

*Please refer to the
your letters.*
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**SOVEREIGNTY OVER THE FALKLAND ISLANDS DEPENDENCIES
AND THE BRITISH ANTARCTIC TERRITORY**

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1. Would you please refer to your letter of 29 October on the question of the relationship of British sovereignty in the Falkland Islands and the Falkland Islands Dependencies/British Antarctic Territory.
2. Despite the hypothetical nature of both Chilean and Argentine editorial comment it is interesting to see how the Chilean suggestion of interdependence between our sovereignty in the Falkland Islands and our claims to the FID/BAT has caught the Argentines looking both ways. On the one hand the Argentines would like the legal situation to be that a cession of sovereignty in the Falkland Islands would automatically affect our position in the FID/BAT; on the other hand they do not want such a legal situation to give Chile a toe in the door on the Falklands question. In fact, the Argentines are on the horns of chimerical dilemma. The following three paragraphs, based closely on legal advice of 1977, set out our view on the legal relationships (or rather lack of them) between the Falkland Islands and the FID/BAT.
3. It may be useful at the outset to clarify the constitutional position. By letters patent of 21 July 1960, there were added to the existing colony of the Falkland Islands the Falkland Islands Dependencies made up of South Georgia, South Orkneys, the South Shetlands, the South Sandwich Islands and 'Graham's Land'. The latter was the name given to the territory in the Antarctic lying between 20° west and 80° west and stretching to the South Pole. Subject to amendments to the co-ordinates in 1917 which need not detain us, the Falkland Islands Dependencies remained a part of the Falkland Islands colony without modification until 3 March 1962. On that date, there was constituted a separate colony known as the British Antarctic Territory and including the South Orkneys, the South Shetlands, the Antarctic Peninsula and Coats Land. That is to say, those parts of the Falkland Islands Dependencies lying to the south of 60° south latitude were detached from the Falkland Islands Dependencies and made a separate colony. South Georgia and the South Sandwich Islands remained parts of the Falkland Islands Dependencie

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4. The basis of British sovereignty over these territories was conveniently summarised in the application made to the International Court of Justice in May 1955 by HMG. Although this case never proceeded to judgment on account of Argentina's refusal to accept the Court's jurisdiction, the application retains its value as a survey of the British title. It may be noted in passing that in 1955 the British Antarctic Territory had not been created and so reference to the Falkland Islands Dependencies included what is now known as the BAT. The application brings out the following points:

- (i) the claim to sovereignty over the Falkland Islands Dependencies was separate from and independent of the British title to the Falkland Islands themselves. (The passage referring to the ICJ in the La Nacion editorial of 29 October is part of footnote 2 to the UK's Applications to the ICJ of 4 May 1955. It reads in full as follows:
- ² It will be understood that although, for reason of convenience, the territories to which the present Application relates were constituted Dependencies of the Falkland Islands for administrative purposes, the British title to them is a separate and independent one, which in no way derives from or depends on the title to the Falkland Islands themselves'.);
- (ii) British sovereignty over the Falkland Islands Dependencies was not based on any 'sector' principle. There was no suggestion that British sovereignty depended upon any southerly extension of sovereignty from the Falkland Islands to the Dependencies nor from one dependency to another. The choice of 20° west and 80° west would appear to have been made in 1908 for reasons having to do with the whaling industry and the need to regulate it;
- (iii) the title to sovereignty was based on discovery accompanied by a formal claim in the name of the British Crown and occupation of the various parts of the Falkland Islands Dependencies. The application sets out a separate history for South Georgia, for the South Sandwich Islands, for the South Orkneys and, together, for the South Shetland Islands and Graham Land. The reason for taking those two together was that they were treated as one unit for the purposes of issuing whaling licences. With regard to the administration of the different areas, information is given on the regulation of the whaling industry by a licensing system, the work of magistrates, the carrying out of scientific work and the issue of postage stamps;

/(iv) Argentina's




- (iv) Argentina's claims were made at different dates. It was only in 1925 that she first claimed the South Orkneys and in 1937 that the claim was extended to cover the South Shetlands and Graham Land (formally defined in 1946). Indeed, as regards the South Orkneys, a treaty was drawn up at one stage whereby we would have ceded sovereignty to Argentina in exchange for a suitable site in Buenos Aires for the British Legation.

Clearly, we have a good, separate root of title to the BAT and each FI Dependency.

5. In the light of the foregoing, it is the opinion of legal advisers that the sovereignty of the Crown over the British Antarctic Territory would not be prejudiced in any way were HMG to cede or to offer to cede sovereignty over any part of the Falkland Islands and their dependencies to Argentina. In order to guard against the possibility of Argentine officials erroneously forming the view that such a cession would affect our sovereignty over the BAT, consideration would need to be given to the idea of it being stated formally, ie in writing or across the table, that our cession of sovereignty was not to be understood by the Argentine Government to affect in any way our sovereignty over the BAT. Although Article IV of the Antarctic Treaty (which preserves the position regarding claims to sovereignty) does not prevent a party from abandoning its claim, such an abandonment could not be implied from the cession of part of the Falkland Islands and their Dependencies to Argentina.

6. To this advice Mr Chamberlain has added

'So far as the question of whether our sovereignty over the Dependencies [as presently defined] would be affected by any cession of sovereignty over the Falkland Islands to Argentina is concerned... I would advise that [such a] cession would not automatically involve cession of sovereignty over the Dependencies. This is because the Dependencies are legally distinct from the Falkland Islands themselves. However, they are administered from the Falkland Islands and if the UK were to cede sovereignty over the Falkland Islands to Argentina, the Dependencies would then be in an administrative vacuum and it would be necessary for HMG to take steps to ensure the proper administration of the Dependencies. Nevertheless, the fact that the Dependencies are called 'Dependencies' could give rise to misunderstandings on the part of Argentina as to whether the cession of sovereignty to Argentina of the Falkland Islands included the Dependencies. It would, therefore, be wise in the course of any negotiations to make it abundantly clear to the Argentines whether or not we were ceding sovereignty over the Dependencies and in the actual instrument by which sovereignty is ceded, the territory which is being ceded should be precisely defined.'



7. In short, you may firmly and confidently rebuff any assertion that cession of sovereignty over the Falkland Islands would have any automatic effect on our sovereignty over the Falkland Islands Dependencies or the British Antarctic Territory. If such cession were ever to come to pass we, for our part, would need to recall the legal advisers enjoinders to define the scope of the cession precisely.

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