

STUDENT ARBITRAL TRIBUNAL

PRESS RELEASE

30 June 2014

The Arbitral tribunal rendered its award in the case concerning sovereignty over the Falkland Islands/Islas Malvinas (Argentina/United Kingdom):

the Argentine Republic has sovereignty over the Falkland Islands

Brussels, 30 June 2014.

On 24 June 2014, the Student Arbitral Tribunal rendered its award in the case concerning sovereignty over the Falkland Islands/Islas Malvinas (Argentina / United Kingdom). The Tribunal unanimously held that sovereignty over the Falkland Islands/Islas Malvinas belongs to the Argentine Republic.

Reasoning of the Tribunal

After a brief outline of the historical context of the dispute and the main relevant facts of the case, the Tribunal started its analysis by identifying the date the dispute crystallized –the critical date– in order to determine whether it was the United Kingdom or the Argentine Republic that had sovereignty over the Falkland Islands/Islas Malvinas at the time. The Tribunal considered the critical date to be 19 November 1829. This was the date of United Kingdom’s protest against the nomination of an Argentinian Governor for the Falkland Islands/Islas Malvinas by Argentina. This protest constituted the first official manifestation of a difference of views between the parties on the subject of sovereignty over the Falkland Islands/Islas Malvinas.

After determining the critical date, the Tribunal addressed the arguments put forth by the parties with respect to sovereignty over the Falkland Islands/Islas Malvinas. It considered that, as a result of the Treaty of cession concluded in 1766 between Spain and France, Spain acquired sovereignty over the islands. According to the Tribunal, Argentina’s sovereignty over the islands is based on Spain’s sovereignty: after Argentina’s independence, sovereignty over the Falklands Islands/Islas Malvinas passed on to Argentina by virtue of the principle of *uti possidetis iuris*. The *effectivités* by Argentina confirm the exercise of the right derived from this legal title.

In view of the above, the Tribunal concluded that, at the date the dispute crystallized, Argentina had sovereignty over the Falklands Islands/Islas Malvinas.

Subsequently, the Tribunal addressed the arguments of acquisitive prescription and the right to self-determination, put forth by the United Kingdom. Although the facts relating to these arguments occurred after the critical date, the Tribunal considered that they may influence the question of sovereignty over the Falklands Islands/Islas Malvinas. Therefore, it decided to examine them in the second part of the arbitral award.

Concerning acquisitive prescription, the Tribunal pointed to its uncertain status in contemporary international law. Moreover, after examining the conditions for establishing acquisitive prescription, it noted that United Kingdom's occupation of the Falklands Islands/Islas Malvinas was not "peaceful" in view of Argentina's protests. Thus the Tribunal came to the conclusion that it could not admit acquisitive prescription as a basis for United Kingdom's sovereignty over the islands.

Turning to the right to self-determination, according to the Tribunal, the relevant UN General Assembly resolutions indicate that the inhabitants of the Falklands Islands/Islas Malvinas are not considered by the General Assembly as constituting a people having a right to self-determination. The fact that the islands are included in the list of Non-Self-Governing territories does not alter this conclusion. The Tribunal held that the inclusion of a territory in the aforementioned list does not in and of itself give a right to self-determination to the inhabitants of such territory. Therefore, the wish expressed by the inhabitants of the Falklands Islands/Islas Malvinas to remain under the administration of the United Kingdom does not challenge the conclusion relating to sovereignty over the islands.

Composition of the Tribunal

The Tribunal was composed as follows: Fallas (president), Borile, Brex, Derouere, Dupan, Henaut, Hofer, Jordens. M. Koutroulis acted as registrar.

The arbitral award, the separate opinions of the members of the Tribunal as well as the pleadings of the professors which presented the parties' arguments are available (in French for the most part) on the internet site of the International law Centre of the ULB, under the heading "TERDI" (<http://cdi.ulb.ac.be/le-tribunal-arbitral-pour-les-iles-malouines-presentation/>).

Note: This press release was drafted for information purposes only, does not offer an exhaustive account of all the points examined in the arbitral award and is not an official document of the Tribunal. Only the text of the arbitral award is authoritative.

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Creation of the Tribunal

The Tribunal and the moot court on the dispute between Argentina and the United Kingdom on the sovereignty over the Falkland Islands / Islas Malvinas have been organised in the context of the *Settlement of International Disputes* course available to the students of the LL.M. in public international law of the ULB. The Tribunal was composed of the students following the aforementioned course.

Two international experts have accepted to present the parties' arguments: Professor Marcelo G. Kohen, of the Graduate Institute of International and Development Studies in Geneva (Argentina) and Professor Michael Waibel of the University of Cambridge (United Kingdom).

The students have had to write the arbitration agreement defining the dispute submitted to the Tribunal and the procedure to be followed. The agreement was then communicated to the parties for approval.

The written proceedings were limited to a minimum: each expert referred the members of the Tribunal to a document providing an overview of the arguments put forth by each State. The oral proceedings took place on 21 March 2014. They consisted of one round of pleadings, with a rebuttal by each expert.

More information on the organisation and the procedure of the Tribunal are available (in French only) on the internet site of the International law Centre of the ULB, under the heading "TERDI" (<http://cdi.ulb.ac.be/le-tribunal-arbitral-pour-les-iles-malouines-presentation/le-tribunal-arbitral-pour-les-iles-malouines-lorganisation-du-proces-simule/>).