni people, and ICJ found the transfer to constitute the valid method of decolonization of Ifni. Since then, this territory has no longer appeared on the list of NSGTs.

In the same advisory opinion, ICJ examined the legal ties between Western Sahara (formerly known as Spanish Sahara) and the Mauritanian entity and between Western Sahara and Morocco. After carefully reviewing the information presented, ICJ found no tie of territorial sovereignty between Western Sahara and Morocco or the Mauritanian entity, nor any other tie of such a nature as to prevent the exercise of the right of the Saharawi people to self-determination. It thus follows, by implication, that had ICJ found a tie of territorial sovereignty between Western Sahara and Morocco or the Mauritanian entity, the tie would have prevailed over the right of self-determination. ICJ's finding and the separate opinions by Judges Singh and Petrén reaffirm the

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66 Resolution 2229 (XXI), Question of Ifni and Spanish Sahara, 20 December 1966.
67 Idem, para. 1.
68 Idem, para. 3.
69 Idem, para. 4.
70 Western Sahara, Advisory Opinion, ICJ Reports 1975, paras. 60-3.
71 Idem, para. 63.
72 Idem, paras. 75 et seq.
73 Idem, para. 162.
74 See in that vein the opinions of Judges Singh and Petrén. Idem, pp. 79-80, 110.
proposition that the right of peoples to self-determination can be limited by territorial claims, as it actually did in the case of Ifni.

With regard to the question of the Falklands/Malvinas, resolution 2065 underscores the existence of a dispute between the UK and Argentina concerning sovereignty over the Islands and invites both States to find a peaceful solution while bearing in mind the UN Charter, resolution 1514, and ‘the interests of the population’.75 There is no reference to the right of self-determination or to the organisation of a referendum on self-determination, in the text of the resolution. UNGA worded the text of the resolution very carefully, as to avoid misunderstandings: It employed the term ‘interests’ and not ‘wishes’. This is worth noting, because any time UNGA deals with the right of a given people to self-determination, it typically employs the term ‘wishes’ or ‘desires’, but not ‘interests’.76

Resolution 2065 recommends diplomatic negotiations to settle the sovereignty dispute between Argentina and the UK, in other words, as the appropriate method of decolonization of the Falklands/Malvinas. UNGA considers the principle of self-determination irrelevant to the dispute. This interpretation of resolution 2065 is confirmed by the text of the preamble of resolution 3160, where UNGA affirmed, ‘Mindful that resolution 2065 (XX) indicates that the way to put an end to this colonial situation is the peaceful solution to the conflict of sovereignty between the Governments of Argentina and the United Kingdom’.77 Likewise, the subsequent resolutions on the same question, i.e. resolutions 31/49 and 37/9, make the same recommendation.78

To summarize, UNGA and ICJ conceive of self-determination not as an absolute right, but as one subject to the territorial limitations referred to in paragraph 6 of resolution 1514. True, both UN organs have admitted territorial claims as a limitation to the right of self-determination only in special circumstances. ICJ has acknowledged the validity of a territorial claim when the population of the territory was not a ‘people’ entitled to self-determination’, or when ‘a consultation was totally unnecessary, in view of special circumstances’.79 ICJ did not mention which circumstances would be so special as to limit the exercise of the right of self-determination, but given that Western Sahara was already a colony of Spain when Morocco and Mauritania attained independence in 1956 and 1960 respectively,80 and because ICJ referred to the absence of sufficient ties between Morocco or the Mauritanian entity and Western Sahara, ICJ may have implied two ‘special circumstances’ that would strengthen a territorial claim vis-à-vis self-determination: the claimant State must have existed at the time of colonization of the NSGT in question and it must have asserted valid sovereignty over the territory at stake at the relevant time. This may explain, for example,

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75 Resolution 2065 (XX), 16 December 1965, para. 1.
76 See for example UNGA Resolution 2230 (XXI), Question of Equatorial Guinea, 20 December 1966, para. 6.
77 Resolution 3160 (XXVIII), Question of the Falkland Islands (Malvinas), 14 December 1973.
78 Resolution 31/69, Question of the Falkland Islands (Malvinas), 1 December 1976, para. 3. Resolution 37/9, Question of the Falkland Islands (Malvinas), 4 November 1982, para. 1.
why UNGA reaffirmed the right of the people of Belize to self-determination and proclaimed the inviolability of its territory, as a response to Guatemala’s sovereignty claim over Belize based on State succession.\footnote{Resolution 3432 (XXX), Question of Belize, 8 December 1975,} Belize was already a UK’s colony when Guatemala gained independence from Spain.

As far as the Falklands/Malvinas are concerned, Argentina was an independent State before the UK took over the Islands in 1833. This may constitute one of the special circumstances referred to by ICJ in \textit{Western Sahara}.

**IV. CONCLUSION**

The UN has facilitated the transformation of the principle of self-determination into a right under international conventions and custom, and it also enabled the implementation of the right. UNGA proclaimed and ICJ confirmed that self-determination is a right vested in three categories of peoples: (i) peoples of mandated and trusteeship territories; (ii) peoples of NSGTs; and (iii), peoples under alien domination, subjugation or exploitation. The Falklands/Malvinas have been on the UN list of NSGTs since 1946 and, therefore, the population of this NSGT appears, prima facie, to hold the right of self-determination. Yet, both, UNGA and ICJ, have acknowledged limitations on the exercise of the right of NSGTs to self-determination, namely: to be entitled to the right, the population of the NSGT concerned must be ethnically or culturally distinct from the administering power; or the existence of special circumstances, such as a sovereignty dispute, that would render a consultation or referendum unnecessary.

The census 2012 in the Islands shows that its population is essentially British and, hence, not ethnically or culturally different from the administering power. Furthermore, all UNGA resolutions on the question of the Falklands/Malvinas emphasize the existence of a dispute between Argentina and the UK concerning sovereignty over the Islands and the need for starting negotiations while bearing in mind the UN Charter, resolution 1514, and the interests of the population. At the same time, it is fundamental to note that none of those resolutions mentions the right of self-determination or the need for safeguarding the wishes of the population of the Islands. In the light of the foregoing, the population of the Falklands/Malvinas does not appear, prima facie, to be entitled to the right of self-determination.

In theory, the sovereignty dispute between Argentina and the UK concerning the Falklands/Malvinas could be settled by diplomatic negotiations, or by resort to ICJ or an arbitral tribunal. For this to happen, the UK should stop claiming an absolute right of self-determination for the population of the Islands, as UNGA does not consider this right applicable to the dispute. In addition, it is worth recalling that the right of peoples to self-determination is not unlimited. Affirming the contrary can solely be based on a misinterpretation of the law regarding decolonization or, more probable in this case, on a political manipulation of the underlying principle of self-determination in order to perpetuate the status quo. Be that as it may, fifty years after the adoption of resolution 2065, it is time to honour UNGA’s recommendation: To start without delay sovereignty talks, to terminate this colonial situation.