

RE-EXAMINING THE FALKLAND ISLANDS WAR: THE  
NECESSITY FOR MULTI-LEVEL DETERRENCE IN PREVENTING  
WARS OF AGGRESSION

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## I. INTRODUCTION

The centuries-old dispute between Argentina and Great Britain regarding the ownership of the Falkland Islands (known as “Las Malvinas,” in Spanish), escalated to an undeclared war when, on April 2, 1982, Argentina invaded and occupied the Falkland’s capital city of Port Stanley.<sup>1</sup> Professor Lawrence Freedman, a preeminent scholar on the Falkland Islands War, argued that it was difficult, at least initially, to “take the conflict seriously” because of the very nature of the Islands themselves, which he described as “an inaccessible and inclement part of the South Atlantic”<sup>2</sup> and lacking any “great strategic and economic asset.”<sup>3</sup> The Falkland Islands are composed of two large islands, East and West Falkland, as well as approximately 200 smaller islands, all of which cover a total area of a little more than 4,600 square miles.<sup>4</sup> The Falklands consist of Dependencies, including South Georgia and the South Sandwich Islands.<sup>5</sup> The physical terrain of the Falkland Islands is primarily made up of hilly grasslands, and the Falklands’ economy is mainly based on sheep herding.<sup>6</sup> A 1980 census estimated the Islands’ population at approximately 1,800 people, total.<sup>7</sup>

The territorial dispute between Argentina and Great Britain dates back to the eighteenth century, at which point the Islands were viewed by the European colonial powers “as a key access point to the southern straits and Cape Horn.”<sup>8</sup> France was the first to colonize East Falkland, but eventually withdrew after protest and compensation from Spain, who took control of the Island in 1767.<sup>9</sup> The British took possession of West Falkland, and its neighboring islands in the mid-1760s.<sup>10</sup> Although Spanish armed forces

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<sup>1</sup> Lawrence Freedman, *The War of the Falkland Islands, 1982*, 61 FOREIGN AFF. 196, 196–97 (1982).

<sup>2</sup> *Id.* at 197.

<sup>3</sup> *Id.* at 200.

<sup>4</sup> United Nations General Assembly, Special Committee on the Situation With Regard to the Implementation of the Declaration of the Granting of Independence to Colonial Countries and Peoples, Working Paper Prepared by the Secretariat, at 1, U.N. Doc. No. A/AC.109/670 (Aug. 5, 1981), in RAPHAEL PERL, *THE FALKLAND ISLANDS DISPUTE IN INTERNATIONAL LAW AND POLITICS* 404 (1983) [hereinafter UN Working Paper].

<sup>5</sup> *Id.*

<sup>6</sup> Freedman, *supra* note 1, at 197.

<sup>7</sup> UN Working Paper, *supra* note 4, at 1.

<sup>8</sup> Jorge O. Laucirica, *Lessons From Failure: The Falklands/Malvinas Conflict*, 1 SETON HALL J. DIPL. & INT’L REL. 79, 80 (2000).

<sup>9</sup> *Id.* Professor Metford points out that during this timeframe, “the Spaniards claimed dominion over all South America, except for the parts occupied by the Portuguese.” J.C.J. Metford, *Falklands or Malvinas? The Background to the Dispute*, 44 INT’L AFF. 463, 467 (1968).

<sup>10</sup> Metford, *supra* note 9, at 467.

expelled the British from the territory in 1770,<sup>11</sup> the Spaniards “handed over” the settlement to Britain a year later.<sup>12</sup> Britain’s occupation of West Falkland was shortlived, however, and it withdrew its naval garrison from the Island within a few years.<sup>13</sup> Upon its departure, the British left a plaque stating its claim to the territory: “In witness whereof this plate is set up, and his Britannic Majesty’s colours left flying as a mark of possession.”<sup>14</sup> Regardless of Britain’s claim, Spain occupied the Island after the British withdrawal.<sup>15</sup> In the early 1800s, as Spanish rule in Latin America came to an end, the Government of Buenos Aires for the United Provinces, which would eventually become Argentina, occupied the Falklands, and claimed sovereignty over them in 1829.<sup>16</sup> In 1833, Britain reclaimed the Islands through the use of force and maintained a presence thereon after.<sup>17</sup> According to Professor Freedman, “Argentina never forgave Britain for this reoccupation,” and in 1945, the Argentine government “revived its claim” to the Islands.<sup>18</sup>

In 1965, the United Nations addressed the territorial dispute through the adoption of U.N. Resolution 2065.<sup>19</sup> The resolution urged that the Falkland Islands dispute be resolved in accordance with U.N. Resolution 1514, which espoused the right of self-determination for colonial countries and peoples,<sup>20</sup> and that Argentina and Britain proceed in negotiations “without delay” in order to find a “peaceful solution to the problem.”<sup>21</sup> However, over the next seventeen years, there was essentially no diplomatic progress.<sup>22</sup> Instead, the two countries were involved in a series of military provocations, which ultimately were the backdrop to war. Professor Freedman notes that by 1982, Argentina’s “patience had run out with Britain” and “[t]he 150th

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 468.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Freedman, *supra* note 1, at 197.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*; see also Metford, *supra* note 9, at 475–76 (detailing the expulsion).

<sup>18</sup> Freedman, *supra* note 1, at 197.

<sup>19</sup> Question of the Falkland Islands (Malvinas), G.A. Res. 2065 (XX), U.N. Doc. A/RES/2065(XX) (Dec. 16, 1965) [hereinafter Resolution 2065].

<sup>20</sup> *Id.*; Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514 (XV), U.N. Doc. A/RES/1514(XV) (Dec. 14, 1960).

<sup>21</sup> Resolution 2065, *supra* note 19, para. 1.

<sup>22</sup> In 1973, the U.N. General Assembly indicated that it is “[g]ravelly concerned at the fact that eight years have elapsed since the adoption of resolution 2065 (XX) without any substantial progress having been made in the negotiations.” Question of the Falkland Islands (Malvinas), G.A. Res. 3160 (XXVIII), U.N. Doc. A/RES/3160 (XXVIII) (Dec. 14, 1973).

anniversary in January 1983 of the British seizure of the islands appeared as a sort of deadline.<sup>23</sup>

On March 19, 1982, Argentine scrap metal merchants landed on South Georgia Island and planted the Argentine flag on the British dependency.<sup>24</sup> Britain had a relatively “muted” response to the incident, and dispatched approximately half its marine garrison from the Falklands to South Georgia.<sup>25</sup> This event served as an appropriate distraction and catalyst for the upcoming Argentine invasion. On April 2, at the direction of President Leopoldo Galtieri, Argentine forces successfully invaded and occupied the Falkland Islands.<sup>26</sup> After diplomatic negotiations failed to bring the crisis to an end, Great Britain and Argentina engaged in what has been described as a “limited war,” which lasted approximately ten weeks.<sup>27</sup> As a result of the war, 255 British and 652 Argentine soldiers died.<sup>28</sup> In the end, Argentina surrendered, and Great Britain repossessed the Islands.<sup>29</sup>

This Article focuses on examining why Argentina’s military junta violated fundamental principles of international law<sup>30</sup> and waged a war of aggression,<sup>31</sup> and what processes could have deterred this armed conflict. Some scholars have claimed that the Argentine government initiated this war in order to deflect attention away from its stagnant domestic economy and its inhumane social policies.<sup>32</sup> However, these broad characterizations and motivations do not give adequate weight to the complexity of the decisionmaking process associated with international relations, and do not assist in determining which policies may have deterred the conflict. The

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<sup>23</sup> Freedman, *supra* note 1, at 198.

<sup>24</sup> *Id.* at 199; *see also* LORD FRANKS, THE FALKLAND ISLANDS REVIEW, REPORT OF A COMMITTEE OF PRIVY COUNSELLORS 49–50 (1983) [hereinafter FRANKS REPORT] (detailing events leading up to the planting of the flag).

<sup>25</sup> Freedman, *supra* note 1, at 199.

<sup>26</sup> *See id.* at 199 (“With its [n]avy at sea and only two days away from the islands, the temptation for the Argentine government to take the historic step . . . seemed irresistible.”).

<sup>27</sup> *Id.* at 196. Professor Freedman stated that the Falkland Islands War was “limited in time, in location, in objectives, and in means.” *Id.*

<sup>28</sup> MAX HASTINGS & SIMON JENKINS, THE BATTLE FOR THE FALKLANDS 316 (1983). Although the Argentine government announced their casualties as 652, the exact number has never been verified. *Id.*

<sup>29</sup> Freedman, *supra* note 1, at 196.

<sup>30</sup> *See* U.N. Charter art. 2, para. 4 (“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”).

<sup>31</sup> Freedman, *supra* note 1, at 200 (describing Argentina’s attack on the Falklands as “a clear act of aggression and a disregard of the principle of peaceful settlement of international disputes”).

<sup>32</sup> John Arquilla & Maria Moyano Rasmussen, *The Origins of the South Atlantic War*, 33 J. LATIN AM. STUD. 739, 740 (2011).

Falkland Islands War provides an illuminating case study for examining the effectiveness of multi-leveled deterrence because the war itself has been very well documented by historians, and the events leading up to the conflict involve several instances in which the British government could have implemented alternative policies.

The following sections will put forth an analysis regarding Argentina's pre-war decisionmaking process, including an investigation into the behavior and influence of senior-level Argentine officials during the crisis, as well as an examination of Argentina's domestic political structure and the international system in general. Based on this evidence, I will discuss what multi-level domestic and international mechanisms were unavailable—or were available but simply failed—in deterring the use of force in these circumstances. By providing a cursory examination of the events leading up to the Falkland Islands War, this Article will emphasize significant themes associated with the pre-war planning in Buenos Aires, and, in doing so, provide a framework for determining what policies can be employed in order to avoid future armed conflicts. Part II provides a brief overview of Kenneth Waltz's work, *Man, the State, and War: A Theoretical Analysis*,<sup>33</sup> which summarizes the most prominent international relations theories on the causation of war, and Part III analyzes these complex factors in relation to the Falklands War. Part IV discusses the significance of multi-level deterrence in international relations, and how these factors either failed, or were nonexistent in the Falklands War context. Part V provides some brief concluding thoughts.

## II. BACKGROUND: INTERNATIONAL RELATIONS AND THE DECISIONMAKING PROCESS

In his groundbreaking work, *Man, the State, and War*, Kenneth Waltz reviews both historic and modern approaches to understanding the causes of international armed conflict. Waltz argues that scholarship in this area has produced three “images” of international relations that describe the underlying reasons for war: (1) human nature; (2) a State's internal structure; and (3) the international system, all of which must be examined in concert in order to fully comprehend war and bring about peace.<sup>34</sup> The following section elaborates on Waltz's analysis, and incorporates additional theories related to the causation of war, which in their totality, will be applied to the Falklands War context.

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<sup>33</sup> KENNETH N. WALTZ, *MAN, THE STATE, AND WAR* (1959).

<sup>34</sup> *Id.* at 12.

A. *Human Nature, Regime Elites, and the Decisionmaking Process*

Waltz's first image depicts human nature as a fundamental cause of war. Accordingly, "[w]ars result from selfishness, from misdirected aggressive impulses, [and] from stupidity," and "the elimination of war must come through uplifting and enlightening men or securing their psychic-social readjustment."<sup>35</sup> Waltz reviews the debate between the so-called "optimists" and "pessimists" on whether war can actually be eliminated through the alteration of the nature and behavior of man.<sup>36</sup> Generally speaking, the former believes a peaceful world is feasible because man is capable of changing his "moral-intellectual outlook" or his "psychic-social behavior," and the latter presumes that war is inextricably linked to man's evil and destructive nature, which ultimately cannot be altered through reason or education.<sup>37</sup>

Recently, scholars have tried to expand upon this first image in their explanation of the decisionmaking process during times of crisis. For example, in *Essence of Decision: Explaining the Cuban Missile Crisis*, political scientists and established practitioners Graham Allison and Philip Zelikow provide their own three-part analysis of the decisionmaking process.<sup>38</sup> Allison and Graham indicate that, in addition to reviewing the nature and behavior of man in general (as Waltz describes), analysis of the decisionmaking process needs to take into account the different political motivations, strategies, and goals of the regime elites who are managing a country's national security apparatus.<sup>39</sup> As Allison and Zelikow explain, regime leaders are not a monolithic group, but instead, individual "player[s]" in a central, competitive game. The name of the game is politics: bargaining along regular circuits among players positioned hierarchically within the government.<sup>40</sup> Therefore, in order to understand government behavior, one needs to understand the interactions and competing preferences of the different regime elites who are influencing the final decisions or outcomes.<sup>41</sup>

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<sup>35</sup> *Id.* at 16.

<sup>36</sup> *Id.* at 18–19.

<sup>37</sup> *Id.*

<sup>38</sup> GRAHAM ALLISON & PHILIP ZELIKOW, *ESSENCE OF DECISION: EXPLAINING THE CUBAN MISSILE CRISIS* (2d ed. 1999). Allison and Zelikow discuss three "models" as being essential to understanding the decisionmaking process: Model I, the Rational Actor; Model II, Organization Behavior; and, Model III, the Government Politics Mode. *Id.*

<sup>39</sup> *Id.* at 255–324.

<sup>40</sup> *Id.* at 255.

<sup>41</sup> *Id.*

### B. *Internal State Structure*

Waltz's second image focuses on the internal structure of nation-states as the driving force behind understanding international conflict. Waltz provides examples of the "internal defects" in a nation-state that may lead to armed aggression, such as: the existence of a "generically bad" type of government,<sup>42</sup> the restrictions and limitations placed on governments that hinder effective and peaceful foreign policy,<sup>43</sup> and the inherent geographic or economic deprivations that lead to aggressive and expansive claims for resources.<sup>44</sup> Accordingly, if one can eliminate these internal defects from governments in order to create "good" nation-states, as opposed to "generically bad" nation-states, then international peace may be achieved.<sup>45</sup> However, as Waltz demonstrates, the competing definitions of internal defects and good governance ultimately depend on one's own political, social, or economic outlook.<sup>46</sup> Thus, although followers of both Karl Marx and Immanuel Kant, for instance, may agree that reform at the nation-state level is a prerequisite to peace, each group may have radically different perceptions on how to bring about this change.<sup>47</sup>

Deviating somewhat from Waltz, it is this Article's contention that there is sound empirical evidence proving that a democratic form of government will have a tremendous impact on whether a nation-state engages in armed aggression. The Democratic Peace Theory (DPT), which argues that major wars<sup>48</sup> are rarely, if ever, fought between well-established democracies, has "achieved broad support across the political spectrum."<sup>49</sup> For instance, in studying the 353 total occurrences of war between 1816 and 1991, DPT-advocate Professor R.J. Rummel concluded that "[n]ever has there been a war involving violent military action between stable democracies."<sup>50</sup>

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<sup>42</sup> WALTZ, *supra* note 33, at 82. In describing a "generically bad" form of government, Waltz states that "the deprivations imposed by despots upon their subjects produce tensions that may find expression in foreign adventure." *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 82–83.

<sup>45</sup> *Id.* at 83.

<sup>46</sup> *See id.* at 83–84 (detailing how the views of Karl Marx, Woodrow Wilson, and Immanuel Kant all differed because of their ideologies).

<sup>47</sup> *Id.* at 83. According to Waltz, Karl Marx would define a "good" nation-state "in terms of ownership and means of production," while Immanuel Kant would base such a definition "in terms of abstract principles of right." *Id.*

<sup>48</sup> For Democratic Peace Theory (DPT) purposes, a "major war" is defined as "interstate war with over one thousand casualties." John Norton Moore, *Beyond the Democratic Peace: Solving the War Puzzle*, 44 VA. J. INT'L L. 341, 342 (2004).

<sup>49</sup> *Id.* (footnote omitted).

<sup>50</sup> RUDOLPH J. RUMMEL, *DEATH BY GOVERNMENT* 2 (1994).

However, 155 of these wars were fought between democracies and non-democracies, and the other 198 wars were fought solely between non-democratic nation-states.<sup>51</sup> Professor Rummel has also provided statistical data illustrating that non-democratic governments murder their own populations at an exceedingly higher rate than democracies.<sup>52</sup> According to Professor Rummel, in the twentieth century, there have been approximately 170 million accounts of “democide,”<sup>53</sup> and non-democratic states are responsible for more than eighty percent of these deaths.<sup>54</sup> Professor John Norton Moore posits that “most [scholars] now accept that the [DPT] is one of the most important correlations found to date about the nature of war.”<sup>55</sup>

Scholars have proffered several different rationales and explanations in support of the DPT.<sup>56</sup> In “Three Pillars of the Liberal Peace,” Michael W. Doyle succinctly argues that the DPT can best be understood by examining three interrelated factors that are institutionally present in democracies: republican representation, an inherent ideological respect for human rights and values, and transnational interdependence.<sup>57</sup> First, in democratic forms of government, regime leaders tend to be held accountable to the state and the voters.<sup>58</sup> Democracies, therefore, “preclude monarchs or dictators turning their potentially aggressive interests into public policy while assuming that the costs will be borne by a subordinate public.”<sup>59</sup> By holding free and fair elections, democracies permit both the rotation of regime elites and the reversal of unpopular policies.<sup>60</sup> Additionally, Doyle cites

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<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 1–9.

<sup>53</sup> *Id.* at 15. Rummel defines democide as the “murder of any person or people by a government, including genocide, politicide, and mass murder.” *Id.* at 31.

<sup>54</sup> *Id.* at 20.

<sup>55</sup> Moore, *supra* note 48, at 344–45.

<sup>56</sup> See, e.g., BRUCE RUSSETT, GRASPING THE DEMOCRATIC PEACE: PRINCIPLES FOR A POST-COLD WAR WORLD (1993) (clarifying the theoretical debate and producing additional support for the relative pacifism of democracies); see generally BRUCE RUSSETT & JOHN O’NEAL, TRIANGULATING PEACE (2001) (arguing that democracy, economic interdependence, and international mediation can successfully cooperate to significantly reduce the chances of war); Michael Doyle, *Liberalism and World Politics*, 80 AM. POL. SCI. REV. 1151 (1986) (outlining the logic of how states that were both liberal and representative remain peaceful with one another, but not reliably with nonliberal, nonrepresentative states); IMMANUEL KANT, PERPETUAL PEACE (1795) (providing the foundation for DPT arguing that a majority of the people would not vote to go to war, unless in self-defense).

<sup>57</sup> Michael W. Doyle, *Three Pillars of the Liberal Peace*, 99 AM. POL. SCI. REV. 463, 463 (2005).

<sup>58</sup> *Id.* at 464.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*; see also John Norton Moore, *A New Paradigm in International Relations: A Reduction of War and Terror in the World through Democratization and Deterrence*, 17 TRANSNAT’L L. 83, 84 (2004) (stating that “In democracies there is a system of checks and

legislatures and public opinion as important drivers that restrain government leaders from enacting policies contrary to fundamental interests of the general citizenry.<sup>61</sup> On this issue, Doyle also notes that democracies are more “transparent” than alternative forms of government, which ensures that the internal decisionmaking process is exposed internationally, and foreign counterparts treat such outcomes or decisions with a higher degree of credibility.<sup>62</sup>

Next, because democratic governments respect fundamental human rights domestically, there is a belief that their foreign counterparts will do the same, which, in effect, creates a sense of trust and cooperation between democracies.<sup>63</sup> On the other hand, because democratic states perceive non-democracies as having aggressive policies towards their own constituency, they presume such governments would incorporate similar policies in their foreign relations.<sup>64</sup> Doyle notes, “fellow liberals benefit from a presumption of amity; nonliberals suffer from a presumption of enmity.”<sup>65</sup>

Lastly, Doyle connects the development of transnational interdependence to a peaceful predisposition between democratic states.<sup>66</sup> Accordingly, the desire for economic prosperity creates incentives for governments to promote peace and avoid war.<sup>67</sup> “Liberal economic theory,” according to Doyle, “holds that these cosmopolitan ties derive from a cooperative international division of labor and free trade according to comparative advantage when the parties can expect to be governed by a rule of law that respects property and that enforces legitimate exchanges.”<sup>68</sup> Thus, nation-states increase prosperity

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balances. For example, in a democratic system leaders are not chosen by violence, but rather, they are chosen for their ability to appeal to a mass audience. This process is in sharp contrast with non-democratic systems. . . .”).

<sup>61</sup> Doyle, *supra* note 57, at 464.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*; see also Conference on Security and Co-operation in Europe: Document of the Copenhagen Meeting of the Conference on the Human Dimension, June 29, 1990, 29 I.L.M. 1305 (discussing the link between democracy, rule of law, and the respect for human rights).

<sup>65</sup> Doyle, *supra* note 57, at 464.

<sup>66</sup> *Id.* at 464–65.

<sup>67</sup> *Id.* at 465.

<sup>68</sup> *Id.* at 464–65. In addition to citing the factors listed in Doyle’s work, Professor Moore argues that the “most important” factor in understanding the DPT, is “public choice theory.” Moore, *supra* note 60, at 84–85. According to Professor Moore, “[n]on-democratic leaders have almost unfettered ability to internalize all the benefits of international aggression while externalizing the cost of potential harm upon their populations. Thus, non-democratic leaders are far more disposed to high-risk aggressive actions risking major war and other disasters.” *Id.* at 85. See James M. Buchanan, *Politics Without Romance: A Sketch of Positive Public Choice Theory and Its Normative Implications*, in *THE THEORY OF PUBLIC CHOICE—II*, at 11–22 (James M. Buchanan & Robert D. Tollison eds., 1984) (detailing the implications for

through international cooperation, as opposed to autarky, which is a significant factor underscoring peaceful foreign relations.<sup>69</sup> Additionally, “[t]he interdependence of commerce and the international contacts of state officials help create cross-cutting transnational ties that serve as lobbies for mutual accommodation. . . . [I]nternational financiers and transnational and transgovernmental organizations create interests in favor of accommodation.”<sup>70</sup> On the other hand, the suspicions between democratic and non-democratic states may limit their social and economic interactions.<sup>71</sup> This background with regard to the DPT is important in the understanding of the Falkland Islands War because, as discussed in more detail below, the Argentine authoritarian government structure had a significant impact on the decisionmaking process prior to the conflict.

### C. *The International System*

Waltz’s third image evaluates the anarchic international system as a cause for war. Waltz summarizes this view of international relations as follows: “[w]ith many sovereign states, with no system of law enforceable among them, with each state judging its grievances and ambitions according to the dictates of its own reason or desire—conflict, sometimes leading to war, is bound to occur.”<sup>72</sup> Given the anarchic system in which we exist, a nation-state may use force at any time to achieve its goals simply because there is no authority preventing such aggression. Thus, in the absence of any overarching authority, and based on the presumption that nation-states have competing interests, policies, and goals, every nation-state must constantly be prepared to defend its national interests, by force if necessary.<sup>73</sup> This ultimately, can itself be a cause of war.<sup>74</sup> Although some have argued that the creation of world government may make armed conflict based on image

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public choice theory in politics).

<sup>69</sup> Doyle, *supra* note 57, at 465.

<sup>70</sup> *Id.* Doyle notes that

because keeping open markets rests on an assumption that the next set of transactions will also be determined by prices rather than coercion, a sense of mutual security is vital . . . . Thus, avoiding a challenge to another liberal state’s security or even enhancing each other’s security . . . naturally follows economic interdependence.

*Id.*

<sup>71</sup> *Id.* Doyle also argues, “[w]hen property lacks clear title and exchanges are subject to manipulation and uncertain legal enforcement — the typical environment of non-liberal states — then economic contact generates strife.” *Id.*

<sup>72</sup> WALTZ, *supra* note 33, at 159.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

three obsolete, Waltz dismisses this solution as “unassailable in logic . . . [and] unattainable in practice.”<sup>75</sup>

### III. ANALYSIS: THE FALKLAND ISLANDS WAR

By focusing on all three of Waltz’s images, as well as recent scholarship in this area, one is able to see the complexity associated with understanding the underlying reasons motivating a nation-state to wage a war of aggression. The following analysis will examine all of these factors in the context of the Falkland Islands War. In doing so, I will attempt to provide a framework for understanding why the Argentine government used its armed forces as a means for obtaining its goals, and what factors, if any, could have deterred the use of force in this situation. Thus, the next section will examine the thinking and strategy among the key individuals of the Argentine regime who instigated the Falkland Islands War, the Argentine government structure and its impact on the decisionmaking process leading to this conflict, and, lastly, the anarchic international system.

#### *A. Argentina: Regime-Elite Decisionmaking*

By examining the decisionmaking process of Argentina’s political and military leaders, including President and Army Commandant Galtieri, Navy Commandant Admiral Jorge Anaya, and Air Force Commandant Brigadier General Arturo Lami Dozo, and other key regime elites during the lead-up to the Falkland Islands War, one can see that the conflict was as much about personal and political opportunism as it was about ideology. The development of Argentina’s war strategy has its roots in the 1970s, almost immediately after the military junta gained control of the government. The 1976 coup d’état in Argentina resulted in Lieutenant General Jorge Rafael Videla assuming the presidency, while his ambitious political opponent Admiral Emilio Massera remained the navy commandant.<sup>76</sup> In an attempt to undermine Videla, Massera “delivered a formal request to the junta for a military force in order to proceed to recover the Falkland Islands.”<sup>77</sup> Videla understood that the request amounted to nothing more than a political ploy, and thus the president responded by both recognizing the importance of reclaiming the Falklands and demanding that a thorough military strategy be

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<sup>75</sup> *Id.* at 238.

<sup>76</sup> OSCAR RAÚL CARDOSO ET AL., *FALKLANDS: THE SECRET PLOT 2–4* (Bernard Ethell trans., 1987).

<sup>77</sup> *Id.* at 4.

completed before Massera's request would be granted.<sup>78</sup> Consequently, Massera assigned the responsibility for developing a Falkland war strategy to his subordinate Jorge Anaya, who completed his mission in 1977.<sup>79</sup>

Although Massera did not follow up with his request to the junta for military assets, Anaya turned the development and implementation of this military strategy "into a personal quest."<sup>80</sup> Anaya believed that the Argentine navy could use the Falkland Islands as a southern base to control the Cape Horn shipping region while still remaining at a safe distance from its rival Chile.<sup>81</sup> Anaya thought the recovery of the Falklands was crucial to the navy and the future of Argentina in general, and he viewed the two as "inextricably and irrevocably linked."<sup>82</sup> Anaya has been described as "the one man [in the Argentine government] who was undoubtedly most single-minded in his determination to recapture the Malvinas, and who was most disposed to use force to do it."<sup>83</sup> United States Secretary of State Alexander Haig recalled a discussion with Admiral Anaya, in which the commandant said "[m]y son is ready to die for the Malvinas[ ] and it is my family's point of view that we would be proud to know his blood mingled with this sacred soil."<sup>84</sup> More recently, in recognition of his death in 2008, commentators described Anaya as the "leading proponent"<sup>85</sup> and the "driving force"<sup>86</sup> behind the Argentine invasion of the Falkland Islands. Anaya's personal position on this matter is significant because of the key role he played in ensuring that Galtieri obtained the presidency in the 1981 coup.

In *Falklands: The Secret Plot*, Oscar Raul Cardoso presents a detailed timeline regarding both Anaya's strategy to invade the Falkland Islands and Galtieri's rise to the presidency.<sup>87</sup> According to Cardoso, Galtieri and Anaya were "close friend[s]" and often attempted to leverage the political upheavals in Argentina during the era for their own political advantages.<sup>88</sup> For instance, Cardoso describes that in the 1980s, both men schemed to overthrow then-President Roberto Eduardo Viola from power,<sup>89</sup> while Anaya

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<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 3.

<sup>80</sup> *Id.* at 4.

<sup>81</sup> PAUL EDDY ET AL., *WAR IN THE FALKLANDS: THE FULL STORY* 28 (1982).

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 27–28.

<sup>84</sup> ALEXANDER M. HAIG, JR., *CAVEAT: REALISM, REAGAN, AND FOREIGN POLICY* 288 (1984).

<sup>85</sup> *Jorge I. Anaya, 81, Admiral During Falklands War, Is Dead*, N.Y. TIMES, Jan. 12, 2008, <http://www.nytimes.com/2008/01/12/obituaries/12anaya.html>.

<sup>86</sup> Phil Gunson, *Rear Admiral Jorge Anaya*, GUARDIAN, Jan. 14, 2008, <http://www.guardian.co.uk/uk/2008/jan/14/falklands.argentina>.

<sup>87</sup> CARDOSO ET AL., *supra* note 76.

<sup>88</sup> *Id.* at 6.

<sup>89</sup> *Id.* In 1980, Roberto Eduardo Viola succeeded Videla as president. EDDY ET AL., *supra*

simultaneously argued that reclaiming the Falklands would have tremendous domestic political benefits for the junta, and that Galtieri was “the man . . . needed” to lead Argentina’s political-military establishment.<sup>90</sup> Regarding Anaya’s former argument—domestic politics—both he and Galtieri perceived Argentina’s recent economic stagnation and social unrest as a threat to the government, and both “believed . . . that it was necessary . . . to revitalise the military machine which was showing unmistakable . . . exhaustion.”<sup>91</sup> After being in power for five years, the Junta’s economic programs led to a “crisis affecting all orders of society.”<sup>92</sup> The government’s fiscal policies resulted in a spike in civil and commercial bankruptcies, high unemployment in key labor sectors, and soaring external debt.<sup>93</sup> In this environment, Galtieri considered success in the Falklands as a “shortcut to popularity.”<sup>94</sup>

Given that Galtieri has been described as a man who was “seduced by the idea of power,”<sup>95</sup> and, during his time as president, as someone who developed “Messianic aspirations,”<sup>96</sup> he agreed with Anaya’s proposition that he should lead the country to the forefront of the international stage. Eventually, Galtieri and Anaya agreed to an “unwritten pact” in which the latter agreed to support Galtieri’s coup for the presidency, and the former agreed to support the military strategy to reclaim the Falkland Islands.<sup>97</sup> On December 22, 1981, with the backing of the commandant of the navy and (the soon to be) commandant of the air force, Admiral Anaya and Brigadier General Lami Dozo respectively, Galtieri successfully forced the resignation of Argentine President Viola and was officially named president of Argentina.<sup>98</sup>

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note 81, at 61.

<sup>90</sup> CARDOSO ET AL., *supra* note 76, at 6.

<sup>91</sup> *Id.* at 7. After obtaining the Presidency, Cardoso noted that “[Galtieri] felt that it would be essential to have some resounding triumph in order to give impetus to the military regime which was struggling to survive.” *Id.* at 21.

<sup>92</sup> ALEJANDRO DABAT & LUIS LORENZANO, ARGENTINA: THE MALVINAS AND THE END OF MILITARY RULE 64 (Ralph Johnstone trans., 1982).

<sup>93</sup> *Id.* at 64–70.

<sup>94</sup> EDDY ET AL., *supra* note 81, at 29; *see also* HASTINGS & JENKINS, *supra* note 28, at 48 (“Within Argentina, recovery of the ‘Malvinas’ would not stifle internal dissent, but at least it would unite the nation for a time. It would serve as a vindication of military rule and cleanse the reputation of the armed forces after the horrors of the dirty war . . .”).

<sup>95</sup> CARDOSO ET AL., *supra* note 76, at 6.

<sup>96</sup> *Id.* at 55.

<sup>97</sup> *Id.* at 25.

<sup>98</sup> *Id.* at 20. For a detailed description of Galtieri’s coup, *see id.* at 17–20.

Galtieri and Anaya informed Lami Dozo about the decision to recapture the Falkland Islands on December 29, 1981, within a week of Galtieri obtaining the Presidency. Cardoso described this event as follows:

[Galtieri, Anaya, and Lami Dozo] made small talk until Anaya and Galtieri threw the Falklands idea on the table. Inside twelve months, they said, one hundred and fifty years of British occupation of the archipelago would be completed. The Government of the armed forces had to try to ensure that by that time the blue and white flag would fly over Port Stanley.<sup>99</sup>

When Anaya and Galtieri finished discussing their proposal, Lami Dozo did not raise any objections, and instead “accepted” the decision.<sup>100</sup> Lami Dozo was “far less belligerent” than the others, and agreed to the mission because, for him, the recovery of the Islands “made sound political sense.”<sup>101</sup> The air force commandant believed that a victory in the Falklands would salvage the military’s political reputation, which was in decline due to both failing economic and oppressive social policies.<sup>102</sup>

The war strategy was buttressed by the fact that Great Britain, and the international community in general, failed to put forth a strategy that would have deterred an Argentine act of aggression. The junta thought that Britain and its allies would treat a “bloodless” invasion and occupation of the Falklands as *fait accompli*, and limit any response to nonmilitary and nonviolent terms.<sup>103</sup> Galtieri is even on record as stating: “I’ll tell you . . . that though an English [military] reaction [to an Argentine invasion of the Falklands] was considered a possibility, we did not see it as a probability. Personally, I judged it scarcely possible and totally improbable.”<sup>104</sup> Scholars also contend that a segment of the Argentine government was confident that its military would have a reasonable chance

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<sup>99</sup> *Id.* at 26.

<sup>100</sup> *Id.*; see EDDY ET AL., *supra* note 81, at 26 (summarizing Dozo’s acceptance of the proposal).

<sup>101</sup> EDDY ET AL., *supra* note 81, at 29. Cardoso described the Air Force Commandant as “an adaptable man and less wedded to rigid military ideology in the eyes of the political parties.” CARDOSO ET AL., *supra* note 76, at 26.

<sup>102</sup> EDDY ET AL., *supra* note 81, at 29.

<sup>103</sup> See CARDOSO ET AL., *supra* note 76, at 57 (discussing that Argentine strategies were premised “on the assumption of an almost total absence of British military reaction, or at least, the absence of any *overwhelming* reaction — such as that which actually did take place”); see also HASTINGS & JENKINS, *supra* note 28, at 48–49 (discussing the Argentineans’ belief that there would likely not be a British military response).

<sup>104</sup> ROBERT JERVIS ET AL., *PSYCHOLOGY AND DETERRENCE* 110 (1985) (quoting President Galtieri).

of winning an armed conflict against Britain in the event that London did respond to an invasion with the use of force.<sup>105</sup> Some in the junta apparently believed “that there was little or nothing in a military sense that Britain could do to dislodge Argentina from the Falklands once they had actually occupied it,” and that a British amphibious counterattack had “little chance of success.”<sup>106</sup>

Based on this analysis, one is left with the view that the three most powerful Argentine regime leaders all agreed, without any significant dissent or hesitation, that instigating a war in the Falkland Islands would be a national priority. President Galtieri believed that a successful invasion of the Falklands would help solidify his control of the government and the country; Admiral Anaya thought a military victory in the Falklands would be a sort of vindication for the years he spent planning for the war; and Brigadier General Lami Dozo viewed the war as a prerequisite for the maintenance of the Junta’s power structure.<sup>107</sup>

The regime leaders mandated that their war strategy be withheld from dissemination, and in fact, very few Argentineans knew of the mission.<sup>108</sup> In March 1982, weeks prior to the actual invasion, only a select group of Argentine officials outside the military commandants knew about the planning, including the Argentine commander of naval operations, Vice-Admiral Juan Jose Lombardo, the foreign minister, Costa Mendez, and the chief of operations of the army general staff, Brigadier General Mario Benjamin Menendez.<sup>109</sup> However, a cursory review of the roles these men played in the planning and lead-up to the Falklands invasion illustrates the near-uniform manner in which they accepted and supported the mission, and where there was dissent, the swiftness with which the dissension was silenced.

Lombardo was one of the first men to be informed of the Falkland Islands war plot when, on December 15, 1981, he was summoned to meet with his supervisor Admiral Anaya.<sup>110</sup> Cardoso describes the exchange as follows:

“I order you,” said Anaya, resorting to a formula that left no margin for error, “to prepare a plan for an Argentine landing in

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<sup>105</sup> See generally Arquilla & Rasmussen, *supra* note 32 (arguing that “[a] fast decreasing gap in relative power between Argentina and Britain may have encouraged the junta more seriously to consider the possibility of initiating a war between the two”).

<sup>106</sup> JERVIS ET AL., *supra* note 104, at 111.

<sup>107</sup> See *supra* notes 88–102 and accompanying text.

<sup>108</sup> HASTINGS & JENKINS, *supra* note 28, at 48 (“It is believed that, at the start of 1982, no more than nine individuals knew of any firm intention by the junta to invade.”).

<sup>109</sup> *Id.*; CARDOSO ET AL., *supra* note 76, at 1–3, 35, 52.

<sup>110</sup> CARDOSO ET AL., *supra* note 76, at 1.

the Falkland Islands. You are to be the first to know about this. It would be wise, therefore, for the people you choose to work on the plan to keep their mouths shut. Secrecy is vital. Do you understand me?"<sup>111</sup>

According to Cardoso, Lombardo challenged his supervisor by asking an obvious question, "admiral — what is going to happen after we've taken the islands?"<sup>112</sup> Anaya had a "cutting reply" for Lombardo: "[d]on't you worry about that, because that's not your responsibility . . . . Limit yourself to working on the plan to take the islands; the rest can come later."<sup>113</sup> In Cardoso's scholarship, he does not identify any significant moment in which Lombardo challenges the regime elites on the basis that their action was the equivalent to a war of aggression. Rather, he obeyed orders in drafting a war strategy, as requested by the commandant of his branch of armed service.<sup>114</sup>

Similarly, Costa Mendez, who was serving as the Galtieri's foreign minister, did not strenuously object to the junta's decision to reclaim the Falklands.<sup>115</sup> In February 1982, Galtieri informed Costa Mendez of the war strategy, and, in response, the latter "proposed that a working party should be formed to study and develop possible alternative[s]."<sup>116</sup> However, Galtieri denied this proposal and demanded that the war strategy be developed with absolute secrecy.<sup>117</sup> On March 26, 1982, the military junta requested that Costa Mendez join them to discuss the military strategy, and, when Costa Mendez arrived, the junta informed him that the decision had been made to invade the Falklands in a matter of days.<sup>118</sup> According to one account, Costa Mendez "encouraged the military decision, egging the commandants on by saying: 'Let's do it now!'"<sup>119</sup> Costa Mendez's is also important to this

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<sup>111</sup> *Id.* at 3.

<sup>112</sup> *Id.* at 6.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*; see also LAWRENCE FREEDMAN & VIRGINIA GAMBA-STONEHOUSE, SIGNALS OF WAR: THE FALKLANDS CONFLICT OF 1982, at 104 (Princeton Univ. Press, 1991) (detailing how Lombardo's plan precluded the use of warships). "[T]he idea would be to surprise the British garrison and take over the Falklands with the minimum of casualties." *Id.* The Falklands War strategy was codenamed as "Operation Rosario." *Id.* at 109.

<sup>115</sup> CARDOSO ET AL., *supra* note 76, at 35.

<sup>116</sup> *Id.* For another view on Costa Mendez's position on the Falklands, see EDDY ET AL., *supra* note 81, at 29–30.

<sup>117</sup> CARDOSO ET AL., *supra* note 76, at 35.

<sup>118</sup> *Id.* at 76. Originally, the Falkland Islands War strategy called for the invasion to take place between May and July of 1982. FREEDMAN & GAMBA-STONEHOUSE, *supra* note 114, at 106. However, the junta feared that the British would fortify the Falklands after the South Georgia incident, and thus rescheduled the actual invasion date for April. *Id.* at 98.

<sup>119</sup> CARDOSO ET AL., *supra* note 76, at 76 (citing Joaquin Morales Sola). Cardoso did describe an alternative account of these events in which he notes that after Costa Mendez was informed

analysis because, “[a]t no point” during the Falklands War strategy development, did “Costa Mendez or any of his advisers appear to have believed a British military response was likely,” which served to support the regime elite’s disposition.<sup>120</sup> According to the Foreign Minister:

[I]n the diplomatic circumstance the peaceful and bloodless occupation of the islands would make the Argentine will to negotiate the solution of the underlying conflict evident. This occupation would make it possible for us to negotiate once and for all the underlying dispute. It would also induce the international community, the interested parties and even the United States of America to pay more attention to the reasons for the dispute, its character and the need for a rapid solution. The United Nations would not be able to procrastinate if faced with a military action and would have to discuss it at the highest possible levels.<sup>121</sup>

Menendez, who was chosen to be military governor of the Falklands after the invasion, challenged, at least to some degree, the regime elites regarding the war policy. On March 2, 1982, President Galtieri told Menendez, “[w]e have taken the decision to recover the Falklands by military means and the Junta have approved my proposal that you should head the military government of the islands.”<sup>122</sup> Menendez listened in astonishment as Galtieri discussed the details of the plans, and when Galtieri completed his remarks, Menendez responded: “What do you think will be the British reaction after we recover the islands?”<sup>123</sup> Similarly to Anaya’s response to Lombardo’s request for more details on the post-war strategy, Galtieri told Menendez, “[t]hat is not your problem,” and, “just concern yourself with preparing to govern.”<sup>124</sup> According to Cardoso, Menendez left the meeting without knowing “whether to jump for joy or ask the earth to . . . swallow him. He had many doubts . . . but Galtieri’s assurance about the success of this

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of the war decision, Costa Mendez limited himself to urging for quick action so as to preclude an attempt by the British to fortify the islands. *Id.*

<sup>120</sup> HASTINGS & JENKINS, *supra* note 28, at 48–49.

<sup>121</sup> FREEDMAN & GAMBA-STONEHOUSE, *supra* note 114, at 81.

<sup>122</sup> CARDOSO ET AL., *supra* note 76, at 52.

<sup>123</sup> *Id.* at 53.

<sup>124</sup> *Id.* During an interview after the Falkland Islands War, Menendez stated, “When General Galtieri said to me: ‘If this operation goes ahead, you will become governor,’ I could have said no. But I said yes. Faced with this a soldier will say to himself: I stay and do my duty, or I go. I stayed.” *Fight for The Falklands: Twenty Years On*, BBC, [http://news.bbc.co.uk/1/hi/english/stat/02/02/02/falklands/my\\_story/menendez.stm](http://news.bbc.co.uk/1/hi/english/stat/02/02/02/falklands/my_story/menendez.stm) (last visited Feb. 6, 2012).

operation calmed him.”<sup>125</sup> Two days later, Menendez approached the chief of the army general staff, Jose Antonio Vaquero, and told him that his previous discussion with Galtieri “left [him] worried.”<sup>126</sup> Vaquero tried to convince Menendez of the logic behind the war strategy by stating that the British government has had “this [Falkland] problem for a long time . . . . The fact is they are going to shout a lot, get annoyed and appear tough, to satisfy internal public opinion . . . England doesn’t know what to do with the Falklands. They find them expensive and far away. Those 1800 inhabitants give them endless trouble.”<sup>127</sup>

Menendez was not satisfied with Vaquero’s rationale.<sup>128</sup> Instead, the following week, Menendez spoke openly to Galtieri about his concerns: “[w]hat are going to be the direct or indirect consequences that Argentina will suffer after the military action?”<sup>129</sup> According to Cardoso, Galtieri mandated that Menendez not concern himself with these issues because they had already been resolved within the military, in coordination with the Ministry of Foreign Affairs, and Menendez should “[c]oncentrate on being the Military Governor.”<sup>130</sup> It was at this juncture that “Menendez stopped worrying,” and replied, “That’s clear enough, Sir. I shall think no more about it. I will think simply in the terms of a Military Governor.”<sup>131</sup>

This cursory review of key regime leaders illustrates how the junta sought unanimity in its war policy development and the secret manner in which it operated. Given the fact that the plot to invade the Falklands came from the most senior levels of government, any dissention could be viewed as insubordination which helped ensure that lower level officials carried out their orders. This approach helped cause or reinforce the most important misperception held by the junta: that the British government or international community would not respond with force to an Argentine invasion. According to one scholar:

Reports from foreign agents and correspondents generally enabled Buenos Aires to buildup a relatively glowing picture of

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<sup>125</sup> CARDOSO ET AL., *supra* note 76, at 53.

<sup>126</sup> *Id.* at 54.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* In describing the Falklands’ Islands significance for Argentines, Menendez stated, “the sovereignty issue is something that starts at a very young age. I remember the comics I used to read when I was seven. There was a comic strip where someone had written graffiti saying ‘The Malvinas are Argentinean.’” *Fight for The Falklands: Twenty Years On*, *supra* note 124.

<sup>129</sup> CARDOSO ET AL., *supra* note 76, at 55–56.

<sup>130</sup> *Id.* at 56.

<sup>131</sup> *Id.*

how the world saw the new Argentina. . . . Much of [the intelligence] came through military channels and was liable to the distortion inherent in military lines of command. *Officers were conscious that evidence of minimal response was what their superiors wanted to hear.* Yet everything pointed to the same conclusion: the British would not respond militarily; the Third World countries at the UN would side with Argentina; there would be insufficient support for a vote favourable to Britain in the Security Council; even if there were sufficient support, Russia would honour the anti-colonialist ticket and veto it; any sanctions imposed by Britain would be ineffective and short-lived.<sup>132</sup>

The manner in which the regime leaders discussed war strategy seemed to discourage opposing viewpoint, and silenced dissention. This is important to note because when foreign governments and international organizations are developing strategies to deter acts of aggression from dictatorships, they must focus on the key regime elites driving the overarching policy, as opposed to the lower rank-and-file soldiers—or the general public for that matter—who may not have an opportunity to challenge the bellicose planning of their own government.

#### *B. The Argentine Internal Government Structure*

As seen above in the description of Waltz's image-two analysis, as well as the DPT, a government's form and configuration may have a profound effect on its international relations. An understanding of the Argentine military junta's organizational structure, its rise to power, and its horrific domestic oppression provides valuable insight into its pre-war decisionmaking process. In 1970s Argentina, the socialist-leaning "Montoneros" conducted guerilla warfare across the country targeting several different sectors of society, including monetary, law enforcement, and labor centers and personnel.<sup>133</sup> In response to the violence, the Argentine government, led by Juan Perón, and his delegate Héctor Cámpora, granted amnesty to the Montoneros and other extremist groups, which "effectively legitimized" their existence and consequently even permitted them to serve in the government.<sup>134</sup> However, the uneasy reconciliation

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<sup>132</sup> HASTINGS & JENKINS, *supra* note 28, at 49 (emphasis added).

<sup>133</sup> IAIN GUEST, BEHIND THE DISAPPEARANCES: ARGENTINA'S DIRTY WAR AGAINST HUMAN RIGHTS AND THE UNITED NATIONS 17 (1990).

<sup>134</sup> *Id.*

between the leftists and the Argentine government was short-lived. In 1973, Perón rejected left-wing candidates for his government, and instead chose his third wife Isabel as his vice-president.<sup>135</sup> In response, the Revolutionary Army of the People, the other main leftist guerrilla group in Argentina, attacked an army health services headquarters.<sup>136</sup> Violence between the government and right-wing extremists on one hand, and the leftist guerrilla groups on the other, intensified from thereon after.<sup>137</sup>

Argentine President Isabel Perón, who succeeded her husband after his death in 1974, was ultimately unable to quell the violence, and, in November 1974, issued a “state of siege” declaration, which permitted the government to suspend certain Constitutional rights.<sup>138</sup> Four months later, Perón signed a decree that ordered the army to conduct “whatever military operations may be necessary to neutralize or annihilate the action of the subversive elements acting in the province of Tucumán.”<sup>139</sup> The order was soon after extended to cover the entire country. During this timeframe the Argentine military portrayed the Perón government as being institutionally incapable of resolving the underlying violence perpetrated by the leftist guerillas, and it sought to position itself as an acceptable government alternative.<sup>140</sup>

On March 24, 1976, General Jorge Videla and the military Junta replaced Perón’s civilian government through a coup.<sup>141</sup> Given the state of violence in the country, many Argentines actually welcomed Videla’s arrival.<sup>142</sup> The junta expanded upon Peron’s decrees and launched a “dirty war” against left-wing subversives and their sympathizers.<sup>143</sup> According to Professor James McGuire, “[o]ne of the first acts of the military government led by General Jorge Videla was to unleash a campaign of terror unprecedented in modern Argentine history.”<sup>144</sup> During the “dirty war,” “disappearances” were the junta’s preferred method of repression, and individuals who faced this form of punishment, generally speaking, may have been “murdered and

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<sup>135</sup> *Id.* at 18.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* at 18–20.

<sup>138</sup> JAMES W. MCGUIRE, PERONISM WITHOUT PERON: UNIONS, PARTIES, AND DEMOCRACY IN ARGENTINA 171 (1997); see GUEST, *supra* note 133, at 19 (describing Isabel Perón’s feeling that other measures “were inadequate”).

<sup>139</sup> MCGUIRE, *supra* note 138, at 171.

<sup>140</sup> See generally Eric Stener Carlson, *The Influence of French “Revolutionary War” Ideology on the Use of Torture in Argentina’s “Dirty War,”* 1 HUM. RTS. REV., Sept. 2000, at 71, 79 (arguing the Argentine military positioned itself as the sole organization able to bring peace to Argentina and portrayed the battle against the guerrillas with an “apocalyptic aura”).

<sup>141</sup> EDDY ET AL., *supra* note 81, at 60.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*; see also GUEST, *supra* note 133, at 21–22 (describing the junta’s actions).

<sup>144</sup> MCGUIRE, *supra* note 138, at 170.

buried secretly, or often tortured, and then bound, drugged, and thrown from ships or aircraft into the Rio de la Plata.”<sup>145</sup> Iain Guest, who has written extensively on the “dirty war,” describes the junta’s brutality during this era: “Never before had the resources of a state been geared to systematic torture and murder. The Junta turned disappearances into a government policy and in so doing gave new meaning to the concept of state terror. It was as deliberate, methodical, and calculated as collecting tax . . . .”<sup>146</sup> Although there is no consensus on the “dirty war’s” death toll, according to a government estimate, 13,000 people were killed or disappeared, and, according to a human rights group, approximately 30,000 people died or disappeared during this time frame.<sup>147</sup>

The Argentine government was able to carry out these atrocities by consolidating legislative and judicial power within the executive branch. For instance, the military junta enacted the State for the Process of National Reorganization, which in effect dissolved both federal and provincial legislative bodies, and permitted the arbitrary dismissal of senior-level government officials.<sup>148</sup> According to Professors Banks and Carrio, during the “dirty war,” the junta enacted a series of statutes and decrees that “criminalized participation in political parties or labor strikes, publication of news concerning terrorism, subversion, or kidnappings and the discovery of bodies, criticism of official policies in university classrooms, and political acts that related to a political party.”<sup>149</sup> The regime indicated that the “Constitution would remain in force only ‘to the extent that it does not oppose the main objectives set forth by the military *junta* or the provisions’ of its law.”<sup>150</sup> With regard to the judiciary, the junta purged the supreme court, replaced approximately eighty percent of all federal judges, and required all new judges to swear an oath to the new constitutional order.<sup>151</sup>

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<sup>145</sup> Elizabeth B. Ludwin King, *Amnesties in a Time of Transition*, 41 GEO. WASH. INT’L L. REV. 577, 583 (2010); see also Antonius C.G.M. Robben, *How Traumatized Societies Remember: The Aftermath of Argentina’s Dirty War*, 59 CULTURAL CRITIQUE 120, 129 (2005) (“Disappearance was the preferred repressive method of the Argentine military.”).

<sup>146</sup> GUEST, *supra* note 133, at 32.

<sup>147</sup> *Argentinian Dictator Jailed for Dirty War Atrocities*, GUARDIAN (UK), Dec. 24, 2010; see also *Argentina Dirty War 1976 – 1983*, GLOBALSEcurity.ORG, <http://www.globalsecurity.org/military/world/war/argentina.htm> (last visited Jan. 30, 2012).

<sup>148</sup> William C. Banks & Alejandro D. Carrio, *Presidential Systems in Stress: Emergency Powers in Argentina and the United States*, 15 MICH. J. INT’L L. 1, 30 (1993).

<sup>149</sup> *Id.* at 31.

<sup>150</sup> *Id.* at 30 (quoting Ley 21.258, XXXVI-B A.D.L.A. 1032 (1976)).

<sup>151</sup> Robert Kogod Goldman et al., *International Protection of the Independence of the Judicial Process*, 76 AM. SOC’Y INT’L L. PROC. 307, 318 (1982).

Between 1976 and 1983, the Argentine government murdered or ensured the disappearance of hundreds of judges and attorneys.<sup>152</sup>

Thus, by the time the junta was making the decision to launch a war of aggression in the Falklands in the 1980s, it was clearly operating under a dictatorship-style government, and in a manner that contradicts the abovementioned DPT ideals proposed by Professor Doyle.<sup>153</sup> First, the Galtieri regime rose through a coup and retained power by consolidating almost all legislative and judicial control.<sup>154</sup> Government officials did not have to prove themselves to a general electorate and were not held accountable to Argentine voters. Instead, they were able to develop a Falklands war policy without any debate or input from constituents who would pay the majority of the costs.<sup>155</sup> In fact, the Falkland Island War strategy was developed with the utmost secrecy, and not only was the general public shielded from this strategy, but fellow members of the Argentine government were unaware that these policies were being discussed.<sup>156</sup> Professors Arquilla and Rasmussen have also indicated that the military structure of the government hindered internal debate regarding the war strategy:

That the military effectively ran the government, even to the extent of constraining decision making of members of the junta, fatally vitiated chances for peaceful settlement. Just as important, perhaps was the chilling effect that the power of the Argentine [armed] services had on any meaningful debate of the decision to fight a major war. Thus, a social norm of 'reticence' on the part of the military officers to criticize war plans, or to call for more prudential behavior, was imposed, and may be a sign that the psychological phenomenon of . . . 'groupthink' was in play . . . .<sup>157</sup>

Some scholars have even argued that military governments are more likely to develop "offensive"—leaning national security doctrines, as opposed to civilian controlled governments, because of their institutional composition.<sup>158</sup>

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<sup>152</sup> Banks & Carrio, *supra* note 148, at 31.

<sup>153</sup> See *supra* notes 57–71 (describing Argentina's slide into dictatorship-style government).

<sup>154</sup> Banks & Carrio, *supra* note 148, at 30–31.

<sup>155</sup> See HASTINGS & JENKINS, *supra* note 28, at 48 (discussing the small number of Argentine government members that were aware of the Falkland Island War strategy).

<sup>156</sup> *Id.*

<sup>157</sup> Arquilla & Rasmussen, *supra* note 32, at 767 (footnotes omitted).

<sup>158</sup> *Id.* at 759 (citing BARRY POSEN, *THE SOURCES OF MILITARY DOCTRINE* (1984); JACK

Next, the Argentine government clearly did not respect fundamental human rights and values. It has been well documented that during the “dirty war,” the Argentine government committed grave atrocities and violated a wide range of human rights.<sup>159</sup> Therefore, in accordance with Professor Doyle’s analysis, by creating aggressive and violent policies towards their own citizenry, one can easily comprehend that the Argentine government would develop an aggressive foreign affairs policy. Lastly, it should be noted that it was the junta’s brutal political and social oppressiveness that actually isolated Argentina’s interaction with the international community.<sup>160</sup> For instance, “[t]he U.S. Administration under Jimmy Carter roundly condemned Argentina’s human rights record and brought in the Humphrey-Kennedy embargo on arms, which formally relegated Argentina to the status of a moral leper.”<sup>161</sup>

### *C. The International System, Self-Help, and the Argentine World View*

As briefly described above in Waltz’s “third image,” the concepts of anarchy and “self-help” in international relations greatly impact the decision on whether to use force and instigate an armed conflict.<sup>162</sup> “A self-help system,” as Waltz describes, “is one in which those who do not help themselves, or who do so less effectively than others, will fail to prosper, will lay themselves open to dangers, will suffer.”<sup>163</sup> The international system is anarchic, meaning that power is decentralized, and, although there are some universally accepted international laws and well-established international institutions, there is simply no world government to enforce laws or norms.<sup>164</sup> Unlike the domestic realm, in which the nation-state can enforce the law or the status quo, in the global system there is no central governing authority to enforce existing international law or agreed upon international accords. As Waltz notes, “[n]ational politics is the realm of authority, of administration, and of law. International politics is the realm of

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SNYDER, *THE IDEOLOGY OF THE OFFENSIVE* (1984); CHRIS DEMCHAK, *MILITARY ORGANIZATIONS, COMPLEX MACHINES* (1984)). It should be noted that Professors Arquilla and Rasmussen focus more on novel theories with regard to organization structures in exploring their thesis instead of the “classical models” cited here.

<sup>159</sup> See, e.g., GUEST, *supra* note 133, at 32 (discussing examples of violations in the context of international political responses).

<sup>160</sup> EDDY ET AL., *supra* note 81, at 61.

<sup>161</sup> *Id.*

<sup>162</sup> WALTZ, *supra* note 33, at 159.

<sup>163</sup> KENNETH N. WALTZ, *THEORY OF INTERNATIONAL POLITICS* 118 (1979).

<sup>164</sup> WALTZ, *supra* note 33, at 159; see, e.g., WALTZ, *supra* note 163, at 79–98 (discussing political structures); JOHN J. MEARSHEIMER, *THE TRAGEDY OF GREAT POWER POLITICS* (2001).

power, of struggle, and of accommodation. The international realm is preeminently a political one."<sup>165</sup> Therefore, nation-states must engage in self-help if they wish to survive.<sup>166</sup>

In 1982, the Argentine government was pursuing a war strategy under the erroneous presumption that using force to reclaim the Falklands would not be met with a strong response by the British, or the United States, which was the regional superpower, or the international community in general.<sup>167</sup> First, the Argentineans believed that, under the anarchic international system, the British would not implement a self-help policy employing armed forces to resolve the situation.<sup>168</sup> As noted above, regime elites in Buenos Aires erroneously believed that a forceful yet bloodless invasion of the Islands would be acceptable to both the British and the international community. According to the Argentineans, London had neither the will nor the motivation to engage in an armed counterattack.<sup>169</sup> The British government had conveyed to Argentina "no real interest in holding onto the islands," and consequently, the Argentine government's Falklands war strategy and foreign policy was premised on the miscalculation that the British would accept the Islands' occupation as a *fait accompli*, and not respond with armed force.<sup>170</sup>

Second, the Argentineans erroneously believed the United States would accept their claim to the Islands and act as a mediator between the Argentine and British governments to resolve the matter peacefully.<sup>171</sup> It should be noted that the United States "professed neutrality" with regard to the Falklands dispute, and always abstained from voting on the matter at the United Nations.<sup>172</sup> Also, during the 1980s, the Argentine government was actively seeking stronger bilateral relations with Washington, D.C.<sup>173</sup> In fact,

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<sup>165</sup> WALTZ, *supra* note 163, at 113.

<sup>166</sup> See MEARSHEIMER, *supra* note 164, at 49–51 (discussing the emergence after World War II of a system where nation-states must resort to self-help in order to survive).

<sup>167</sup> EDDY ET AL., *supra* note 81, at 29–30; see also CARDOSO ET AL., *supra* note 76, at 56–58 (explaining how Argentina assumed that no British military response was forthcoming and that the United States would intervene before more general international hostilities arose).

<sup>168</sup> See, e.g., CARDOSO ET AL., *supra* note 76, at 57; see also JERVIS ET AL., *supra* note 104, at 110 (explaining the Argentine perception that Britain would not react to the Falkland invasion militarily).

<sup>169</sup> See JERVIS ET AL., *supra* note 104, at 111 (detailing London's passive response to the threat of an Argentinean invasion of the Falklands).

<sup>170</sup> Freedman, *supra* note 1, at 199.

<sup>171</sup> See FREEDMAN & GAMBA-STONEHOUSE, *supra* note 114, at 80 (detailing reasons the United States might have mediated the Falkland conflict).

<sup>172</sup> *Id.*

<sup>173</sup> See, e.g., CARDOSO ET AL., *supra* note 76, at 14–16; see EDDY ET AL., *supra* note 81, at 61–64; FREEDMAN & GAMBA-STONEHOUSE, *supra* note 114, at 32 (describing the State of Argentine-American relations).

during Galtieri's tenure as president, the Argentines were urgently trying to portray themselves to the Reagan Administration as a key ally in the United States' fight against communism in the Western Hemisphere.<sup>174</sup> As Professor Freedman notes, "[i]n Washington, the Galtieri regime was judged to represent the acceptable face of military dictatorship. Cooperation [between the two countries] was developing on the support of other right-wing regimes in Central America . . . . The hope was that Washington would not be too cross if Las Malvinas were retrieved . . . ."<sup>175</sup>

In addition, Costa Mendez, the Argentine foreign minister, persuaded the junta that the United States would seek to find a peaceful resolution to the issue after the invasion, a concept referred to as the "super-power hypothesis."<sup>176</sup> The super-power hypothesis posited that in a bipolar world divided between the United States and the Soviet Union, the former would peacefully intervene in a Western Hemisphere-based crisis, dispute, or armed conflict in accordance with its Western super-power status, even if it embroiled a close ally, in order to maintain the status quo.<sup>177</sup> The foundation for this hypothesis was based on historical events that had similar—but certainly not exact—characteristics to the Falkland crisis. For example, in the Suez Crisis of 1956, Egyptian President Gamal Abdel Nasser nationalized the Suez Canal, and the British and French, in coordination with the Israeli government, coordinated and implemented a military response.<sup>178</sup> The United States intervened in the conflict *against* its Cold War allies and attacked the Anglo-French-Israeli action to restore the status quo.<sup>179</sup> In another example, during the 1973 Arab-Israeli War, Egypt and Syria initiated military hostilities against Israel, which resulted in a devastating armed conflict that lasted approximately three weeks.<sup>180</sup> In response, the United States and the Soviet Union "agreed to try to bring the war to an end,"<sup>181</sup> and Secretary of State Kissinger even pressured Israel not to destroy segments of Egyptian forces that it had surrounded in the Sinai desert.<sup>182</sup> As a result of Egypt's aggression and the armed conflict that followed, the Arab-Israeli

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<sup>174</sup> See FREEDMAN & GAMBA-STONEHOUSE, *supra* note 114, at 32 (stating that a major flare-up between Britain and Argentina "would threaten its position in South America and serve as a distraction from the main priority—East–West relations").

<sup>175</sup> Freedman, *supra* note 1, at 199.

<sup>176</sup> CARDOSO ET AL., *supra* note 76, at 57.

<sup>177</sup> *Id.* at 57–58.

<sup>178</sup> *Id.*; see, e.g., MARTIN GILBERT, HISTORY OF THE TWENTIETH CENTURY 393–96 (2001) (describing the organized response).

<sup>179</sup> GILBERT, *supra* note 178, at 394–96; CARDOSO ET AL., *supra* note 76, at 58.

<sup>180</sup> GILBERT, *supra* note 178, at 496–97; CARDOSO ET AL., *supra* note 76, at 58.

<sup>181</sup> GILBERT, *supra* note 178, at 497.

<sup>182</sup> *Id.*; CARDOSO ET AL., *supra* note 76, at 58.

dispute became a “top-priority” for the United States.<sup>183</sup> Costa Mendez also cited the United States’ role as a mediator in the El Salvador-Honduras and Ecuador-Peru disputes as evidence that Washington would attempt to find peaceful solutions to a regional conflict.<sup>184</sup> However, as Cardoso aptly described, Mendez failed to recognize that the super-power hypothesis did not adequately explain the events unfolding in the Falklands because “the South Atlantic is remote and the Middle East was not.”<sup>185</sup>

In addition to the United States’ previously-voiced neutrality on the territorial dispute, the improving Washington-Buenos Aires bilateral relations, and the super-power hypothesis, some have argued that the Reagan Administration directly indicated to the Argentineans that it would not attempt to prevent Argentina’s reclamation of the islands.<sup>186</sup> This indication, if true, naturally played into the junta’s world view that its act of aggression would not be challenged militarily by the United States, and Great Britain, in the unlikely event it chose to do so, would be acting unilaterally with a military self-help response. For instance, Tam Dalyell, a member of the British parliament during the Falklands War, alleges that Vernon Walters, an ex-Deputy Director in the U.S. Central Intelligence Agency and representative for the Reagan Administration, intermittently traveled to Buenos Aires in 1981 and 1982.<sup>187</sup> It was during these visits in which Walters and senior members of the Argentine government discussed several national security-related issues, including the creation of a South Atlantic Treaty Organization, and the benefits a military base in the Falklands would have for such an organization.<sup>188</sup> When the Argentineans asked how the British would respond to such an action, Walters “replied to the effect that the British would *huff, puff and protest, and do nothing*, with the implication that the American could soothe ruffled British feathers.”<sup>189</sup> On a separate occasion, when Foreign Minister Costa Mendez attempted to ascertain from Thomas Enders, the U.S. Under Secretary of State for Inter-American Affairs, what the “American attitude” would be if there was increased tensions between the British and Argentine governments, Enders replied that the United States’ policy would be “hands off!”<sup>190</sup> Although Enders disputes

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<sup>183</sup> FREEDMAN & GAMBA-STONEHOUSE, *supra* note 114, at 80–81.

<sup>184</sup> CARDOSO ET AL., *supra* note 76, at 58.

<sup>185</sup> *Id.*

<sup>186</sup> *See id.* at 10–12, 48–51 (detailing the U.S.-Argentina relationship at the time which gave such an impression).

<sup>187</sup> *Id.* at 11.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.* Cardoso notes that Walters “denied that during his contacts with the Argentines they, at any time, hinted at his intentions regarding the Falklands.” *Id.* at 12.

<sup>190</sup> *Id.* at 48–51; FREEDMAN & GAMBA-STONEHOUSE, *supra* note 114, at 33.

this sequence of events, Cardoso reminds the reader that the United States' "hands off" policy was the traditional Washington policy on such matters, and, more importantly, "Costa Mendez believed he saw in the message (from Enders) a confirmation of American disinterest — a decisive point in the Argentine military plans."<sup>191</sup>

Third, Argentina believed that lack of unanimity on the Falklands issues within the United Nations Security Council would prevent any international agreement with regard to the use of military force in response to Argentine aggression.<sup>192</sup> The Security Council is composed of five permanent members—China, France, Russia, the United Kingdom, and the United States—and ten non-permanent members elected by the General Assembly for two-year terms.<sup>193</sup> In April 1981, the ten non-permanent members were Guyana, Ireland, Japan, Jordan, Panama, Poland, Spain, Togo, Uganda, and Zaire.<sup>194</sup> Security Council members are given one vote each, decisions require an affirmative vote of at least nine members, and any permanent member has the authority to veto an action.<sup>195</sup> In the lead up to the Falklands invasion, Argentina believed that it could exploit either the anti-colonialism sentiment in the Third World or the East-West divide on the Security Council to prohibit a strong U.N. response. According to some scholars, "Costa Mendez assured the [Argentine] Cabinet that there would be no problems in the [U.N.] and that one could count on the Soviet and Chinese veto."<sup>196</sup>

Unfortunately for the junta, their theory was tested soon after the April 2 invasion, and they were wrong. On April 3, the U.N. Security Council adopted Resolution 502, which stated, *inter alia*, that the Council was "deeply disturbed" by the Argentine invasion, "determin[ed] that there exists a breach of the peace" in the Falkland region, and "demand[ed] an immediate withdrawal of all Argentine forces from the Falkland Islands (Islas Malvinas)."<sup>197</sup> Prior to the invasion, Argentine ambassadors to both

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<sup>191</sup> CARDOSO ET AL., *supra* note 76, at 49.

<sup>192</sup> U.N. Charter art. 42 (providing the Security Council authority to "take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.").

<sup>193</sup> U.N. Charter art. 23, para. 1.

<sup>194</sup> II LAWRENCE FREDMAN, *THE OFFICIAL HISTORY OF THE FALKLANDS CAMPAIGN: WAR AND DIPLOMACY* 122 (2005) [hereinafter *WAR AND DIPLOMACY*].

<sup>195</sup> U.N. Charter art. 27. The rule that any permanent member of the Security Council has power to "veto" in action is often referred to as "great Power unanimity."

<sup>196</sup> CARDOSO ET AL., *supra* note 76, at 102; *see also* Freedman, *supra* note 1, at 199 (discussing that the junta "hop[ed]" that the "Soviet Union would veto any strong action in the U.N. Security Council").

<sup>197</sup> S.C. Res. 502, U.N. SCOR, 37th Year, U.N. Doc. S/RES/502 (Apr. 3, 1982).

the Soviet Union and China were engaging with their host governments, respectively, to discuss the possibility of using their veto authority in the event that the United Kingdom attempted to pass a strongly worded resolution in response to the invasion, such as Resolution 502.<sup>198</sup> During the Security Council's debate over Resolution 502, Costa Mendez made a "direct appeal" to the Soviet Ambassador to the U.N. to veto the proposal.<sup>199</sup> During their discussions, Costa Mendez obviously seemed desperate and he "cited non-alignment, anti-imperialism, Argentine grain sails to Moscow, anything" to get Soviet support.<sup>200</sup> In the end, neither the Soviets nor the Chinese used its veto authority, and instead, both countries abstained from voting on Resolution 502.<sup>201</sup>

Foreign Minister Costa Mendez's prediction that he could convince the Third World countries to vote against any U.N. action on the basis of anti-colonialism unity also turned out to be mistaken. As Professor Freedman posits, Third World countries were not Argentina's "natural allies."<sup>202</sup> In fact, Argentina "had not given much support to the anti-colonial campaign of others nor shown much sympathy for those issues which mattered most to this group," such as the Israeli-Palestine dispute.<sup>203</sup> Argentina's hope that the past support it received with regard to the dispute, especially from its Latin American counterparts, would help in these matters also did not come to fruition.<sup>204</sup> For instance, in 1976, the Organization for American States, through the Inter-American Juridical Committee, declared that Argentina had an "undeniable right of sovereignty" over the Falkland Islands.<sup>205</sup> Yet, during the debate at the United Nations, although many South American countries recognized Argentina's sovereignty over the Falklands, they also explicitly acknowledged that their preference was for a peaceful resolution to this matter.<sup>206</sup>

Lastly, Panama and Guyana were the only two governments from South America on the Security Council at the time of the vote.<sup>207</sup> Panama voted against U.N. Resolution 502,<sup>208</sup> but Guyana declined to vote against the

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<sup>198</sup> FREEDMAN & GAMBA-STONEHOUSE, *supra* note 114, at 139.

<sup>199</sup> *Id.*

<sup>200</sup> HASTINGS & JENKINS, *supra* note 28, at 100-01.

<sup>201</sup> SC Res. 502, *supra* note 197.

<sup>202</sup> FREEDMAN & GAMBA-STONEHOUSE, *supra* note 114, at 138.

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> Org. of Am. States [OAS], *Declaration of the Inter-American Juridical Committee on the Problems of the Malvinas Islands* (Jan. 22, 1976), in PERL, *supra* note 4, at 389, para. 1.

<sup>206</sup> FREEDMAN & GAMBA-STONEHOUSE, *supra* note 114, at 138.

<sup>207</sup> *Id.* at 137.

<sup>208</sup> *Id.* at 139-41.

resolution because it did not want Argentina's act of aggression to create precedent for resolving disputed territory in the region as it possessed land that neighboring Venezuela sought to claim.<sup>209</sup> As a result, Argentina's strategy to divide the global community to ensure that there would not be a consolidated response to its aggression failed, which proved exceptionally valuable for Britain.<sup>210</sup>

In summary, during the decisionmaking process that led to war, Argentina viewed the international system as being fractured, and in some cases sympathetic to its cause.<sup>211</sup> This misperception caused Argentina to believe that it could use force to reclaim the Falklands, and the international community would not respond with unanimity, which, in effect, would isolate Britain.<sup>212</sup> Further, Argentina's war strategy was bolstered by Britain's previous indications that it was unwilling to use force to reclaim the territory.<sup>213</sup> As will be examined more thoroughly below, this Argentine world view was neither radical nor extreme. In fact, Argentina received weak deterrent signals from both Britain and the international community with regard to the Falklands dispute.

#### IV. MULTI-LEVEL DETERRENCE

Professor Moore has elaborately argued that deterrence is an absolute necessity in ensuring that nation-states avoid armed conflict.<sup>214</sup> In a similar fashion, Carl Von Clausewitz has written:

Since war is not an act of senseless passion but is controlled by its political object, the value of this object must determine the sacrifices to be made for it in magnitude and also in duration. Once the expenditure of effort exceeds the value of the political object, the object must be renounced and peace must follow.<sup>215</sup>

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<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> See *Colonialism and the Malvinas Conflict*, 17 *ECON. & POL. WKLY.* 1139, 1139–40 (1982) (indicating the presence of public support of Argentina's claim by Latin American governments like Peru, Brazil, Nicaragua, Grenada, and El Salvador in addition to the support from the Organization of American States; also identifying waning support for the British cause by Ireland, West Germany, and Italy).

<sup>212</sup> Arquilla & Rasmussen, *supra* note 32, at 751 (identifying the misperception of British resolve and Argentina's incorrect assumption that the British would not attempt a reconquest).

<sup>213</sup> *Id.*

<sup>214</sup> Moore, *supra* note 48, at 376–95.

<sup>215</sup> CARL VON CLAUSEWITZ, *ON WAR* 92 (Michael Howard & Peter Paret eds. and trans., 1976) (emphasis omitted).

Thus, multi-level deterrence directed at all levels of the decisionmaking process exponentially compounds the perceived costs and risks associated with war, and it will impact the level of resources a government is willing to expend in order to achieve its goal or objective. Therefore, based on the work of Professor Moore, multi-level deterrence can be defined as the process of discouraging acts of aggression through the systematic application of unique mechanisms, institutions, and means, including: diplomacy, potential military action, collective security, third party dispute settlement, and individual criminal liability.<sup>216</sup> By examining these factors in the Falkland Islands War context, one can see that they either were nonexistent or applied in a weak or inefficient manner.

#### A. *Diplomacy*

Diplomacy, which is considered both an “art” and “process” of conducting state-to-state negotiations, is a significant means for ensuring conflict avoidance.<sup>217</sup> “When done well,” Professor Moore notes, “negotiation can not only settle longstanding disputes and promote stable expectations but it can also mobilize deterrence and in many ways reduce the risk of war. As such, diplomacy is certainly a staple in the struggle against war.”<sup>218</sup> Respected international relations theorist Hans Morgenthau elaborated on this point:

Of all the factors that make for the power of a nation, the most important, however unstable, is the quality of diplomacy . . . . The conduct of a nation’s foreign affairs by its diplomats is for national power in peace what military strategy and tactics by its military leaders are for national power in war. It is the art of bringing the different elements of the national power to bear with maximum effect upon those points in the international situation that concern the national interest most directly.<sup>219</sup>

However, in order to successfully resolve disputes or prevent war, nation-states must conduct diplomatic negotiations with realistic goals and

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<sup>216</sup> Moore, *supra* note 48, at 376–77; *see also* BLACK’S LAW DICTIONARY 514 (9th ed. 2009) (defining “deterrence” as an “act or process of discouraging certain behavior, particularly by fear”).

<sup>217</sup> BLACK’S LAW DICTIONARY, *supra* note 216, at 524.

<sup>218</sup> Moore, *supra* note 48, at 404–05.

<sup>219</sup> HANS J. MORGENTHAU, POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE 152 (7th ed. 2006).

objectives in mind, and diplomacy without such clarity, not only is meaningless, but may, in some circumstances, be counterproductive. As one can see from an examination of British-Argentine diplomacy in the lead-up to the Falkland Islands War, diplomacy in itself ended up being a source of contention between the two governments, as opposed to a means to help deter aggression.

British and Argentine negotiations over the sovereignty of the Falkland Islands gained momentum in 1965, when the United Nations adopted Resolution 2065, which mandated that the two countries resolve the territorial dispute “without delay” and in a “peaceful” manner.<sup>220</sup> At first, there was “considerable progress” with regard to the negotiations, which culminated in the signing of a “Memorandum of Understanding” in 1968.<sup>221</sup> Accordingly, this agreement provided:

The Government of the United Kingdom as part of such a final settlement *will recognise Argentina’s sovereignty over the Islands* from a date to be agreed. This date will be agreed as soon as possible after (i) the two governments have resolved the present divergence between them as to the criteria according to which the United Kingdom Government shall consider whether the interests of the Islanders would be secured by the safeguards and guarantees to be offered by the Argentine Government, and (ii) the Government of the United Kingdom are then satisfied that those interests are so secured.<sup>222</sup>

However, Britain’s own diplomatic strategy that focused on transferring sovereignty of the Falkland Islands to Argentina was not well received domestically. Due to intense lobbying and pressure exerted by the Falklands Islands Committee,<sup>223</sup> London “chang[ed] its negotiating position,” and indicated that the “‘wishes of the islanders’” was critical to resolving the territorial dispute.<sup>224</sup> Yet, the Falkland Islands’ population, sometimes

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<sup>220</sup> Resolution 2065, *supra* note 19, para. 1.

<sup>221</sup> FREEDMAN & GAMBA-STONEHOUSE, *supra* note 114, at 8.

<sup>222</sup> FRANKS REPORT, *supra* note 24, para. 23 (emphasis added).

<sup>223</sup> In March 1968, the Falkland Islands Committee, an unofficial body, was created to provide guidance on the wishes of the Falkland Islanders regarding their own future to the British government. *Id.* para. 22. The Committee’s membership included Members of Parliament from all the main political parties in the United Kingdom. *Id.*

<sup>224</sup> FREEDMAN & GAMBA-STONEHOUSE, *supra* note 114, at 8; *see also* Resolution 2065, *supra* note 19, para. 1 (indicating that the Falklands dispute should be resolved “bearing in mind . . . the interests of the population of the Falkland Islands (Malvinas)”).

referred to as “Kelpers,” were antipathetic to Argentina, which in effect precluded Britain from transferring all out sovereignty to the Argentine government, as originally planned and negotiated.<sup>225</sup>

Due to this setback, the two governments attempted to “change the islanders’ view” of Argentina by integrating the Falklands with the mainland.<sup>226</sup> In 1971, the Communications Agreements were reached between Buenos Aires and London that established a wide range of programs intended to further this policy, including the most significant: new air and sea transportation services between the Falklands and Argentina.<sup>227</sup> The Communications Agreements of 1971 also included a provision creating a travel document that would guarantee the freedom of movement within Argentina for the Islanders and serve as the only travel identification necessary for Argentineans travelling to the Falklands; reciprocal duties and taxes exemptions; an exemption for Islanders to perform any Argentine military service requirements; the harmonization of postal and telephone rates; and, a provision for designated scholarships for the Islanders to Argentine schools.<sup>228</sup> However, this diplomatic progress was undermined by the British government when, in 1975, it sent an expedition to the Islands to determine any undiscovered economic potential.<sup>229</sup> The expedition, referred to as the Shackleton survey, “provoked a very hostile reaction in Argentina,”<sup>230</sup> and was followed by a worsening of relations.<sup>231</sup>

Discussions between the governments resumed after the Shackleton crisis, and it was during that juncture that London attempted to implement the “leaseback” arrangement.<sup>232</sup> The leaseback policy envisioned passing sovereignty of the Islands to Argentina and then leasing them back to the Falkland Islanders for a finite period of time.<sup>233</sup> However, in 1980, Britain’s general population was made aware of Nicholas Ridley’s trip to the Falklands to discuss the lease-back proposal with the Islanders, and, in response, the British citizenry fiercely confronted this policy.<sup>234</sup> As a result

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<sup>225</sup> Freedman, *supra* note 1, at 197.

<sup>226</sup> FREEDMAN & GAMBA-STONEHOUSE, *supra* note 114, at 8.

<sup>227</sup> *Id.*; FRANKS REPORT, *supra* note 24, para. 26.

<sup>228</sup> FRANKS REPORT, *supra* note 24, para. 26.

<sup>229</sup> FREEDMAN & GAMBA-STONEHOUSE, *supra* note 114, at 9.

<sup>230</sup> FRANKS REPORT, *supra* note 24, para. 34.

<sup>231</sup> FREEDMAN & GAMBA-STONEHOUSE, *supra* note 114, at 9; FRANKS REPORT, *supra* note 24, paras. 36–39.

<sup>232</sup> FREEDMAN & GAMBA-STONEHOUSE, *supra* note 114, at 9.

<sup>233</sup> EDDY ET AL., *supra* note 81, at 53. Based on this proposal, “Argentina could require the symbolic title, while the islanders cherished way of life would be preserved for several generations at least.” *Id.*

<sup>234</sup> *Id.* at 54–55.

of this fiasco, the Islanders “obliged the [British] Government to add their representatives to all future delegations discussing the Islands with Argentina and to freeze the sovereignty issue, thus channelling all bilateral (now trilateral) negotiations into exclusively peripheral matters.”<sup>235</sup> As a result, the Falkland Islanders had veto power on negotiations over the Falklands.<sup>236</sup>

The lease-back failure, in combination with the Falklands Island Committee opposition, left British policy “dangerously out of kilter,”<sup>237</sup> and consequently British diplomacy equated to “talking for the sake of talking.”<sup>238</sup> In other words, given their lack of negotiating options, the British essentially developed a diplomatic strategy in which they attempted to avoid “actually finding a solution to the problem and instead sought merely to forestall a crisis by keeping the negotiations alive.”<sup>239</sup> This series of diplomatic failures contributed to convincing the Argentine regime “of the *impossibility* of obtaining sovereignty over the Falklands through diplomacy.”<sup>240</sup> Thus, the junta approached the next rounds of negotiations in 1982 with an alternative military solution already being developed.<sup>241</sup> Ultimately, the lack of diplomatic progress and good faith on the part of the British helped solidify the junta’s perception that a peaceful resolution to the dispute could not be reached under the current circumstances, and actually spurred the Argentine invasion.

### B. Military Deterrence

According to Professor Moore, effective military deterrence is “perhaps the most important single feature of the deterrent context.”<sup>242</sup> In order to be considered “effective,” Professor Moore notes that this form of deterrence must include several key elements, including: the “ability” and “will” of a nation-state to respond with military force, an “effective communication” of this position to potential aggressive regimes, and regime leaders perceiving that other nation-states have the will and ability to use military force in response to aggression.<sup>243</sup> According to Professors Arquilla and Rasmussen, during the ten years leading up to the Falklands War, Argentina’s “military strength grew substantially” in terms of relative power, while Britain was in

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<sup>235</sup> FREEDMAN & GAMBA-STONEHOUSE, *supra* note 114, at 9.

<sup>236</sup> *Id.* at 10.

<sup>237</sup> Freedman, *supra* note 1, at 198.

<sup>238</sup> FREEDMAN & GAMBA-STONEHOUSE, *supra* note 114, at 9.

<sup>239</sup> JERVIS ET AL., *supra* note 104, at 105.

<sup>240</sup> *Id.* at 97 (emphasis added).

<sup>241</sup> FREEDMAN & GAMBA-STONEHOUSE, *supra* note 114, at 12.

<sup>242</sup> Moore, *supra* note 60, at 841.

<sup>243</sup> *Id.*

a state of decline, and, thus, by 1982 “the forces dedicated to the fight by each side, though not identical, were in virtual equipoise.”<sup>244</sup> During this period, Argentine defense spending doubled, in contrast to British spending, which “remained virtually flat.”<sup>245</sup> Additionally, Argentina’s military expansion focused on building a capacity to fight armed conflicts in the South Atlantic, while Britain prioritized its capabilities in anticipation of a potential land war in Europe against the Soviet Union or other Warsaw Pact countries.<sup>246</sup> Professors Arquilla and Rasmussen note, “[f]rom [a] purely quantitative perspective . . . it seems clear that the combatants were closely, though not identically, matched. A more qualitative approach to evaluating the correlation of forces does not erode this finding.”<sup>247</sup> Although it has been noted that Britain possessed nuclear weapons and the junta did not, which is clearly an advantage to the former, Arquilla and Rasmussen contend: “normative inhibitions against the threat of [the] first use [of their nuclear weapons] were no doubt severely constraining, and there is no evidence of the junta being intimidated by this extremely unlikely possibility.”<sup>248</sup>

Regardless of the United Kingdom’s *ability* to deter an Argentine invasion by the use of armed forces, it consistently failed to demonstrate the “will” to defend the Falkland Islands militarily. Instead, Britain often left the Islanders vulnerable to invasion, a fact understood in Buenos Aires and a key factor in the junta’s war strategy.<sup>249</sup> For instance, in September 1966, the New Argentina Movement, a Perónist group of young Argentine civilians, hijacked an airplane and forced it to land in Port Stanley.<sup>250</sup> The hijackers even “arrested two British officials” during the exploit code-named “Operation Condor.”<sup>251</sup> The operation was deemed a “farce” as the airplane sank in the racecourse it landed on (there were no airport landing strips at the time), and the perpetrators were eventually captured and returned to Argentine custody.<sup>252</sup> Yet, members of Argentina’s general public viewed the Perónists as “national heroes,” and threatened strikes if they were prosecuted for their crimes.<sup>253</sup> From a military standpoint, Operation Condor clearly “demonstrated the islands’ vulnerability to surprise attack from the

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<sup>244</sup> Arquilla & Rasmussen, *supra* note 32, at 754–55.

<sup>245</sup> *Id.* at 755.

<sup>246</sup> *Id.*

<sup>247</sup> *Id.* at 756; *see also* Freedman, *supra* note 1, at 202–03 (discussing Argentina’s and Britain’s military capabilities).

<sup>248</sup> Arquilla & Rasmussen, *supra* note 32, at 754.

<sup>249</sup> HASTINGS & JENKINS, *supra* note 28, at 18.

<sup>250</sup> FRANKS REPORT, *supra* note 24, para. 21; HASTINGS & JENKINS, *supra* note 28, at 17.

<sup>251</sup> HASTINGS & JENKINS, *supra* note 28, at 17.

<sup>252</sup> *Id.*

<sup>253</sup> *Id.* at 18.

mainland,<sup>254</sup> and that Argentina could most likely backup its claim to the territory through the use of military force.<sup>255</sup>

In fact, a 1965 British Joint Intelligence Committee Report actually predicted that, although it was unlikely the Argentine government would launch an assault on the Islands, an invasion by an “unofficial party of raiders” could pressure the Argentine regime to change its posture and support the reclamation.<sup>256</sup> In response to Operation Condor, the Royal Marine detachment in the Islands was restored to platoon strength, after having been reduced to one officer and five men a few years earlier.<sup>257</sup> The British government was well aware that the stationing of a platoon would not be able to prevent or counter a full-scale Argentine invasion.<sup>258</sup> Instead, London’s strategy was based upon the presumption that the positioning of more soldiers on the Islands would increase the possibility of bloodshed during an Argentine invasion of the Falklands, and this would result in Britain gaining international sympathy for its cause.<sup>259</sup> According to at least one assessment of these events, “the British response signalled the remarkable weakness of British commitment to its claim” over the Islands.<sup>260</sup>

In 1975, as diplomatic relations worsened between the two countries, military confrontation escalated. In December 1975, the Argentine Chief of the Army warned the British Naval Attaché in Buenos Aires that the crew of the RRS *Shackleton*, an unarmed research ship, would be arrested and detained if they entered Argentine waters.<sup>261</sup> In February 1976, the British vessel found itself approximately seventy-eight miles south of the Falkland Islands.<sup>262</sup> In response, an Argentine destroyer fired shots across the RRS *Shackleton*’s bow after it refused Argentine orders to stop encroaching on Argentine waters.<sup>263</sup> According to a British intelligence report, Argentina’s plan to intercept the ship had been in existence for about six weeks, was developed by the armed forces and not the Argentine civilian government,

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<sup>254</sup> *Id.*

<sup>255</sup> Michael P. Socarras, *The Argentine Invasion of the Falklands and International Norms of Signalling*, 10 YALE J. INT’L L. 356, 363 (1985).

<sup>256</sup> FRANKS REPORT, *supra* note 24, at 5.

<sup>257</sup> *Id.*

<sup>258</sup> HASTINGS & JENKINS, *supra* note 28, at 18.

<sup>259</sup> *Id.*

<sup>260</sup> Socarras, *supra* note 255, at 363 n.31.

<sup>261</sup> FRANKS REPORT, *supra* note 24, para. 42; FREEDMAN & GAMBA-STONEHOUSE, *supra* note 114, at 9.

<sup>262</sup> FRANKS REPORT, *supra* note 24, para. 42; FREEDMAN & GAMBA-STONEHOUSE, *supra* note 114, at 9.

<sup>263</sup> FRANKS REPORT, *supra* note 24, para. 42; FREEDMAN & GAMBA-STONEHOUSE, *supra* note 114, at 9.

and was specifically designed to avoid British casualties.<sup>264</sup> In response to the incident, the British reversed an earlier decision to take its only armed vessel from the region, the HMS *Endurance*, out of service.<sup>265</sup> Instead, the ship would remain in the South Atlantic, subject to annual or biannual review.<sup>266</sup> The British government also deployed a frigate and a civilian-manned Royal Navy support vessel, which represented “the firmest response of any British government to an Argentine challenge during this period.”<sup>267</sup>

After this incident, the British government completed a military assessment that sought to outline options to counter an Argentine invasion of the Islands.<sup>268</sup> The assessment discussed both the difficulties of providing air reinforcements to the Islands, primarily because of the lack of an airstrip, and the effects of adverse weather, climate, and the Islands’ geographic isolation on military planning.<sup>269</sup> The report concluded that “[t]o recover the Islands by military means, though far from impossible, would be a major operation at very long range.”<sup>270</sup> Some scholars contend that this “bleak” assessment brought the British government back to the negotiating table despite Argentina’s aggressive posture.<sup>271</sup>

In yet another incident, on December 20, 1976, Britain “discovered the existence of an Argentine military presence on Southern Thule in the South Sandwich Islands.”<sup>272</sup> On January 5, 1977, Britain requested that Buenos Aires explain its presence on the Dependency.<sup>273</sup> Nine days later, the Argentine Ministry of Foreign Affairs told its British counterparts that the work on the island was scientific in nature and implied that its presence would not be permanent.<sup>274</sup> On January 19, the British delivered a formal diplomatic protest, in which the government indicated that prior consultation should have been sought, Argentine actions violated British sovereignty, and

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<sup>264</sup> FRANKS REPORT, *supra* note 24, para. 42. According to the Frank’s Report, the RRS *Shackleton* incident was part of the Argentine strategy to pressure the British to negotiate over the Islands. *Id.* Additionally, the British assessed that the Argentine “armed forces commanders were opposed to military invasion, and concluded that the Argentine Government intended to follow a policy of ‘continued pin-pricks,’ which carried the risk of bringing about a progressive deterioration in Anglo-Argentine relations.” *Id.*

<sup>265</sup> *Id.* para. 44.

<sup>266</sup> Socarras, *supra* note 255, at 367; *see also* FRANKS REPORT, *supra* note 24, para. 44.

<sup>267</sup> Socarras, *supra* note 255, at 367.

<sup>268</sup> FRANKS REPORT, *supra* note 24, para. 46.

<sup>269</sup> *Id.* para. 47.

<sup>270</sup> *Id.*

<sup>271</sup> Socarras, *supra* note 255, at 368.

<sup>272</sup> FRANKS REPORT, *supra* note 24, para. 52.

<sup>273</sup> *Id.*

<sup>274</sup> *Id.* para. 53.

that the scientific program should be terminated.<sup>275</sup> Professor Freedman describes the Southern Thule precedent as “enticing” due to the fact that Britain had a relatively subdued response, as evidenced by the fact that London’s formal protest did not occur until after a month after the discovery of Argentina’s presence on the Dependency.<sup>276</sup> Other commentators have more strongly indicated that the incident, and particularly the British response, “communicated a lack of seriousness on both diplomatic and military levels.”<sup>277</sup> Additionally, following the incident, the British actually softened their positions during the dispute negotiations, and again illustrating a willingness to discuss transferring sovereignty of the Falklands.<sup>278</sup>

Clearly, the Southern Thule incident represents precedent in which Argentina aggression, albeit an extremely minor form, was not met with any British military force or even an illustration of the will to use force to protect its sovereignty over the Falklands. In fact, a February 7, 1977 British intelligence report indicated that, as part of the Southern Thule incident, the Argentine government had a contingency plan to invade the Falklands.<sup>279</sup> Ultimately, the plan was “shelved” not because of British military deterrence, but rather because the junta could not count on support from the communist bloc or Third World countries at that point in time.<sup>280</sup>

In June 1981, after an internal defense review on the Falklands situation, the British government decided to withdraw the HMS *Endurance* at the end of its 1981–1982 deployment.<sup>281</sup> Although the ship was not very well-equipped militarily, it was the only regular British naval presence in the region and had a symbolic value “far beyond its military capabilities.”<sup>282</sup> Indeed, the British Foreign Office warned that such a policy would be misconstrued in Argentina, and the junta would interpret such an action as “a diminution in Britain’s commitment to the Islands.”<sup>283</sup> This sentiment was echoed in Buenos Aires as well:

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<sup>275</sup> *Id.*

<sup>276</sup> FREEDMAN & GAMBA-STONEHOUSE, *supra* note 114, at 41.

<sup>277</sup> Socarras, *supra* note 255, at 369.

<sup>278</sup> See, e.g., FREEDMAN & GAMBA-STONEHOUSE, *supra* note 114, at 41 (noting that Britain’s formal protest “was followed almost immediately by a softening of the British position in the negotiations with a willingness to discuss sovereignty”); Socarras, *supra* note 255, at 369 (stating that the incident had “intimidated the British government into stating publicly that ‘the time ha[d] come’ to negotiate on sovereignty”).

<sup>279</sup> FRANKS REPORT, *supra* note 24, para. 56.

<sup>280</sup> *Id.*

<sup>281</sup> *Id.* para. 114.

<sup>282</sup> Freedman, *supra* note 1, at 198.

<sup>283</sup> FREEDMAN & GAMBA-STONEHOUSE, *supra* note 114, at 20.

In July 1981 the British Embassy in Buenos Aires reported, in a letter to the Foreign and Commonwealth Office at official level, that several Argentine newspapers had carried prominently versions of a report of an article in *The Daily Telegraph* on the subject. The letter reported that all the newspaper articles highlighted the theme that Britain was “abandoning the protection of the Falkland Islands”. An intelligence report in September 1981 quoted an Argentine diplomatic view that the withdrawal of *HMS Endurance* had been construed by the Argentines as a deliberate political gesture; they did not see it as an inevitable economy in Britain’s defence budget since the implications for the Islands and for Britain’s position in the South Atlantic were fundamental.<sup>284</sup>

Further solidifying Argentina’s belief that Britain lacked the will to defend the Falkland Islands militarily, when the scrap merchants planted the Argentine flag on South Georgia Island in March 1982, the incident that preceded the full Argentine invasion, there was a “muted British response.”<sup>285</sup> Although the British did have some military personnel in the region, it clearly was not enough to equate to effective military deterrence.<sup>286</sup> In fact, some of the larger and more threatening British naval deployments in the South Atlantic, such as nuclear submarines, were placed in the immediate area covertly and without the Argentineans ever discovering them.<sup>287</sup> Such a policy is counterintuitive to military deterrence theory.

The British government was simply not conveying to the Argentine military junta, nor was the latter perceiving, that the British had the will and desire to keep the Falkland Islands by military force, if necessary. The Franks Report notes that during the period 1965–1979, “[t]he military threat to the Islands varied in the light of the course of negotiations; it also changed character from ‘adventurist’ operations in the Islands to wider and more aggressive forms of military action by the Argentine Navy.”<sup>288</sup> This brief summary of events illustrates that the British government simply did not demonstrate a will to use force to protect the Falklands, which contributed to an escalation of Argentine aggression.

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<sup>284</sup> FRANKS REPORT, *supra* note 24, para. 116.

<sup>285</sup> Freedman, *supra* note 1, at 199.

<sup>286</sup> *Id.*

<sup>287</sup> FRANKS REPORT, *supra* note 24, paras. 65–66.

<sup>288</sup> *Id.* para. 70.

### C. *Collective Security and Regional Arrangements*

Generally, collective security refers to any and all multilateral agreements that are established to protect the security of nation-states.<sup>289</sup> Collective security “envisages an institutionalized arrangement for deterring or defeating aggression, conceived as the resort to violence in pursuit of change, by guaranteeing that an attack by any . . . [nation-state] will be met by the combined resistance of all the others whose contribution to the common defense may be needed.”<sup>290</sup> The concept is rooted in the idea that any change in the international system must come about through peaceful means.<sup>291</sup> Any attempt to use force to amend the status quo poses a threat to the entire international system; therefore, nation-states will accept the responsibility of defending the order of the current system.<sup>292</sup> The collective security theory came to prominence during the interwar period, and is illustrated “in the preamble of the Covenant of the League of Nations, which obligated all nations to solidarity ‘for their peace and security.’”<sup>293</sup>

Although in its broadest sense collective security contemplates the organization of the entire international community to respond to aggression, regional organizations play a key role in collective defense and the maintenance of international peace and security. For example, the U.N. Charter provides that the U.N. shall not “impair the inherent right of individual or *collective self-defence* if an armed attack occurs against a Member of the United Nations.”<sup>294</sup> Additionally, it does not preclude the “existence of regional arrangements or agencies for dealing with . . . the maintenance of international peace and security . . . provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.”<sup>295</sup> The Charter also mandates, “[t]he Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council . . . .”<sup>296</sup> The most significant collective security and regional security arrangements that the United Kingdom was integrated with at the time of the Falkland Islands War

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<sup>289</sup> JOHN NORTON MOORE & ROBERT F. TURNER, NATIONAL SECURITY LAW 6 (2d ed. 2005).

<sup>290</sup> *Id.*

<sup>291</sup> *Id.*

<sup>292</sup> *Id.*

<sup>293</sup> 1 EDMUND JAN OSMAŃCZYK, ENCYCLOPEDIA OF THE UNITED NATIONS AND INTERNATIONAL AGREEMENTS 404 (Anthony Mango ed., 3d ed. 2003).

<sup>294</sup> U.N. Charter art. 51 (emphasis added).

<sup>295</sup> *Id.* art. 52, para. 1.

<sup>296</sup> *Id.* art. 53, para. 1.

were the United Nations and the North Atlantic Treaty Organization (NATO).

The preamble to the U.N. Charter specifically notes that it was established “to save succeeding generations from the scourge of war,” in part by “unit[ing] our strength to maintain international peace and security.”<sup>297</sup> Thus, one of the international organization’s fundamental purposes is to utilize collective security to deter and respond to aggression. Prior to the 1982 Falkland Islands War, the United Nations had only employed a significant collective security response to an act of aggression on one occasion: the Korean War.<sup>298</sup> Yet, the Security Council’s call to action against North Korean aggression was not born out of unity of purpose and resolve; rather, it was accomplished only because the Soviet Union mistakenly thought that its abstention from the Council’s voting was the equivalent to a veto.<sup>299</sup> As scholars have noted, “[T]he record of practice seems to be that the new UN rules of collective security were every bit as ineffective as those of the League of Nations.”<sup>300</sup>

In addition to the United Nation’s internal political differences that caused a collective security impasse, the international organization has historically lacked effective and efficient armed forces.<sup>301</sup> Article 43 of the Charter states that the Security Council must rely upon member states to “make available” their own national armed forces for collective security missions, in accordance with “special agreements.”<sup>302</sup> However, to date, no country has entered into an Article 43 agreement with the United Nations, and thus, the organization does not have its own military force readily available to deter or respond to acts of aggression.<sup>303</sup> Therefore, although the

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<sup>297</sup> *Id.* pmb1.

<sup>298</sup> S.C. Res. 83, U.N. Doc. S/RES/83 (June 27, 1950) (recognizing North Korean aggression “constitutes a breach of the peace,” the Security Council “[r]ecommend[ed] that the Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area”).

<sup>299</sup> *Id.* United Nations Security Council Resolution 83 was enacted by a vote of 7–1: the United States, United Kingdom, France, China, Cuba, Ecuador, and Norway voted in favor of the resolution; Yugoslavia voted against the resolution; Egypt and India did not vote; the Soviet Union abstained from voting. *See also* U.N. Charter art. 27, para. 3 (stating “decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members”).

<sup>300</sup> Robert J. Delahunty & John Yoo, *Great Power Security*, 10 *CHI. J. INT’L L.* 35, 43 (2009).

<sup>301</sup> *See, e.g.,* Anna Roberts, Note, “*Soldiering on in Hope*”: *United Nations Peacekeeping in Civil Wars*, 35 *N.Y.U. J. INT’L L. & POL.* 839, 890–91 (2003) (detailing the U.N.’s historically ineffective armed forces).

<sup>302</sup> U.N. Charter art. 43, para. 1.

<sup>303</sup> Andrew S. Miller, Note, *Universal Soldiers: U.N. Standing Armies and the Legal Alternatives*, 81 *GEO. L.J.* 773, 782 (1993); ALLISON R. HAYWARD ET AL., *THE WAR ON TERRORISM AND THE*

U.N. provides a process for defining when and how the use of force is permitted, it has a very limited ability to effectuate these decisions.<sup>304</sup> Clearly, this lack of readily deployable armed forces undermines the deterrence factor that U.N. collective security is supposed to portray: any act of aggression by one state will be met with the combined resistance of all other member-states.

The historic Cold War division on the Security Council, which resulted in a United Nations collective security stalemate, as well as its lack of institutional military capability, was not lost on the Argentine government. In fact, as demonstrated above, during the war planning, the junta relied on a veto from the Soviet Union, China, or the nonaligned countries on the Security Council to reject a United Kingdom-proposed resolution condemning the invasion.<sup>305</sup> Additionally, given Argentina's growing relationship with Washington, the military junta believed that the former would not permit a military response by London in the Western Hemisphere, but instead would seek a peaceful resolution to the matter.<sup>306</sup> Therefore, whether because of a polarized Security Council, a nonexistent military structure, or poor leadership, the United Nations collective security ability did not have a significant effect on the Argentine government decisionmaking prior to the Falklands War.

In contrast to the United Nations, NATO is typically seen as an effective and well-organized collective security body.<sup>307</sup> The North Atlantic Treaty (also known as the Washington Treaty) was signed in 1949, and it officially created the transatlantic military alliance known as NATO.<sup>308</sup> Originally, twelve countries signed the treaty as a mechanism to confront the growing threat of communist expansionism in Europe and maintain international peace through united military deterrence.<sup>309</sup> According to the NATO

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COMMANDER IN CHIEF CLAUSE: DELEGATION OF THE PRESIDENT'S COMMAND AUTHORITY, FEDERALIST SOC'Y (2005), <http://www.fed-soc.org/publications/detail/the-war-on-terrorism-and-the-commander-in-chief-clause-deligation-of-the-presidents-command-authority>.

<sup>304</sup> See Oscar Schachter, *The Right of States to Use Armed Force*, 82 MICH. L. REV. 1620, 1621–22 (1984) (detailing the U.N.'s inability to enforce its decisions).

<sup>305</sup> FREEDMAN & GAMBA-STONEHOUSE, *supra* note 114, at 138–39.

<sup>306</sup> Thomas M. Franck, *Dulce Et Decorum Est: The Strategic Role of Legal Principles in the Falklands War*, 77 AM. J. INT'L L. 109, 111 (1983).

<sup>307</sup> See generally James G. Neuger & Kitty Donaldson, *Clinton, Gates Question Britain's Defense Cuts, See Added Burden for U.S.*, BLOOMBERG (Oct. 14, 2010), <http://www.bloomberg.com/news/2010-10-14/gates-questions-british-defense-cuts-sees-added-burden-for-u-s-military.html> (noting that Secretary of State Hillary Clinton stated that "NATO has been the most successful alliance for defensive purposes in the history of the world").

<sup>308</sup> North Atlantic Treaty, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243 [hereinafter NATO Treaty].

<sup>309</sup> NORTH AMERICAN TREATY ORGANIZATION 29–30 (2001), available at <http://www.ms.z>

Handbook, “[NATO] commits each member country to sharing the risks and responsibilities as well as the benefits of collective security . . . . Solidarity and cohesion within the Alliance ensure that no member country is forced to rely upon its own national efforts alone in dealing with basic security challenges.”<sup>310</sup> This underlying concept of collective security is articulated in Article 5 of the North Atlantic Treaty, which provides in part:

The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all, and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.<sup>311</sup>

NATO has been an effective deterrent against nation-state aggression primarily because of two interrelated political and military reasons.<sup>312</sup> First, at the political level, Article 5 clearly represents the broad-based will of NATO members to support an ally that has been a victim of aggression by providing immediate defense and security.<sup>313</sup> Second, since NATO was composed of militarily advanced states, it unmistakably had the resources and capability to respond successfully to an armed attack.<sup>314</sup> However, because of its self-imposed military response limitations, its other global

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gov.pl/editor/files/docs/DPB/polityka\_bezpieczenstwa/NATO\_handbook.pdf. The original twelve members of NATO were Belgium, Canada, Denmark, France, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, the United Kingdom, and the United States. *Id.* Prior to the Falkland Islands War, the Federal Republic of Germany, Greece, Spain, and Turkey joined NATO. *Id.* at 30.

<sup>310</sup> *Id.* at 30–31. The Handbook also provides, “[w]ithout depriving member states of their right and duty to assume their sovereign responsibilities in the field of defence, the [NATO] Alliance enables them to realise their essential national security objectives through collective effort.” *Id.* at 31.

<sup>311</sup> North Atlantic Treaty, *supra* note 308, art. 5.

<sup>312</sup> Moore, *supra* note 60, at 856–57.

<sup>313</sup> See Broderick C. Grady, Note, *Article 5 of the North Atlantic Treaty: Past, Present, and Uncertain Future*, 31 GA. J. INT'L & COMP. L. 167, 178 (2002) (stating that Article 5 represents the notion that “an attack on a member state is to be considered an attack on all member states”).

<sup>314</sup> Cheryl Swack, *Building a Bridge for Defense: The European Union's Common Foreign and Security Policy*, 6 U. MIAMI Y.B. INT'L L. 1, 14 (1997).

priorities, and, again, poor leadership, NATO did not position itself prior to the Falklands War to significantly deter or impact Argentina's military strategy.

First and foremost, Article 5 of the North Atlantic Treaty mandates a collective security response against an "armed attack" only if said attack occurs "against one or more of them in *Europe* or *North America*."<sup>315</sup> Therefore, NATO members that are attacked in territory outside Europe or North America cannot automatically invoke Article 5 to respond to or counter such aggression.<sup>316</sup> This is precisely what occurred in the Falkland Islands War. Although Argentina clearly waged a war of aggression against British territory, it did so in the South Atlantic Ocean, a far distance from Europe and North America. Thus, if any NATO member state was going to assist the United Kingdom in responding to the invasion, it would be doing so on a voluntary basis, as opposed to upholding a legally binding treaty obligation. Given Argentina's preconceived notion that the United Kingdom lacked the will to unilaterally respond to a Falklands invasion with armed force, one can presume that Argentina most likely thought that the United Kingdom would not be able to rally other NATO members to exert armed force in response to its aggression.

Additionally, given NATO's other, more significant regional security interests, the military junta may not have thought that the international organization would readily assist the United Kingdom in responding to aggression. However, this was not the case. One scholar summarizes Britain's interaction with NATO as follows:

At NATO, the need was to convince Britain's partners that the detachment of a substantial force to sail to the South Atlantic, with the inevitable weakening of NATO's defenses in Europe,

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<sup>315</sup> NATO Treaty, *supra* note 308, art. 5 (emphasis added). The NATO Treaty also provides,

For the purpose of Article 5, an armed attack on one or more of the Parties is deemed to include an armed attack:

On the territory of any of the Parties in Europe or North America, on the Algerian Departments of France (2), on the territory of or on the Islands under the jurisdiction of any of the Parties in the North Atlantic area north of the Tropic of Cancer;

On the forces, vessels, or aircraft of any of the Parties, when in or over these territories or any other area in Europe in which occupation forces of any of the Parties were stationed on the date when the Treaty entered into force or the Mediterranean Sea or the North Atlantic area north of the Tropic of Cancer.

*Id.* art. 6.

<sup>316</sup> *Id.*

was nevertheless an essential reaction to aggression. The argument was accepted early on, and despite some private alarm as the size of the task force grew, NATO never wavered publically in its backing for the British military. There was another, more cynical, reason for this enthusiasm: The South Atlantic was to prove the best testing ground ever devised for the ships, planes, and missiles on which NATO forces rely.<sup>317</sup>

Therefore, although NATO was more than willing to militarily support an ally in its response to an act of aggression outside its territorial jurisdiction, it did not adequately demonstrate this commitment to deterrence prior to the invasion.

Lastly, as noted above, the United States portrayed itself as neutral with regard to the Falklands dispute. Clearly, the U.S. government, which was a key NATO member, did not adequately demonstrate its willingness to invoke a collective military response in order to deter Argentine aggression. In reality, however, the fact that Britain was a NATO ally was a deciding factor in shifting U.S. support to the British government. For example, Lawrence Eagleburger, who was United States Under Secretary for European Affairs during the Falklands War, attempted to influence the Reagan Administration to support Britain for the sole reason that it was a member of NATO. According to Eagleburger,

I was driven essentially by one very simple argument — an ally is an ally. I believed . . . that one of our serious general foreign policy problems is a growing perception — correct perception — that we are no longer reliable partners and allies as we were, [and] under those circumstance, in a case that was so important to Mrs. Thatcher . . . we had no choice.<sup>318</sup>

As Professor Freedman notes, “Although [NATO] itself did not oblige the U.S. to come to British aid the circumstances of the Argentine occupation and the fact that Britain was the ally in question made support even more vital.”<sup>319</sup> In order for collective security to maximize its deterrence effect, it needs to demonstrate the will and capability to use force in response to aggression prior to the act, which clearly did not occur under these circumstances.

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<sup>317</sup> EDDY ET AL., *supra* note 81, at 118–19.

<sup>318</sup> FREEDMAN & GAMBA-STONEHOUSE, *supra* note 114, at 155–56 (citation omitted).

<sup>319</sup> *Id.* at 156.

*D. The International Court of Justice*

Professor Moore notes the importance that third-party dispute resolution organizations may have with regard to international conflict:

Certainly mechanisms for encouraging peaceful settlement of disputes and resolution of disputes by law rather than force are worthy additions to our arsenal against war. In the long run, establishment of stable expectations about authority in the international system and encouragement of a genuine rule of law among nations is in the interest of all.<sup>320</sup>

Although Professor Moore does not speak to it directly, the International Court of Justice (ICJ) is one such body. The ICJ was established, in part, to be the “principal judicial organ” of the United Nations,<sup>321</sup> and, more generally speaking, its “creation . . . represent[s] the culmination of a long development of methods for the pacific settlement of international disputes.”<sup>322</sup> The Court has jurisdiction to settle disputes submitted to it by nations, and to render advisory opinions at the request of the United Nations or any specialized agencies the U.N. creates.<sup>323</sup>

Professor Malcolm Shaw has a similar view, stating that “[t]he [ICJ] does not constitute an exclusive, self-contained world, but exists as part of a wide-ranging set of mechanisms and means for the resolution of inter-state disputes.”<sup>324</sup> Unfortunately, with regard to the competing claims of sovereignty over the Falkland Islands, the ICJ did not manage or help resolve the underlying dispute, and was substantially underutilized.

In 1947, following a rise of tensions between London and Buenos Aires on the issue of the Falklands, the former proposed that the territorial dispute over the Falkland Island Dependencies, and only the Dependencies, be submitted to the ICJ for resolution.<sup>325</sup> Argentina rejected this proposal.<sup>326</sup> In

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<sup>320</sup> Moore, *supra* note 48, at 407.

<sup>321</sup> U.N. Charter art. 92.

<sup>322</sup> *The Court: History*, INT’L CT. OF JUST., <http://www.icj-cij.org/court/.index.php?p1=1&p2=1> (last visited Jan. 20, 2012).

<sup>323</sup> Statute of the International Court of Justice arts. 34, 65, June 26, 1945, 59 Stat. 1055, T.S. No. 993.

<sup>324</sup> Malcolm N. Shaw, *The International Court of Justice: A Practical Perspective*, 46 INT’L & COMP. L.Q. 831, 864 (1997).

<sup>325</sup> I LAWRENCE FREEDMAN, *THE OFFICIAL HISTORY OF FALKLANDS CAMPAIGN: THE ORIGINS OF THE FALKLANDS WAR* 14 (2005) [hereinafter *ORIGINS OF THE FALKLANDS WAR*]; WAR AND DIPLOMACY, *supra* note 194, at 121.

<sup>326</sup> WAR AND DIPLOMACY, *supra* note 194, at 121.

1955 the British government again approached the ICJ in the hopes that it would provide guidance with regard to several disputed territories in the South Atlantic region, including islands that the government of Chile claimed as its own.<sup>327</sup> Yet, again Britain's application to the ICJ distinguished the claims of sovereignty between the Falklands' Dependencies, and the Falklands themselves, and reiterated that sovereignty over the former was not derived from title to the latter.<sup>328</sup> Britain also noted to the ICJ that "there was no 'sector' principle in operation, that is southerly extension of sovereignty of the Falklands to the Dependencies or from one dependency to another."<sup>329</sup> By framing its argument in this manner, Britain sought to ensure that any loss or concession of one territory would not affect its sovereignty claims to any of the other islands.<sup>330</sup> The ICJ ultimately did not address the matter primarily because neither Argentina nor Chile would consent to ICJ jurisdiction.<sup>331</sup> Although the issue of referring the matter to the ICJ garnered some attention again in 1966–1967 and 1981–1982, respectively, it never came to fruition.<sup>332</sup>

Professor Freedman noted that the composition of the court was a factor that both countries considered when deliberating on whether or not to submit the Falklands dispute to the ICJ.<sup>333</sup> During the lead up to the war, the ICJ had a unique composition of First, Second, and Third World countries that clearly had different perspectives with regard to how nation-states could legally acquire territory.<sup>334</sup> In addition to its own member on the court, Argentina could have relied on members from Algeria, Brazil, India, the Soviet Union, Syria, and probably Poland to vote in its favor on the dispute.<sup>335</sup> On the other hand, Great Britain could have relied upon, in addition to its own sitting judge, the support of judges from France, Italy, the United States, West Germany, and "probably" Japan.<sup>336</sup> It was unclear how the judges from Nigeria and Senegal would rule on the matter.<sup>337</sup> Therefore, although on this count Argentina could have expected a slight advantage

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<sup>327</sup> *Id.*

<sup>328</sup> ORIGINS OF THE FALKLANDS WAR, *supra* note 325, at 14.

<sup>329</sup> *Id.*; Antarctica Cases (U.K. v. Arg.; U.K. v. Chile), 1955 I.C.J. 12 (March 10).

<sup>330</sup> ORIGINS OF THE FALKLANDS WAR, *supra* note 325, at 14.

<sup>331</sup> WAR AND DIPLOMACY, *supra* note 194, at 120.

<sup>332</sup> *Id.* at 119–22.

<sup>333</sup> *Id.* at 122. For a description of how ICJ judges are chosen, see *The Court: Members of the Court*, INT'L CT. OF JUST. (Apr. 7, 2012), <http://www.icj-cij.org/court/index.php?p1=1&p2=2>.

<sup>334</sup> For a list of the ICJ's composition at the time of the Falklands War, see *The Court: All Members*, INT'L CT. OF JUST. (Apr. 7, 2012), <http://www.icj-cij.org/court/index.php?p1=1&p2=2&p3=2>.

<sup>335</sup> WAR & DIPLOMACY, *supra* note 194, at 122.

<sup>336</sup> *Id.*

<sup>337</sup> *Id.*

with regard to the make-up of the Court, the final decision was still “too close to call.”<sup>338</sup> Professor Freedman describes how this uncertainty reinforced Argentina’s decisionmaking in the lead-up to the Falkland Islands War: “While there might be political grounds on which to raise the issue, as part of some package deal, there could be no guarantee that a reference to the ICJ would ‘be certain, or even more likely than not, to uphold our case.’”<sup>339</sup> Thus, Argentina did not permit this course of action to be pursued as a realistic alternative to armed conflict.

Although there was no certainty that Britain would see a favorable outcome if the entire Falklands Island dispute (as opposed to just the Dependencies) was submitted to the ICJ, such action could have in itself benefited London, and assisted in the avoidance of war. For example, if the British government submitted the dispute to the ICJ, and Argentina again rejected this proposal (which was the most likely scenario), one could presume that Britain would have “gained moral support” from the international community.<sup>340</sup> In contrast, Buenos Aires’s standing around the world may have been tarnished if it again rejected this dispute settlement option. Further, as noted above, the junta was relying on international opinion to either be in its favor, apathetic, or, at the very least not sympathetic to Britain’s cause after the Falklands invasion. Thus, in 1982, Argentina may have viewed its rejection of ICJ jurisdiction as counterproductive to its overall goal of acquiring the Falklands. In another view, if Argentina did accept ICJ jurisdiction over the matter, it would have at least frozen the status quo for a “considerable period” of time until a final ruling was announced.<sup>341</sup> Of course, a ruling in favor of Argentina could have, at a minimum, given the British government an opportunity to confront the Falkland Islands Committee with the proposition that it had to transfer sovereignty of the Islands to Argentina in accordance with the rule of law. It is unclear how Argentina would accept an ICJ ruling in favor of Britain, although Professor Freedman notes that based on its experience with regard to international arbitration on disputed territory with Chile, Argentina “would only accept a judgment in its favour.”<sup>342</sup>

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<sup>338</sup> *Id.*

<sup>339</sup> *Id.*

<sup>340</sup> *Id.* at 120.

<sup>341</sup> *Id.*

<sup>342</sup> *Id.* at 121.

*E. Individual Criminal Liability*

Holding individual regime leaders accountable for the crime of aggression can be, if properly implemented, a significant deterrent in preventing armed conflict and other human rights atrocities. At the Nuremberg Tribunals, Justice Robert Jackson emphasized, “[t]he wrongs which we seek to condemn and punish have been so calculated, so malignant and so devastating, that civilization cannot tolerate their being ignored because it cannot survive their being repeated.”<sup>343</sup> Similarly, Professor Benjamin B. Ferencz, a former Nuremberg Tribunal prosecutor, argued, “[a] permanent court is needed for permanent deterrence . . . . The certainty of punishment can be a powerful deterrent. To condemn crime yet provide no institution able to convict the guilty is to mock the victims and encourage dangerous unrest.”<sup>344</sup>

After World War II, the international community expanded upon Nuremberg’s principles, as well as earlier efforts that had culminated in the Kellogg-Briand Pact,<sup>345</sup> and through the U.N. Charter, outlawed the right of nation-states to wage wars of aggression.<sup>346</sup> More recently, the theory of holding individuals accountable for wars of aggression has been codified in the Rome Statute of the International Criminal Court (ICC).<sup>347</sup> The ICC was adopted in 1998 to “put an end to impunity for the perpetrators” of the most serious crimes and thus “contribute to the prevention of such crimes” in the future.<sup>348</sup> However, the Rome Statute itself did not define the term “aggression.” Rather, the treaty indicated that the ICC will exercise jurisdiction over acts of aggression after it has adopted a provision defining

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<sup>343</sup> ROBERT H. JACKSON, THE CASE AGAINST THE NAZI WAR CRIMINALS: OPENING STATEMENT FOR THE UNITED STATES OF AMERICA 1, 3 (1946).

<sup>344</sup> Benjamin B. Ferencz, *Can Aggression Be Deterred by Law*, 11 PACE INT’L L. REV. 341, 342 (1999).

<sup>345</sup> Treaty on the Renunciation of War as an Instrument of National Policy art. 1, Aug. 27, 1928, 46 Stat. 2343, 2345–46, 94 L.N.T.S. 57, 59 (“[T]he High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another.”).

<sup>346</sup> See U.N. Charter art. 2, para. 4 (“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”).

<sup>347</sup> Rome Statute of the International Criminal Court art. 5, para. 1, July 17, 1998, 2187 U.N.T.S. 90. The Rome Statute also provides the ICC with jurisdiction over genocide, crimes against humanity, and war crimes. *Id.*

<sup>348</sup> *Id.* pmb1.

the crime and setting forth conditions for the exercise of jurisdiction over the crime.<sup>349</sup>

In 2010, the Review Conference of the Rome Statute adopted a resolution amending the Rome Statute to include a definition of the crime of aggression, although the ICC's exercise of jurisdiction is subject to the approval of two-thirds of States Parties in a decision to be taken after January 1, 2017.<sup>350</sup> The Review Conference based its definition of the crime of aggression on United Nations General Assembly Resolution 3314, which was intended to guide the Security Council in making a determination whether there was an "act of aggression" as proffered under Article 39 of the U.N. Charter.<sup>351</sup> Article I of the Annex to Resolution 3314 defined "aggression" as "the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition,"<sup>352</sup> and Article III provided specific actions that "qualify as an act of aggression."<sup>353</sup> It was in this context in which the Review Conference defined the crime of aggression as

the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.<sup>354</sup>

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<sup>349</sup> *Id.* art. 5, para. 2.

<sup>350</sup> Press Release, International Criminal Court, Review Conference of the Rome Statute Concludes in Kampala (Dec. 6, 2010), *available at* <http://www.icc-cpi.int/Menus/ASP/Press+Releases/Press+Releases+2010/Review+Conference+of+the+Rome+Statute+concludes+in+Kampala.htm>.

<sup>351</sup> *Id.*; G.A. Res. 3314 (XXIX), U.N. GAOR, 29th Sess., Supp. No. 31 (Dec. 214, 1974) [hereinafter Resolution 3314]; *see also* U.N. Charter art. 39 ("The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken . . . to maintain or restore international peace and security.").

<sup>352</sup> Resolution 3314, *supra* note 351, at Annex, art. 1.

<sup>353</sup> *Id.* art. 3.

<sup>354</sup> Amendments to the Rome Statute of the International Criminal Court on the Crime of Aggression, Resolution RC/Res.6, Annex I (June 11, 2010), *available at* [http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/RC-Res.6-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.6-ENG.pdf). Similarly to Article III of the Annex to the Resolution 3314, the ICC's crime of aggression provides:

For the purpose of paragraph 1, "act of aggression" means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a

It is difficult to speculate whether an international criminal tribunal, such as the ICC, would have actually deterred the military junta from waging a war of aggression because of fear of personal liability. It must be noted that Resolution 502 did not state that Argentina committed an "act of aggression" by invading the Falklands, despite the fact that its actions clearly violated the prohibitions articulated in Resolution 3314, the "Definition of Aggression."<sup>355</sup> Instead, Resolution 502 simply indicated that the Argentine invasion caused "a breach of the peace" in the Falklands region.<sup>356</sup> This is not surprising, however, as the Security Council has never indicated that any nation-state has ever committed an "act of aggression," but instead has chosen to frame conflict, and the right of self-defense, in terms of there being a "breach of peace."<sup>357</sup>

Additionally, although there was no permanent international criminal tribunal at the time, the junta conducted hostilities in a manner consistent with the international laws of war. For instance, during the initial invasion, a significant part of the Argentine strategy was to ensure that there would be

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declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:

- (a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
- (b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
- (c) The blockade of the ports or coasts of a State by the armed forces of another State;
- (d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
- (e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
- (f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
- (g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

*Id.*

<sup>355</sup> S.C. Res. 502, *supra* note 197.

<sup>356</sup> *Id.*

<sup>357</sup> M. Cherif Bassiouni & Benjamin B. Ferencz, *The Crime Against Peace*, in INTERNATIONAL CRIMINAL LAW 313, 334 (M. Cherif Bassiouni ed., 2d ed. 1999).

no “bloodshed.”<sup>358</sup> Further, as Professor Freedman notes, during the armed conflict itself, “[c]are was taken when it came to the treatment of civilians and prisoners and only in the later stages did noncombatants get caught in the fighting.”<sup>359</sup> However, Argentina’s regime elites may have attempted to avoid war crimes, not out of fear of being held individually liable by an ad hoc international tribunal created after the war, like the Nuremberg court, but out of concern such actions would undermine the junta’s attempt to gain international sympathy for its cause. More to the point, the junta committed terrible atrocities and acts against its own people during the “dirty war,” yet the Argentine leadership did not seem to fear prosecution for these crimes. Given the fact that there simply was no ICC during the 1982 War, it is hard to speculate how the junta, which had committed devastating crimes against its own people, but not against British soldiers, would have been impacted by such an organization.

#### V. CONCLUSION

By examining the complexity of the decisionmaking process in conjunction with the 1982 Falkland Islands War, one can draw several lessons as it relates to the significance of multi-level deterrence in avoiding armed conflict. First and foremost, in order to determine what policies should be employed to deter an act of aggression, it is important to understand the decisionmaking process. The disposition of regimes elites, a government’s structure and organization, and the international system in general, will impact the decision associated with using armed forces. Therefore, multi-level deterrence must be tailored at all levels of the decisionmaking process to compound its effectiveness.

Often, diplomacy is the first and last mechanism employed to avoid armed conflict. As noted above, in the Falklands case, there was essentially seventeen years of negotiations between Argentina and Great Britain prior to the conflict. However, British diplomacy in this era failed miserably. The British government did not use diplomacy as a means to resolve the dispute, and deter the use of force. Instead, diplomats used negotiations as stalling tactics. If Great Britain truly wanted to find a political settlement to the dispute, it first needed to confront two entities: its domestic opposition in the Falkland Islands Committee, and the Islanders themselves, whose overlapping interests and lobbying efforts stymied Britain’s Foreign and Commonwealth Office. London’s oscillating diplomatic strategy of

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<sup>358</sup> FRANKS REPORT, *supra* note 24, para. 206.

<sup>359</sup> Freedman, *supra* note 1, at 196.

providing concessions to Buenos Aires, which were either contingent on improbable thresholds, such as the Falkland Islanders' consent, or abandoned all together, actually spurred the junta to believe that the dispute could only be settled after military action was taken. Ultimately, it was London's ambiguous political strategy towards the Falkland Islands, and its poor leadership in this realm, that undermined a central purpose of diplomacy—deterrence on the use of force and the peaceful settlements of disputes.

If Great Britain was unwilling to confront its domestic opposition to the peaceful transfer of sovereignty, it needed to show a level of military deterrence to preempt Argentine aggression. Unfortunately, London did just the opposite: it failed to demonstrate a will to resolve the territorial dispute diplomatically, and refused to accept responsibility for the security of the Falklands.<sup>360</sup> In 1982, British armed forces were created, trained, and mobilized primarily in anticipation of a military confrontation in Europe against its Cold War enemies. London did not demonstrate to Buenos Aires—in a systematic and calculated fashion—its capability of winning a war in the Falklands, or even the priority to do so. Thus, regardless of whether Great Britain had the “ability” to defeat Argentina with military force, it repeatedly failed to demonstrate the “will” to do so, a key aspect of military deterrence. The period leading up to the Falkland Islands War witnessed a series of both official or unofficial Argentine acts of aggression in the South Atlantic. However, the British government failed to respond to any of these events with a seriously tough and overt military stance. In fact, not only did London fail to respond to these acts of aggression with enhanced levels of military force to deter further acts of aggression, it often responded to these incidents by resuming negotiations or further diminishing its already scarce military capability in the region.

Argentina was also undeterred by the poor implementation of the collective and regional security arrangements established at the time. As history has proven, the United Nations lacks the means to enforce a Security Council resolution at any given time. Of course, the Cold War division within the United Nations has contributed to its lackluster deterrence capability. NATO's own geographical limitations, as well as its competing priorities, has limited its effectiveness, at least to a certain degree. In order to avoid future acts of aggression, collective and regional security arrangements need to demonstrate a cohesive will to respond to acts of aggression, wherever they occur. Acts of aggression should not be tolerated simply because they occur outside an area or region of interest to the world powers. Aggression must be confronted immediately in order to deter

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<sup>360</sup> *Id.* at 198.

further or similar acts by other governments. The United Nations needs to develop more unity in confronting aggression, and, just as important, a clear capability to do so. Ideological and political divides on the Security Council should no longer permit acts of aggression from going unpunished. Further, the Security Council should not hesitate in labeling an illegal military confrontation as an unlawful act of aggression, rather than simply a breach of the peace. By doing so, the Council will be sending a clear message that it will respect the tenants of General Assembly Resolution 3314.

The ICJ and ICC represent two significant, but underutilized, international organizations that can help deter aggression. With regard to the former, as demonstrated in the Falklands dispute, many nation-states will simply refuse to submit a claim to the ICJ unless they know for certain beforehand that they will win the case. Thus, governments will often seek to “count” votes on who they can rely on for support in the ICJ, thus making a calculated political decision. Governments must be persuaded to accept the ICJ as a respected international body that will solve disputes peacefully. Regarding the latter, the ICC needs to ensure that the implementation of the definition for an act of aggression is followed by immediate acceptance of jurisdiction of the crime, followed by legitimate prosecution. The ICC must show a willingness to prosecute the crime of aggression just as it has done with cases involving genocide and other human rights violations. By employing a multi-level deterrence policy against regime leaders and governments prone to aggression, nation-states and the international community in general will be in a better position to avoid unlawful armed conflict.