



SOUTH ATLANTIC COUNCIL OCCASIONAL PAPERS

No.4

March 1988

FISHING IN THE SOUTH-WEST ATLANTIC

By Dr Peter Willetts, City University, London

This paper will argue that the British government's declaration of a fishing zone around the Falkland Islands for the 1987 season was not essential on conservation grounds and could have been delayed for at least another year without any danger to the fish stocks. As the waters are disputed, it is both politically implausible and legally impossible that any permanent internationally recognised maritime boundary could be established without the agreement of the Argentinian government.

The British policy of seeking international agreement on a multilateral fisheries management regime, which was pursued from March 1985 to October 1986, was preferable at the time and ought not to have been abandoned in favour of unilateral action. The Argentinian government should have given active support to a multilateral regime and have damaged their interests by not doing so. Unilateral actions by either Argentina or Britain can only make the Falklands/Malvinas issue more difficult to resolve. Even if Britain were to retain permanent control over the Islands, the current fishing zone provides an unsatisfactory answer to the conservation problems. Similarly, if Argentina were to gain effective control, they would be obliged, for both conservation and legal reasons, to act in concert with the governments of fishing countries. For all concerned a multilateral fishing regime still provides the only practical way of achieving conservation and the only satisfactory way of handling the legal and political problems associated with fishing in the area.

This paper will be presented in five sections. Firstly, because the fish do not follow political boundaries, it is necessary to establish the technical nature of the conservation problems. Secondly, the political pressures which led the British government to declare a fishing zone are examined. Thirdly, the legal problems in this unusual situation are evaluated. Fourthly, reactions of other governments to the British decision are considered. Finally, the case is put that a multilateral regime is still both desirable and possible.

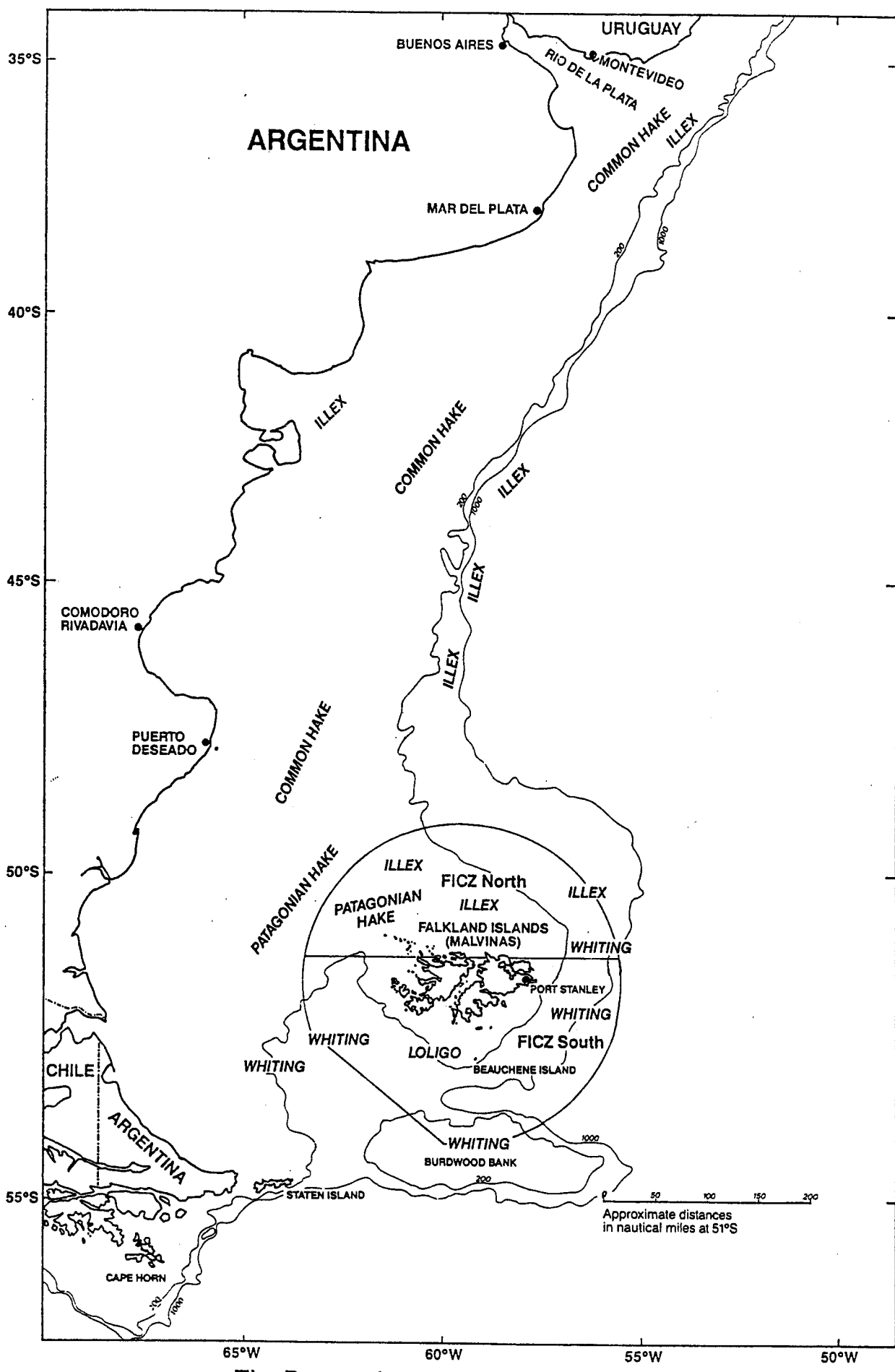
1. The Patagonian Shelf Fishery.

Most of South America has a very narrow continental shelf, but around Argentina shallow seas extend 100 to 200 miles from the coast. A further extension in the south-east, bulging 500 miles out to the east from the mainland, rises above sea level to produce the Falkland Islands. This whole area is known as the Patagonian Shelf. The edge of the shelf, where the shallow waters give way to the deeper ocean, is known as the Patagonian Slope. Since the 1982 war the British garrison has maintained a Falkland Islands Protection Zone (FIPZ), to exclude Argentinian naval ships and military aircraft from the waters immediately around the Islands. The FIPZ is bounded by a circle, with its centre at 51° 40' S, 59° 30' W, (a point in the Falkland Sound, which runs between the two main islands), and with a radius of 150 nautical miles.

In October 1986 the British government declared that fishing licences would be required from 1 February 1987 by all ships operating in a Falkland Islands Interim Conservation and Management Zone (FICZ). This fishing zone is co-extensive with the military zone, for most but not all of the area of the FIPZ circle. The difference arises in the south west: a segment has been cut off the FICZ, where it is opposite the Argentinian island of Isla de los Estados (Staten Island), which is only 186 nautical miles (n mls) from the Falklands. The map on the next page shows the boundary of the FICZ. The fish stocks are to be found mainly in the shallow waters of the Patagonian Shelf up to 200 metres in depth. In addition, one important area for illex is the central Patagonian Slope.

When the Food and Agriculture Organisation of the United Nations convened the World Conference on Fisheries Management and Development at Rome in June 1984, the South-West Atlantic was the only area of international commercial fishing not covered by a fisheries management regime. The FAO itself has seven regional bodies and, in other areas, there are fisheries regimes set up by bilateral or multilateral agreement or by regional organisations such as the European Community and the South Pacific Forum. The main reason for this exceptional situation in the South-West Atlantic is that there was virtually no exploitation of the fishing stocks by international fleets until the late 1970s. In order to understand the politics of fishing in the area, it is necessary to consider the nature of the conservation problems. This paper will draw on two main sources: the Beddington Report submitted to the British government in 1985 and a FAO report published in March 1987.

Eleven types of fish are now caught in the area, but only four are of any importance. The seven minor stocks are sharks and rays, as long-established interests for the local coastal fleets of Argentina and Uruguay; two types of grenadier caught only in recent years by Polish and Soviet ships: eels, an Argentinian activity since the mid-1970s; some erratic catching of cod by East European fleets; and minimum Argentinian and East European interest in toothfish. The major stocks are hake, southern blue whiting, illex squid and loligo squid. The most valuable stock commercially is the illex.



The Patagonian Shelf Fishing Grounds

Table 1 The Increase in Fishing in the South-West Atlantic
(Catches in thousands of metric tons per annum)

	Common + Patagonian Hake	Southern Blue Whiting	Illex, Shortfin Squid	Loligo, Common Squid	Seven Minor Species	Total Catch
1970	91.4	—	1.3	0.2	13.3	106.2
1971	98.2	—	1.8	0.1	14.0	114.1
1972	115.3	—	1.8	0.1	14.2	131.4
1973	155.9	—	4.1	0.2	15.8	176.0
1974	165.8	—	5.0	0.2	18.7	189.7
1975	119.0	—	4.6	0.1	22.1	145.8
1976	187.3	—	8.3	0.1	24.6	220.4
1977	319.1	2.1	2.3	0.4	19.6	343.4
1978	397.5	16.3	73.1	0.9	23.9	511.7
1979	445.3	38.9	122.2	0.9	32.4	639.7
1980	355.2	78.4	28.9	1.1	34.3	497.9
1981	322.9	69.7	52.4	0.6	18.2	463.8
1982	353.7	137.2	189.0	18.5	26.7	725.0
1983	343.3	258.1	166.2	38.3	42.5	848.4
1984	251.3	113.8	219.2	31.5	56.4	672.1
1985	363.3	96.8	234.1	50.5	67.3	812.0

Table adapted from Csirke's FAO report, pp. 7-8.

Common Hake and Patagonian Hake

Hake is the largest catch by volume, having risen from 91,400 tonnes in 1970 to a maximum of 445,266 tonnes in 1979 and, except for 1984, remaining over 320,000 tonnes in the 1980s. Throughout the period 1970-85 more than 90% of the catch was taken by the Argentinians and the Uruguayans. There are two closely related species of hake. The great bulk of the catch is common hake, caught in the River Plate basin and the northern part of the Patagonian Shelf, but before the Falklands war the Argentinians had begun to fish as far south as the Falkland Islands. The second species is the Patagonian hake. The FAO report quotes an estimate by an Argentinian institute that 90% of the stock is to be found within the FICZ, but British sources suggest this is wrong, with water movements making the proportion within the zone in different years range from 30% to 80% of the stock. The Patagonian hake also extends northwards into undisputed Argentinian waters, overlapping with the southern distribution of the common hake. As the two species are very difficult to distinguish, there are not separate statistics for catches. Before the declaration of the British fishing zone, no fleets were deliberately catching Patagonian hake, but around 5-20,000 tonnes per year were caught as a by-catch with other species (FAO estimates). This compared with a potential yield of 40-50,000 tonnes.

The common hake is moderately to fully exploited, and there is no evidence that any depletion of the stock has made it more difficult to catch. (The drop in the Argentinian catch is for economic reasons.) The common hake is

adequately covered by a local bilateral regime, the Joint Argentinian-Uruguayan Technical Commission for the Maritime Front. Given the distribution of the fish, the FICZ has little significance for this species. Although the physical appearance of the Patagonian hake is difficult to distinguish from the common hake, the two species occupy quite distinct ecological niches. There is still not enough biological information to guide decision-making on a reliable management regime for Patagonian hake. Nevertheless, there seems to be general agreement that there are not yet any significant conservation problems. The FAO report concluded in 1987.

For the time being there seems to be no urgent need to introduce management measures to protect this stock (of Patagonian hake), although a sudden increment in overall fishing effort directed to this species might change the situation very rapidly.

Referring to the two species of hake together, Beddington concluded that Restrictions on catch levels within the zone would be rendered irrelevant if substantial catches in excess of the potential yield were taken elsewhere. Similarly the potential to damage the stock by fishing only within the Falkland zone is limited.

In other words, while conservation within the FICZ is useful, there were no pressing problems with hake and there was no rational basis for an independent hake fisheries management regime solely within Falklands waters.

Southern Blue Whiting

Although the first ships to take southern blue whiting in 1977 from the Patagonian Shelf were Japanese, from 1978 to 1985 this species was predominantly of interest to the Poles, with their catch varying from 69% to 95% of the total tonnage. The second biggest catch during the 1980s was by the Soviet fleet. The species is used for human consumption and also helps to meet the East European demand for fish meal. The total catch rose rapidly to a maximum of 258,000 tonnes in 1983, but fell to 97,000 tonnes in 1985. Initially the Poles operated in eastern and north-eastern Falklands waters, but after 1982 they switched to the south-west, and the Soviet fleet were mostly in the south and south-east. There is also stock on the Burdwood Bank and nearer the Argentinian mainland.

As the whiting have only been commercially fished for ten years, while they live for up to thirty years, analysis of the ages of fish samples from the Polish catches gives us the natural history of a stock, which had been undisturbed from the mid-1950s to the mid-1970s. The FAO report suggests that one feature of the whiting stock has been big variations in the spawning survival rate from year to year. They appear to have done well in 1955, then had a bad time in the late 1950s and early 1960s, had a series of good years from 1965 to 1968 and done quite well since with 1971-72 and 1975-77 being less successful years.

Using early trawl surveys before the Polish data became available, Beddington estimated the maximum sustainable yield as being in the range from 94,000 to 187,000 tonnes per year, while the FAO suggested 72,000 to

170,000 tonnes. Even the most optimistic figures implied there had been some overfishing and the most pessimistic estimate suggested overfishing for six years from 1980 to 1985. Influenced by data for 1983, the peak fishing year, Beddington concluded "It is probable that this stock is being over-exploited". As there were already strong indications of Polish attention switching from whiting to squid, Beddington acknowledged fishing pressure on blue whiting might decrease even in the absence of management. Three other factors reduced the cause for alarm. Firstly, both reports pointed out that whiting migrate both seasonally and diurnally, and as a result the stocks may be significantly higher than the trawl survey data indicated. Secondly, because whiting have a relatively long life, they can be heavily fished for a few years, while the older stock are removed, before dangers of depletion arise. Thirdly, the Polish fleet have so far mainly caught older adult fish and, inasmuch as younger spawning stock have not been caught, there is less likely to have been overfishing.

Csirke, the author of the FAO report, obtained age frequency data from six years of Polish fishing: data which was not available for the 1985 Beddington report. Using a technique known as 'Virtual Population Analysis', Csirke estimated the numbers of blue whiting of each age in the overall stock, from one to twenty eight years old, for 1978 to 1985. The results suggested a total tonnage of fish which was far higher than any of the previous estimates. Then, using a standard model to estimate the maximum sustainable yield from fishing, the FAO report asserted.

The above analyses indicate that the stock is lightly to moderately exploited and suggest that as far as the same fishing pattern is maintained fishing effort could be safely increased to the level of 1983 ... the fisheries have been sustained by a few strong year classes such as the particularly abundant 1966-68 year classes, that had been heavily fished in the past but still seem to be abundant enough to contribute to the total catches in the next couple of years.

It was then pointed out that more recent spawning survival rates had not been so high and, if in the future several bad years should occur together, the fishing effort would have to be reduced. The natural variation in size of the fish stock means that proper monitoring is essential and management measures could be needed. The report concluded.

For the time being, however, management measures do not seem to be urgently needed from a biological point of view or for conservation purposes, provided the overall fishing effort increases within reasonable limits and the fleet maintains the same fishing pattern... It should also be noted that most of the exploitable stock and the best fishing grounds are located around the Falkland Islands (Malvinas), where most of the current catches have been taken.

In other words, a management regime for southern blue whiting in the Falklands waters would be both practical and a good idea, as a prudent medium-term goal, but it was not a matter of urgency in 1986, when the FAO report was produced.

Illex Squid

The illex start the southern summer being widely dispersed throughout the Patagonian Shelf and so are in such low concentrations that they cannot be fished in October and November. In the autumn they migrate and form high concentrations on the continental slope, where the shelf gives way to the deep ocean. In December and January some may be caught, but a good return on the fishing effort cannot be expected. The main fishing season is from February until June or July. The stock then migrate further out from the slope towards much deeper waters, where they die after spawning.

A low level of fishing for illex took place in the early and mid-1970s by the Argentinians and the Uruguayans. The Argentinians started serious exploitation of this resource with large catches in 1978 and 1979 and then continued at a lower level, taking just over 30% of the total catch in 1980 declining to 9% of the total in 1985. The Uruguayans also became more active from 1978 onwards, but have remained of minor significance compared to any of the other fleets. The Polish and the Japanese fleets first appeared in 1978 and have dominated the fishery in the 1980s. The Taiwanese, the East Germans and the Bulgarians joined in on a smaller scale in 1984 and 1985, while the South Koreans started in 1985.

Despite the Poles having the largest fleet, squid are not consumed in Eastern Europe. The Japanese provide the largest market, with imports from the Patagonian Shelf and elsewhere making up for the demand which is not met by their own fishing around Japan. The Poles enter into complex countertrade arrangements with Japanese companies. They deliver the illex to Japan and in return receive Scottish mackerel and herring, which has been purchased by the Japanese and transhipped onto East European vessels off the British coast. Thus one complicating factor for British government policy is that reduced catches of squid in the South West Atlantic by the East Europeans could have a serious economic impact on Scottish fishermen.

The most important feature of the stock of illex squid is the high variation in numbers from year to year and our inability with current knowledge to explain the variation, let alone predict the effect of fishing one year upon the size of the stock for the next year. Beddington points out that both some research vessels surveying in the Falklands waters and Japanese commercial vessels failed to find many squid in the mid-1970s. The FAO report documents the high variation in the stock size, giving estimates of the numbers of illex in December, that is the early summer in the southern hemisphere, prior to each season from 1978 to 1985. They range from a population of 171 million in December 1979 to six times as many, 1031 million, in December 1981.

The unpredictable nature of the stock comes from the fact that after natural mortality and fishing mortality the numbers surviving to spawn do not determine the numbers recruited into the following season's stock. We can see in Table 2 that the two smallest spawning stocks in 1980 and 1983 produced one of the lowest and one of the highest recruitment levels in the following years. On the other hand, in 1979 the largest spawning population in this

Table 2 **Estimated Numbers of Illex in the SW Atlantic***
(Millions of individuals)

	Stock at Start of Season	January to June Catch	July Spawning Stock	Catch % of Starting Stock
1978	740	83	244	11%
1979	853	99	288	12%
1980	171	50	34	29%
1981	286	69	67	24%
1982	1031	338	182	33%
1983	630	343	31	54%
1984	984	541	64	55%
1985	895	438	65	49%

*Table adapted from Csirke's FAO report, p.52 and p.54.

eight year period resulted in the lowest new population at the start of the next season. Beddington suggests that since the mid-1970s squid may have benefited from the reduction in hake and blue whiting, while Csirke suggests that in some years colder water moving north from Antarctica may affect the squid. Both agree that the impact of the environmental system makes the size of the illex stock very unstable.

As with southern blue whiting, Csirke undertook a Virtual Population Analysis for the illex, with the size of the stock for this species being estimated from 1978 to 1985 for every month within the one year life-cycle. As we have already seen, the results showed 1980 and 1981 to be poor years, while 1979, 1982, 1984 and 1985 were good years. The FAO report then assumes that the number of spawners will directly affect the new stock recruited into the following year, with the relationship substantially modified by environmental conditions. On this basis it is argued that

a spawning stock size similar or slightly higher than the ones in 1980 and 1983 could be set as a benchmark for the minimum safe spawning stock level below which no fishing should be allowed.

Beddington had earlier suggested a very different conservation benchmark, that "No more than 60% of the fishable biomass should be removed in any one year", leaving 40% as a breeding reserve. This simple rule of thumb is comparable to target exploitation rates used elsewhere by some international commissions. On this basis, in an update to the original Beddington report, it was concluded that in 1985 the stock was close to overfishing or overfished already. However, Csirke rejected the percentage-uptake approach, as leading to underexploitation of the stock when good conditions occur and risking overfishing in poor years. As 1985 was a good year, he concluded that the high catch was no problem and the stock was "reasonably exploited" each year. What the report does not say, but one may deduce from consideration of the data in Table 2, is that there might be a serious danger of the stock

being wiped out, if the high level of fishing activity carried out in 1983, 1984 and 1985 were to be repeated in some future year when environmental conditions turned out to be as bad as in 1980.

While there is some fishing for illex around the River Plate and inshore further south along the Argentinian coast, the two main grounds are (1) the offshore continental slope between 42° S and 48° S and (2) the waters to the north and north-east of the Falklands. The two areas may be equally productive in some years, but higher catches are usually obtained in the offshore area north of 48° S beyond the British fishing zone and outside Argentina's jurisdiction. The FAO report says

since there is no evidence of the existence of more than one identifiable, separate population, we will treat all the shortfin squid [illex] caught in the area of the South-West Atlantic under consideration as belonging to a single stock

Csirke thought that "very roughly", in 1984 and 1984, 45-50% of the catches were from the northern offshore grounds, 40-45% from the Falklands waters and 10-15% from the River Plate and Argentinian inshore waters.

Both the reports advocate monitoring of the illex stocks. The FAO report says

it will be advisable to monitor the fishery, as far as possible on a monthly basis, to facilitate the timely adoption of management measures that might be needed if the overall fishing effort increases or if the spawning stock is reduced beyond the desirable levels.

Beddington felt there was too little information to assess the management problems, but Csirke thought the fishing effort should be increased or decreased each year according to the stock size at the start of the year and that later in the year fishing should be halted if the spawning stock went below an agreed minimum safe level. Finally, Csirke pointed out

an uncontrolled or unexpected increase in the total fishing effort [in the area outside the Argentinian 200 mile limit] ... will certainly obscure and can even cancel out the effects of possible management measures adopted in other areas.

What this means, behind the diplomatic way in which it is put, is that it is not possible in any British fishing zone to guarantee effective conservation measures: "an adequate management of the shortfin squid stock will require the collaboration and some kind of understanding with the states fishing in the adjacent area". It is not impossible to imagine a year in which a combination of cold Antarctic waters pushing the stock northwards, poor spawning survival and heavy fishing effort lead to a total ban on fishing in the British FICZ, but fishing further north still was able to wipe out the stock. A fishing management regime is required, but it is not rational to have anything other than a multilateral regime covering the whole stock of illex. Until there is a multilateral regime, strict British controls are only likely to divert the vessels towards greater fishing effort on the high seas.

Loligo Squid

While the Argentinians had a minimal catch of 100 to 300 tonnes of loligo throughout the 1970s, this species was not exploited in any significant way until very recently. The Soviet fleet started fishing for loligo in 1982 and until 1985 remained the dominant fleet. The Spaniards started in 1983 taking nearly as much as Soviet vessels for two years, but dropping to 18% of the catch in 1985, when they caught less and the Soviet catch more than doubled. From 1984 the Bulgarians joined in, taking small catches. Loligo are found all over the Patagonian Shelf, even as far north as the Uruguayan offshore waters, but in most places they are in such low concentrations that it is not economic to fish for them. The only fishery is in the southern part of the FICZ, particularly around Beauchêne Island. Beddington does not make any separate assessment of the loligo, while the FAO in a few sentences suggests the stock is comparable to that of the illex and so has "a high probability of becoming overexploited". Since the zone was declared, a small number of vessels from Portugal, Italy and Greece have also obtained licences to fish loligo (see Table 3).

2. The British Decision to Declare a Fishing Zone

The increase in fishing activity around the Falkland Islands became particularly evident to the Islanders with the increasing numbers of trawlers and jiggers using Berkeley Sound to tranship fish to larger factory ships and freezers. As the fishing activity increased in the early 1980s, the local pressure on the British government to declare 'an exclusive fishing zone' correspondingly increased. In September 1982 Lord Shackleton, in his review of the post-war economic development potential of the Falklands, had advocated a 200 n mile fishing zone for both the Falklands and the dependencies, but was uncertain whether there would be economic benefits in the near future. In November 1983 the Falkland Islands Legislative Council formally requested the establishment of a fishing zone. The British government for some time said it was "actively considering the possibility", but policy-making on fishing remained in abeyance while the Select Committee on Foreign Affairs considered the question. Their report was delayed by the 1983 election and finally came out in October 1984. The committee was originally going to produce a report which was highly critical of 'Fortress Falklands' and the British government's policy towards Argentina. After the election the composition of the committee was changed and sections of the report were redrafted. However, all but one of the new committee's members still agreed

Despite the environmental drawbacks of the existing free-for-all in Falkland waters, we are not convinced that the establishment of an Exclusive Fishing Zone in Falklands waters can be justified.

In the House of Commons debate on the Select Committee's report, Sir Geoffrey Howe announced the government's decision on Lord Shackleton's recommendation of a 200 n mile zone.

the Government have had to give weight to the serious difficulties that could arise in [the Falklands] context. The Select Committee, quite rightly, drew attention to the political and practical problems of enforcing and policing a unilaterally imposed fisheries zone in an area where British sovereignty was in dispute. For that reason, the Committee was not convinced that the establishment of such a zone could be justified.

The Government take the same view. For the same reason, we have decided instead to explore possible ways in which to establish a multilaterally based conservation and management regime. (Hansard, 14 March 1985, col.495)

Two new policy steps followed from this decision. The British forces in patrolling the FIPZ had been recording all sightings of fishing vessels in the area since September 1983 and in March 1985 the Falkland Islands Development Corporation, acting for the British and Falkland governments, commissioned the Marine Resources Assessment Group at Imperial College, London, to analyse this data, to "report on future prospects" and to "review relevant techniques of fisheries conservation and management". (The resulting study was used for this paper and is generally known as 'the Beddington Report'.) At the same time the British mission in Rome approached the FAO, asking them to undertake a wider study. Soundings were taken with other governments, including the Argentinians, at the sixteenth session of the FAO's Committee on Fisheries in April 1985 and at the UN General Assembly in September Sir Geoffrey Howe made an appeal for "mutually beneficial co-operation". As a tactful gesture, he presented the idea of a regime as a "FAO initiative". On 21 November 1985, a week after the Argentinians gave their support, the FAO's Director-General formally announced the decision to proceed with their study.

The Coalite Company, which owns the Falkland Islands Company, and the Falkland Islands Association, a British lobby group with good connections in parliament, continued to press for a unilateral fishing zone. A company in Hull, J Marr and Sons, became interested in operating in the area, established an office in Port Stanley and chartered ten jiggers from Japan for the 1986 season. They hoped a British zone would open up to them a rich fishery to which British vessels could have privileged access. On the other side, the South Atlantic Council supported the multilateral approach. A wide variety of MPS regularly questioned ministers on what progress was being made with the FAO, while the conservation worries gained increasing weight. Even Tam Dalyell, the most staunch critic of 'Fortress Falklands', spoke of "the ecological disaster of over-fishing" (Hansard, 17 June 1986, col 894).

Anxiety increased in the Islands when large numbers of dead penguins were found on the beaches. An alarmist interpretation of this was that the penguins were dying of starvation, due to depletion of their food supplies, but the cause turned out to be the disease puffinosis. More seriously the fishing effort showed a further large increase during the 1986 season. However, at this stage the Foreign and Commonwealth Office stuck firmly to the policy of pursuing a multilateral fishing regime. Lady Young, the deputy Foreign Secretary and the responsible minister for the Islands, visited the Falklands

in February 1986 and received a hostile response both at public meeting and in private meetings with councillors. The Islanders, who have a low level of public services by British standards, were angry about a valuable resource being exploited with no return for the Islands. One sign of British response to these pressures was the decision to allow the Falklands government to impose fees from 1 April 1986 for transshipments of fish made within the three-mile territorial limit.

In Argentina there appears to be less concern with general environmental questions than there is in Britain. On the specific question of fishing, the Argentinian industry was directing much more of its effort to hake than to squid, and hake was a species for which there were no immediate worries about conservation. If there were any suspicions that the British might take unilateral action, Argentinian political leaders were confident that they had widespread support at the United Nations while Britain was isolated. The Argentinian government had also been used to being in a strong position in fisheries negotiations, winning joint participation by Argentinians in return for allowing Spanish, German and Japanese companies to fish in their waters. The author can vouch for the occurrence of one face to face exchange (in which those involved both had regular contact with their respective ministers) in which the Argentinian failed to appreciate the seriousness of the conservation question for the British and simply thought fishing was too unimportant for any acknowledgement to be made of Britain's *de facto* control in the area. Sir Geoffrey Howe has also referred to direct official contact, in which the British made it clear to the Argentinians "that a solution without prejudice to our respective positions on sovereignty could and should be found", (Hansard, 29 October 1986, col 323). In spite of the information being available, with the perspectives in the two societies being so different, it seems probable that the Argentinian government failed to appreciate the dynamics of the fishing issue in British politics.

Not surprisingly, given the emotional significance of the Falklands question (particularly for the Prime Minister) and given the minimal contacts between the two governments, British ministers and high officials have found it very difficult to perceive positive opportunities for making progress with the Argentinians. (This short-sightedness showed itself most clearly in the failure to recognise the significance of Argentina's peace initiative of 17 November 1986). As the legal right to manage ocean fisheries is dependent on "sovereignty", the key issue at dispute between the two countries, the British were disposed towards the view that the Argentinian government would be unwilling to discuss a fishing agreement. Two events in 1986 seemed to justify this perception.

On 28 May a Taiwanese trawler, the *Chiann Dek III*, was fired on by an Argentinian coastguard vessel. As the incident occurred more than 200 n mls from the Patagonian mainland, but within 200 n mls of the Falklands, Sir Geoffrey Howe has described this as being part of an "aggressive" new attempt by the Argentinians to assert their sovereignty over the Islands. At the time

the South Atlantic Council put out a press statement condemning the shooting and regretting the fact that two Taiwanese fishermen lost their lives. But however much one condemns the deliberate machine-gunning of the trawler and the resulting fire, if one accepts the Argentinian account of the events (and it has in no respects been challenged by the British), it is not appropriate to use the highly emotive term "aggressive" to describe Argentinian official policy. Indeed the original Foreign Office statement on the incident was much more cautious.

Argentinian coastguards had earlier that day found another Taiwanese trawler, the *Chi-Fu VI*, at a point which they say was 195 n mls from the lighthouse on Penguin Island. As this small island provided an extension of the 200 n mile zone from the Argentinian mainland and in May Britain was claiming no more than a three-mile territorial sea, there could be no dispute about an Argentinian attempt to enforce its fishing regulations in this first encounter. The weather was too poor to try boarding the *Chi-Fu VI*, so despite warning shots being fired the trawler escaped by fleeing into the FIPZ. The Argentinian coastguard ended its pursuit upon approaching the Protection Zone. Only a few hours later the second Taiwanese boat, the *Chiann Dek III*, was sighted. This time the encounter started at a point just outside the 200 n mile zone from the mainland. After warning shots had again failed to prevent the Taiwanese trying to escape in the FIPZ, shots were fired into the hull starting a fire. The Argentinians rescued twenty one of the fishermen, but one had died of a heart attack and one went missing.

It is worth noting from this account that the Argentinians were careful not to challenge the FIPZ: at no point did they enter waters over which Britain then claimed any form of control. Given the earlier encounter with the *Chi-Fu VI* and the bad weather conditions prevailing all that day, the attack on the *Chiann Dek III* has the character of bad judgement being exercised in a "hot pursuit" situation. Also it should be remembered that no other similar incidents have been reported before or since and so it cannot be seen as part of a general change to a more aggressive policy. (A Japanese vessel had been arrested on 10 May outside the FIPZ, but with no shots being fired.) The Argentinians did in 1986 become more active in policing fishing in the waters they claim. Although the British government did not recognise their right to do this, there is no evidence that the policing was intended as a provocative challenge to the British or was designed to undermine the FAO's work.

The second event, which disturbed British ministers, was the signing of bilateral fishing agreements between Argentina and the Soviet Union and Bulgaria in July 1986. Limits were imposed on the Soviet and Bulgarian catches of 180,000 and 28,000 tonnes respectively; Argentina would gain tax revenues and guaranteed exports of their own fish products; the vessels would be partially crewed by Argentinians; and Argentinian officials would be on board to monitor the fishing. Not surprisingly it was possible for the agreements to be seen as covering activity in the waters around the Falklands. On the Argentinian side it would legally have been a weakening of their

sovereignty claim for this not to be the case. On the Soviet and Bulgarian side they could not explicitly deny the Argentinian claim, which they had been supporting in the United Nations.

While there were worthwhile economic gains for the Argentinians, the agreements did not in any significant way change the legal aspects of the Argentinian-British dispute. British officials have suggested that the agreements implied Soviet and Bulgarian recognition of Argentinian sovereignty in the Falklands waters, but it has been pointed out in a House of Commons Library Research Note that "the formal texts refer only to Argentina's EEZs, without defining them". One minor change in practice might have been entry into the FIPZ of Argentinian fishermen aboard Soviet or Bulgarian vessels, but it is by no means certain that the captains of the boats would have gone ahead without obtaining tacit British approval. The Foreign Office fear seemed to be that an Argentinian network of bilateral agreements would undermine the policy on fishing. Sir Geoffrey Howe said that "these agreements are incompatible with the multilateral initiative", (Hansard, 29 October 1986, col 323). There is no self-evident logical basis to this argument: bilateral agreements can be one method of enforcing multilateral agreements. The argument also backfires against Sir Geoffrey, as seven months before the Soviet and Bulgarian agreements were signed the British had also negotiated bilateral 'Voluntary Restraint Arrangements' with East Asian countries. Finally, it must be remembered that the agreements had been signed, but they had not been ratified, when the British zone was declared. Conservative politicians in Argentina did not want to see an agreement with the Soviet Union, fishing interests were doubtful about the terms and the opposition party was not committed to approving the agreements. It was only *after* the British declared their zone that the agreements were quickly ratified. There is a stronger case for saying that the FICZ caused the ratification of the agreements than for saying that the agreements forced the British to declare a unilateral fishing zone. While the Soviet and Bulgarian agreements certainly had an impact on the British Foreign and Commonwealth Office thinking at both the official and the ministerial level, one can remain sceptical whether there would have been the same impact had identical agreements been signed with Japan and West Germany.

The Argentinian government, at a minimum, might be said to have shown complacency, underestimated the pressures on the British government and acted with insufficient sense of urgency. If the official British interpretation is correct, they deliberately showed no interest in backing the conciliatory policy of constructing a multilateral regime and, by the alternative approach of trying to promote third-party recognition of their claim to the Falklands waters, they provoked a hostile British response. (As there is a degree of incoherence in most governments' policy-making most of the time, elements of both interpretations may be valid.) From their perspective, the Argentinians paid a heavy political price in failing to head off the moves towards unilateral British action.

However, the shortcomings in Argentinian policy-making do not demonstrate that it would have been impossible to establish a multilateral regime. On 12 November 1985, the Argentinian public was prepared for the forthcoming announcement of the FAO's involvement, by their fisheries minister advocating a technical assessment of the fish stocks. At this point the British government, which had previously been insisting that the initiative was "best pursued confidentially", (Hansard, 15 July 1985, col 49w) admitted to parliament for the first time that they were in contact with the Argentinians, (Hansard, 20 November 1985, col 206w). It may seem that a delay of eight months for the Argentinians merely to accept the start of a FAO scientific study was an inordinately long time. Nevertheless we have already seen that the British took two and a half years from the Shackleton proposal until they decided to adopt a multilateral approach and initiated their own scientific study.

The FAO officials had to take time travelling to all the countries involved in order to meet fishing experts and gather data. Delays arose because they did not get all the assistance they wanted. Japan and Poland provided the most detailed data and Britain supplied the Beddington report and four updates. Although the Soviet Union, Spain, Taiwan and Uruguay are not credited with providing information for the FAO report, the Argentinians did co-operate fully. The FAO had seen the area as important for its programmes in fisheries management, but lost some of their impetus when the Assistant Director-General responsible for fisheries, Mr Carroz, died in October 1985. (He still has not been replaced on a permanent basis.) The report was due to appear in mid-1986 but eventually the first draft was circulated on 18 November 1986 and the final draft in May 1987. In order to gain time, in December 1985 the British government negotiated 'Voluntary Restraint Arrangements' (VRAs) with the fleets from Japan, South Korea and Taiwan to cover the 1986 season. These did not work as well as had been hoped and the total number of vessels still increased substantially in 1986. An attempt was made to extend the VRAs for the 1987 season to all the fleets of countries fishing in the area. Slow progress with both the FAO study and the extension of the VRAs was seen as forcing the British to take unilateral action to regulate fishing for the 1987 season.

Thus, the increased sense of urgency about conservation measures, the slow progress with the multilateral approach, a belief that the Argentinians were not going to co-operate, pressure from the 'Falklands lobby', the perception of an aggressive image created by the Taiwanese trawler incident and the negative impact of the Soviet and Bulgarian agreements together explain the politics of the British government's change in policy. However, these factors did not make a unilateral regime any more credible for effective conservation in October 1986 than it was in 1984-5 when the Select Committee and the Foreign Secretary rejected the option. We have seen from the scientific studies that hake and whiting were not under serious threat and illex, which might be in some danger of being depleted, could not be protected by conservation measures covering less than half of the stock.

Whiting is the one stock which is centred on Falklands waters and, despite the British government's emphasis on the increase in the total number of vessels in the area, the Polish catch in 1986 went down, primarily for economic reasons. Fishing effort for illex did increase in 1986 and it is not impossible that the stock might have been in danger. However, as events turned out with this unpredictable species, there was good recruitment to the new stock for 1987, according to the FAO. A preferable approach by the British government would have been to push hard for Voluntary Restraint Arrangements; to start preparations for a unilateral regime, without making any announcement; to maintain regular, high-level contact with the FAO; and to have monitored the recruitment to the illex stock in December 1986. If the illex had had a poor start to the year, the VRA targets could have been imposed in January, with policing from 1 March 1987. If the illex had a good year, as was the case, another twelve months could have been gained for pursuing the multilateral approach. The scientific studies do not demonstrate that there was an urgent need to establish a Falklands fishing zone in late 1986.

3. The Legal Basis for the British Decision

One rather extraordinary aspect of this issue is that the British news media have not to date given any precise coverage of the geographical or the legal aspects of the fishing zone. Even the quality press and a prestigious TV programme like *Panorama* have produced maps which are highly inaccurate in ways which are politically significant. It is believed that this Occasional Paper contains the first published maps with all the information necessary to understand the Argentinian-British fishing dispute. We will now examine on what basis the British government could claim the right to establish the FICZ, assuming that it does have sovereignty over the Falkland/Malvinas Islands and ignoring, for the time being, the fact that this fundamental axiom is challenged.

It is now universally accepted that all states have the right to declare a 200 nautical mile zone within which they may regulate fishing activity. Most governments claim this right under the authority of the United Nations Convention on the Law of the Sea (UNCLOS), but some, such as the British government which has not signed the Convention, refer to a more general right under customary international law. (To the non-lawyer the idea of such a recent innovation being "customary" brings to mind the story of an Oxford college which posted a notice "There is a tradition – starting today – that students do not walk on the quadrangle lawn".) Secondly, there is the concept of the continental shelf being the natural extension of a coastal state and giving sovereign rights to non-living resources, such as oil and gas, as well as sedentary living resources. Under UNCLOS, a third concept was developed of an Exclusive Economic Zone (EEZ), up to 200 n mls in breadth, covering rights over both living and non-living resources. The EEZ idea developed as part of the UNCLOS negotiations and its widespread acceptance led many states to adopt its provisions, before the Convention was finalised. As a result the International Court has accepted that the EEZ has also become part of

customary international law. Therefore the UNCLOS EEZ model is binding upon the British government, even though it has not signed the Convention (Attard pp.294-5, 308).

The FICZ declaration of 29 October 1986 makes no reference to an EEZ or to UNCLOS or to any earlier international legal conventions. As a result one must assume that it is relying primarily on international customary law. It starts by declaring a right to fishery limits of a maximum of 200 n mls from the coast and then says the FICZ will be established "within these limits". Unfortunately this phrase was ambiguous and, to those who saw no more than the declaration, could easily give the impression (particularly after translation into another language) that a full 200 n mls was going to be policed. Nevertheless, Sir Geoffrey Howe's statement to the House of Commons made it plain that the FICZ would be approximately the same as the military protection zone. The declaration also went much beyond the fishing issue and asserted the existence of a 200 n mile continental shelf. (The fact, that the limit was not given as being the geographical boundary of the shelf but was taken to be 200 n mls, shows British acceptance of the influence of the UNCLOS EEZ concept upon the law of the continental shelf.) The inclusion of the wider claim to the shelf was a particular target for hostile Argentinian comment. This provision was politically unwise, as its unnecessary inclusion helped to justify the Argentinian perception that the British government was not motivated by conservation and was using the fishing issue to expand its sovereignty claim.

The British fishing zone is highly unusual in two respects. Firstly, a claim of 200 n mls in breadth is now the universal norm, rather than 150 n mls. Secondly, everybody else measures their limits from the coastline, whereas the FICZ is from a single point. If the Islands were further out in the Atlantic Ocean, a 'Falklands shaped' boundary rather than a circle might have been declared. The result is that on a rough estimate the FICZ is, at the most, only one third of the area of a full 200 n ml EEZ all around the Falklands coasts. Given the closeness of the Islands to the Argentinian mainland, even if British sovereignty over the Islands were uncontested, a British fishing zone could not have been extended the full 200 n miles in all directions. While Port Stanley is nearly 1,200 miles from Buenos Aires and the pre-war flights were to Comodoro Rivadavia which is about 590 miles away, the shortest distance between the Islands and the mainland, from Bird Island to Staten Island, is only 214 statute miles. What matters for the law of the sea is the distance in nautical miles: as the nautical mile is 15% longer than the statute mile, undisputed Argentinian territory and the Falklands are only 186 nautical miles apart at the closest points. Thus an Argentinian coastal EEZ reaches as far as the Falklands and a Falklands EEZ reaches as far as Staten Island. It is for this reason that the British government could not have considered any possibility of claiming, let alone policing, a full 200 n mls to the west or the south-west of the Islands. Even after the FICZ has been so restricted in its size, a large part of the British fishing zone remains nearer than 200 n mls to the mainland.

Public discussion of the issue at the time (apart from one question by Dick Douglas in the House of Commons) did not give attention to the British government's acknowledgement in the declaration that the entitlement to fishery limits is "subject to the need for a boundary with Argentina", due to the overlap between the two EEZs. What this means is that the British government has not established, and cannot unilaterally establish, any legal boundaries to a fishing zone in the area. As David Attard said in a recent authoritative study,

The establishment of an international maritime boundary regardless of the legal position of other States is contrary to the recognized principles of international law. The position was aptly described in the 1951 *Fisheries Case* by the International Court: 'The delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal state ... the validity of the delimitation with regard to other States depends upon international law.' There is therefore a fundamental obligation to ensure that delimitation is the result of an agreement between the parties to the dispute. (Attard, p.223).

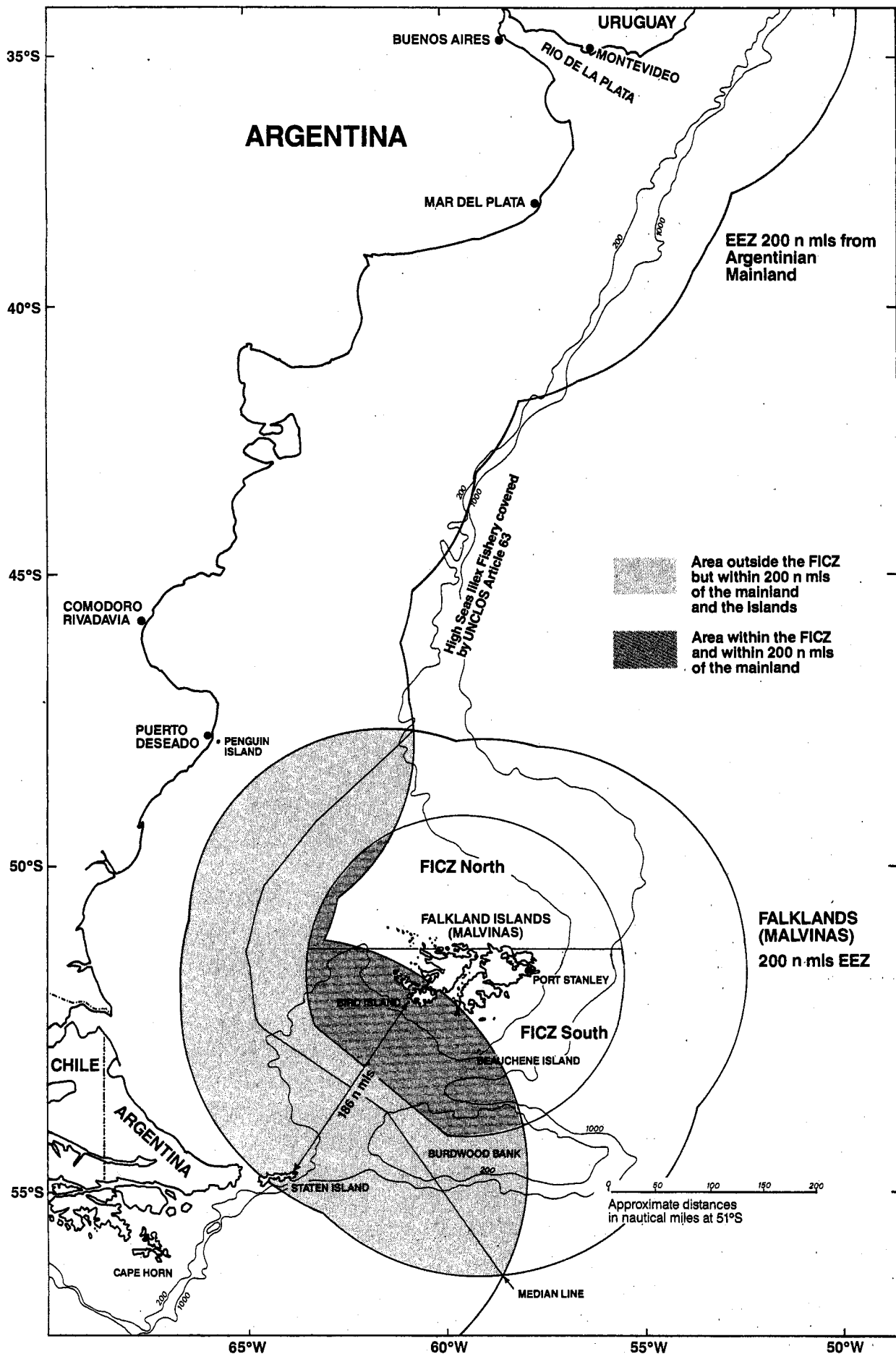
Thus the fishing zone has the legal status of a temporary administrative arrangement and this is recognised by the inclusion of the word *Interim* in the title of the FICZ. This important point has never been made clear on the floor of the House of Commons. A second meaning to *Interim* is that the zone will not be maintained when a multilateral regime comes into effect.

The question then arises what is the position before legal delimitation is agreed. Article 74 of UNCLOS provides that

the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardise or hamper the reaching of the final agreement.

This means that an *Interim* fishing zone also should have been established by agreement with Argentina. The British government might claim that it is not bound by this Convention which it has not signed. But UNCLOS has been signed by the European Community on behalf of its members to cover their transferral of "competence to it with regard to the conservation and management of sea fishing resources". Furthermore, we have already seen that the general UNCLOS EEZ model "may be considered, at least in its essentials, to reflect customary law" and Attard says specifically that Article 74 "reflects the position under customary law" (pp.308 and 294). Of course it cannot be presumed that the British and Argentinian governments would have reached agreement, but equally it cannot be assumed that "arrangements of a practical nature" would have been impossible. (UNCLOS provides that in the absence of agreement "within a reasonable period of time" a dispute shall be submitted for binding decision by a court or tribunal. As these latter provisions for binding decision are so new and untried, there is less of a case that they are obligatory for Britain).

In addition the Final Act of the UN conference contained Resolution III, which was initiated by the British to cover the Falklands/Malvinas dispute.



The FICZ and its relationship to Exclusive Economic Zones

It provides in paragraph 1 that

(a) In the case of a territory [which is a colony] ... rights and interests under the Convention shall be implemented for the benefit of the people of the territory ...

(b) Where a dispute exists between the States over the sovereignty of a territory ... there shall be consultation between the parties to that dispute regarding the exercise of the rights referred to in subparagraph (a). In such consultations the interests of the people of the territory shall be a fundamental consideration. Any exercise of those rights ... shall be without prejudice to the position of any party to the dispute.

Although a conference resolution such as this has minimal legal status, there is a strong political obligation to maintain a consistent foreign policy and act in accord with resolutions one has accepted a few years earlier. The British government failed to meet this obligation as it did not engage in any consultations with the Argentinian government about establishment of the FICZ.

Under the 1958 Convention on the Continental Shelf there was a presumption that the maritime boundary between states facing each other would be the median line: that is the line which is always the same distance from the nearest point on the territorial baselines of each country. However, the International Court in 1969 decided that this provision was not part of customary law and it was not adopted in UNCLOS. Instead Article 74 aims "to achieve an equitable solution". In practice, the median line is the usual starting point for negotiations and may provide the final boundary, for example Britain agreed on the median for boundaries with the Netherlands, Norway and Denmark. Equally, this principle may be modified, by ignoring particular islands or following navigation channels, as in the 1973 Argentina/Uruguay Agreement. In the case of the Falklands, one probable deviation from the median would be to ignore the area produced by a 200 n ml circle around Beauchêne Island. The British Foreign Office showed some confusion on this subject by putting out maps, in late 1986, which showed the median line, but from January 1987 they relied on a different map, which just indicated that "the course of the maritime boundary between Argentina and the Falkland Islands has not been determined". This statement is legally accurate and there is no way of knowing how much of the waters on the Falklands side of the median would be awarded by the International Court to Argentina.

The actual boundary of the FICZ has a segment cut-off the 150 n mile circle, in the south-west, to avoid any possibility of incidents between Argentinian and British vessels on or near the median line. Nevertheless, until there is either an agreement with Argentina or a decision by the International Court to establish a final legal boundary, there is an area of overlap between an Argentinian EEZ claimable from the mainland and the FICZ, which covers somewhere between one quarter and one third of the British fishing zone. The British government currently has the policy of refusing to discuss sovereignty with the Argentinian government, but without such discussions, or submission to a court decision, international legal

recognition of sovereignty over the Falklands waters cannot be obtained. We have also seen that, even if British sovereignty over the Islands is accepted, it can be argued that, in the absence of any serious attempt at “understanding and co-operation” with Argentina, the British declaration of a temporary unilateral fishing zone was not legally valid. In reality the British legal position is open to even more argument, because title to the territory is also contested.

4. Reactions to the British Decision

The British announcement on 29 October 1986 immediately produced a crisis atmosphere in Buenos Aires. There was a strong statement by the cabinet, a new military committee was set up, and leave was cancelled for military conscripts for a short while. A special meeting of the foreign ministers of Argentina, Brazil and Uruguay was convened in Punta del Este, Uruguay, on 2 November, at which the three governments called for a special session of the OAS Council. By the time of the Punta del Este meeting any hint of a military response had gone and Argentinians pledged themselves only to use peaceful means in their furtherance of the dispute. The Argentinian deputy foreign minister, Sr Sabato, went to Western European capitals and the European Commission to appeal for support. The OAS met a week later in Guatemala City and on 11 November unanimously supported a resolution which expressed “deep concern at this new element of tension and potential conflict”. The significance of this was that the United States sided with Argentina. Indeed US officials told journalists in Guatemala City that they were furious with the British for imposing the zone without any prior consultations and it emerged that Mr Schultz actively co-operated with Sr Caputo in drafting the OAS resolution.

In their turn the Argentinian government significantly misperceived the political situation when Sr Caputo, speaking in the United Nations General Assembly on 24 November, denied that the British had genuine worries about conservation and said the zone was declared primarily in pursuit of “an expansionist logic which seeks to expand, whatever the cost may be, its illegal occupation of the maritime and insular territory” of Argentina. There was also a major misperception of the conservation arguments, when Sr Caputo denied that there was a serious threat of depletion of the fishery and to justify this view quoted one sentence from the FAO draft report:

there seems to be no reason to expect that the offshore fishing pressure in the South-West Atlantic will have a greater impact on the ecosystem in the area than the one by other fisheries of similar characteristics had in other parts of the world.

However, the quote does not sustain the position being taken, because the next sentence (at least in the final report) says that this comparison “is by no means a reassurance” that there will not be an impact on the ecosystem. Also, it is clear in the report that the paragraph is not referring to the impact on the main fish stocks, but to the impact on birds, sea mammals and other predators on hake, whiting and squid.

There is some evidence that in the initial crisis atmosphere many in Argentina, including perhaps Sr Caputo himself, thought that the British were going to police a 200 n mile zone, which would have meant displacing Argentinian fishing boats and coastguard patrol vessels. After a few days the crisis cooled down and, quite remarkably, on 17 November the Argentinian government made a more conciliatory new proposal for Argentinian-British talks on bilateral relations. Just before the fishing zone came into effect on 1 February, the Argentinians announced that they would maintain their patrolling in the waters up to 200 n mls from the Falklands and would arrest vessels which fished in the British zone without Argentinian permission. At the same time they said that they would not challenge the FICZ and to avoid any possibility of incidents they would avoid entering within ten n miles of the British zone.

Thus we now have the unusual situation where the two governments claim rights over an identical area of the seas, but the British patrol the inner section and the Argentinians patrol the outer section, with both carefully foregoing attempts to enforce their full claim. The genuine desire of both sides to prevent any further deterioration in relations has led to some cautious contacts. Under a United States initiative and with the United States acting as an intermediary, exchanges on the fishing question started in Washington in January 1987. In order to maintain the fiction that there are no direct bilateral contacts, documents without any titles are exchanged via the US State Department. They are known as 'non-papers', so that it can be denied that position papers have been exchanged. After some delay each government has acknowledged that these exchanges are taking place and each is pleased that there is a clear desire to avoid any incidents involving fishing boats or patrol vessels.

The operation of the FICZ has gone more smoothly than anybody, including the Falklands government, expected. The Soviet and the Bulgarian fleets are the only important ones to have stopped fishing in the Falklands waters, but they have continued fishing in the other parts of the Patagonian Shelf. The Spanish government explicitly said it would not recognise the British right to proclaim the zone, but allowed Spanish fishing companies to apply for licences. The Poles have accepted the British licencing system, except that they have argued strongly that the fees were too high, and have remained one of the largest fleets in the area. The only other politically significant result is that British vessels have started to operate in small numbers. The allocation of licences by country can be seen in Table 3.

Officially the licencing system appears to be complex as there are separate allocations for the area north of the Islands and for the central-south area, with specification whether only finfish or all species may be caught, and fees varying by the size of ship and by the type of ship (jigger, trawler or combination). In practice the All Species [North] Licence covers illex fishing by jiggers from March to June. This is sought by the East Asian fleets and the Poles to supply their countertrade arrangements with Japan. The All Species [South] Licence covers fishing by trawlers from February to March

Table 3 FICZ Licence Allocations for January to June 1988

	Illex	Loligo	Fin Fish	Total	
Japan	63	0	1	64	<u>Time restrictions</u> Illex: March to June Loligo: February to June Finfish: January to June and July to December
Poland	23	6	29	58	
Spain	6	16	24	46	
South Korea	21	0	11	32	
Taiwan	25	0	0	25	
UK	5	8	8	21	
Portugal	0	3	1	4	<u>Area restrictions</u> Illex: North of 51° 20' S Loligo: South of 51° 20' S Finfish: Whole FICZ
Italy	0	3	0	3	
Greece	0	2	0	2	
Netherlands	0	1	0	1	
Chile	0	1	0	1	
Total	143	40	74	257	

for loligo. This is sought by ships from four southern European countries and others, including the Poles, supplying these countries. The Finfish Licence covers hake and whiting caught anywhere in the FICZ and is allocated for any period of the year, with management planning focussing on two six-month periods. While hake and whiting may be caught throughout the year, parts of the zone are closed off for particular months, to prevent squid being taken as a by-catch. The finfish licences mainly go to the Poles and the Spaniards, with smaller South Korean and British interests. The total number of licences was designed to produce a substantial reduction in overall effort in 1987 and a further reduction in loligo fishing in 1988.

The fishery is policed by two converted trawlers and one Dornier aircraft. When the zone was announced, there was incredulity in parliament that such limited resources would be adequate. However, as the Argentinian and Soviet vessels have taken care to avoid the zone, no problems have yet arisen. Three forms of monitoring provide data which is fed back to the Marine Resources Assessment Group in London: fishing vessels radio in to Stanley their position and their catch each day; details of transshipping in Berkeley Sound are recorded; and the patrols go on board vessels to take samples. The income from the fishing zone has not been anywhere near the £50 million, which Lord Shackleton optimistically predicted in a House of Lords debate (22 April 1985), but it has been highly significant. The net revenue from the licences in 1987 was 147% of the normal annual budget of the Falklands government. The fishing licences brought in about £13.5 millions, with £0.8m from transshipping fees, and patrol costs of about £4m. The net income of £10.3m compares with a total budget for the previous year of £7m. Put another way, in 1987 the Falklands government budget suddenly had a new source of income which was equivalent to more than £5000 per capita of the local population. It is beyond the scope of this paper to consider the effect of this sudden change, but it must be noted that, apart from the war, this is the most important

development in modern times in the political and economic circumstances of the community.

5. The Continuing Need for a Multilateral Fishing Regime

The initial success of the first year's experience with the FICZ has led to wild talk of the Falkland Islands having an assured basis for a prosperous and independent future. Such talk immediately appears to be a distortion of the real situation when one remembers the annual cost to the British Exchequer for the Falklands garrison of £100 million according to government estimates and over £200 million according to some defence experts. The dispute with the Argentinian government over the fishing zone will not quietly be forgotten, because it is part of a sovereignty dispute which will not go away.

We have seen that the Argentinian government was mistaken to suggest that there were no conservation problems and was unwise in not responding to the political pressures to establish a conservation regime. The British government tended to exaggerate the immediacy of the problem and suggested urgent action was essential, when that was not the case. The British conservation zone has been managed very loosely with respect to hake and whiting, which are not under any serious current threat. When we have more knowledge it may turn out that the zone has had some value in preserving loligo squid. For the most valuable stock, illex squid, the FICZ by itself offers no guarantee that the stock can be preserved. Even if the Argentinians enforce parallel conservation measures, the illex could still be under threat, because the highest catch has been taken on the high seas beyond 200 n miles from the mainland and the Falklands. This highly volatile stock could still be overfished in the near future. After the zone was established, Dr Beddington stated

Squid and fish know no boundaries. There are natural boundaries, which don't correspond to the political boundaries of the area ... Some of the species move in and out [of the FICZ] closer to the Argentinian mainland and also out into the high seas further to the north, so that to have a proper management zone one would need to have information coming in from all these sources and to be managing the area as a whole. (FCO film)

There is only one reasonable conclusion: there is a need for conservation, but the management regime has to cover the whole Patagonian Shelf. It would be prudent to regard all the area from the Burdwood Bank to the Uruguayan waters, including both the EEZs and the continental slope, as a single ecological system.

International law in the field of fishing pushes in the same direction as the scientific conservation arguments. Under both the Convention on the Law of the Sea (UNCLOS) and under customary law, EEZ limits or fisheries limits, with a permanent legal status, cannot be declared unilaterally. There is a legal obligation to seek agreement to define boundaries. Even for those few countries which recognise British sovereignty, the FICZ can only have the status of a temporary administrative arrangement.

UNCLOS points the way forward out of the current conservation and the legal problems. As was pointed out in the conclusion to the FAO report, illex falls precisely under the terms of Article 63, paragraph 2 of the UN Convention on the Law of the Sea that reads: "Where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall seek either directly or through appropriate subregional or regional organisations, to agree upon measures necessary for the conservation of these stocks in the adjacent area".

The official Argentinian position is still that the British initiative at the FAO was only an "attempt to internationalise the waters of the Malvinas Islands". However, we have seen that the valuable illex are distributed as a single stock over the whole Patagonian Shelf and Slope. As the heaviest fishing is along the continental slope on the high seas, an Argentinian government which controlled both the mainland EEZ and the Falklands/Malvinas EEZ could not unilaterally control the illex fishery. There would still be a need for a multilateral regime. UNCLOS Article 63 imposes an obligation on Argentina to reach agreement with the governments of all countries fishing for illex. A narrow interpretation of Article 63 might allow Argentina to have a set of bilateral agreements rather than work through a multilateral arrangement, but that is neither very practical nor in accord with Articles 118 and 119, which only mention international organisations as a means of conserving the living resources of the high seas. Existing regimes for the high seas are organised either on a regional basis, as in the north-east Atlantic, or on a species basis, as for salmon.

If there was the political will to reach agreement, there would be no problem in finding an organisational structure for a multilateral fishing regime. The most obvious would be to bring it under the FAO, which can provide a neutral secretariat. Given the friendliness of the United States administration with both the British and the Argentinian governments, the OAS could offer a regional framework. Alternatively, the Latin American Economic System (SELA) would avoid the United States being a dominant presence. Finally, as the FAO, the OAS and SELA might all be unacceptable to one or the other side, an ad hoc *Patagonian Shelf Fisheries Commission* could be established for the purpose.

Now that there is a small British fleet in the area, the Argentinians could agree that they and the Uruguayans, as the "coastal states", could sit down with Japan, the Soviet Union, Poland, Spain, Britain and the governments of other fishing countries. On the other hand, the British government could interpret the same meetings as including Britain among the "coastal states" rather than the "fishing states". So long as nobody defined which were "coastal states" and which were "fishing states", everybody could accept that they were sitting down together without affecting the disputed sovereignty claims. A fisheries regime could establish quotas for all countries in the whole area: that is a total acceptable catch for each species, divided among the various

fleets, covering all their fishing inshore to the mainland, offshore from the mainland, on the Patagonian Slope beyond the 200 n mile zones and in the Falklands waters. Effective policing would only require the current level of tacit co-operation between Argentina and Britain. A secretariat in Rome (the FAO headquarters) or Montevideo, as a regional capital city, could collate data on fishing effort in the area as a whole.

There remains the problem of who would gain the income from the multilateral licencing system. Here again a simple agreement on "creative ambiguity" could be accepted by all sides. Both the British and the Argentinian governments have as their official policy the maintenance of the Falklands/Malvinas as an autonomous region. Therefore both ought to be able to accept some income from a Patagonian regime going to the Falkland Islands Development Corporation. A starting point for bargaining could be 10% of the hake and 10% of the illex fees going to Uruguay; 90% of the Hake and 60% of the illex fees going to Argentina; and 100% of whiting and loligo, along with 30% of the illex fees going to the FIDC. These figures might suggest to both Argentinians and to Islanders that they would be giving up too much of "their" income. But it must be remembered that the proposed organisation, under UNCLOS Article 63, could licence the illex fishing which is currently unregulated on the high seas. Each side would be getting its percentage from a much larger cake. By covering the whole area, each side would also gain the assurance that the conservation measures stood a real chance of lasting to give a long-run source of income.

The Argentinian government showed in its statement on 3 February 1988, marking the start of the second year of the FICZ, that it now recognises the need for conservation. The British government has maintained in parliament and at the United Nations that it will still give preference to a multilateral regime, if that becomes a possibility. The two governments have already been holding a series of exchanges on fishing via Washington. With some hard work on the technical details and a modest measure of political goodwill a multilateral Patagonian Shelf Fisheries Agreement could be produced. So far the fishing issue has tended to feed the mutual suspicions and antagonisms, but a multilateral regime could promote co-operation of benefit to all concerned. In the interests of conservation, the observation of international law, the economic security of the Falkland Islanders and good relations between Argentina and Britain some such multilateral agreement is essential.

Appendix: Declaration on the Conservation of Fish Stocks and on Maritime Jurisdiction around the Falkland Islands

1. In order to create the necessary conditions for ensuring conservation of the fish stocks around the Falkland Islands, the British Government hereby declares that:

the Falkland Islands are entitled under international law to fishery limits to a maximum of 200 nautical miles from the baselines from which the breadth of the territorial sea of the Falkland Islands is measured.

The maximum extent of these limits is also subject to the need for a boundary with Argentina in areas where arcs of 200 nautical miles from Argentina and

the Falkland Islands overlap. In the absence of any agreement, the British Government hereby declares that:

the boundary is that prescribed by the rules of international law concerning the delimitation of maritime jurisdiction.

This declaration of limits is effective immediately.

2. Within these limits, legislative measures will be taken shortly in the Falkland Islands to ensure the conservation and management of living resources in accordance with international law. Such measures will be intended to ensure conservation of the stocks on an interim basis pending international agreed arrangements for the South West Atlantic fishing as a whole, and taking into account the best scientific evidence.

3. These measures will apply to a zone known as the Falkland Islands Interim Conservation and Management Zone (FICZ). The limits of the FICZ will be defined in the legislation and the effective date of the measures will be made known well in advance.

4. Approaches will be made as a matter of urgency to the states fishing around the Falklands, as well as to the Commission of the European Communities, about arrangements for the 1987 fishing season commencing on 1 February 1987.

5. The British Government has also given consideration to the related question of the continental shelf around the Falkland Islands in the light of the present state of international law, according to which rights to the continental shelf are inherent. The British Government hereby declares for the avoidance of doubt that:

the continental shelf around the Falkland Islands extends to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea of the Falkland Islands is measured or to such other limit as is prescribed by the rules of international law, including those concerning the delimitation of maritime jurisdiction between neighbours.

It will be for the authorities in the Falkland Islands to take legislative measures in order to implement this Declaration.

Foreign and Commonwealth Office, London, 29 October 1986.

Also issued as UN document A/41/777.

References

D Attard, *The Exclusive Economic Zone in International Law*, (Oxford: Clarendon Press, 1987)

J R Beddington, S Brault and J Gulland, *The Fisheries Around the Falklands*, (London: IIED/IUCN Marine Resources Assessment Group, Imperial College, 1985)

J Csirke, *The Patagonian fishery resources and the offshore fisheries in the South-West Atlantic*, (Rome: Food and Agriculture Organisation of the United Nations, Fisheries Technical Paper, No. 286, March 1987)

F P Fernandez, 'Argentine fishery activity in light of the main events which have recently affected it', in *Adjustments to changes in fisheries law and economics*, (Rome: Food and Agriculture Organisation of the United Nations, Fisheries Technical Paper, No. 269, 1985)

Foreign and Commonwealth Office, *FICZ*, (London: film produced in mid-1987)

House of Commons, *The Falkland Islands*, Fifth Report from the Foreign Affairs Committee, Session 1983-84, HC268, (London: HMSO, 25 October 1984)

House of Commons Library, *The South Atlantic Fishing Dispute*, (London: Research Note No. 309, mimeo, 27 November 1986)

Hydrographer of the Navy, *Falkland Islands – Fishery Limits*, (London: Admiralty Notice to Mariners, No. 179, 19 January 1987)

Lord Shackleton, *Falkland Islands Economic Study 1982*, (London: HMSO Cmnd.8653, Sept. 1982)

Acknowledgements

Thanks are due to Lee Radford of Brigham Young University for research assistance and to the Marine Resources Assessment Group, the FAO, the UN Library, the Royal Geographic Society, the Foreign and Commonwealth Office, the Falkland Islands Government Office, the Ministry of Defence, the Brazilian Embassy and the House of Commons Library for providing information.

About the author:

Dr Peter Willetts is a Lecturer in International Relations at City University, London. He has published four books: two on the Non-Aligned Movement, one on pressure groups in international relations, and one edited with Dr R J B Jones on Interdependence. Dr Willetts' most recent writing has mainly been on the United Nations. Since 1985, he has been Hon Secretary of the South Atlantic Council.

South Atlantic Council Occasional Papers

Options in the Falklands-Malvinas Dispute, by Bruce George MP and Dr Walter Little, April 1985

British Defence Policy and the South Atlantic, by General Sir Hugh Beach, May 1986

The Aland Islands Solution, by Donald Bullock and Professor Christopher Mitchell, March 1987

The South Atlantic Council is a group of fifty British people, including members of the House of Commons and the House of Lords from all the main parties, academics, business people, journalists, retired diplomats and church leaders, all of whom have personal experience and/or expertise on Argentine-British relations.

The Occasional Papers are published by the Council to encourage public and media discussion of the Falklands/Malvinas dispute and other issues affecting Argentine-British relations. Any views expressed are those of the authors and not of the Council, whose sole aim is to improve communications and understanding between Argentinians, British people and the Islanders.

South Atlantic Council, March 1988

Price £1.00