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SECOND INTERNATIONAL DECADE FOR THE ERADICATION OF COLONIALISM

Caribbean Regional Seminar on the implementation of the Second
International Decade for the Eradication of
Colonialism: next steps in decolonization

St. George's, Grenada
22 to 24 May 2007

Statement by the representative of Argentina

Caribbean Regional Seminar on the implementation of the Second International Decade for the Eradication of the Colonialism, Grenada, (22-24 May 2007)

Statement by the Argentine Delegate

Madam Chair,

First, I would like to thank the Government and People of Grenada for their warm welcome and hospitality and the Special Committee on Decolonisation for the invitation extended to my Government to attend and address this Caribbean Regional Seminar on the situation in the non-self governing territories. I would like to add my country's support and good wishes for the success of this Seminar and for your chairmanship of the Special Committee which will help to continue and advance the decolonisation process.

This process is one of the most relevant successes of the United Nations and it is fitting that we renewed this decade our commitment to continue working towards its completion. In doing so, each pending issue should be approached taking into consideration its individual features. This is the case of the "Question of the Malvinas Islands" which affects the territorial integrity of the Argentine Republic and is deeply felt by its people.

The Argentine position on this matter is enshrined in the Argentine National Constitution which states: "The Argentine Nation ratifies its legitimate and imprescriptible sovereignty over the Malvinas, South Georgias and South Sandwich Islands and the corresponding maritime and insular areas, since they are an integral part of the national territory. The recovery of those territories and the full exercise of sovereignty over them, while respecting the way of life of their inhabitants in accordance with international law, constitutes a permanent objective of the Argentine people which is not to be resigned".

Madam Chair,

Allow me to elaborate on the meaning of this paragraph. The "Question of the Malvinas Islands", which includes the Malvinas Islands, South Georgias and South Sandwich Islands and the surrounding maritime areas, constitutes a special and particular case as it was expressly recognized by the Resolutions of the Special Committee related to this Question. Its specificity derives from the following historical facts:

For most of the 16th century only navigators in the service of Spain travelled the maritime routes along the South American coast, advancing southwards in their search for an inter-oceanic passage. In this process the Malvinas Islands were discovered by members of Magellan's expedition of 1520. From that moment on they were recorded on European maps under a variety of names and remained under effective control of Spanish authorities.

When in 1764 a French sailor established Port Louis on Soledad Island, Spain objected and France recognized Spain's sovereignty rights and ordered the surrender of this settlement to Spain, which renamed it Puerto Soledad. The year after the French settlement, a clandestine British expedition arrived in the archipelago and in 1766 English sailors established a fort at a place they named Port Egmont on an island to the west of Gran Malvina. Despite the secrecy of the British government, Spain became aware of it and insisted on protesting its rights. Not receiving an acceptable response, it

set out to find the illegal settlement and in 1770 expelled the settlers by force. After settling their differences with Spain for this action, Great Britain withdrew from Port Egmont in 1774. From then on, the Spanish authorities in Puerto Soledad continued to exercise their jurisdiction and control over the whole of the archipelago.

During this time Great Britain consented the open, continuous, effective and peaceful exercise of State sovereignty by Spain first and Argentina later. During the thirty-seven years following the British withdrawal, Spain appointed 32 governors.

As for Argentina, the first governors of the United Provinces of the Río de la Plata included the Malvinas in different administrative acts, considering them an integral part of their territory, inherited from Spain by succession of States in accordance with the *uti possidetis juris* of 1810.

In 1820, Naval officer David Jewett took possession of the Malvinas Islands on behalf of the United Provinces of the Río de la Plata at a public ceremony in Puerto Soledad, which was attended by sealers and whalers of different nationalities, most of them from the United States and Great Britain, who happened to disembark on the islands in the course of their work. The news was published in the media in the United Kingdom with no official reaction forthcoming. Nor did Great Britain reveal any claim to the Malvinas Islands during the process of recognition of Argentina's independence which started in 1823 and ended with the signing by both countries of the Commerce, Friendship and Navigation Treaty in 1825.

During the 1820s, Argentine governments continued to take various actions of sovereignty over the Malvinas Islands, including the appointment of governors, legislation on fishing resources and the granting of territorial concessions. As a result, the population of Puerto Soledad grew to a little more than one hundred fixed residents. They worked in stockbreeding, sealing and providing services to the boats which came into port.

On June 10, 1829, a decree of the Argentine government decided to decentralize some administrative powers from Buenos Aires and established a Political and Military Command of the Malvinas Islands, under Governor Luis Vernet.

On January 3, 1833, following an episode which involved the seizure of some whaling ships of a third country which countervailed regulations enforced by Argentine authorities, the United Kingdom seized the islands by force, ousting the Argentine authorities and population residing there, who were never allowed to return. They were replaced during these 174 years of usurpation, by a colonial administration and a population of British origin.

The act of force of 1833 was carried out in a time of peace without prior communication or declaration by a friendly government of the Argentine Republic. It was immediately rejected and protested. On 16 January 1833, when news of the events in the Malvinas Islands reached Buenos Aires, the Argentine government demanded explanations from the British Chargé d'Affaires, who was unaware of the actions carried out by vessels of his country. On 22 January, the Minister of Foreign Affairs presented a protest to the British government official.

I would like to quote part of that first protest of 22 January for the audience to be aware how unexpected such behaviour coming from England was for the Argentine authorities

and specially to point out that the spirit of our country regarding this question has always been and will be the same:

"[...] The Undersigned abstains for the present from more particularly noticing the incompatibility of a proceeding, as violent, as arrogant, in the midst of the most profound peace, and when the existence of close and friendly relations between the two Governments on the one hand, and on the other, the moderation, cordiality, and pureness of intention, of which England had made a boast, had given no reason to expect, that the confidence in which the Argentine Republic reposed, would have been so suddenly abused.

For the reasons above expressed, in compliance with the orders of His Excellency, and in his Name, and by that which we owe to our own dignity, to posterity, to the deposit which The United Provinces have entrusted to the Government of Buenos Aires, in fine, before the whole world which is observing us, the Undersigned protests in the most formal manner, against the pretensions of the Government of Great Britain to the Malvinas Islands, and to the occupation which has been affected of them, as equally against the insult offered to the Flag of the Republic, and to the prejudice which She has suffered, and may suffer, in consequence of the above cited proceedings, and moreover, against the still further proceedings of the English Government in this respect. The Chargé D'Affaires, to whom the Undersigned addresses himself, is requested to lay this Protest before his Government, communicating to the same, the decided resolution of this Republic to sustain Her Rights [...]". End of quote.

The issue remained unsettled and was expressly recognised as such by the British Foreign Secretary in 1849. Argentina continued to pose the issue at different levels of government. In 1884, in view of the lack of any acceptable British response to the protests, Argentina proposed to submit the issue to international arbitration, which was also rejected by the United Kingdom without giving any further explanations.

During these 174 years of existence of the dispute Argentina has never ceased to formally and consistently protest the illegal occupation of these territories by the United Kingdom.

Madam Chair,

This historical background demonstrates why the Malvinas Question is a special and particular colonial case as it takes the form of a sovereignty dispute. Therefore, any comparison to other colonial cases tends to distort its reality. All statements of the Special Committee and the General Assembly have expressly acknowledged this assertion as I will show later on.

Madam Chair,

Within the framework of the decolonisation process, my country has constantly supported the principle of self-determination and its applicability in general to the peoples under colonial rule. The Argentine Republic has demonstrated its firm commitment to this principle as one of the paths that leads to the eradication of colonialism. However, in analysing the "Question of the Malvinas Islands" one must keep in mind the reasons why in this case the principle of territorial integrity prevails and why a correct interpretation of the principle of self-determination makes it inapplicable.

The Declaration on the Granting of Independence to Colonial Countries and Peoples, Resolution 1514 (XV) of the United Nations General Assembly, adopted on 14 December 1960, is the guiding resolution on decolonisation.

Its Preamble proclaimed "the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations", stating that "all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory."

This Resolution was adopted in defence of peoples subjected to or subjugated by a colonial power. In its paragraph 1 it establishes that "The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation".

However, the principle of self-determination enshrined in paragraph 2 of Resolution 1514 is limited by the principle of territorial integrity, which prevails over the former, since paragraph 6 of the abovementioned resolution says: "Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations." And in paragraph 7, it adds that "All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity".

In the "Question of the Malvinas Islands" part of the territory of an independent State, the Argentine Republic, has been separated -against the will of its inhabitants- by virtue of an act of force perpetrated by the United Kingdom in 1833, which was never consented by the Argentine Republic, as an aggrieved State. These considerations become all the more compelling when considering that the existing population has been removed by that act of force, without any possibility of returning, and has been replaced by subjects of the occupying power who naturally, cannot be considered to having been ever submitted to or subjugated by a colonial power as should be the case if one is to follow Resolution 1514. We have here a colonial situation but not a colonised people.

The inappropriate application of the principle of self-determination to a territory only populated by nationals of the colonial power would place the destiny of such territory in hands of the power that was installed there by force, in violation of international law.

The fundamental principle of self-determination must not be used to transform an illegitimate possession into full sovereignty. Its application to the specific case of the Malvinas Islands, would entail the absurdity of taking advantage of Resolution 1514, the objective of which is to end colonialism, to perpetuate a colonial situation to the detriment of the legitimate rights of the Argentine people, and would imply the disruption of the territorial integrity of the Argentine Republic.

The correct interpretation of Resolution 1514 applied to the case of the Malvinas is clear from its wording: colonialism in all its manifestations must be brought to an end, and national unity and territorial integrity must be respected, in the application of this Declaration.

The general principles regulated by Resolution 1514 were applied to the specific case of the "Question of the Malvinas Islands", forty-two years ago, by Resolution 2065 (XX), of 15 December 1965.

This Resolution overwhelmingly approved by the General Assembly reiterates our commitment to end colonization in all its forms, one of which is the "Question of the Malvinas Islands" which takes the form of a dispute between Argentina and the United Kingdom on sovereignty on the islands, and invites both Governments to negotiate a peaceful solution, taking into consideration the objectives of the Charter, Resolution 1514 (XV) and the interests of the inhabitants of the islands.

Madam Chair,

Resolution 2065 (XX) was adopted by 94 favourable votes and only 14 abstentions including that of the United Kingdom. There were no negative votes. In fact the two Parties began to fulfil this mandate, as immediately a process of bilateral negotiations got under way. Between then and until sometime before the 1982 armed conflict, both countries analysed several hypotheses of controversy settlement, including the consideration of several proposals, even if at the end an agreement proved elusive.

This call for negotiations between Argentina and the United Kingdom as the only way to find a peaceful solution to the sovereignty dispute has been reiterated by the General Assembly before and after the 1982 conflict and has been specifically reiterated year after year by the Special Committee on Decolonisation (whose last Resolution is dated June 15, 2006). Moreover, the inapplicability of the principle of self-determination as a means to end the sovereignty dispute was clearly confirmed in 1985, when the United Nations General Assembly rejected two British draft amendments which sought to include a reference to that effect in the draft resolution on the "Question of the Malvinas Islands".

In this sense, I would like to quote crystal clear words from Professor Antonio Cassese, the very well known Italian jurist of the University of Florence, from the very authoritative work coordinated by Jean -Pierre Cot and Alain Pellet in the Charter of the United Nations:

"There are some cases for which the principle of self-determination is inapplicable [...] considering the historic circumstances [...] I refer to the Malvinas case [...] where a colonial power has conquered a long time ago [...] in 1833 [...] a territory very far from the motherland settling down a small colony which little by little has constituted a completely foreign cluster to the population of the closest State to which the islands belong. Under these circumstances resorting to plebiscites or referendums to verify the will of the inhabitants cannot constitute a satisfactory test: the criteria of free choice on the part of the interest population, which normally accompanies the anticolonialist principle and even constitutes its principal instrument of implementation, is incompatible with the former". End of quote.

Madam Chair,

The "Question of the Malvinas Islands" involves a sovereignty dispute over the territory to which there are only two parties: Argentina and the United Kingdom. The solution to

such dispute must be reached through negotiations between both governments as the only way to put an end to this special and particular colonial situation.

After 174 years of the usurpation, 42 of the adoption of Resolution 2065 (XX) which mandated negotiations without delay for a peaceful solution, and 25 of the South Atlantic Conflict, we are still faced with a sovereignty dispute that has to be solved between the Governments of the Argentine Republic and the United Kingdom, taking due account of the relevant resolutions of the United Nations. Unfortunately, the Argentine Government's efforts towards re-establishing negotiations according to the mandate of the General Assembly and the Special Committee, have not yet found a positive reply from the United Kingdom. Nevertheless, on this occasion, my Government reiterates its conviction on the legitimate basis of our position and its disposition to resume negotiations with the United Kingdom over the sovereignty dispute in order to reach a peaceful, just and lasting solution to the "Question of the Malvinas Islands".

This is the spirit of the paragraph I quoted from our National Constitution at the beginning of my statement.

Thank you, Madam Chair.