

## **Prenegotiation and Mediation: the Anglo-Argentine diplomacy after the Falklands/Malvinas War (1983-1989) (\*)**

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This paper studies the process of prenegotiation and the role of mediators during the negotiations between the Argentine and British governments about the dispute over the sovereignty of the Falkland/Malvinas Islands from immediately after the war of 1982 to 1990. In this period, the relationship between both governments evolved from rupture and no-relations to the agreement on the conditions to negotiate the renewal of full diplomatic relations concluded in early 1990. In a preliminary process of prenegotiation, the governments of Switzerland, initially, and the United States played a role in helping to reach an agreement. The former failed when the talks ended abruptly in July 1984. The latter succeeded in getting both parties to the table and keeping them there, thus avoiding a potential rupture until the two parties reached an agreement in principle.

During the prenegotiation stage, the principal parties were able to reduce the risks of escalation; they defined and narrowed the boundaries of the dispute, clearly identified the trade-offs, and structured the agenda of formal negotiations. Consequently, the likelihood of successful negotiation improved significantly when the parties reach an agreement during prenegotiation on what will be discussed later.

This case also illustrates that sometimes, when negotiations reach a point of stalemate, a mediator can help to find a “zone of agreement.” When this situation occurs, the degree of involvement and the resources of the mediator are particularly important. Finally, this case confirms the assertions that effective mediation is more a matter of leverage and influence than a matter of impartiality.

Key words: <international negotiation> <prenegotiation> <mediation> <Falklands> <Malvinas>

This research studies the process of bilateral negotiations between the Argentine and British governments about the dispute over the sovereignty of the Falkland/Malvinas Islands from 1983 to 1989. In this period, the relationship between both governments evolved from rupture and no-relations after the war of 1982 to the agreement on the conditions to negotiate the renewal of full diplomatic relations concluded in early 1990. In this process of prenegotiation, the United States played a pivotal role in helping to reach an agreement. During the period of prenegotiation Argentina moderated its original position and accepted the British conditions to start negotiations.

This work seeks to elucidate how the intervention of a powerful and committed third-party, the United States government, persuaded Argentina and Great Britain to get to the table.<sup>1</sup> By concentrating upon the decisions of the Argentine government, we will analyze the effect of the presence of a third-party at two different moments when Argentina decided to explore the initiation of negotiations with Great Britain. In one instance negotiations failed. In the other the outcome was successful, a potential crisis was solved, and the road was clear for starting serious negotiations. In this last instance, what factor changed to compel the Argentine government to come to the table and accept the British terms, while in the previous case they had failed to do so? This paper contends that it was the presence of an effective third-party.

In general the literature on international negotiation stresses how the parties negotiate, but another important albeit less studied problem is that of persuading the parties to negotiate.<sup>2</sup>

In 1982, the Argentine military government launched a military operation to repossess the British colonial territory of the Falkland/Malvinas Islands. In a war that lasted 74 days, the British defeated the Argentine troops, and regained the territory. After this adverse result, the Argentine military regime collapsed, and in December 1983 a new democratically elected government assumed power. The new government of the President Raúl Alfonsín maintained its claims over the islands, although it rejected the use of force to solve the dispute. At this stage, both governments expressed their desire to reestablish complete diplomatic relations. All efforts to negotiate the issue failed because the positions of the two

parties remained far apart. In effect, after winning the war, the British wanted only to restore formal diplomatic relations *without* discussing the issue of sovereignty. For its part, the Argentine government proposed formal diplomatic relations *only* if sovereignty were part of the package to be discussed at the table. During this period, initiatives to negotiate bilaterally failed. In July 1984, the Swiss government sponsored talks in the city of Berne that failed.

The situation finally began to change after a crisis in 1986. This crisis was sparked by differences between Argentina and Great Britain over the control of fishing in the disputed waters. First, the Argentine implemented a policy of more aggressive naval patrolling in the waters around the islands and it signed fishing agreements with the Soviet Union and Bulgaria. The British thereupon imposed unilaterally a fishing conservation zone in the area. The implementation of these policies appeared to escalate the dispute into a potentially new conflict in the South Atlantic. At that moment, the United States, worried about the tension between two of its allies, intervened as a mediator. After two years of secret prenegotiations among the three parties, the Argentine government agreed to negotiate formally the reinstatement of diplomatic relations without discussing for the moment the issue of sovereignty over the islands as were the British wishes. During this period, the trilateral negotiations had changed the Argentine position from negotiating only if discussing sovereignty to the reestablishment of diplomatic relations without discussing sovereignty. Why did the Argentine government take such decision? What factors influenced the decision to adopt a conciliatory approach?

This paper contends that between 1986 and 1989, parties established a “zone of agreement” where they had failed previously, primarily because of the presence of a mediating party like the United States.<sup>3</sup> The resolution of any dispute depends on recognizing a settlement range consisting of all the possible settlements which both sides might prefer to no agreement at all. A preliminary task of the negotiators is to explore the possibility of finding such zone. For this reason recent literature has begun to pay more attention to the preliminary stage or phase in the negotiation process known as *prenegotiation* (PN).<sup>4</sup> The parties engage in PN because they agree that the search for a resolution is better than stalemate or the status quo. As Zartman and Berman explain, "long before the first formal session opens, the

negotiation process begins with the decision made by each party to explore the possibility of negotiating."<sup>5</sup> One advantage of PN is that it is less structured, and less regulated by rules, than is formal negotiation. It allows more freedom to the parties and in consequence it is open-ended and fluid. PN is important in defining and narrowing the boundaries of the dispute, setting the agenda by eliminating many of the most problematic issues, identifying trade-offs, and structuring the agenda of formal negotiations.<sup>6</sup>

Among the factors that explain prenegotiation outcomes, some authors concentrate on the importance of the mediation role by an effective third-party.<sup>7</sup>

Structural realism assumes that states occasionally quarrel because they exist in an anarchic system without any central authority.<sup>8</sup> Conversely, lesser powers might not fight if a great power functions as a "policeman." We will argue that this idea is related to the notion of the presence of a mediator with leverage in the PN process. This suggests the crucial role played by the United States in the dispute between Great Britain and Argentina.

Mediation is a form of third party intervention in disputes for the purpose of abating or resolving that dispute through negotiation. The parties accept mediation in the hope that negotiation through an intermediary will help them reduce some of the risks that compromises entail, by protecting their image and reputation when making concessions. Finally, a mediator's involvement may include a guarantee for the eventual agreement, thus reducing the risks of violation either adversary.<sup>9</sup>

Through mediation, the mediator transforms the bargaining structure from a dyad into a triangle. In a triangular relationship, the outcome of the contest may be determined by the transformation of a coalition of two against one.<sup>10</sup> This could apply to the Argentine case when its negotiators confronted the essentially unified position of the United States and Great Britain during the period of the secret negotiations. One important claim of the literature on mediation is that the adversaries accept mediators because of their ability to influence, protect, or extend the interests of each party in conflict. In consequence, effective mediation is more a matter of leverage and influence than a matter of impartiality.<sup>11</sup>

This study examines the negotiation process primarily from the perspective of the Argentine government during the period 1982-1989 by using official documents and interviews to actors and witnesses of the events.

*Direct Bilateral Negotiations: the road to Berne (January -July of 1984)*

On December 10, 1983 a significant change took place in Argentina. A democratically elected government assumed power in the country. New actors took charge of Argentine politics. Consequently, some expected also a change in the future of the Anglo-Argentine negotiations. Observers expected that this change would help to improve the bilateral relationships. The new Argentine president, Raúl Alfonsín, belonging to the Union Civic Radical, would be the president for next six years. In his inaugural speech to the Congress he declared that,

In the case of the Islands Malvinas, Georgia of the South and Sandwich of the South, it is and it will always be our unrelinquished objective the recovery and definitive secure of the right from our nation to its sovereign territorial integrity. *In this point we are inflexible and the sovereignty is a previous fact to the negotiation.* We will impel the recovery of those insular territories and their definitive integration to the sovereignty of the Nation claiming with energy and decision the execution of the effective resolutions of the General Assembly of the United Nations. They exhort to the direct negotiation of all the aspects.<sup>12</sup>

Newspapers of that date also printed the message that Mrs. Thatcher, British Prime Minister, sent to the new president to congratulate him for assuming the presidency,

At times of their government's beginning I want to make you know that, although we have many differences, we all can congratulate ourselves for the restoration of the democracy in Argentina, in the belief that it will bring freedom and justice to all its people. That day gives hopes for your country.

In a press communiqué, Alfonsín thanked Mrs. Thatcher for the good wishes.<sup>13</sup>

In an interview with the British press, Alfonsín declared that a British reduction of the exclusion area in the waters surrounding the Malvinas and the suspension of the construction works of the new airport nearby Port Stanley could be followed by an Argentine decision for an immediate formal

suspension of the state of hostility.<sup>14</sup> He also added that in the subsequent negotiations “the islands could be immediately given in leasing to Great Britain for one period to be determine.”<sup>15</sup>

President Alfonsín's government refused systematically to declare the cease of the hostilities. However, unlike the previous military regime, the new president asserted that his government would not extend the situation of belligerency. The negotiating strategy that the radical government adopted was one “to bring the United Kingdom to the table of negotiations by means of the public denunciation of the situation in diverse international forums.”<sup>16</sup> This action would be carried out mainly in the United Nations’ General Assembly. It would also be appealed to the Organization of American States and to the Non-aligned Movement. As part of the Argentine strategy, Alfonsín affirmed that they also had planned to try to work with the opposition inside the British Parliament.<sup>17</sup>

By the end of 1983, the positions of both governments were still far apart. The British expert Walter Little summarized the situation in this way:

[Then] the British were willing to discuss everything except the only thing that Argentina wanted. On the other hand, the Argentina was mainly interested in discussing the only topic that the British had declared not to be willing to talk about.<sup>18</sup>

On January 2, 1984, the Argentine government took a new initiative. Coincidentally with the commemoration of the 151st anniversary of the British occupation of the Islands, the Foreign Ministry proposed the following formula: formal ceasing of the hostilities, elimination of the British protection area surrounding the islands, restoration of the diplomatic and commercial relationships, and reduction in the number of British troops garrison the islands. Once these steps were taken, open conversations could be renewed.<sup>19</sup>

On January 26, the British responded. They suspected that in spite of their declarations, Argentine officials only sought to renew the talks about the issue of the sovereignty. Therefore, they deemed “unacceptable” the proposal for the retirement of the troops and the introduction of an open agenda. Their proposal restricted the discussion topics to practical ones such as repatriation to the continent of the

remains of the soldiers killed during the war, renewal of the commercial and financial links, and restoration of direct diplomatic contacts.<sup>20</sup>

The British government took the next concrete step. On January 26, the Swiss embassy in Buenos Aires delivered to the Argentine government a proposal to reopen the talks about Malvinas. They offered to reestablish the bilateral relations, to arrange the repatriation of the bodies of the Argentine soldiers, but did not mention at all the issue of sovereignty.<sup>21</sup>

On February 1<sup>st</sup>, the Argentine president presented a new strategy that seemed to be more flexible. At the ceremony of presidential assumption of Jaime Lusinchi in Caracas, Venezuela, Alfonsín proposed the replacement of the British garrison on the islands by a United Nations peacekeeping force. He also proposed conversations in order to lift the exclusion area imposed by the United Kingdom to Argentine ships. In exchange, Argentina would declare a *de jure* ceasing of the hostilities and a return to the normal bilateral relationships. But he also added, “Argentina would never renounce its legitimate rights to the Malvinas.”<sup>22</sup> The following day, the British government rejected the proposal. The Secretary of State for Foreign Affairs, Geoffrey Howe, stated that the government and the protection of the Falklands were clearly his government’s responsibility. It was “necessary to reestablish the mutual trust between Great Britain and the Argentina, and the best way of making it is by improving the bilateral relationships through the countries that represents the interests of both nations.” He stressed that his government was interested in “a so-called normalization he bilateral relationships, but not in talks about the islands.”<sup>23</sup>

On February 16, the Argentine government finally answered, through the Brazilian embassy in London, to the British proposal from January 26. Buenos Aires characterized the proposal from January as “positive,” and would help to normalize the relationship between both countries.

On April 6, the British government responded that they were ready talk about reestablishing diplomatic relations but not ready to talk about sovereignty. They also suggested a meeting between diplomats of both countries would.<sup>24</sup> The Argentines responded on May 19, requesting more precision about the meaning of the contacts.<sup>25</sup>

The Argentine note led to a deeper involvement of the Swiss government, specially its Secretary of Foreign Affairs, Edouard Brunner, who assumed a personal role as mediator.<sup>26</sup> Since Alfonsín's assumption to power, the Argentine and the British had maintained confidential exchanges through the countries representing the respective interests of each party, Switzerland and Brazil. These exchanges aimed to reach an acceptable formula for both parties ending with the normalization of the relationships.<sup>27</sup> Specifically, Edouard Brunner together with the help of the Brazilian ambassador in Switzerland, Geraldo Silos, had been working on confidential negotiations to arrange a meeting between representatives of Argentina and Great Britain. The purpose of the meeting was to facilitate an informal exchange of ideas without a predetermined agenda.<sup>28</sup> At the end of the talks, the parties expected to produce a joint communiqué. The Argentine government came to the talks with favorable expectations about serious negotiations with the United Kingdom<sup>29</sup>.

Finally, on June 25, the Argentine Foreign Ministry received a British official note accepting participation in a meeting. Consequently, in Buenos Aires, Dante Caputo and the ambassadors in Buenos Aires from Brazil and Switzerland finalized all arrangements.

The Argentine participants subsequently explained the details in personal interviews with María Oliva and the author. Research shows that the main obstacle to arranging the meeting was the position of both parties regarding sovereignty. The Swiss government played a significant role in finding a middle ground formula. The late Jorge Sábato, then Secretary of Especial Affairs of the Foreign Ministry, described this process as conversations to discovered some sufficiently ambiguous formula that not would imply a commitment from either party. The talks went back and forth until finally, the Swiss suggested a relatively ambiguous form that where the Spanish translation from the English would have two different meanings. After long deliberations and proposals, the parties arrived to the formula of "to be not prepared."

According to official Argentine sources, the practical solution was not to require official translations during the meetings. The formula was expressed originally in English. When the Argentines would require the treatment of the issue of sovereignty, the British representatives would respond that the



United Kingdom was “not prepared” to treat the topic. In this case, the Spanish translation could be either that the British were actually “not prepared,” or “not willing.” Consequently, each party would give to the phrase the interpretation they wanted. For the Argentines, the United Kingdom was not prepared to discuss the topic, but they could do it later. Whereas the British interpretation of the formula could be that they are “not willing” to do it. Covered by this ambiguous formula both governments would continue with the treatment of other topics.<sup>30</sup> In this way, the formula was specifically designed in such an ambiguous form to protect the desires of each party. According to Mirré, through the mediation of the Swiss embassy in Buenos Aires the parties had agreed on three points: open agenda, no translators, and freedom to treat any issue.<sup>31</sup>

During the 18 and 19 of July, diplomats from Argentina and Great Britain carried on conversations in Berne, Switzerland. The Argentine delegation consisted of five members, headed by the Under Secretary for Southern Affairs, Marcelo Delpech.<sup>32</sup> Mr. David Thomas, Under Secretary for American Affairs led the British delegation of five officials from the Foreign Office.<sup>33</sup>

The meeting in Berne failed because of the mention of the topic of sovereignty. In this case, both sides ending accusing the other of having broke the previously agreed formula.<sup>34</sup>

A few days later, the Argentine press, citing Swiss sources, claimed the South American diplomats had been assured that the British would respond to the sovereignty issue with “the almost scripted” “not in a position” to discuss it. In that case, Argentine representatives would assume that sovereignty would not be excluded at all, and they would proceed with the discussion of other topics. But, the British gave a different answer. Their representatives stated precisely that they were “not prepared” to discuss the topic, which had a meaning very different to that of the expected answer.<sup>35</sup> The British had insisting on an official simultaneous Spanish translation. Thus, their words had the meaning that they in fact wanted, that is, “they were not willing to treat the topic”.<sup>36</sup> Ambassador Ortiz de Rozas, a direct witness, told the author that the British delegate spoke first and declared that his government was not prepared to discuss sovereignty. Then, the British translator repeated in Spanish “no está dispuesto” (not willing). The amazed Argentine delegation asked for an explanation and Mr. Howe, head of the

delegation, repeated in perfect Spanish: “what you have heard, we are not willing to discuss the topic.” Mr. Howe had lived in Argentina for some years and had studied in a very exclusive English high school near Buenos Aires.<sup>37</sup>

The British government thereupon declared that the Argentine government “had suddenly broken off the conversations for not abiding to the convened formula”.<sup>38</sup> The differences arose from the introduction of the simultaneous translation. Argentine sources verify that they had agreed that there would be no interpreters in the meeting.<sup>39</sup> Contrary, the British insist that there was no violation of the previously accepted rules.<sup>40</sup> The Secretary of Foreign Affairs declared to the Parliament that the delegates had acted according to the “fully agreed arrangement and clearly understood by the Argentine government.”<sup>41</sup>

The Swiss government recognized that the parties were further apart than they had imagined. This assertion supports García del Solar interpretation that

the rules had not been rigorously set. Compounding it was the Swiss attitude, which were very eager to do splendidly. Mr. Brunner was not rigorous enough, as he should have been, to check the agreement with both parts.

Consequently, both parties went to the meeting convinced that the rules had been set differently. Moreover, “both parties showed their unwillingness to solve the problem when it arose”<sup>42</sup> Contrary, Ambassador Ortiz de Rozas thought that the meeting had been “well prepared” by the Swiss, but that Margareth Thatcher changed the negotiators’ instructions.<sup>43</sup> What is clear is that the parties wanted to sit and talk, but they were not prepared to move from their original positions as demonstrated by the clear British statements and Argentine abrupt decision to abandon the talks.<sup>44</sup> The Swiss government was not successful because of his inexperience, wishful thinking, or because it simply lacked the means to compel the parties to continue the dialogue.

The Berne summit was important, however, because it was the first direct official contact between the parties and its failure pulled back to zero the work that had been done during the previous months. Finally, it made more difficult future negotiations.<sup>45</sup> The abrupt end to the Berne conversations

closed any possibility of direct contacts between the governments. This situation lasted until the British general elections of June of 1987.

*Question around the fishing resources in the South West Atlantic*

The regulations of the fishing in the disputed waters of the South Atlantic have been an important source of friction between Argentina and Great Britain. The possibility that an incident could take place between these two states because of fishing reached such proportions that it finally alarmed the government from the United States. With the purpose of diminishing the tension, the United States government began to promote secret conversations among the parties that extended until principles of 1990. The talks eventually achieved a formula of understanding among the parties that became the basis for the Madrid Accords signed in February of 1990. Through these accords, Argentina and Great Britain reestablished normal diplomatic relationships, interrupted since the beginning to the South Atlantic War in 1982.

Until that war, the South Atlantic had been a fishing area little exploited. But after the conflict, it began to attract numerous fishing and factories of diverse and distant nationalities. Also, the area remained one of the few ones that lacked fishing regulation. This continued until the British established the conservation area in February of 1987.<sup>46</sup>

In October of 1986, the United Kingdom decided to establish the conservation area known as Falkland Islands Interim Conservation and Administration Zone (FICZ). To avoid potential confrontations, British authorities superimposed the conservation area with the protection area established in July of 1982 around the Malvinas. The British ordinance also demanded that any vessel wanting to fish in the FICZ had pay for a license, and Argentine ships and airplanes could not enter into the protection area without the British government' s prior authorization.<sup>47</sup>

The United Kingdom justified the unilateral October 1986 decision for three reasons. First, confronted with the threat to the balance of the fishing stocks, the British government had tried during the 18 previous months to get an international agreement under the auspices of the FAO to regulate fishing in

the region. Second, the Argentine government had begun a policy that the British considered “aggressive patrolling” within 200 miles from the Malvinas. This policy reached its peak when an Argentine patrol vessel sank a Taiwanese fishing boat in May of 1986. Lastly, the Argentina had signed bilateral fishing agreements with Bulgaria and the USSR under which the ships of those flags could fish in the waters around the Malvinas in July of that year.<sup>48</sup> The signing of these agreements also caught the attention of the Americans. According to some critics, the Argentine government was spreading the Cold War in the South Atlantic.<sup>49</sup>

The Argentine government opposed any multilateral agreement because it would mean “to admit the British competition in maritime spaces of its jurisdiction and to recognize the United Kingdom as riverside country.”<sup>50</sup> As for the British unilateral declaration, Argentine claimed that the declaration did not respond to the terms of the Resolution 31/49 of the United Nations.<sup>51</sup>

The Argentine reacted by claiming that the British decision proved the necessity for negotiations on all topics, including sovereignty. Moreover, a declaration such as October 29 kept alive the dispute as a source of tension and conflict. Therefore, the Argentine government reiterated its willingness to begin global negotiations according to the terms of the resolution 40/21 of the General Assembly of the United Nations.<sup>52</sup> Argentina was also willing to have an open dialogue to generate trust and to facilitate negotiations.

Besides the declaration, the Argentinean government took additional measures. It formed a new military committee and it canceled the licenses for conscript soldiers. On November 2, the foreign ministers of Argentina, Brazil and Uruguay met in Punta del Este and agreed to request a special session to the Council of the OAS. Soon after, November 11, the OAS supported a resolution that expressed “great concern for this new element of tension and potential conflict unanimously.” The United States supported the Argentine position.

*Anglo-Argentine confidential talks on fisheries: the United States mediation (1986-1989)*

When the British government announced that starting from February 1<sup>st</sup> of 1987 it would impose a conservation area and fishing administration unilaterally (FICZ) in the adjacent waters to the Islands Malvinas, Argentina protested. Immediately, the United States government feared escalation in the tension between the two friend nations. Therefore it decided to assume a more active role in order to reach some agreement to avoid incidents in the South Atlantic.

This section will present the development of the negotiations using the Argentine minutes that recorded the whole process.<sup>53</sup> It is necessary to note that this work rests mainly on Argentine documentation, therefore it is not known with certainty the content of exchanges between the British and American representatives. However, it is possible to infer their nature by analyzing the positions the Americans adopted when negotiating with the Argentines and the courses of actions they recommended.

During the course of the negotiations the British rigidly held to their negotiating position toward the islands, and the Argentines, in spite of their stated determination, ended up accepting the British proposals. The negotiation process also shows that the friendly pressure put by the United States on the Argentines played an important role in the way the process concluded.

On November 16, 1986 the Argentine Foreign Ministry handed to the Brazilian embassy in Buenos Aires a declaration to be transmitted to the British government. The note responded to the British declaration of October 29, 1986, on fishing conservation around the Malvinas. The Argentine government invited the British government to celebrate global negotiations on all the pending topics, including sovereignty according to the United Nations resolutions. It also proposed to exchange a formal declaration on cessation of hostilities for the elimination of the 150 miles protection area.

The British rejected the Argentine declaration for holding to the same position that had caused the rupture of the Berne conversations in 1984. The British diplomacy claimed any dialogue proposed by Argentina would inevitably include the topic of sovereignty.<sup>54</sup> This was something that the British were not willing to accept.

The State Department grew alarmed for the possibility of an increase in the tension between Argentina and Great Britain; therefore it decided to intercede.<sup>55</sup> Initially, Secretary of State George Shultz proposed to Dante Caputo a procedure in which the parties would negotiate under a common multilateral fishing regime, the Commission for the Consultation of Antarctic Marine Living Resources. This way, at the initiative of the United States and with Washington acting as intermediary, the exchanges on the issue of fishing began in January of 1987. The procedure adopted maintained the fiction of the absence of direct bilateral contacts by exchanging documents without letterhead (non-papers) via the State Department. In case of problems, the non-papers could be easily denied them.<sup>56</sup> It is important to note that these initially cautious contacts were possible, partly, because a genuine desire existed in both countries to avoid an even worse deterioration in their relationship.<sup>57</sup>

The Argentine government gratefully received the proposal of the United States. According to Caputo: "if the United States asks, you talk, you chat...it was important not to be denied, not to say no...For us was very important the American involvement..."<sup>58</sup> At the same time, Minister Caputo and his collaborators designed the strategy to follow. It would consist on "finding an environment to converse and to rehearse possible solutions, without prejudicing their rights". In this case, the conversations supported by the United States should suffice to avoid armed incidents arising from the activation of the British conservation area on February 1<sup>st</sup>. Regarding the conservation of the fishing resources, they decided to reject any possible international regulation or any solution via the FAO. As a sign of commitment to the United States, Argentine reiterated that they were "willing to declare the formal ceasing of hostilities. At the same time, in exchange, they would request the United Kingdom as a commitment to the United States to lift the exclusion area forty-eight hours later."

On December 22 and 23, 1986, an Argentine delegation met with the American delegation in the State Department in Washington.<sup>59</sup> The Americans repeated the proposal for solving the fishing dispute by using the Consulting Commission of Antarctic Marine Live Resources (CCAMLR). According to the Americans, this proposal would allow discussion without prejudice on the dispute. Washington officials also expressed their concern for wider political question, of which the fisheries were only a part. For

them, multilateral organization would serve as vehicle for a wider solution in the medium term. In the short term, what was needed were measures to foment trust. The State Department emphasized that its formula was flexible and “it could become a screen for informal conversations if both parts have the political will.”

The Argentines rejected the use of the Antarctic Convention, however, and next they handed the first non-paper for the British. The document reiterated the exchange formula of ceasing of hostilities for lifting the exclusion area as a step to pacify the area and to facilitate the task of the experts. In this sense, it proposed creation of a group of experts, under the auspices of the United Nations General Secretary, to establish a common regime of fishing and administration. The Americans accepted the Argentine document with some reservations.<sup>60</sup>

One day before the enforcement of the conservation area, the British transmitted through the American embassy in Buenos Aires their own first non-paper.<sup>61</sup> The document declared that the Argentine document of December 23 had been well received. They shared the objectives of preventing incidents and conserving fisheries within the context of the international law. They also guaranteed that they were prepared, “without prejudice on the topic of sovereignty, to work to reach both objectives,” that is, prevention of incidents and conservation of fisheries. The document stressed, first, that the conversations would be limited exclusively to agreements on procedures for conservation and administration of the fishing. They wanted assurance that the Argentina’s agreements with the Soviet Union and Bulgaria were consistent with the terms of the British declaration of October 29. As for the eventual role of a third party, they rejected mediation from the UN General Secretary. The document also underscored that the role of the third party should not be that of mediator but rather as “communication channel.” It was clear that the British did not want to eliminate the Conservation Zone.

April of 1987, 24 Argentine representatives met with the American officials in Washington. During this meeting, the Argentines gave their government’s second non-paper. This statement proposed, without affecting their respective positions about sovereignty, the creation of a temporary regime to coordinate the respective administrations of the fishing areas, to establish application procedures, and to

define the area of application of the regime. As for the role of a third party, it defined the role as advising the parties, receiving their ideas and elaborating proposals to the temporary coordination regime. For this role, the Argentines insisted on the Secretary General. The Argentine proposal also asked for “the elimination of the area of 150 miles in the two aspects of conservation and protection.”

The Argentines produce another initiative during their next encounter with American officials. The meeting took place in New York in the headquarters of the United Nations on June 25. In the meeting participated, the Argentine foreign minister, Caputo proposed the text of an umbrella formula for the sovereignty. This one was based, with very small modifications, in the one that had facilitated the signing of the Communications Agreements between Argentina and Great Britain in 1971.<sup>62</sup> It also proposed a sequence of steps to facilitate a bilateral meeting followed by reciprocal gestures. The Americans officials agreed to transmit the proposal to the British embassy, but they warned that the British probably would reject the reciprocal gestures.

On August 10, the British responded to the latest Argentine non-paper via Washington. The second British non-paper, dated August 7, expressed that His Majesty' s government accepted the interest shown by the Argentine government in reaching an agreement on the conservation, prevention of incidents, and improvement of the relationship between both countries. At the same time, it emphasized that they were not prepared “to discuss sovereignty.” Also, to avoid future misunderstanding they considered that a fishing agreement in the South West Atlantic was regulated by two regimens with separate jurisdictional laws that required coordination. Most importantly, the declaration of October 29, 1986 stood. It rejected the Argentine proposition of an open agenda and, once again, the elimination of the conservation zone.

Minister Caputo gave the Argentine reaction to the British proposal of August 10 on September 29 to Mr. Gelbard. Caputo stated that the British document seemed to him good: “it is the first time that there is a positive exchange.”

On November 27 the British embassy in Washington gave the American government its third British non-paper. In response to some Argentine concerns, London made clear that it was “a matter of



fact” that there existed two separate bodies of fishing regulations in the South West Atlantic, the British and the Argentine. In regards discussing practical topics like fisheries, the British Government declared that they were convinced that progresses in those topics would help to reestablish the normal relations. On December 3, the Americans gave the British document to the Argentines.

On December 22, the Argentinean delegation gave Gelbard a new non-paper, its fourth, responding to the British. It stated: “Argentina accepts the terms of the umbrella of sovereignty” that protected the positions of both countries, because this procedure did not leave “aside the topic of the sovereignty.” They also were prepared, if the British accepted, for a meeting in anywhere in Latin America

By the end of 1987 the positions of the parties were very well defined. During that year of exchanges, the parts presented their proposals and set their positions. Thanks to the United States mediation, 1988 brought a notable increment in the exchanges among the parts. The Americans also started to pressure the Argentines.

On February 8 and 9 the American diplomats Gelbard and Felder visited the Argentina. Without a British answer to the Christmas Argentine proposal, they first met with Mr. Caputo. The Americans stressed the convenience Argentina of a unilateral declaration of ceasing of hostilities. The Argentines then asked if such an action would guarantee the renewal of their military procurement by the United States. The Argentines did not receive any definitive answer, but the Americans argued that this declaration would have two positive effects: first, on U.S. Congress that would decide on any military procurement to Argentina. Second, it would produce a very positive image of president' s Alfonsín government. Finally, without predicting the British position, Argentine and Americans agreed that they would continue exploring the American proposition that would strengthen the Argentine-American cooperation.

However, these signs of progress were threatened by a British decision. On February 12, 1988 the British government announced that it would carry out military maneuvers in the area of Malvinas. The operation named ‘Fire Focus’ generated agitation in the diplomatic circles, and it hastened the return

to Buenos Aires of Mr. Gelbard who was touring Latin America. He met on February 16 with Caputo, who stated that the British action had ruined the favorable climate created for taking the “audacious initiative” of an Argentine declaration of cease of hostilities.

On the other hand, Gelbard thereupon answered that he had received the news with “consternation” and that he was upset by the suddenness of the British decision. He also affirmed that the Argentines had behaved well. Finally, he also declared:

We are very angry. They acted [the British] like in the case of the declaration of the Area of Conservation. We, in these last months have expressed to them our concern for the sale of weapons to Chile. They are destabilizing the Hemisphere. It is OUR hemisphere, not theirs. We are worried about what can happen.<sup>63</sup>

Nonetheless of their delicate position in the role as third party in the conversations for their commitments with both parts, the American diplomat reiterated the necessity to declare a cessation of hostilities. Gelbard also added that the relationship of his country with Argentina regarding defense matters was complicated by its formal belligerency with a country member of the NATO. To reinforce his meaning he handed over a copy of the points edited personally by the Secretary of State Shultz and Collin Powell, of the National Security Council. This document urged the Argentines “to conclude the state of hostilities formally with Great Britain.” In exchange, the American government committed “to offer public recognition to this significant contribution to the regional peace.” It also offered to lend political and practical support to the process of democratic consolidation. Also, it committed itself to double its efforts for the progress of the conversations with the United Kingdom. Lastly, the carrot, Washington would work with the Argentine government to normalize and to improve the relationship regarding the supply of military equipment, especially of airplanes A-4.<sup>64</sup> He concluded by saying that six years after the United States had supported the United Kingdom in the war, “we show with concrete and very symbolic acts: military equipment and airplanes.” Caputo declared that, at first sight, the American proposal seemed to him very impressive.

Like Caputo, President Alfonsín responded that the initiative represented a fundamental and basic change. But if the Argentinean government declared the cessation of hostilities at that moment, it

would appear that he had acted under pressure. Consequently, the president proposed to send a personal letter to Mrs. Thatcher where it would express the uselessness of continuing hostilities between the Argentina and Great Britain. In the letter he would also offer the cessation of the hostilities in exchange for lifting the exclusion area by the British.

Gelbard supported the idea of sending a letter but feared that the Prime Minister would not lift the exclusion area. Then he asked if the president would consider American government' s proposal sufficient compensation. The president responded him that for him, the North American offer was enough, but he was not sure if it would be it enough for the “Argentine people.”<sup>65</sup>

Caputo commented that it seemed reasonable to appeal to the Security Council, even though, the Americans doubted Mrs. Thatcher would accept the involvement of the Council of Security. To the Americans it was clear that she did not want to make concessions.<sup>66</sup> In spite of his doubts, Gelbard thought that the president should continue with the idea of the personal letter. Lastly, he promised to transmit the Argentine ideas to the Secretary Shultz and reiterated that it was essential for the Argentine government to declare the cessation of hostilities.

Finally, the British government responded to the Argentinean proposal of the previous Christmas with his fourth non-paper on March 9, 1988. The British reiterated their position once again: to leave aside the topic that most divided the parties (sovereignty) and to continue with the search of practical steps to reconstruct trust and to reestablish relations. Lastly, to avoid confusion, they attached the Spanish text of the “umbrella” formula.

Some months later, on July 12, and on the occasion of the announcement of the visit to the Secretary of State Shultz to Argentina, Caputo proposed to the American government to announce that Argentine-British talks would proceed under the umbrella formula and with open agenda if London previously agreed.<sup>67</sup>

On July 25, the British handed its fifth non-paper. A personal letter from the British Foreign Secretary, Howe, to Secretary of State Shultz, accompanied it. The non-paper stated that the British Government was prepared to begin direct conversations based on the formula of the “umbrella” agreed

by the two parties and amended by the Argentinean non-paper of May 10. But the document reiterated its position that negotiations would start on the basis of the Declaration of October 29 1986.” That is to say, on the Area of Conservation and Administration. The document concluded with a proposal of a work schedule to treat the topics of conservation of resources and prevention of incidents.

This document accompanied by a personal letter of Howe to Shultz produced a change in the dynamics of the conversations. Starting from that moment, the American diplomacy accelerated its effort to convince Argentina of the generosity of the British proposal and to urge Buenos Aires to accept it. The meetings that followed show this change in the emphasis of the American diplomacy.

One week after the last British non-paper, on August 2, Gelbard presented to the Argentines his government’s evaluation of the British document. They found it “very positive.” In contrast, they considered the Argentinean proposal of July 12 a “non -starter.” Moreover, they assumed that the British proposals to advance with the conversations should be acceptable for the Argentines. Next, Gelbard insisted that the British proposal was “more positive than the previous ones.” It was important to reconstruct the dialogue and to begin with the “measures of confidence building.” Finally, the Americans communicated the conditions requested by Howe to have direct talks with the Argentines. The British government expected Alfonsín to give verbal assurances that, first, Argentina will not use the conversations to introduce the topic of the sovereignty of the Islands; and second, the Argentine government should accept that the British area of conservation of 150 miles existed as reality.

To underscore their position, Secretary Shultz also handed to the Argentine government the written American “observations.” In this case, the State Department “strongly urged” the Argentine government to accept the conservation zone as “fact of life.”

The Americans also explained that the United Kingdom now only requested from the Argentine government certain verbal guarantees, in contrast to previous requests, when they requested guarantees in writing. To reinforce their request, August 3, the Secretary Shultz sent a letter to Alfonsín. The text reiterated the British request.

The talks expanded during a meeting in New York on September 19, between Caputo and Gelbard. On that occasion, Gelbard clarified to the Argentines that the British did not expect a literal answer: it would be enough if the Americans transmitted impression that Alfonsín would respond favorably to the points expressed in the Secretary Shultz's letter. Caputo reiterated President Alfonsín commitment: 'we won't surprise.'

At the same time, Caputo handed a copy of a new non-paper (the seventh), and he made clear that president Alfonsín could not go beyond what he had expressed in the August 2 request. Next, the Argentine minister read a text stating that the Argentine government would not use violence and that they would not surprise his speakers.

The Argentine non-paper said that the Argentine government accepted the commencement of direct dialogue between the two parties. The document shows a change in the Argentine attitude. The elimination of the protection Area was no longer requested, but rather it declared the existence of overlapping jurisdictions. Point 2 of the document is particularly important because it agreed to sit down to dialogue according to the terms requested by the British under the umbrella formula.

One week later, the 26, the Secretary Shultz informed Caputo in New York that he had transmitted to the Secretary Howe the last Argentinean non-paper accompanied with a recommendation for a favorable answer.

At the beginning of October, Caputo met with Shultz in New York and said that he was "prepared to begin any contact with the British, with or without witness, with the level and reserve that they wanted" and he urged starting the talks.<sup>68</sup> The Secretary of State responded that he would emphasize in a personal telegram to Secretary Howe the good predisposition and the flexibility showed by the Argentines.

By the mid-December an important meeting took place in Geneva, between Foreign Minister Caputo and the British representative in the United Nations, Crispin Tickell. Caputo, after clarifying that the meeting was not a negotiation, urged Tickell to begin conversations under the umbrella and open agenda. Tickell insisted on only limiting the talks to the prevention of incidents and fisheries conservation.

They talked about the British proposal that Argentina would accept the conservation area as a fact of life. Although the Argentines declared that they rejected the area, they understood that it existed in fact, and for this reason Argentines vessels did not enter the area. Tickell responded that what the British sought was recognition that the United Kingdom was there although it did ‘not mean that Argentina *approves* such a presence.’<sup>69</sup> In this case, recognition signified that the Argentines did not attempt to enter into the area.

Caputo said that given the President Alfonsín’s guarantees to Secretary Shultz (that Argentina would not introduce surprises and that it acted in good faith) and those expressed by him during the meeting, it would be enough to satisfy the required oral securities. Tickell responded that he found them sufficient, but they would have to be transmitted through the United States. Finally the parties agreed that the first meeting would be devoted to determining the agenda topics.

One week later, December 21, the Caputo and Shultz met again in Washington. The Argentines then informed Shultz what was discussed and agreed during the Geneva meeting. Secretary Shultz responded that he would transmit all the proposals to the British Foreign Affairs Secretary.

By April 1989 there was no answer from the British to the Argentinean non-paper of September 19, 1988, nor to the proposals transmitted through the Secretary Shultz and ambassador Tickel in October and December of that year. On April 28, the American ambassador in Buenos Aires explained that the British wanted to wait after the Argentine presidential elections of May 4<sup>th</sup>, and ‘that is the answer that they had given us.’ That was the last exchange diplomat among the president’ s government Alfonsín and the British, by July of 1989, there was a new government in the Argentina.

#### *Analysis of the Prenegotiation processes*

Recently, the literature on international negotiations has begun to analyze more carefully the phase of prenegotiation. This study illuminates in more detail the development of this process and specifically, the role of the mediator in the case of the Anglo-argentine relations after fighting a war in 1982.

The course of any negotiation will be severely affected by how the principal parties can adjust their positions, set the agenda, and make arrangements to proceed with the formal negotiations. There are occasions during this process when the parties become deadlocked. Under such circumstances the intervention of a third party can introduce a new dynamic to the negotiation and push it beyond the point of stalemate. In these cases, the influence of the mediator became critical. This is precisely what happened in the complicated tango of the British-Argentine prenegotiations from 1982 to 1989.

As this study has shown, the Anglo-Argentine dispute over the sovereignty of the Falkland/Malvinas islands was punctuated by two key instances of prenegotiation and mediation.

The opportunities for developing a PN phase occurred under the Argentine democratic government of President Alfonsín (1984 and between 1986-1989). In order to understand the PN phase, it is important to fix its temporal boundaries. The scholarly literature contends that the starting point in any PN phase in essence is marked by a key turning point in relations between the principal parties. This trigger can be an event or new condition that prompts a reassessment of alternatives, adding negotiation to them. In the case of the road to Berne process, the turning point was the regime change in Argentina. The establishment of a democracy in the South American country in December 1983 changed the principal actors on one side and generated new expectations about the possibility of solving the dispute swiftly and peacefully. The Swiss government thereupon facilitated the contacts between the parties and was instrumental in the preparation of a formal meeting in the city of Berne. The prenegotiation process came to an abrupt end, however, when the official delegations actually met on July 18, 1984. The PN process failed when the Argentine delegates abandoned the table. They participated at the meeting with the sole objective of introducing into the talks the issue of sovereignty, among other minor issues. This was something that the British explicitly refused to allow.

The failure of the talks at Berne in July 1984 shows that the parties had arrived at the formal meeting without enough preparations. There were profound disagreements between Argentina and the United Kingdom regarding what topics were to be discussed. In this regard, observers agreed that the Swiss diplomats did not pay enough attention to the details in the preparation of the agenda. It was also

clear that the British were determined to avoid any discussion on sovereignty even at the cost of breaking off negotiations before they could begin.

As a mediator in the PN process, Switzerland's intervention remained low on the spectrum, limiting itself to the role of "communicators" and only belatedly as "formulators", in helping to shape the diplomatic formula of "not to be prepared" to discuss sovereignty at the formal meeting at Berne.

Although there is no doubt about Swiss impartiality and its tradition of neutrality and sincere interest in helping to resolve the dispute, they were unable to modify the nature of the dispute and, because they lacked any other resource or leverage to offer to the principal parties, they could not keep them at the table.

Following the break-up in Berne official bilateral contacts between Argentina and the United Kingdom were frozen. But a new round of PN was triggered by another turning point in their relationship. This time, the British had announced in October 29, 1986, that a new Conservation and Protection Zone around the Falkland/Malvinas would be established in the next four months. This unilateral action generated a crisis atmosphere that soon prompted the Washington's diplomatic intervention. The United States mediation continued for two years and ended in December 1988 when the British informed the American diplomats that they would await the results of the next presidential elections in Argentina before continuing with the next step, namely, a formal meeting between the parties to discuss a pre-established agenda that excluded the issue of sovereignty.

In contrast to the Swiss intervention, Argentina and the United Kingdom felt obliged to participate in the new diplomatic process sponsored by the United States at the end of 1986. As some scholars suggest, great powers, and the United States in particular, possess both the resources and the reputation to compel state leaders to return to the bargaining table.<sup>70</sup> In this case, the parties could not say no to great power mediation, given Washington's position in the international system and its capacity for acting as a guarantor of any possible agreement.<sup>71</sup> Acting as the Hemispheric "Godfather," Washington was making an offer that could not be refused. The United States had reasons and means to encourage the two parties to find a formula to communicate.



The Americans cleverly avoided any direct contact between the parties and proceeded with the PN through the exchange of non-papers that they would pass between the parties. Washington adopted an incremental strategy that skirted the controversial issue of sovereignty and sought to solve other issues first. Initially, during the first year of the mediation, the Americans stuck to a “communicator” role and rarely “formulated” alternative solutions. Finally, the parties arrived at an “umbrella formula” to preserve their respective claims over the territory in order to proceed to discuss other less controversial topics. However, during 1988, American diplomats intensified their activity. They moved to the level of “formulators” and even acted as “manipulators” when US diplomats could not change the British position and thus started pressing Argentina (with inducements) to accept negotiation under what amounted to the British terms. In this case, the Americans offered such “carrots” as full support to Argentina’s democracy and renewed supplies of military equipment. The Argentine government did not immediately accept the American offer, although they did begin to move in the direction proposed by Washington’s interlocutors. By the end of 1988, the Argentines declared that they were ready to have a formal meeting to discuss humanitarian and fishery conservation issues, and eventually, the reestablishment of formal diplomatic relations with the British under the terms of the umbrella formula.

The Argentines now were ready to sit at the table to discuss with a preset agenda that, most importantly, excluded any discussion of sovereignty. Nonetheless, the British suspended the negotiations to await the Argentine presidential elections scheduled for May 1989.

Unlike the first US diplomatic intervention in April 1982, which dealt with a crisis management situation, the 1986 intervention supports Stein and Zartman’s assertions that PN is more useful and effective when is triggered by crisis avoidance or post-crisis management situations.<sup>72</sup>

This stage of the PN process was only partially successful. Full success was elusive because the urgent crisis that prompted the Americans to intervene diplomatically was averted. The exchange of non-papers had defused the immediate topics that divided the principal parties regarding control and exploitation of the South Atlantic fisheries. Yet the basic dispute, sovereignty, was not solved but put aside under the umbrella formula. The British had essentially obtained what they always wanted, namely,

Argentina's recognition that they were present in the South Atlantic even if Buenos Aires did not approve such a presence. Finally, the Alfonsín administration did not obtain the maximum goal of regaining sovereignty, but did gain British recognition that the islands were under dispute. Argentina could still insist on the possibility, however remote, that it could eventually regain sovereignty through subsequent diplomatic negotiations.

America's resources and prestigious position in the international system sufficed to keep the parties engaged in the negotiating process. Unlike the earlier Swiss experience, the American strategy to press the parties to start to talk about practical issues and not to discuss sovereignty proved ultimately successful. Even though the United States had abandoned neutrality and tilted toward Britain during the war, Argentina accepted American mediation because only the United States could influence London to be more accommodating. Just as Egypt and Syria acquiesced American shuttle diplomacy after their 1973 war with Israel, Argentina sought US mediation as the best way to influence the British to accept an eventual, if theoretical, discussion of sovereignty. Because the superpower's position and prestige in the international system, Buenos Aires sought Washington as a guarantor of fair negotiations and a witness of the Argentine goodwill to negotiate in contrast to the British negative attitude to negotiate. Consequently, American mediation in the South Atlantic was similar to what Stein describes as its role during the Middle East peace process between Israel and Egypt in the Camp David Accords. Then a precondition for the success of PN was "a powerful and committed third party that could overcome psychological and cultural obstacles to communicate as well as reward concessions."<sup>73</sup>

As exchanges non-paper passing proceeded, the US proved to be a very impartial mediator in terms of what Wallensteen prescribes as the correct reporting of what the other party says.

In July 1989 the new government of President Menem expressed its immediate interest to begin negotiation to reestablish full diplomatic relations with the United Kingdom without discussing sovereignty. Thus, Buenos Aires's diplomacy initiated a series of unilateral confidence building gestures towards London. The whole process was propelled by the umbrella formula and the compromises reached between both governments during Alfonsín's presidency. This process ended with the formal meetings in

October 1989 in Madrid. The Madrid Accords reestablished full diplomatic relations and ended the state of hostilities between the parties. They had finally found a way to coexist peacefully in the region.

### *Conclusions*

According to many authors, PN is important as a preparatory phase that helps to improve the formal negotiations aiming to solve a dispute between states. How successful were the PN processes in reaching to the solution of the conflict? Judging from the overall outcome, in absolute terms, or under the light of Bercovitch's objective criteria, neither the mediated PN processes conducted by the Swiss nor the Americans solved the dispute definitively. The Falkland/Malvinas archipelago is still a disputed territory. However, according to Bercovitch and Wallensteen, success is a relative concept. In this case, instead of a categorical objective judgment of failure, the subjective criteria became all important. Consequently, it could be said that the Berne was a first test that educated the principal parties to become aware of the limits of their respective positions. It also helped to teach future mediators about how not to approach to the negotiation with the principal parties. Washington's mediation could also be analyzed according to the subjective dimensions of parties' satisfaction and effectiveness. Although parties' satisfaction measurement and precise meaning remain unclear, it is possible to get some sense of these satisfactions by looking at the objectives of the parties when they entered in the PN process and how much they were achieved at the end.

Washington's immediate objectives of avoiding a new confrontation in the South Atlantic were reached. The secondary objective of finding a way to have the parties seated to talk was also fulfilled. The mediation process was the means to establishing future negotiating mechanisms between Buenos Aires and London as they were finally adopted in the Madrid Accords. In this case, Washington's intervention not only maintained the parties at the table but also contributed to an educational process. Finally, for the American diplomacy, in contrast with the role played during the conflict in 1982, the whole mediation process helped to improve Washington's image in the Hemisphere by working with the parties to reach some negotiated agreement.

From the Argentine perspective, the objective criteria of getting the British to discuss the transfer of sovereignty or, at least, a return to the *ante-bellum* situation of discussing a formula for sovereignty transfer, failed absolutely. However, if the measure of success is judgment about the extent of change, and if the observer starts by looking at the Argentine diplomatic situation at the end of the conflict, June 1982, it is possible to assert that the whole negotiating process helped to improve the situation of the South American country. After having used the force to settle the dispute, having disobeyed United Nations resolutions, having lost the armed conflict, and having the British assert that the dispute was totally solved, Argentina became isolated, or as one analyst noted: a “pariah” state.<sup>74</sup> Less than ten years later, Argentina, under democratic rule, was supported by the United States, negotiated with the UK under the “umbrella formula,” obtained the British acknowledgement that the archipelago was a “disputed territory,” and the protection and conservation zone was finally abolished. After reestablishing diplomatic relations with the United Kingdom in 1990, Argentina was not a “pariah state” any more. This new situation enabled President Menem’s administration to improve the international position and prestige of Argentina during those early post-cold war years.<sup>75</sup>

From the British perspective, they were able to bring the Argentines to the table to discuss other issues than sovereignty. The latter finally accepted reestablished diplomatic relations without discussing sovereignty. However, under the umbrella formula London returned to the *ante-bellum* situation of recognizing the islands as a disputed territory.

By analyzing the interaction dynamics and the processes of learning and adjustment of the parties and those of the Argentines in particular this research had followed a developmental model. This model assumes that the negotiation process is broader than the actual bargaining or concessions-trading phase only. Rather, the model emphasizes that the outcomes of a negotiation process are neither predetermined nor random, but are the result of a progressive process of “information exchange, learning, social influences, mutual adjustment and joint decision making.”<sup>76</sup> First, the Britons and the Argentines met at Berne with the help of the Swiss. They learned the extent of their irreducible positions. After that event the Americans intervened, and a longer process of negotiations started with the Americans trying a

different approach to negotiate with the parties. After two years of interaction, the parties arrived at a principle of commitment to start formal negotiations. For these reasons, “the outcome of a negotiation on an international issue is generally determined through the process itself.”<sup>77</sup>

In sum, this study highlights the importance of the PN process in international negotiations. As the Berne incident shows, when PN is conducted carelessly the final outcome would be complete failure. This would be the case of what Rothman says happens during traditional preparations for negotiations, where “agenda-setting discussions are regularly left until the actual start of formal negotiations.” Consequently, this behavior “often leads to negotiation coming to an end before they really begin.”<sup>78</sup> Conversely, the American intervention helped initiate a new PN process that ultimately ended satisfactory for the parties. In this case, Washington’s mediation reduced the risks of escalation in the dispute between the Buenos Aires and London; it defined and narrowed the boundaries of the dispute, clearly identified the trade-offs, and most importantly, structured the agenda of formal negotiations. The specialists on the topic agree that the likelihood of successful negotiation improves significantly when the parties reach an agreement during PN on what will be discussed later.<sup>79</sup>

This case also illustrates that sometimes, when negotiations reach a point of stalemate, a mediator can help to find a “zone of agreement.” When this situation occurs, the degree of involvement and the resources of the mediator are particularly important. Finally, this case confirms the assertions that effective mediation is more a matter of leverage and influence than a matter of impartiality. This study seems to confirm Bercovitch’s assertion that mediators’ success is associated with their capacity to “move things about.”<sup>80</sup>

## NOTES

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<sup>1</sup> Stein (1989a).

<sup>2</sup> Stein (1989)

<sup>3</sup>This is the "overlapping area of acceptable outcomes for the negotiating parties." Starkey, Boyer, and Wilkenfeld (1999).

<sup>4</sup> Saunders (1985); Zartman (1989).

<sup>5</sup> Zartman and Berman (1982).

<sup>6</sup> Stein (1989a).

<sup>7</sup> Stein (1989a). Druckman (1986) and Bercovitch (1996).

<sup>8</sup> Waltz (1979).

<sup>9</sup> Touval and Zartman (1985); Princen (1992).

<sup>10</sup> Touval and Zartman (1985).

<sup>11</sup> Bercovitch (1996); Smith (1994).

<sup>12</sup> The President also claimed that the installation of a British military and nuclear forces and the establishment of the exclusion area in the islands Malvinas were "a serious threat to the security of the Argentine Republic and to the whole region" (Clarín, 12-11-1983. Emphasis added).

<sup>13</sup> Alfonsín reminded her also of an old English proverb: "when there is a will there is a way."

<sup>14</sup> Argentine name of Port Stanley, capital city of the islands.

<sup>15</sup> Clarín, 12-11-1983.

<sup>16</sup> Escudé and Oleaga (1996), 15.

<sup>17</sup> Raúl Alfonsín, interview with María Oliva for her Masters Thesis (Oliva 1991). Dante Caputo, who was the Argentine foreign minister during almost all the Radical government's period, explained the reasons upholding this strategy:

It was necessary to achieve a state of permanent external tension on the Malvinas topic. For us the only method (and by the way, a long term one) to achieve this objective, was to make evident all the time to the United Kingdom of international costs of the occupation. If those costs diminished, if those costs became null, almost null, the intervention or the presence of the British occupation would stay permanently. (Cited in Escudé and Oleaga, 1996, 16).

<sup>18</sup> Little (1989), 61. In an interview, Margaret Thatcher expressed her desire to enter in conversations with Argentina, and that she wanted a good diplomatic and commercial relationship. That is, her government wanted "normal relationships." Yet, at the same time, she would not promised participate in any conversation about sovereignty. In contrast, future Argentine Foreign Minister, Dante Caputo, declared that sovereignty of the islands was not negotiable and that it was the initial point for any negotiation (Thomas, 1991, 34).

<sup>19</sup> Little (1989), 60-61. To facilitate normalization of the relations the Argentines also proposed to "degrade" the topic of sovereignty stating that the interests of the islanders would be respected and guaranteed (Clarín, 1-3-1984).

<sup>20</sup> The British government also reiterated that they considered only the "wishes" of the islanders and that the sovereignty over the islands was "hot negotiable." Clarín, 1 -5-1984. According to Little, the Prime Minister's view seemed say "as if the Argentines refused to recognize that things had changed as consequence of their occupation of the islands." (Little, 1989, 61).

<sup>21</sup> Oliva (1991), 52.

<sup>22</sup> Gustafson (1988), 181. The same day, the Argentine Secretary of Public Information make public a complementary communiqué to the President's declarations:

- a. We are willing to begin conversations with the United Kingdom through our respective representations in the United Nations.
- b. The immediate objective of these conversations is to return the relationships and the terms of the controversy between both countries in the state that they were before the conflict.
- c. These conversations should be framed, within the context of the resolutions 2065-XX, 37/9 and 38/12 of the United General Nations Assembly, as well as the resolution 505/82 of the United Nations Security Council.

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- d. These conversations require as a necessary condition that the elimination of the exclusion area established by the United Kingdom and a guarantee that this country won't continue the fortification of the islands neither the military concentration in the area.
- e. To make effective this guarantee it should be studied the possibility for the presence in the islands of United Nations peacekeeping contingents.
- f. Obviously, when the situation is modifying in this proposed way there would be a *de jure* declaration of cease of hostilities. This act will be follow by the corresponding commercial, economic and diplomatic consequences. (La Prensa, 2-2-1984)

<sup>23</sup> Clarín, 2-3-1984 and Gustafson (1988), 181.

<sup>24</sup> Oliva (1991), 55.

<sup>25</sup> Once again, unlike the British, the Argentine government stressed its desire for an open agenda without the exclusion of the issue of sovereignty. According to the Argentines such exclusion would be a 'hon-realit' position (Oliva, 1991, 55).

<sup>26</sup> Oliva (1991) 55-56.

<sup>27</sup> Makin (1992), 227.

<sup>28</sup> Makin 229.

<sup>29</sup> Oliva (1991) 47.

<sup>30</sup> Little (1989), 61.

<sup>31</sup> Oliva (1991) 57. Mirre also commented in a personal interview that 'the day we arrived to Berne we met with Brunner in the Swiss Foreign Ministry. There, Mr. Brunner told us about the next meeting with the British: "Yes sir, it will be informal, you will be able to speak of everything that you want and there won't be translators. In the room there will be a table in 'U' form, the Swisses and the Brazilians will be at the center, the Argentines will be at one side and the British in front of them, there won't be translators, and there won't be even anybody that doesn't belong to the negotiation, not even the *advis*" (idem)

<sup>32</sup> Other members of the Argentine negotiating team were the Consejero Federico Mirré, the Argentine ambassador in Switzerland, Juan Carlos Katzenstein and the ambassador Carlos Ortiz de Rozas. He had been the last Argentine ambassador to the Great Britain, until the April 1982. With the delegation there was also a trilingual dactilographist.

<sup>33</sup> The British delegation was also formed by the British ambassador to Switzerland, John Powell-Jones and a member of the Foreign Office's Falklands Department, Andrew Palmer. (see Oliva, 1991, 46 and Clarin. Escudé and Oleaga, 18).

<sup>34</sup> Beck (1988), 174; Little (1989), 61; Freedman (1988), 67.

<sup>35</sup> Makin (1992), 229.

<sup>36</sup> Escudé and Oleaga (1996), 18-19.

<sup>37</sup> Interview with the author, Buenos Aires, 7-22-1999.

<sup>38</sup> Beck (1988), 174.

<sup>39</sup> According to Dante Caputo the United Kingdom, breaking the agreement, spoke in English, and it produced an official simultaneous Spanish translation. The translator gave the strictest interpretation of the term, that is to say, 'is not willin g to' (Caputo interview with Oliva, 58)

<sup>40</sup> Escudé and Oleaga (1996), 19.

<sup>41</sup> Clarín 7-21-1984.

<sup>42</sup> Interview with Romero, 44.

<sup>43</sup> Interview with the author, Buenos Aires, 7-22-1999.

<sup>44</sup> According to Beck, 'the Berne episode, albeit intended to be merely talks abo ut talks, highlighted the basic incompatibility of the Argentine and British approaches towards the future of the islands.'" On one side, the British stayed intransigent about respecting the islanders' desires. On the opposite side, Argentina was reluctant to repeat the experience of the period 1966-1982. When, as believed by the Argentines, the pattern was maintaining conversations that seemingly would not achieve the transfer of sovereignty. Beck (1988), 175.

<sup>45</sup> According to García del Solar, 'Due to the fa ilure in Berne there was a great untrust atmosphere for some years'". (Oliva, 1991, 48).

<sup>46</sup> Churchill (1989), 93-4; Willetts (1989), 103.

<sup>47</sup> Churchill (1989), 96 and del Castillo (1989), 84.

<sup>48</sup> Churchill (1989), 95; Willetts (1989), 109.

<sup>49</sup> Escudé and Oleaga (1996).

<sup>50</sup> del Castillo (1989), 87.

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- <sup>51</sup> del Castillo (1989), 84. The Resolution 31/49 of December 1 1976 requested the governments of Argentina and the United Kingdom to accelerate negotiations concerning to the dispute over the sovereignty... and it urges the two parts to abstain from adopting decisions that could introduce unilateral modifications to the situation while the islands are still under the processes recommended by resolutions 1514 (XV), 2065 (XX), and 3160 (XXVIII).
- <sup>52</sup> November 17, 1986. The resolution 40/21 repeated the text of resolution 37/9 of November 1982, which urged both parts to renew negotiations aimed to the resolution of the dispute.
- <sup>53</sup> The quotations that follow come from the minutes unless otherwise specified.
- <sup>54</sup> Letter from the State Secretary of Foreign Affairs Geoffrey Howe to Cyril Towsend (12-19-1986)
- <sup>55</sup> The Assistant Secretary for Interamerican Affairs of the State Department informed Dante Caputo about the American concern for the British unilateral decision (Oliva, 1995, 20).
- <sup>56</sup> Willetts (1989), 114.
- <sup>57</sup> The governments of Argentina and Great Britain had clearly expressed a desire to avoid any type of incidents related to fishing or patrol ships (Willetts, 1989, 114-15). Garcia del Solar asserts that, since the beginning of his administration, Alfonsín intended to normalize relations with Britain (interview with the author, 8-4-1999).
- <sup>58</sup> Interview with the author, Buenos Aries, 8-19-1999.
- <sup>59</sup> The Argentinean delegation was composed for the ambassadors García del Solar, Candiotti, y Ferrari Etcheverry, the ministers Ruiz Cerruti, Grandi, and the counselor Otegui. The American delgation was headed by the Assisstant Secretary of State for Oceans and International Environmental and Scientific Affairs, John Negroponte. Other delegates were Robert Gelbard, Deputy Assisstant Secretary of State for South America and five more officials.
- <sup>60</sup> As Gelbard reminded the Argentines, the Convention and the United Nations were not equivalent. The Antarctic Treaty regime was more neutral and technical. On the other hand, the United Nations, from a political perspective, were not neutral and therefore “the United Kingdom could have difficulties in accepting it, it could seem them partially.”
- <sup>61</sup> According to an American official from the State Department, the British agreement to enter into the talks was a sign of flexibility. They were surprised by that attitude. (Interview with Oliva, 11-20-1992)
- <sup>62</sup> Text of the “umbrella” proposed in the third non -paper stated:
- Anything in the development and content of the present meeting could be interpreted as:
    - a) A renouncement on the part of the Argentine Republic or of the United Kingdom to the rights to sovereignty and territorial and marine jurisdiction on the islands Malvinas and the surrounding maritime spaces.
    - b) A recognition or support of the position of the Republic Argentina or of the United Kingdom about the sovereignty and territorial and marine jurisdiction on the islands Malvinas and the marine spaces.
    - c) Any act or activity that it is taken to end like consequence of that developed and suited in the present meeting and while it is in execution he/she will be able to constitute foundation to affirm, to support or to refuse, the position of the Republic Argentina or of the United Kingdom about the sovereignty and territorial and marine jurisdiction on the islands Malvinas and the surrounding maritime spaces.
- <sup>63</sup> Emphasis added.
- <sup>64</sup> In an effort to convince the Argentines, Gelbard admitted that for the Argentines to make that declaration was difficult. He added, “what the English are making is incredible and stupid ... It contrast with the role that Alfonsín would assume with the declaration of a cease of hostilities.”
- <sup>65</sup> That same afternoon, in Caputo’s house, Gelbard reiterated that his government offered an alternative: “cease of hostilities for a privileged relationship with the United States.”
- <sup>66</sup> Gelbard added that because for Ms. Thatcher ...”the Malvinas were her Chuchilian moment... [also] these maneuvers are a calculated decision.”
- <sup>67</sup> This Argentine non-paper was dated July 12.
- <sup>68</sup> There was a sense of urgency, Caputo said that the elections were coming and that nobody knew what the next government in Argentina could do regarding negotiations.
- <sup>69</sup> Emphasis original.
- <sup>70</sup> Ibid., 7; Inbar 1991, 72.
- <sup>71</sup> Super power intervention “could lower the demands to the other side by making the superpower a guarantor of an agreement and/or to assure superpower support for means to be taken if the agreement is violated.”(Inbar 1991, 72).
- <sup>72</sup> Zartman 1989, 16-17; Stein 1989a, 176, 181; Stein 1989b, 240 and 247.
- <sup>73</sup> Stein 1989a, 204.
- <sup>74</sup> See Escudé 1986.



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<sup>75</sup> See Cisneros 1998.

<sup>76</sup> Bercovitch 1991, 12.

<sup>77</sup> Stein 1989b, 248.

<sup>78</sup> Rothman 1991, 36.

<sup>79</sup> *Ibid.*, 37; Stein 1989b, 257.

<sup>80</sup> See introduction.

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