Problems of fisheries management on the Patagonian shelf: A Decade After the 1982 Falklands (Malvinas) Conflict

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Problems of fisheries management on the Patagonian shelf: A decade after the 1982 Falklands (Malvinas) conflict

by

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Summary

The armed conflict between Argentina and Britain over the Falkland Islands (Islas Malvinas) early in 1982, resulted in a confusing partition of the maritime area around these islands. The military strategies and policies developed by both countries during and after the war created an unclear situation regarding limits and jurisdictions, thus delaying managerial actions and regulation enforcement over the fishing resources of the area. Several foreign fishing fleets operating in the region at the time, took advantage of the lack of protective legislation and recognized authority, resulting in overfishing of species such as squid and hake. No significant control was implemented until 1986, when Argentina signed fishing treaties with the former USSR and Bulgaria in an effort to regulate fishing activities in Argentina's claimed jurisdictional waters. This move was immediately followed by the British announcement that fishing licenses would be issued to interested foreign fishing vessels. The emerging management efforts, their political and economic significance, and their consequences for the fisheries on the Patagonian shelf are examined in this study.
Acknowledgements

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Finally, special thanks go to my family and friends for their constant stimulus, love, and vote of confidence in each one of my efforts.
Juan López y John Ward

Les tocó en suerte una época extraña.
El planeta había sido parcelado en diversos países, cada uno provisto de lealtades, de queridas memorias, de un pasado sin duda heroico, de derechos, de agravios, de una mitología peculiar, de próceres de bronce, de aniversarios, de demagogos y de símbolos. Esa división, cara a los cartógrafos, auspiciaba las guerras.

López había nacido en la ciudad junto al río inmóvil; Ward, en las afueras de la ciudad por las que caminó Father Brown. Había estudiado castellano para leer el Quijote.

El otro profesaba el amor de Conrad, que le había sido revelado en un aula de la calle Viamonte.

Hubieran sido amigos, pero se vieron una sola vez cara a cara, en unas islas demasiado famosas, y cada uno de los dos fue Caín, y cada uno, Abel.

Los enterraron juntos. La nieve y la corrupción los conocen.

El hecho que refiero pasó en un tiempo que no podemos entender.

Jorge Luis Borges

Los Conjurados, Madrid, 1985
Introduction

After World War II, the commercial fishing of the world's oceans entered a stage of rapid development. The total world harvest of some 20 million tons in 1950 increased by five times—to a total of 100 million tons—in 1990.¹ This intense level of activity determined that, in several cases, the initially abundant captures would soon be replaced by unequivocal symptoms of overfishing. The shortage resulting from the stocks' biological constraints to cope with intense extraction became more severe as the increasing adoption of zones of economic authority by coastal states reduced the proportion of resources available for foreign harvest.² In a few years, the awareness of a limited scope of expansion in some of the world's traditional fishing grounds prompted the need to search for additional resources in new commercial regions.³ Late in the 1970's one such region was identified in the Southwest Atlantic. Several deep-water fleets then turned their attention in that direction to harvest the virtually unexploited fish resources located on the shelf expanding from the Argentine coast to the Falkland Islands (Islas Malvinas).⁴


⁴Reference to the Falkland Islands (Fig. 1), called Islas Malvinas by the Spanish community, (or Falklands or the Islands, hereinafter) implies the main land masses (East and West Falkland) and does not include Dependencies such as South Georgia, South Sandwich, Shag Rocks and Clerke Rocks.
The aftermath of the 1982 hostilities between Argentina and Britain over the Falklands perhaps represented the single most critical event during the fishing history of this region.\(^5\) The magnitude of this relatively short armed episode has had significant long lasting consequences for the fisheries of the area since its effects still ensue.

This study reviews the legal, economic, and administrative issues existing in the fisheries off Patagonia and the Falklands prior to and following the military confrontation.\(^6\) It also delineates the different levels of complexity arising from the global, regional, national, and zonal components of this issue with the final goal of suggesting needed elements for a system of rational management of these fishing grounds.

**Definition of the Patagonian offshore area**

The contact between Argentina and the Atlantic Ocean stretches for some 4,989 km of shoreline.\(^7\) Underwater, the land mass extends as a gently sloped platform, which represents the largest continental shelf of the Southern hemisphere. On this shelf, the Falkland Islands rise about 300 nautical miles east of the entrance to the Strait of Magellan, between 50° 53' and 52° 58' South and 53° 37' and 61° 27' West (Fig. 1). This archipelago is composed of about 200 islands which comprise a land area of


\(^6\)For the purpose of this study, the term Patagonia refers to the territory between the Andes and the Atlantic Ocean south of the Colorado River. Although most of the region belongs to Argentina, a small portion of the extreme south lies within Chile.

\(^7\)Ocean Yearbook 3, (E.M. Borgese and N. Ginsburg, eds.) The University of Chicago Press, Chicago, pp. 563-568, Appendix G.
approximately 4,700 square miles. The areal scope of a 200-nautical-mile zone around the Islands reaches 149,000 square miles, whereas the submarine area surrounded by the 200 meter isobath approximates 64,200 square miles. Correspondingly, a 200 nautical mile limit off Argentina closes an area of 339,500 square miles as the 200 meter isobath circumscribes 232,200 square miles of the continental shelf (Fig. 2(a)).

The historic record is unclear as to who discovered the Falklands. Most of the evidence, however, seems to indicate that the discovery occurred in the 16th century by either the Spanish or the British. In 1690, the British made the first recorded landing on the Islands. Sovereignty over the Islands was contested by Britain and Spain from the 1760's to 1811, and by Britain and Argentina ever since. At present, the Islands are administered as a British crown colony by an appointed governor who heads a population of about 2,000 people. Falkland Islanders call themselves kelpers and are almost entirely descendants of early British settlers, largely Scottish. The kelpers, in exercising the right of self-determination, have repeatedly expressed both their wish to remain British citizens and their resistance to any association with Argentina.

The whole area of the Islands is devoted to sheep farming. Several tons of wool are produced annually which are sold to Britain as the Islands' almost single resource. While these exports are valued at about US$ 5 million making the colony almost self-supporting, occasional help

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from Britain has been received.\textsuperscript{11} It is obvious that the choice to continue occupation of the Islands cannot be explained simply by reference to the economic value of their land resources. Instead, the desire to maintain the colonial situation has to be explained by a combination of other factors beginning with the Islands' potential strategic and economic importance. The geographic advantages of the Falklands are manifest when considering the struggle for Antarctica\textsuperscript{12} and the interoceanic route and military-strategic importance of the South Atlantic. The economic significance revolves around two main resources: mineral deposits and fisheries.

The wide basin stretching between Patagonia and the Falklands has long been considered an area of important hydrocarbons potential, with reserves possibly as large as the North Sea. Evaluations of oil potential of this continental shelf have varied between 40 and 200 billion tons of recoverable oil. Although the waters surrounding the Islands contain sedimentary rocks with reasonable oil prospects, it is now considered that claims of huge hydrocarbon reserves were too overtly optimistic.\textsuperscript{13}

The fishery issue is further developed in other sections of this study. At this point, it is worth noting that commercial fishing had never been developed in the Falklands prior to the 1970 decade.


The Argentina/Britain conflict: Initial stages

The Falklands dispute received relative indifference from the international community before 1982. A historical review of the arguments and claims to territory over the Islands presented by Argentina and Britain falls beyond the scope of this paper and is detailed elsewhere. Multiple resolutions and diplomatic negotiations were unable to settle the territorial dispute that these two countries had had for more than a century. That stagnant situation was dramatically altered on 2 April, 1982, when Argentina deployed a military force to take control over the Islands. The following day, both countries broke off diplomatic relations with each other, as the UN Security Council passed Resolution 502 calling on both governments to use diplomatic channels to settle their dispute. Despite attempts by the United Nations and the United States to negotiate a settlement, British diplomats preconditioned negotiations with a demand that Argentine troops pull out, whereas their Argentine counterparts demanded the British recognition of Argentina's sovereignty over the Islands. Obviously, peaceful discussions were hindered by the combination of two factors: first, a passionate nationalism was being increasingly fueled and manipulated by the


Argentine military government so as to divert the public's attention from the then existing catastrophic socioeconomic situation. Second, the sense of humiliation of Great Britain, one of the world's top military powers, which was facing the progressive decline of colonialist regimes.\textsuperscript{18}

\textbf{Maritime zonation: A separating factor}

The Argentine use of force on 2 April, 1982 caught the international community by surprise. The reaction was fairly rapid by most states of the European Community (EC) who showed their discontent with the military invasion.\textsuperscript{19} The British government, forced to implement hasty decisions, quickly reacted by approving the departure of a strong naval task force heading to the Islands. This immediate reaction also shocked the world's nations and created concern even in British governmental and parliamentary spheres.\textsuperscript{20}

On 7 April, 1982, Britain announced the establishment of a Maritime Exclusion Zone (MEZ, Fig. 2(b)), a circular area with a 200-nautical mile radius around the coordinates 51°40' S and 59°39' W.\textsuperscript{21} According to the announcement, any Argentine vessel navigating those waters after 11 April was liable to a British attack. Argentina's response to this threat was to

\begin{itemize}
\item \textsuperscript{18} Supra footnote 13.
\item \textsuperscript{21} Supra footnote 15.
\end{itemize}
declare a Maritime Defense Zone (MDZ, Fig. 2(b)), which covered the same area as the MEZ, the very same day of the MEZ’s announcement.\textsuperscript{22}

The MEZ was relabeled as a Total Exclusion Zone (TEZ, Fig. 2(b)) on 28 April, 1982.\textsuperscript{23} This implied more stringent limitations and a serious warning not only for Argentine planes or vessels but also to any other state flying or navigating in the area in support of the Argentine forces. One day later, the Argentine government announced that all British naval and air forces within 200 miles from Argentina or the Falklands would be considered hostile and referred to this area as the Exclusionary Zone (EZ, Fig. 2(c)).\textsuperscript{24} The threat of air raids over the British fleet led to a further extension of the TEZ to prevent such attacks. On 8 May, 1982, the limits of the British declared TEZ were pushed out to 12 nautical miles from the Argentine coast (Fig. 2(c)). The nature of the extended TEZ was different from the original, since in the former only Argentine battleships and military planes were proscribed.\textsuperscript{25}

On 23 July, 1982, forty days after the Argentine forces surrendered, the TEZ was lifted by Britain with the understanding that Argentina’s warships and military aircrafts were not to enter a 150 nautical miles zone around the Islands referred to as Falkland Islands Protection Zone (FIPZ, Fig. 2(d)).\textsuperscript{26} As for territorial waters, Britain maintained a 3-nautical mile


\textsuperscript{23}Supra, footnote 15.


\textsuperscript{25}Supra  footnote 15.

band around the Islands, whereas Argentina claimed a controversial 200-nautical mile territorial sea. This overwhelming succession of zones and jurisdictions added to the general confusion triggered by the armed conflict and favored an uncontrolled foreign fishing pressure on the local stocks.

**Argentina's maritime claims and legislation**

Argentina's maritime claims in terms of resource exploitation and jurisdiction extent have been confusing and unclear since the 1940's. A review of Argentina's maritime legislation will show that these norms have a marked imprecision in their terminology, probably due to language modalities or to different values associated with these issues. However, its revealed behavior indicates that efforts have been made towards adjusting its claims within a worldwide, or at least regional, international agreement. Moreover, as it will be explained below, this pattern is observable not only in Argentina's legislation but also in the demands of several other Latin American states which, at times, proceeded as a consolidated unit and introduced true innovations since the early development of an international law of the sea.

After World War II, an increasing number of coastal states, notably from the Latin American bloc, made extensive claims over their adjacent maritime areas (see below). Different shades of these demands were seminal at the origin of concepts such as the patrimonial sea and the exclusive economic zone, which reflected, essentially, economic needs and interests. Although the formulation of the different claims vary in their terminology and reach, the underlying motives and philosophies behind

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27 *Supra* footnote 15.
these declarations have similar scopes of objectives. This section specifically reviews the evolution of pertinent legal instruments included in Argentina’s legislation in effect during the Falklands’ crisis, and addresses the connection between these claims and those formulated by other Latin American states, in particular, and the world community, in general.

A. Towards an era of ocean control.

Throughout the sixteenth century, the debate between those states favoring the freedom of the seas (mare liberum)28 and those advocating their right to claim extensive areas (mare clausum)29 grew stronger. The undisputed naval supremacy achieved by England during the eighteenth century, relaxed the arguments in favor of a closed sea, and the doctrine of mare clausum gradually faded from practice. Instead, the concept of a narrower belt of waters along the coast, which could be defended by shore based forces and over which a state had complete sovereignty, became more appealing. However, the extension of these belts became an open discussion (claims ranged from 3, 4, or 6 nautical miles, to even larger zones or no claims at all) and no single distance was accepted as universal international law.30

The announcement of the two Truman Proclamations on 8 September, 1945 significantly altered the Grotian principle of freedom of the seas and initiated new concepts in maritime jurisdiction by triggering the


proliferation of national maritime claims beyond traditional territorial limits. In the first proclamation, the United States asserted, among other things, its jurisdiction and control over the natural resources of the subsoil and sea bed of the continental shelf contiguous to the United States coast.\textsuperscript{31} In the second proclamation, the United States "regards it as proper to establish conservation zones in those areas of the high seas contiguous to the coasts of the United States wherein fishing activities have been or in the future may be developed and maintained on a substantial scale..."\textsuperscript{32} By doing so, the United States not only called the world's attention to the notion of valuable resources in the sea but also indicated the point of departure for the implementation of unilateral conservation measures outside a state's territorial waters without claiming rights to exclusive fishing.

\textbf{B. The Latin American response.}

The actions of the United States were immediately emulated and exceeded by several Latin American states concerned about the modern US fishing vessels operating off their coasts. Resenting this foreign presence in their waters and the potential destructive nature of uncontrolled international fish extraction, these states wished to extend their exclusive fishing boundaries to eliminate outside competition. Only a month after the Truman Proclamations, Mexico claimed similar rights in a presidential proclamation

\textsuperscript{31} Proclamation No. 2667, "Policy of the United States With Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf", September 28, 1945. \textit{American Journal of International Law}, 40: 45 [1946].

proclamation. A year later, Argentina not only claimed sovereignty over her extraordinarily broad continental shelf but also over the water column above the shelf. Within a few years, maritime claims multiplied and escalated. Between 1946 and 1957, Panama, Chile, Peru, Costa Rica, Nicaragua, and El Salvador had each unilaterally claimed sovereignty over their continental shelves and the superjacent waters and declared 200-mile limits for exclusive fishing rights.

On 19 August 1952, Chile, Ecuador, and Peru proclaimed in the Santiago Declaration their "...sole sovereignty and jurisdiction" seaward for 200 nautical miles, while preserving "innocent and inoffensive passage" in the zones. A brief interlude concerning the extension of maritime claims

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39 Nicaragua Constitution of 1950, Art. 5.


was followed by additional Proclamations along these lines. Argentina\textsuperscript{42}, Nicaragua\textsuperscript{43}, and Panama\textsuperscript{44} in the 1960's, and Brazil\textsuperscript{45} in 1970, each independently used domestic legislation to affirm 200-mile extensions of their territorial waters.

New economic and political conditions after 1960 gave rise to changes in the concepts of national sovereignty and economic rights, and the increasing demand for a revision of the existing ocean regime.\textsuperscript{46} During the 1970's, two significant concepts in the law of the seas emerged: the \textit{patrimonial sea} and the \textit{exclusive economic zone} (EEZ).

The notion of the patrimonial sea, first proposed in 1971 by a delegate from Venezuela,\textsuperscript{47} would have granted coastal states sovereign rights over all resources, as well as jurisdiction over scientific research and marine pollution, in a belt extending seaward for 200 miles. The concept of the patrimonial sea was formally endorsed and embodied in the Santo Domingo Declaration of June 1972,\textsuperscript{48} which was proclaimed at the Specialized Conference of the Caribbean States on the Problems of the Sea. The declaration described the patrimonial sea in pertinent part:

\begin{flushright}

\textsuperscript{43}Decree No. II of 5 April, 1965.

\textsuperscript{44}Act No. 31, 2 February, 1967.

\textsuperscript{45}Decree Law No. 1098, 25 March, 1970.


\textsuperscript{48}Declaration of Santo Domingo, 7 June, 1972. American Journal of International Law, 66: 918.
\end{flushright}
1. The coastal State has *sovereign rights* [emphasis added] over the renewable and non-renewable natural resources, which are found in the waters, in the seabed and in the subsoil of an area adjacent to the territorial sea called the patrimonial sea.

2. The coastal State has the duty to promote and the right to regulate the conduct of scientific research within the patrimonial sea, as well as the right to adopt the necessary measures to prevent marine pollution and to ensure its sovereignty over the resources of the area.

3. The breadth of this zone should be the subject of an international agreement, preferably of a worldwide scope. The whole of the area of both the territorial sea and the patrimonial sea, taking into account geographic circumstances, should not exceed a maximum of 200 nautical miles.

4. The delimitation of this zone between two or more States should be carried out in accordance with the peaceful procedures stipulated in the charter of the United Nations.

5. In this zone ships and aircraft of all states, whether coastal or not, should enjoy the right of freedom of navigation and overflight with no restrictions other than those resulting from the exercise by the coastal State of its rights within the area. Subject only to those limitations, there will also be freedom for the laying of submarine cables and pipelines.

This is the first 200-mile claim which is not a territorial sea in the strict sense, since the right of "innocent passage", traditionally recognized in the territorial sea, is expanded to free maritime and air navigation, a traditional freedom of the high seas. It is clear in this definition of the patrimonial sea, that claims are made over natural resources. In this way, the coastal state's economic interests are protected, without any territorial claim.\(^\text{49}\)

In January 1971, a delegate from Kenya first advanced the notion of the EEZ at the Colombo session of the Asian-African Legal Consultative

Committee. The Kenyan delegation then redrafted the concept in a working paper for the Committee's Lagos session the next year. When Kenya submitted its "Draft Articles on the Exclusive Economic Zone Concept" to the Geneva session of the U.N. Sea-Bed Committee in late 1972, the EEZ officially became part of the law of the sea negotiations.


1. In the exclusive economic zone, the coastal state has:
   (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, current and winds;
   (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:
      (i) the establishment and use of artificial islands, installations and structures;
      (ii) marine scientific research;
      (iii) the protection and preservation of the marine environment;
   (c) other rights and duties provided for in this Convention.

2. In exercising its rights and performing its duties under this convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.

3. The rights set out in this article with respect to the sea-bed and subsoil shall be exercised in accordance with Part VI [The continental Shelf].


Since the 1940's several Latin American states assumed a vigorous position in defending their rights over their maritime space, although with different modalities and denominations. The claim by Chile in 1947 has real importance as an indicator of change from the traditional concept. In this instance, Chile established an extension of 200 miles of national sovereignty over the seas adjacent to its coasts... to preserve, protect, conserve, and exploit the natural resources...". It was made clear that this disposition did not affect free navigation of the sea.

In 1970, Latin American states gathered in Montevideo and Lima, adopting two declarations. Both of these declarations recognize the right of coastal states over the natural resources of their adjacent seas, without affecting the freedom of navigation and overflight for ships and planes of any flag State. Although the right to establish limits to their "... maritime sovereignty and jurisdictions [emphasis added]..." was claimed by states subscribing to the Declaration of Montevideo, it was also declared that "... sovereignty or exclusive rights [emphasis added]... over maritime zones adjacent to their coasts, over the seabeds and subsoil..." have been extended to a distance of 200 nautical miles from the baseline of the territorial sea. In Lima, the rights of coastal states to establish their limits of "... sovereignty or jurisdiction over the sea...[emphasis added]" according to reasonable criteria, were also recognized. The terms sovereignty and

52 Supra footnote 36.


jurisdiction, and sovereignty or jurisdiction illustrate the wide range of views with which powers on a territorial sea or a patrimonial sea were debated.\textsuperscript{55}

In general, the analysis of Latin American laws pertaining to the establishment of their maritime areas, indicates that these states have claimed rights of either sovereignty, exclusive rights, sovereign rights, jurisdiction, national dominion, protection and control, property, or any other form of authority.\textsuperscript{56}

The EEZ concept soon replaced the notion of the patrimonial sea and, within two years, it was recognized as a "common aim" by the so-called Group of 77. In spite of U.S. opposition to extensive offshore coastal state jurisdiction, there has been a growing acceptance of the EEZ as an essential component of the emerging law of the sea since the early 1970's. The first EEZ claim which did not receive challenges from the international community -an indicator of the increasing acceptance of this concept as becoming embodied in customary practice- was the one by Costa Rica in 1972.\textsuperscript{57}

\textbf{C. Argentina’s maritime claims.}

The 1853 Argentine Constitution as amended in 1957, has no provisions on the extension and claims over maritime and submarine areas. The first claim in this regard appeared in Decree 1386 of 24 January, 1944\textsuperscript{58}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{57}Supra footnote 2.
\item \textsuperscript{58}Boletín Oficial, March 17, 1944.
\end{itemize}
\end{footnotesize}
which established that "...the epicontinental sea of Argentina, shall be
deemed to be temporary zones of mineral reserves". On 11 October, 1946,
Article 1 of Decree 14708\textsuperscript{59} declared that "...the Argentine epicontinental sea
and continental shelf are subject to the sovereign power of the nation".
Article 2 of the same document affirmed that "For the purposes of free
navigation, the character of the waters situated in the Argentine
epicontinental sea and above Argentine continental shelf, remains
unaffected by the present Declaration".

Early in 1966, the massive Soviet fishing effort offshore Argentine
coasts raised concern on the future of fish resources. The Soviet catch for
that year totaled 73,000 mt, nearly one-third of Argentina's entire catch of
about 250,000 tons.\textsuperscript{60} Two events led to demands for actions to be taken by
Argentine officials: first, the realization that most of the Soviet catch was
hake, the primary species utilized by Argentine fishermen. Second,
incoming reports revealed Soviet plans to undertake a massive expansion
of the fishery in 1967. After the dimensions of the Soviet effort had become
apparent, Law 17094 of 29 December 1966\textsuperscript{61} was passed. This declaration
redefined earlier Argentine claims but, at the same time, caused some
uncertainty reading as follows:

\begin{quote}
shall extend over the sea adjacent to its territory for a distance of
200 nautical miles measured from the line of the lowest tide..."
\end{quote}

\textsuperscript{59}Supra. footnote 34.

\textsuperscript{60}Jacobson, D. and D. Weidner. 1989. Argentine-Soviet Fishery Relations Reviewed, 1966-
88. \textit{Marine Fisheries Review}, 51 (2): 55-68. See, also, footnote 73.

\textsuperscript{61}Supra footnote 42.
Article 2. "The sovereignty of the Argentine nation shall also extend over the seabed and the subsoil of the submarine zones adjacent to its territory up to a depth of 200 meters or, beyond this limit, up to that depth of the overlying waters which allows exploitation of the natural resources of those zones".

Article 3. "The provisions of this law shall not affect freedom of navigation or of air traffic".

Article 4. "Within ninety days from the date of promulgation of this law, the National Executive Power shall issue regulations establishing the terms under which foreign ships may conduct operations designed to explore and exploit the natural resources of the sea within the 200-nautical-mile zone referred to in this law".  

Decree 5106 of 29 December, 1966 implies the claim of a territorial sea beyond 12 nautical miles. Article 1 of this instrument indicates that "...the Naval Operations Command shall be authorized to issue foreign fishing vessels which request them permits to carry out fishing operations in the Argentine territorial sea [emphasis added] at a distance of no less than twelve miles from the coast." Shortly after, the first Argentine Fishing Law (Law 17500 of 25 October, 1967) was issued. The Fishing Law established that:

Article 1. The resources of the Argentine territorial sea [emphasis added] are the property of the national State, which shall authorize their exploitation in accordance with the provisions of this Act and the rules governing its application.

62 According to some writers Law 17094 was never intended to be of international application (See, for example, Travieso, J.A. 1983. Hacia un horizonte de 200 millas. Notas sobre la zona económica exclusiva en los espacios marítimos. Revista del Colegio de Abogados de Buenos Aires, 43: 56 p). It is also in open contradiction with the Argentine position during the subsequent negotiations at UNCLOS III.


64 Supra footnote 63. See, also, footnote 71.
Article 2. Resources up to a distance of twelve nautical miles from the coast may be exploited only by vessels flying the national flag. In addition, the Executive Power shall each year select, within the Argentine territorial sea, a specific zone whose exploitation shall be reserved for vessels flying the national flag.

The enormous potential of the fish resources off Argentina quickly attracted domestic and foreign interests. At the national level, Law 18502 passed on 24 December, 1969-65 limited the offshore jurisdiction of Argentina's coastal provinces to 3 nautical miles from the low-water mark, leaving the area between that limit and 200 nautical miles under the sole jurisdiction of the federal government. This restriction on the exploitation rights over the natural resources has been repeatedly contested by the provincial governments which pushed for an extension of full jurisdic- tional rights out to 12 miles and even to their adjacent 200-mile zone.66 Regarding foreign fleets, Decree 8802 of 22 November, 196767 contained "Provisional Regulations Governing the Issue to Foreign Vessels of Permits for the Exploitation of the Living Resources of the Argentine Territorial Sea". In the first article it is mandated that "[f]oreign vessels may engage in activities involving the exploitation of the living resources of the Argentine territorial sea beyond a distance of twelve nautical miles from the coast [emphasis added] only if they have in their possession, before the commencement of their activities, a local registration document (matricula) and a permit..."

65 Supra footnote 63.


67 Supra footnote 63.
D. Resume.

The Truman Proclamations of 1945 initiated a new era in the development of a universal law of the sea. Shortly after, a number of states expressed their demands regarding the exploration, exploitation, and conservation of natural resources. However, most of these unilateral early Latin American claims have been gradually modified or abandoned in favor of a universally accepted claim to an EEZ extending to a limit of 200 nautical miles from the territorial sea baselines.

It is interesting to note that at the time the Falklands issue ripened into a crisis, leading to a concert of changing zones and delimitations, the Third UN Conference on the Law of the Sea (UNCLOS III) was approaching its conclusion. In this forum, limits for territorial seas were being established together with the definition of the EEZ to preserve the marine economic resources of coastal states. It is important to point out that although the 1982 UN Convention on the Law of the Sea - which Argentina signed in 1984- has not entered into force yet, most of its provisions (except perhaps for those regarding the deep-seabed) are presently accepted as international customary law. Therefore, the applicability of these provisions are binding and independent of the ratification of the 1982 Convention on the Law of the Sea. Consequently, sovereignty over the territorial sea cannot be extended beyond 12 nautical miles. In the EEZ, there is no sovereignty, but rather sovereign rights of the coastal State over natural resources, without affecting the other traditional freedoms of the high seas.

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More recently, on 14 August, 1991, the Argentine Congress sanctioned Law 23968, by which the baselines of Argentina are clearly defined, together with the definition of internal waters, territorial sea (of 12 nautical miles), contiguous zone (out to 24 nautical miles), exclusive economic zone (to a limit of 200 nautical miles), and continental shelf (either to 200 nautical miles or to the border of the continental margin). For the first time, all these zones have been detailed in a single instrument and are in complete conformity with the terminology as interpreted in the framework of UNCLOS III.

The Patagonian fishery

A. Fishing off Argentina.

Commercial fishing operations in Argentina started early in this century. An artisanal fishery, composed of horse-hauled nets and small vessels, supplied local markets with fresh seafood products and raw materials for salted and canned products which constituted the most important fishery items until the 1950's. Prior to the 1960 decade, the Argentine fishing fleet remained limited to small coastal purse-seiners and no more than 15 deep-water vessels. Since 1963, the offshore catch exceeded the coastal production and frozen products became the industry's major commodity.

The expansion of the Argentine fishing industry during the 1960's was a result of encouraging legislation and increasing national and foreign

69Boletin Oficial, No. 27278, 5 December, 1991, Art. 1-11, Annexes I and II.

investments. At the domestic level, Law 17500\textsuperscript{71} established tax exemptions for fuel expenses during fishing operations and for imported fishing vessels. Export figures clearly illustrate the boost in the activity following large investments in the sector (i.e. marketing, fleet, gear, etc.). For example, the total volume of exported fishery products rose from 8,700 tons in 1969 to 64,900 tons in 1974, which translates in an increase in revenues from US$ 2.8 million to US$ 33.6 million.\textsuperscript{72}

Foreign exploitation of fish stocks on the Argentine shelf became dramatically evident by 1967. The Soviet distant-water fleet, composed of motherships and factory trawlers, represented the most significant presence in the area. In 1966 and 1967 alone, the intense Soviet fish extraction totalled some 751,000 metric tons.\textsuperscript{73} Although most of the catch was hake (*Merluccius hubbsi*) the effects of overfishing were reflected in the collapse of the hawkfish (*Cheiilodactylus bergi*) stock. The threat posed to a number of coastal demersal species prompted the Argentine government to issue urgent fishing regulations. In less than a year, Laws 17094 and 17500, and Decrees 5106 and 8802 (see above) were passed as a measure to protect the fishery resources from uncontrolled foreign fishing and to generate revenues from fishing licence fees.

From the 1970's onwards, the Argentine fishing industry showed a considerable expansion. During the 1970-1979 decade, total landings

\begin{footnotesize}

\textsuperscript{71}See footnotes 63 and 64.


\textsuperscript{73}Other countries, namely Japan, West Germany, Cuba, and Spain had fishing vessels operating in the area at that time, with comparatively lower capture volumes. Also see footnote 60.

\end{footnotesize}
reached over 3 million metric tons (an increase of 210% over the total catch of the previous 10 years) of which one third was exported at a value of about 604 million dollars. Several factors contributed to this marked growth: 1) A progressive exhaustion of traditional fishing grounds in other areas of the globe; 2) The rapid increase of sovereignty claims by riparian states over 200-mile offshore zones, which limited access to foreign fleets; 3) Advanced technologies incorporated by leading fishing nations to their distant-water fleets in order to tap even more remote stocks; 4) A favorable international commercial climate for the marketing of Argentine fish; and 5) Relatively low prices for the purchase of new vessels and upgrading of the national fleet.

The auspicious prospects envisioned under those circumstances, led the Argentine government to promulgate Law 20136 of 5 February, 1973, which extended the claims of exclusive exploitation by Argentine vessels of the fish resources from 12 nautical miles (Law 17500, see above) to 200 nautical miles from the coast, and established a sanction schedule for violators.

B. Fishing off the Falklands.

The end of the armed hostilities between Argentina and Britain over the Falklands indicated the beginning of a fishing management vacuum. After July, 1982, neither Argentina nor Britain were regulating fishing activities of foreign fleets in the South West Atlantic. On the one hand,

74 The main importers of Argentine fishery products were the United States, Spain, Brazil, and Japan. Supra footnote 72.

75 Supra footnote 72.

76 Supra footnote 63.
Argentina, back in the reality of its complicated internal affairs, was trying to heal the wounds of its broken honor. It was a time in which patrolling jurisdictional waters and enforcing legal foreign fishing were certainly not national priorities. On the other hand, Britain was too busy learning how to manage its responsibilities on a territory located 8,000 miles away. Surveillance of waters adjacent to the Islands was oriented to preventing a new potential attack by Argentina, and not on other foreign vessels fishing in the area.

Several nations, aware of the economic benefits of fishing around the Falklands, relocated their fleets in this area dominated by British indifference and away from Argentine regulations and control. Notably, Poland, the former USSR, Spain, Taiwan, Japan, and East Germany had the capabilities to exploit that fishery estimated to yield, as of 1979, a potential US$ 200 million/year. Prior to 1982, three commercially important finfish species were exploited from the offshore South West Atlantic: common hake (*Merluccius hubbsi*), Patagonian hake (*M. polylepis*), southern blue whiting (*Micromesistius australis*), and Antarctic cod (*Notothenia rossii*). In the five years from 1977 to 1981, the combined extraction of these species totalized slightly over 2,000,000 metric tons. Of these resources, common hake, together with Patagonian hake, are the most important finfish stocks of the Southwest Atlantic. Common hake represents the main target and exported

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77 *Supra* footnote 9.


80 The differentiation of these two species is not immediate from a simple external inspection and, thus, are usually pooled together in most commercial statistics.
item of Argentina's fisheries. Until the 1970's, hake fishing was concentrated in the River Plate basin and in the northern Patagonian shelf area. Uruguay also developed a hake fishery off the River Plate Basin but of comparatively smaller magnitude. Both countries have been jointly managing the shared hake stock through the Joint Argentinian-Uruguayan Technical Commission for the Maritime Front. In 1979, Argentina incorporated larger vessels into its fleet which expanded the range of hake extraction to the Falklands sector, from which 5 to 10 thousand tons of hake per year were captured until 1982.

However, the dangerous events of 1982 forced the fishing fleets operating in the area to limit their traditional ventures and seek for alternative sources. Under these circumstances, the fishing efforts shifted to two additional species: shortfin squid (Illex argentinus) and common squid (Loligo spp.). Throughout most of the 1970 decade, squid catches in the region were limited to a small scale fishery off the River Plate basin exploited by Argentina and Uruguay. By 1978, the intensification of Argentine fishing effort on the Patagonian shelf and slope, in addition to the initial harvests around the Falklands by Polish, Japanese, and Soviet vessels, resulted in a substantial increase in squid capture. During the period 1978-1981 the combined total catch for these two species reached over 280,000 metric tons.

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81 The River Plate and Maritime Front Treaty between Argentina and Uruguay was signed on 19 November, 1973, and entered into force on 12 February, 1974. For full text, see Continental Shelf Boundary: Argentina-Uruguay. U.S. Department of State, Bureau of Intelligence and Research, Limits in the Seas, No. 64: 16p [1975].

82 Supra footnote 79.

83 Supra footnote 79.
The *Illex* fishery takes place north of the Islands with peak catches in April and May. The main fishing countries are Poland, Japan, Taiwan, and Korea, which operate mainly jiggers. *Loligo* squid are targeted by Polish, Spanish, British, and other EC countries' trawlers operating during two fishing seasons. The main catch takes place south of East Falkland from February to June. From August to October, the fishing area is localized east-northeast of the Islands. The life cycle of both species is very short since they reach sexual maturity within a year and usually die after spawning. Their pattern of aggregation is very variable throughout the year: while *Illex* undergoes extensive horizontal migrations, *Loligo* appears to migrate mainly following the vertical axis. The implication of these biological traits are fundamental for any managerial action. Given the short life span, it is critical to determine the level of adult escapement that will breed the next generation. To attain this level, the overall fishing pressure on the stocks while moving through different fishing sectors needs to be known and observed. The noxious combination of logistic difficulties to monitor and enforce control on a migratory resource, and the uncertainties associated with the estimation of a "safe" escapement target can result in a drastic fishery collapse.

The large size of squid stocks, combined with a good selling price and numerous Asiatic and European markets developed serious interests in their exploitation. Projections on the squid potential catch around the Falklands estimated more than 250,000 tons per year, valued at approximately £ 100 million.84 This potential revenue interested British fishing companies, which proposed that a fishing policy be enforced to

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84 *Supra* footnote 78.
establish a formal industry and to preserve the stocks from being abused. Such action required the declaration of a 200-mile fishing zone around the Islands, and a system of fishing licences to be applied to interested foreign fleets.  

However, the British government delayed a decision on this proposal concerned about a relapse with Argentina. 

Significant increases in squid catch volumes began to attract new foreign interests and to alarm some British, Falkland, and Argentine sectors. An average of 237,000 tons of squid per year was exploited between 1982 and 1985. The total fishing effort by trawlers of any origin operating in the area increased from 9,919 hours in 1982 to 36,412 hours in 1985. Signs of saturation of squid markets and unbalances with regard to some finfish products were starting to become evident. 

Management attempts on the Patagonian fishery

The increasing trend of the annual harvests called for immediate actions to be taken. On November, 1985, the FAO Fisheries Department decided to compile the available information on the South Western Atlantic fisheries and to advise on their future regulation. The report, which was finished one year later, had a limited circulation among the major involved countries. A final version was finally published in 1987 indicating that the

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85 Supra footnote 78.
86 Supra footnote 79.
89 Supra footnote 77.
squid stocks were being maximally exploited and probably overfished. The geographical proximity of the high seas, remote (i.e. unprotected) Argentine waters, and the British imposed 150-mile zone around the Islands (unregulated in terms of fishing operations), provided a convenient location for intense fishing. In fact, movements of fishing vessels from one area to each one of the others were difficult to monitor and restrict. Several incidents, ranging from catch and gear seizure to fire-fighting encounters, between foreign fishing vessels and Argentine Coast Guard patrollers were registered since 1986. 90 These events displayed the maintenance of Argentine claims of sovereign rights and jurisdiction over resources within 200 nautical miles from its coast and the enforcement of national fishing regulations. 91

An important step to achieve managerial control and attract international recognition was taken on July 1986 after the signature of fishing agreements between Argentina and both the former USSR and Bulgaria. 92 Under these treaties, Soviet and Bulgarian trawlers were granted fishing access to Argentine waters (and use of land located bases), to participate in joint ventures, and to extract surplus resources as determined by Argentine authorities. Argentina, in turn, was to collect 3 to 5% of the catch revenue, and to offer employment to its nationals either as inspectors on board or crew members. However, these arrangements led to a strong


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reaction, mainly among Argentine research and fishing sectors, who feared an uncontrolled exploitation.93

The British reaction to Argentina's fishing negotiations was the creation of a new zone. On 29 October, 1986, the British government declared the Falkland Islands Interim Conservation and Management Zone (FICZ, Fig. 2(e)).94 The breadth and seaward limits of the FICZ were identical to those of the FIPZ, with the exception of a truncation of the circular limit in its southwest sector,95 with the added components of a fishing zone. Embodied in this announcement was the reserved right to eventually extend the outer boundary of the FICZ from 150 to 200 nautical miles. Full details on the rules to be observed within this fishing zone were provided on 12 November, 1986 through the Fisheries Ordinance issued by the Falkland Islands Legislative Council.96 According to this legislation, fishing licenses should be issued by the Falklands Director of Fisheries on an individual basis (i.e. regardless of flag state).97

Despite repeated Argentine protests to the establishment of the FICZ the new limitation became effective on 1 February, 1987.98 A total of 326

93 The Falklands - Action at last. supra footnote 92.


95 To avoid a jurisdictional overlap, Britain decided to enforce the median boundary line as the operational limit where the distance between the Falklands and Argentina is less than 400 miles. See, for example, Common sense, World Fishing, 35 (12): 3 [1986].

96 FICZ Fisheries Report '87/88, supra footnote 94.


98 See, for example, Carta de fecha 30 de octubre de 1986 al Secretario General por el Representante Permanente de la Argentina ante las Naciones Unidas. United Nations, General Assembly, A/41/784, s/18438, 31 October, 1986.
vessels were licensed during that first year, which represented a gross income of US$ 24 million collected by the Falkland Island government.\textsuperscript{99} Surveillance control was intensified and violators arrested and/or fined.\textsuperscript{100}

It soon became obvious that the straddling movements of the stocks being fished required special attention.\textsuperscript{101} Specifically, the life cycle of \textit{Illex} sp. involves extensive movements between the FICZ, Argentine waters, and the high seas. Falkland fishing officials claimed for an extension of the FICZ to 200 nautical miles to ensure more effective conservation measurements.\textsuperscript{102} Once again, a potential recrudescence of the differences with Argentina pressed Britain in a more moderate direction and the 150-mile limit was maintained. Alternative approaches proposed to alleviate the fishing pressure over squid stocks included the shortening of the fishing season, a reduction in the fishing effort (\textit{i.e.} limit the number of licenses), or negotiations for self regulation while fishing in international waters.\textsuperscript{103}

In 1988, 407 licenses were issued, resulting in a fee revenue of US$ 31 million. The total catch from the FICZ (317,000 tons) was marketed at 234 million dollars.\textsuperscript{104} During 1989, only 302 licenses were distributed and a


\textsuperscript{100}Falkland arrests. \textit{World Fishing}, 37 (6): 56 [1988].


\textsuperscript{102}Falkland Islands needs extended fishing zone. \textit{World Fishing}, 37 (12): 38 [1988].


reduction of two weeks in the duration of the fishing season was determined
to allow for a build up in squid spawning stocks.\textsuperscript{105}

Just when alarming figures were forecasting an imminent collapse in
the local squid stocks due to overfishing, relieving news regarding a
strengthening of the relationships between Argentina and Britain started to
circulate. Delegations from both countries sketched an agenda of common
interests on 18-19 August, 1989.\textsuperscript{106} Those topics were fully discussed at a
joint meeting held in Madrid on 17-19 October, 1989. Salient points of the
resulting statement indicated the avoidance of military aggression and the
common interest to restore trade and communication relations. A working
group on fisheries met in Paris on 18-19 December, 1989. That body
determined that mutual exchange on information regarding stock status and
statistics and fishing fleet operations was necessary for bilateral cooperation
and conservation.\textsuperscript{107}

Resumption of consular relations between London and Buenos Aires reinforced the potential for intense dialogue.\textsuperscript{108} British and Argentine diplomats gathered together on 14-15 February, 1990, to discuss air and
maritime safety, operation of armed units, and other pertinent topics. An
emergent concession at this stage of relations was the complete elimination

\textsuperscript{105}See, for example, \textit{Tiempo de negociación en el Atlántico Sur}, \textit{supra} footnote 91;
Southwest Atlantic Illex squid. Fishing effort cannot be sustained, \textit{supra} footnote 103.

\textsuperscript{106}Argentina-United Kingdom: Joint statement of relations and a formula on sovereignty
with regard to the Falkland Islands, South Georgia and South Sandwich Islands. \textit{International Legal Materials,} 29 (5): 1291-1295 [1990].

\textsuperscript{107}Argentina-United Kingdom: Joint statement on confidence-building measures, including
an information and consultation system and safety measures for air and maritime

by Britain of the FIPZ rather than the anticipated reduction in its size.\(^{109}\)

Argentine ships and planes enjoyed, therefore, a substantial increase in their freedom of navigation. Merchant ships were able to sail through the former protection zone without prior British permission, while Argentine fisheries patrol launches and aircrafts were free to operate within the FICZ for the purpose of monitoring foreign fishing vessel operations.\(^{110}\)

Notwithstanding that the 150-mile FICZ and the system of licences remained in force, the future of the squid stocks was not very promising.\(^{111}\) Demands for an extension of the FICZ to 200 nautical miles from the Islands were still urged by Falkland Islanders worried by the reduction in license revenues caused by overfishing. The increasingly favorable environment for negotiations between Argentina and Britain resulted in a joint declaration for the purpose of stock conservation and management. On 28 November, 1990, both countries agreed to declare joint control and supervision and to impose a complete temporary ban to fishing by vessels of any flag. This jointly agreed zone, the Falklands Outer Conservation Zone (FOCZ, Fig. 2(f)), extending over 200,000 square kilometers in a semicircle north, east and south of the FICZ, was enforced by British surveillance crafts beginning on 26 December, 1990, and still in force at the time of writing.\(^{112}\)


for Argentine patrolling of the FOCZ still need to be arranged. Another salient point of this declaration is the establishment of the South Atlantic Fisheries Commission, composed of officials from both states, for the purpose of exchanging information, monitoring the implementation of the fishing prohibition, and making recommendations to both governments on conservation measures for fish stocks in the area.

Conclusion: The future of fisheries management in the region

The first decade after the Falklands War has witnessed four basic arrangements, in terms of fishing operations, surveillance/enforcement, access, and management measures, in the Patagonian shelf: 1) Exclusively Argentine waters, 2) The British FICZ, 3) The Joint Argentine/British FOCZ, and 4) The adjacent high seas areas. The continuing conflict among these areas imposes severe constraints on possible agreement over conservation and management policies. Alternatively, the wide distribution of stocks and fleets determines that action applied in any of these areas will ultimately echo in all of the others.

In 1989, Argentina ranked 33th in world fish catch. However, the Argentine fishing effort in territorial waters is considered to be below optimum levels. For instance, the percentage of vessel utilization in the small-scale fleet in 1987 reached just over 40%, about 60% of the trawler fleet has a high average age, and the refrigeration plants in the fishing ports usually operate at 50% of installed capacity. According to some

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estimates, the captures of coastal and offshore demersal species -aside from hake, shrimp, croaker and pescadilla- could be doubled.\textsuperscript{115} This situation originates from internal economic and administrative instabilities, international price crises, saturation of certain markets, protectionist policies by importing countries and disadvantageous competition. To top it all, Argentina's legislation with regard to jurisdictional claims and fisheries has been multiple, unclear, and even contradictory.

At present, several legal instruments are being developed, and obsolete legislation being revised and updated. For instance, the recent Law 23968\textsuperscript{116} eliminates the confusion regarding Argentina's claims over its maritime spaces and their boundaries by adopting the more familiar norms embodied in the 1982 UN Convention on the Law of the Sea. As for fishing legislation, Decree 2236 of 24 October, 1991,\textsuperscript{117} regulates the granting of domestic fishing permits and establishes basic principles for the exploitation of the resources. In the meantime, several bills are being debated in the Argentine Congress for the sanction of a, very much awaited, national fishing law.\textsuperscript{118} The greater political and economic stability emerging in Argentina has opened new hopes for a revitalization of the fishing sector.\textsuperscript{119}

Fishing within the FICZ's boundaries is entirely regulated through licenses issued by the Falkland Islands government. One of the objectives envisioned by that administration upon creation of the FICZ, was "...to enable

\textsuperscript{115}Supra footnote 70.

\textsuperscript{116}See footnote 69.

\textsuperscript{117}Boletín Oficial, October 30, 1991.

\textsuperscript{118}Argentina needs new fishing law. Fishing News International, 29 (8): 35 [1990].

the Falklands to enjoy greater benefits from the resource." This program has been receiving an annual US$ 30 million in fee revenues for the Islands' economy; a little over one third of this amount is spent on research and enforcement every year.\textsuperscript{120} Without doubt, the license scheme reduced the total fishing pressure applied to the fishery. This licensing approach, however, shows two major weaknesses. The first one is concerned with the license granting mechanism. Eligibility to a license application to operate within the FICZ stipulates that interested vessels need to agree on voluntary restraints to protect squid stocks. By entering this understanding, licensed vessels "promise" not to fish on those stocks while outside the FICZ in an attempt to reduce the total fishing effort and to achieve higher catch rates per vessel.\textsuperscript{121}

In general, cooperation and compliance to the rules between the fleets and the government have been high. However, the perception of the relative advantages resulting from such accord is linked to the different values weighed by individual boats. Hence, the terms of these agreements have not always been accepted which, translated in uncontrolled fishing outside the area, jeopardizes the entire structure of the management plan.\textsuperscript{122}

The second limitation of the licensing program is that the generated revenues are only a small fraction of the potential value of the resource being managed. From the point of view of the Falkland Islands government,

\textsuperscript{120}FICZ Fisheries Report '87/88, supra footnote 94.

\textsuperscript{121}Fishing News International, 29 (8): 2 [1990], supra footnote 111.

\textsuperscript{122}See, for example, Falklands ban on Taiwan. Fishing News International, 29 (12): 10 [1990].
it appears that a more productive utilization of the fishery, in the longer term, would be possible through the implementation of alternative managerial strategies such as a foreign subsidies program or joint ventures.\textsuperscript{123} Perhaps, the term \textit{interim} in the zone's label, incorporates a time factor, reflecting either a dynamic evolution in the operating regulatory measures or the temporary nature of the existence of the zone itself.

The concert of voices ignited by the creation of the FICZ raised diametrically opposite positions. On one extreme, Falkland Islanders were disturbed by the fact that the area's breadth of 150 miles, instead of the possible 200 miles, was ineffective in providing for stock conservation and that substantial unlicensed foreign fishing was taking place right outside the FICZ. On the other end of the spectrum, several Argentine sectors were disputing the legitimacy over any of these claims and assuring that unilateral decisions taken inside the FICZ were seriously affecting the Argentine fishing industry. Fortunately, more moderate minds in both parties found room for negotiations between these two extremes, with the understanding that some cooperation was better than none at all.

The joint creation of the FOCZ is a good example of the improved political relations between both countries. Although it is too early to evaluate the impact of this moratorium on the strengthening of the fishery, the expectations are optimistic according to the South Atlantic Fisheries Commission which recommended the extension of the fishing ban in this area until 26 December, 1992.\textsuperscript{124} But two questions, certainly need an


answer in the near future: (1) What will happen when the stocks rebuild and
the moratorium is lifted?; and (2) Will the Anglo-Argentine relations be
sufficiently strong, at that time, to allow for an agreement on a joint
exploitation of the area? So far, the recent establishment of the FOCZ is an
indicator of confidence build up and opens a whole new dimension to
develop a variety of management strategies. The success or failure of this
joint declaration will depend on the diplomatic abilities and priorities of both
parties.

The proximity of high seas to either one of the previous three areas
remains the source of more complicated difficulties. Two problems, usually
linked together, are of immediate concern: the first one is represented by the
presence of foreign fleets outside 200 miles, actively poaching landward of
this limit. The second point of concern is that of an international fishing fleet
continuing to harvest straddling stocks during their residence in the high
seas. Far from being a relief, it should be mentioned that the Falklands case
is not unique in dealing with these two issues. Other locations around the
world have been facing the same circumstances without significant solutions
yet evident.125 The multiplicity of interests operating in the high seas has
exposed limitations of the 1982 Convention on the Law of the Sea on
straddling stocks126 as it specifies no distribution of competence, does not
define the extent of actions that a coastal state can take, and provides no
enforcement measures. This highest forum of international negotiation has

Law of the Sea of 1982 arising from new fisheries conflicts: The problem of straddling
International Law, 77: 739-755.

failed, so far, to resolve this recurrent controversy: the resistance of distant
water foreign fleets to accept regulations and control and, the anger and
frustration of coastal states witnessing a severe depletion of their offshore
stocks.

In a chronological sense, the conclusion of UNCLOS III and the end
of the Falklands war are events of almost the same age. Since then, the
management of the issue on foreign fishing offshore Patagonia and the
Falklands progressed more rapidly due to the individual or combined action
of Argentina and Britain, than from the simple application of pertinent
provisions included in the Law of the Sea. The complexity of technical
factors resulting from the nature of the resources, the way they are exploited
and the diversity of national interests, severely curtails the development of
an acceptable -and compulsory- multinational solution to the presence of
foreign fleets fishing on common stocks outside the 200 mile limit.127 While a
global solution to this aspect of foreign fishing seems to be, at best, several
years away, the immediate future of the fisheries offshore Patagonia
appears to be strongly dependent on the mutual understanding and allied
cooperation of Argentina and Britain. If the fishing policies in Argentina's
EEZ, the British FICZ, and the Joint Argentine/British FOCZ are consistent
with one another, at least with respect to the issue of distant water fleets, the
impact of foreign activities as affecting the Patagonian fisheries will be
significantly reduced. More importantly, however, is that successful
collaboration between both nations in the fisheries realm might breed a
favorable attitude to consolidate further joint agreements. Areas of mutual
agreement might include the exploitation of potential mineral deposits and,

perhaps, the solution to the even more delicate, and still pending, question of sovereignty over the Islands. If lessons from the past are kept in mind, new directions in the management of these fisheries seem possible.
Figure 2. Succession of Argentine and British delimitation of the Patagonian shelf region.
**Figure legends**

**Fig. 1.** The Falkland Islands Archipelago. *From:* Beck, P.J. 1988.

**Fig. 2.**

A. The Patagonian shelf region: Argentine coastline, Falkland Island and politico-economic sectors.

B. MEZ: Maritime Exclusion Zone (Britain), 7 April, 1982.
MDZ: Maritime Defense Zone (Argentina), 7 April, 1982.
TEZ: Total Exclusion Zone (Britain), 28 April, 1982.

C. EZ: Exclusionary Zone (Argentina), 29 April, 1982.
Extended Zone (Britain), 8 May, 1982.

D. FIPZ: Falkland Islands Protection Zone (Britain), 23 July, 1982.

E. FICZ: Falkland Islands Interim Conservation and Management Zone (Britain), 29 October, 1986.


This figure has been entirely designed by Gustavo Bisbal based on the information presented in the text.
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