

INTERNATIONAL COURT OF JUSTICE

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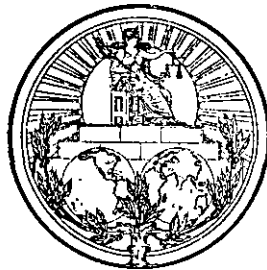
PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

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ANTARCTICA CASES

(UNITED KINGDOM *v.* ARGENTINA;  
UNITED KINGDOM *v.* CHILE)

ORDERS OF MARCH 16th, 1956: REMOVAL FROM THE LIST



COUR INTERNATIONALE DE JUSTICE

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MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

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AFFAIRES RELATIVES A  
L'ANTARCTIQUE

(ROYAUME-UNI c. ARGENTINE ;  
ROYAUME-UNI c. CHILI)

ORDONNANCES DU 16 MARS 1956 : RADIATION DU RÔLE



## 2. APPLICATION INSTITUTING PROCEEDINGS AGAINST THE REPUBLIC OF CHILE

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THE AGENT FOR THE GOVERNMENT OF THE UNITED  
KINGDOM TO THE REGISTRAR OF THE INTERNATIONAL  
COURT OF JUSTICE AT THE HAGUE

FOREIGN OFFICE,  
LONDON, S.W. 1,

May, 1955.

Sir,

I have the honour to refer to Articles 40 (1) of the Statute of the International Court of Justice and Article 32 (2) of the Rules of Court and, by direction of Her Majesty's Principal Secretary of State for Foreign Affairs, to submit an Application instituting proceedings in the name of the United Kingdom of Great Britain and Northern Ireland against the Republic of Chile in the following case <sup>1</sup>.

2. Differences have arisen between the Governments of the United Kingdom and of the Republic of Chile since November 6, 1940, concerning pretensions advanced by the Republic in a Presidential Decree of that date, to the sovereignty of certain Antarctic and sub-Antarctic territories which belong to the United Kingdom under prior, long standing, and well established legal titles dating from, at latest, the period 1775-1843. The particular territories in dispute between the two countries, namely the South Shetland Islands and Graham Land, form part of Falkland Islands Dependencies. These were already existing British possessions which (following on a long series of analogous enactments—see paragraph 13 below) were proclaimed as such and formally placed

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<sup>1</sup> It results from the present Application that the United Kingdom Government accepts the jurisdiction of the Court in respect of the questions hereby submitted to it, and in particular that of the title to the sovereignty over the South Shetlands and Graham Land. The present Application does not constitute a submission to the jurisdiction of the Court in any other respect, or as regards the title to sovereignty over any territory other than the South Shetlands and Graham Land.

under the administration of the Government of the Colony of Falkland Islands by Royal Letters Patent of July 21, 1908. These Letters Patent, the full text of which is set out in Annex I (No. 1) to the present Application, specified as the principal territories included within the Dependencies the territories known as South Georgia, the South Orkneys, the South Shetlands and the Sandwich Islands, and the territory known as Graham Land. Further Letters Patent of March 28, 1917 (Annex I, No. 2), were issued for the purpose of clarifying the extent of the Antarctic mainland together with its coastal archipelagos which were comprised within the designation "territory of Graham Land" used in the earlier Letters Patent. Under the supplemental Letters Patent of 1917, the Dependencies were finally defined to include—

"all islands and territories whatsoever between the 20th degree of West longitude and the 50th degree of West longitude which are situated south of the 50th parallel of South latitude; and all islands and territories whatsoever between the 50th degree West longitude and the 80th degree of West longitude which are situated south of the 58th parallel of South latitude".

The territories of the Dependencies, as so defined in the Letters Patent of 1908 and 1917, which had long been British possessions, have for many years been utilised and administered by the Falkland Islands Government effectively, openly and, until recently, without any objection from the Republic of Chile, which facts are conclusively shown in paragraphs 6 to 25 below<sup>2</sup>.

3. Notwithstanding the United Kingdom's open assumption, and longstanding and peaceful exercise of sovereignty over the territories concerned, and the clear and precise delimitation of the Falkland Islands Dependencies in the above-mentioned Letters Patent, the Government of the Republic of Chile in the above-mentioned Presidential Decree made the following announcement:—

"All lands, islands, islets, reefs of rocks, glaciers (pack-ice) already known, or to be discovered, and their respective territorial waters, in the sector between longitudes 53° and 90° West, constitute the Chilean Antarctic or Chilean Antarctic territory."

The Decree, the full text of which in Spanish and English is set out in Annex I (No. 3), refers in terms only to *Antarctic* territory, but Chile's subsequent encroachments on British territory in the South Shetlands and at the northern extremity of Graham Land

<sup>2</sup> It will be understood that although, for reasons of convenience, the territories to which the present Application relates were constituted part of the Falkland Islands Dependencies for administrative purposes, the British *title* to these territories is a separate and independent one which in no way derives from or depends on the title to the Falkland Islands themselves.

lead the Government of the United Kingdom to infer that the pretensions<sup>1</sup> formulated in the Chilean Presidential Decree also extend to all territories within the specified sector between longitudes 53° and 90° West, including those situated *outside* the Antarctic Circle.

4. The western limit of Chile's pretensions, as proclaimed in the Presidential Decree, is longitude 90° West, whereas the western limit of the Falkland Islands Dependencies is longitude 80° West. The United Kingdom's present Application to the Court does not, therefore, concern Chile's pretensions in the areas between longitudes 80° and 90° West, which lie outside the limits of the Falkland Islands Dependencies. The eastern limit of Chile's pretensions, as proclaimed in the Presidential Decree, is longitude 53° West, whereas the eastern limit of the Falkland Islands Dependencies is 33 degrees further to the east at longitude 20° West. The United Kingdom's present Application does not, therefore, concern the areas of the Falkland Islands Dependencies between longitudes 20° and 53° West, which lie outside the limits of Chile's pretensions. The northern limit of the Falkland Islands Dependencies in the longitudes in question being latitude 58° South, the United Kingdom's present Application relates to the pretensions of Chile to the sovereignty of the islands and lands of the Dependencies which lie between longitudes 53° and 80° West and to the Southwards of latitude 58° South. A map depicting the territories in dispute between the United Kingdom and Chile is attached to the present Application as Annex 2. As this map shows, the principal territories in dispute between the two countries are the South Shetland Islands and Graham Land together with its coastal archipelagos.

5. The main facts relative to the United Kingdom's title to the sovereignty of the Falkland Islands Dependencies and the territories comprised in it, and to the violation of her sovereignty by the Republic of Chile, are set out in paragraphs 6-33 below<sup>3</sup>. The United Kingdom Government considers that the facts stated in the present Application suffice to establish conclusively both the United Kingdom's title to sovereignty and the violation of that sovereignty by the Republic of Chile. The United Kingdom Government reserves the right, however, to amplify in its pleadings its exposition of the relevant facts and to furnish further proof of both these matters.

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<sup>3</sup> The description of the origins of the British titles and of their subsequent consolidation by occupation, user, administration and other means appropriate to the circumstances of the territories, as contained in paragraphs 6, 25 and 28-30 hereof, are substantially identical with the corresponding passages in the separate Application which the United Kingdom Government is making concurrently with the present one, complaining of violations of its sovereignty over the same area on the part of the Republic of Argentina.

**Origins of the British Titles, Historic Discoveries and Acts of Annexation by British Nationals in the Period 1675-1843.**

6. The British title to the territories concerned goes back to a number of dates varying from, at latest, 1775 to 1843. The first discovery of any of the islands or lands of the Falkland Islands Dependencies may well have been that of *South Georgia* in 1675 by the British merchant Anthony de la Roche. This group of islands was rediscovered in 1775 by the great English navigator Captain James Cook, R.N. On January 17 of that year he landed at three places on the island, took possession of it formally in the name of King George III and called it South Georgia in honour of the King.

7. Captain Cook also discovered the *South Sandwich Islands* in 1775. Sailing eastwards from South Georgia, he sighted first a small group of islands which he called the Clerke Rocks after the name of his lieutenant, and then, on January 31, a larger group which he called the Sandwich Land after the First Lord of the British Admiralty of that date.

8. The *South Shetland Islands* were discovered by the English sea captain William Smith on February 18, 1819. Revisiting the islands in October of the same year, he landed, planted the British flag and formally took possession of the group in the name of King George III, calling it New South Britain—(this was afterwards changed to South Shetlands, named after the Shetland Islands, north of Scotland). A few months later, Edward Bransfield, R.N., accompanied by William Smith, proceeded again to the islands and made a survey of the whole group. On January 16, 1820, he landed on the largest island (King George Island) in the centre of the group and took possession formally in the name of King George IV. After a voyage south-westwards between the South Shetlands and Graham Land, to which further reference is made in paragraph 10 below, he returned to the South Shetland Islands. On February 4 he landed on the most easterly island of the group, taking possession formally in the King's name and calling the island Clarence Island in honour of the Duke of Clarence, the brother of the King.

9. The *South Orkney Islands* (named after another Scottish group) were discovered by the British sealing captain, George Powell, on December 6, 1821. On the following day he landed on the largest of the islands, took possession of it formally in the name of King George IV and called it Coronation Island in honour of the King's Coronation.

10. *Graham Land*, the northern extremity of the Antarctic continent, was first discovered on January 30, 1820, by E. Bransfield, R.N., in the course of the voyage of exploration south-westwards from the South Shetlands which was mentioned in paragraph 8

above. He sighted, in hazy weather, the outline of parts of the Antarctic mainland and one or two coastal islands. He named the land Trinity Land in compliment to the Board of Trinity House (the British institution responsible for pilotage and maritime lights), and he named two of the coastal islands, Hope Island and Tower Island, respectively. He also traced the outline of the Antarctic mainland and coastal islands, as he had seen them, on the chart which he drew of the South Shetlands and forwarded to the British Admiralty. Soon afterwards, further sightings of the Antarctic peninsula or its coastal islands were reported by British and American sealers, by the Russian navigator Admiral Bellinghausen, and by the French navigator, Captain D'Urville, but the first sighting was that of E. Bransfield, R.N. In 1829, Captain H. Foster, R.N., in H.M.S. *Chanticleer*, effected a landing on one of the coastal islands, Hoseason Island off West Graham Land, and deposited there a copper cylinder in which was a document taking possession in the name of King George IV. On February 21, 1832, the British sealing captain, John Biscoe, landed on an island of the Palmer Archipelago, believing it to be part of the mainland, and took possession formally in the name of King William IV, calling the territory Graham Land, by which name the peninsula is known to-day, in honour of Sir James Graham, then First Lord of the British Admiralty. On January 6, 1843, Captain J. C. Ross, R.N., commanding H.M.S. *Erebus* and H.M.S. *Terror*, penetrated into a gulf on the eastern side of the peninsula and landed on a coastal island. He named the gulf Erebus and Terror Gulf, and the island James Ross Island, and took possession of the island together with its "contiguous lands" for the British Crown.

II. The first discoveries of South Georgia, the South Sandwich Islands, the South Orkneys, the South Shetlands, and Graham Land were thus all made by British nationals—a fact reflected in the names given to these territories by which they have been known, and have figured in maps and charts, ever since. The same applies to Coats Land, as to which see paragraph 14 below. Some discoveries of particular parts of these principal groups of territory were made by explorers or seamen of other nationalities; but the initial discoveries of all five principal groups were British. There were no Spanish or Chilean discoveries. Furthermore, during this early period in Antarctic history from 1678 to 1843, acts of annexation were performed in the name of the British Crown at places ashore within all the principal groups except the South Sandwich Islands, where, frequently, the local conditions render landing impossible. On the other hand, during this period no acts of annexation were performed in any of the territories concerned on behalf of any other State.

12. The facts stated in paragraphs 6 to 11 above show that from very early dates varying between 1775 and 1843, Great Britain possessed, on the basis of discovery, accompanied by a formal claim in the name of the British Crown, an original root of title to all the territories concerned.

**Display of British Sovereignty in or in regard to the Falkland Islands Dependencies in the Period 1843 to July 21, 1908**

13. In pursuance of a British Act of Parliament (6 Victoria, Chapter 13—British and Foreign State Papers, Volume 31, page 1211), Royal Letters Patent were issued on June 23, 1843, making provision for the government of the "Settlements in the Falkland Islands and their Dependencies" (Annex 1 hereto, No. 3). Supplemental Letters Patent were issued on April 28, 1876, making further provision for the government of the "Settlements in the Falkland Islands and their Dependencies". On February 25, 1892, fresh Letters Patent were accordingly issued by which the Government of the "Settlements in the Falkland Islands and their Dependencies" was designated as the Government of a Crown Colony (British and Foreign State Papers, Volume 84, page 262). Similarly, the Commission issued to the new Governor in November, 1847 (Annex 1 hereto, No. 4), and the ten succeeding Commissions to Governors issued between that date and 1908, were in the form of an appointment covering "the Falkland Islands and their Dependencies". Again, numerous laws passed by the Falkland Islands Government during the period 1843-July 21, 1908, were made for "the Falkland Islands and their Dependencies"<sup>4</sup>. The particular territories comprised in the "Dependencies of the Falkland Islands" were not named in the various Letters Patent, Governor's Commissions, or laws of the Falkland Islands Government. The Colonial Office Year Book, however, began in 1887 to specify South Georgia as one of the Dependencies. There had been comparatively little whaling and similar activity in the Antarctic in the middle of the nineteenth century, but from 1892 onwards whaling, sealing and scientific exploration began to revive. This renewed activity called for a corresponding exercise of State authority in the Antarctic and led very soon to special provision being made by Great Britain for the government of the five principal territories as Dependencies of the Falkland Islands and to their formal constitution as the Falkland Islands Dependencies.

14. The Antarctic revival in the area now in dispute began with the voyage of four Scottish vessels in 1892 to the eastern side of Graham Land and the Weddell Sea for whaling and sealing. In the same year a Norwegian whaling expedition which went to the

<sup>4</sup> As regards the nature of the connexion between the Falkland Islands and the Dependencies, see footnote 2 to paragraph 2 above.



Weddell Sea, called at the South Orkneys, and further Norwegian expeditions in 1893 and 1894 visited the South Shetlands and Graham Land. In 1897 and 1901 respectively, Belgian and Swedish scientific expeditions went to the South Shetlands-Graham Land area, and in 1902 they were followed by a Scottish scientific expedition under Dr. W. S. Bruce in the s.s. *Scotia*. Dr. Bruce established a meteorological station at Laurie Island in the South Orkneys in 1903, the working of which was entrusted to the Argentine meteorological office in the following year. He spent the Antarctic winter of 1903 at Laurie Island and in 1904, after revisiting Laurie Island to land the Argentine meteorologists, he penetrated deep into the Weddell Sea, discovering *Coats Land* (named after a Scottish supporter of the expedition) which is now the eastern frontier of the Falkland Islands Dependencies on the Antarctic continent.

15. In 1904 the Norwegian whaling expert, Captain Larsen, formed a company in Buenos Aires, the *Compania Argentina de Pesca*, for the purpose of whaling in the Antarctic and established a shore whaling station at South Georgia. In 1905, a Chilean company, the South Georgia Exploration Company, financed by British subjects in Chile, was granted a mining and grazing lease of South Georgia by the Governor of the Falkland Islands and proceeded there, only to find Captain Larsen's *Compania Argentina de Pesca* already in occupation of the best site for a base. Meanwhile, the Captain had applied through the British Legation in Buenos Aires to the British Government in London for a whaling licence for South Georgia. The British Government, learning that another licence had previously been granted by the Governor, despatched H.M.S. *Sappho* to South Georgia to investigate the situation on the spot. The result was that a whaling licence was granted by the Governor to the Argentine company, and the Chilean company then abandoned its project. In the same year, 1905, Norwegian whalers visited South Georgia and the South Shetlands, taking with them the first whale-factory ship employed in the Antarctic. In connexion with this enterprise, the Norwegian Government addressed an inquiry to the British Government concerning the sovereignty of territories in the area between longitude 35° and 80° West and latitudes 45° and 65° South, *i.e.*, in the area covering South Georgia, the South Shetlands, the South Orkneys and the northern part of Graham Land. The British Government replied that the South Shetlands were not international but were British possessions as were also South Georgia, the South Orkneys and Graham Land (the South Sandwich Islands lie outside the area of the Norwegian inquiry) and that Norwegian whalers should apply to the Governor of the Falkland Islands for any facilities that they might need.

16. In view of these developments, the Falkland Islands Government promulgated a whaling ordinance in 1906 (Ordinance No. 3 of 1906) by which the taking of whales without licence was made unlawful, and a royalty was made payable in respect of each whale caught under licence from that Government. It was further considered desirable, in view of the increasing importance of the five principal territories as whaling and sealing bases, to make specific provision for their government and to make more specific provision for their government as dependencies of the Falkland Islands. Accordingly, on July 21, 1908, as recited in paragraph 2 above, South Georgia, the South Orkneys, the South Shetlands, the Sandwich Islands and the territory of Graham Land were by Royal Letters Patent formally constituted Dependencies of the Colony of the Falkland Islands and placed under its government. Under these Letters Patent (Annex 1 hereto, No. 1) it was provided that :—

- (a) the Governor of the Colony should be the Governor also of the Dependencies and be invested with the same powers of government and legislation in respect of them as he should from time to time possess in the Colony ;
- (b) the Executive Council of the Colony should act also as the Executive Council of the Dependencies ;
- (c) the Governor should have, and be deemed always to have had, power by and with the advice and consent of the Legislative Council of the Colony, to make laws for the peace, order and good government of the Dependencies ;
- (d) the Governor should have, and be deemed always to have had, power to make grants and dispositions of land within the Dependencies in the name of the Crown.

The definition of the lands comprised in the Falkland Islands Dependencies, as mentioned in paragraph 2 above, was afterwards amended by Letters Patent of March 28, 1917, so as to include explicitly all islands and territories situated between longitudes 20° and 50° West, and south of latitude 50° South ; and all islands and territories situated between longitudes 50° and 80° West, and south of latitude 58° South. The lines of longitude and latitude laid down in these Letters Patent as defining the territories comprised within the Falkland Islands Dependencies are indicated in red on the map exhibited as Annex 2 of this Application <sup>5</sup>.

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<sup>5</sup> Reference is again made to footnote 2 to paragraph 2.

**Display of British Sovereignty in or in Regard to the Dependencies  
in the Period July 21, 1908-September 22, 1938**

17. Great Britain's title to the islands and territories of the Dependencies was thus formally confirmed and defined by the issue of the Letters Patent of 1908 and 1917, but, as has been shown, it did not originate in or depend on these Letters Patent, and had been in existence for many decades previously. This title was now consolidated and maintained by a further effective display and exercise of British sovereignty. In pursuance of the authority contained in the Letters Patent of 1908, a Falkland Islands Ordinance was promulgated in that year under which the Governor in Council was empowered to declare any law passed for the Colony to be applicable also in the Dependencies so far as might be appropriate to their circumstances. Under this principal Ordinance numerous laws were either made or made applicable to the Dependencies by the Governor in Council, covering, *inter alia*, the administration of civil and criminal justice, marriage, testacy and intestacy, &c., and constituting a full and sufficient corpus of laws for those territories, having regard to their particular circumstances.

18. Especially important are the laws made by the Falkland Islands Government for whaling and sealing, which provide convincing proof of the effectiveness of Great Britain's display and exercise of sovereignty in the Dependencies. In 1908 the whaling Ordinance of 1906 referred to in paragraph 16 above was repealed, and replaced by a new Ordinance. This principal whaling Ordinance of 1908, as amended by later Ordinances, together with the Regulations made under it, established a detailed and comprehensive code of whaling law for the Dependencies, as can be seen from the summary of the whaling laws in force in the Dependencies in 1920 which is contained in the report of an official committee presented to the British Parliament in that year (*Command Paper* No. 657). The relevant extract from this report is annexed to this Application (Annex 1 hereto, No. 5). It shows that one of the chief objects of the legislation was the conservation of stocks by regulating the number and tonnage of whaling vessels, the number of whaling licences, the number of whales to be taken by each licence-holder, by protecting whale calves and by other measures. Analogous, if somewhat less elaborate, laws were introduced in 1909 for the regulation of sealing in the Dependencies. These laws made it unlawful to take seals in the Dependencies without a licence, gave authority for the issue of licences, and provided for the creation of a close season and of seal reserves.

19. The above-mentioned whaling and sealing laws were actively and extensively applied in the Dependencies. For whaling-licence purposes, as appears from the summary of laws given in Annex 1, No. 5, the Dependencies were divided into four units—South Georgia, the South Shetlands together with Graham Land, the South Orkneys and South Sandwich Islands.

(1) *In the case of South Georgia*, the Buenos Aires company mentioned in paragraph 15 above, the Compañía Argentina de Pesca, was granted a lease of 500 acres of land at an annual rent of £250 for 21 years from January 1, 1906, and obtained an additional lease of land in 1909. Seven other companies, four Norwegian and three British, were granted whaling leases between 1908 and 1911 on terms similar to those given to the Argentine company. Applications for further leases in South Georgia were refused in order to conserve whale stocks. The whaling companies concerned, in addition to their leases, were required to take out whaling licences for South Georgia which were renewable annually. In 1910 the Argentine company took out, in addition, a sealing licence, and after that year South Georgia was divided into four areas for sealing purposes, three being let out on licence each year and the fourth being left vacant as a seal reserve. An additional place was made into a seal reserve in 1918.

(2) *In the case of the South Shetlands and Graham Land*, a licence to take whales in their territorial waters was granted to a Chilean company in 1907, and a similar licence was granted in 1908 to a Newfoundland company. By the season of 1912-13, there were 12 factory ships and 32 catchers of various companies working in the South Shetlands area, all holding licences from the Falkland Islands Government. In 1912 a Norwegian company, the Hektor Whaling Company, was granted a 21 years' lease of a site on Deception Island for a whaling station but, in the absence of other suitable sites, the remaining companies operated with factory ships moored at Deception Island or, occasionally, at King George Island. From that date, whaling companies operated in the territorial waters of the South Shetlands and Graham Land under licence from the Falkland Islands Government every year without interruption, even during the first world war, until 1930, when developments in pelagic whaling led them to conduct their operations on the high seas. Activity in these two territories has been practically confined to whaling, although one sealing licence was issued in 1913 with respect to Graham Land.

(3) *In the case of the South Orkneys*, the first whaling licence was granted in 1908 to the Newfoundland Steam Whaling Company. Other companies applied for licences, and in the 1914-15 season four Norwegian companies were granted licences. Whaling ceased during the remainder of the first world war, but in 1920 a Norwegian company, the A/S Tönsberg Hvalfangeri, was granted a lease of 500 acres on Signy Island for a shore whaling station. A further whaling lease for the South Orkneys was granted in 1925 but by 1930 pelagic whaling had made it unnecessary for whalers to conduct their operations in territorial waters, and applications for licences ceased. One sealing licence was also issued for the South Orkneys in 1913.

(4) *In the case of the South Sandwich Islands*, where access to the land is extremely difficult, whaling activity has been less frequent. In 1912, six Norwegian companies took out licences from the Falkland Islands Government, and in 1927 the Tönsberg Company applied for and obtained a licence. In addition, a sealing licence was granted in 1910 for the South Sandwich Islands to the Argentine company, the Compañia Argentina de Pesca.

20. British sovereignty has also been displayed and exercised in the Dependencies through magistrates commissioned by the Falkland Islands Government.

(i) As early as 1909, a resident magistrate was sent to *South Georgia*, and there has been a British administration in that group continuously since that date. Customs and police officers were added to the magistrate's staff, and in 1912 a post office was established at Grytviken. By 1925, the Government buildings included offices, a wireless station and a marine laboratory in addition to dwelling houses.

(ii) The *South Shetlands* and *Graham Land*, as mentioned in paragraph 18 above, have been treated as a single unit for the purpose of the whale fishery, a single licence being granted to cover both these territories. The whaling companies normally made their base first at Deception Island in the South Shetlands. If the season was favourable, they moved southwards through the Bransfield Strait and established a forward base in the Palmer Archipelago either in the Melchior Islands or at Port Lockroy. But Port Foster at Deception Island is the most convenient starting point for operations in the Bransfield Strait and off Graham Land, and it was accordingly made by law a "port of entry" for shipping visiting the area. A resident British magistrate was sent to Port Foster every summer season from 1910 to 1930, and this official exercised jurisdiction over all whaling vessels operating in the waters either of the South Shetlands or of Graham

Land and its coastal islands. From 1912 to 1930 a post office was maintained by the magistrate at Port Foster.

(iii) At the *South Orkneys* whaling activity was somewhat less frequent than at South Georgia and the South Shetlands, with the result that the visits of British magistrates were correspondingly less regular. But in 1913 a Customs Officer spent two months in the islands supervising the observance of the whaling laws, while a special Whaling Officer spent about three months there both in 1914 and 1915. Next, the South Georgia magistrate went to Signy Island in 1921 to inspect the site which the Tönsberg Hvalfangeri Company proposed to lease, and in the following year a Whaling Officer spent three months at Signy to ensure that the terms of the lease and the whaling laws were carried out by the company. In the three seasons 1925-26, 1926-27 and 1927-28, a Whaling Officer again spent three months in the South Orkneys. In 1928 the Governor of the Falkland Islands himself visited Signy Island to inspect the area leased to the Tönsberg Hvalfangeri Company.

(iv) The comparatively slight whaling activity at the almost inaccessible *South Sandwich Islands* has called for very little exercise of administrative authority at the islands themselves\*.

21. The cessation of certain facilities and activities after 1930 came about as follows. The introduction between 1925 and 1930 of pelagic whaling with large whale factory ships, enabled the whaling companies to conduct their operations on the high seas without the use of bases ashore or in coastal waters. The result was that after 1930 the companies, in order to avoid payment of the licence fees imposed by the Falkland Islands Government, ceased to take out licences for operating from bases in the various Dependencies—(licences continued to be taken out by the companies with permanent bases in South Georgia). But, although in consequence there was some diminution in the administrative activity of the Falkland Islands Government with regard to the whaling vessels themselves, British State activity in the Dependencies continued in full force and without interruption in the period between 1930 and the outbreak of the second world war. During this period, the Dependencies were extensively visited and surveyed by the vessels of the *Discovery Committee*, an official body responsible to the Secretary of State for the Colonies. As early as 1917, proposals had been made for a thorough investigation

\* Coats Land (see paragraphs 14 and 15 above) is also not discussed here in any further detail, only very recent Argentine action having brought this territory into question (see paragraph 4 above).

into the economic resources of the Dependencies, and a Committee had been set up to report on the preservation of the whaling industry, the possibilities of developing other industries, and the needs of scientific research. Following the presentation of this Committee's report to the United Kingdom Parliament in 1920, a permanent Committee known as the *Discovery Committee* was established in 1923 under the direction of the Secretary of State for the Colonies. The principal function of this Committee, under its terms of reference, was to conduct research into the economic resources of the Antarctic and sub-Antarctic regions, with special reference to the Falkland Islands Dependencies. But its functions also included coastal surveys and general scientific research into the oceanography, weather and ice conditions and flora and fauna of the Antarctic and sub-Antarctic regions. Between 1925 and 1939 the Committee's research ships, *Discovery I* (one commission), *Discovery II* (five commissions) and *William Scoresby* (seven commissions) made very extensive investigations of the Dependencies. Numerous voyages among the principal territories of the Dependencies were made by these ships on each commission, and detailed surveys were made of their coasts and coastal waters. As a result, the Dependencies during this period were covered literally by a network of patrols undertaken by the Discovery Committee. The main focus of the Committee's research was on the natural history of whales, the most important economic resource of the Dependencies, and especially intensive observations were made on the whaling grounds of South Georgia, the South Shetlands and Graham Land. But the Committee also collected very extensive information on the hydrography and biology of the Dependencies, on the navigation and charting of their waters, and on Antarctic ice and ice-navigation. A large and important body of scientific material has been published by the Committee in the 27 volumes of "*Discovery Reports*", and its research on the natural history of whales is admitted by expert opinion to have made a vital contribution towards the effective solving of the international problem of the conservation of whale fisheries.

22. In addition, a large-scale expedition, the *British Graham Land Expedition*, visited the southern parts of the Falkland Islands Dependencies in 1934-37 to make land investigations. Reaching Deception Island late in 1934, the expedition proceeded to Port Lockroy in the Palmer Archipelago in January 1935. Shortly afterwards, a base was established and occupied further

south, and from there various sledge and plane journeys were made which threw much fresh light on the geography of the area. In February, 1936, the expedition moved still further to the south to Marguerite Bay and established a base on the Debenham Islands. From there, important sledge journeys were made across Graham Land to the east coast and far southwards into King George VI Sound. Numerous reconnaissance flights were carried out, and the expedition ascertained conclusively for the first time that Graham Land is attached to the Antarctic mainland.

23. Other examples of the display of British sovereignty in or in regard to the Dependencies during the period July 21, 1908-September 22, 1938, are mentioned in the three next succeeding paragraphs of this Application dealing with the recognition of the British claims by Norway, Argentina and Chile. Still further examples could be cited. The facts given in paragraphs 16-22 above and in paragraph 24 below, however, are by themselves sufficient to establish conclusively a continuous and peaceful display of British sovereignty in and in regard to the territories of the Dependencies during the period July 21, 1908-September 22, 1938, which is that reviewed in the present section.

#### **Recognition of the British Claims by Norway, Argentina and Chile after the Issue of the Letters Patent of July 21, 1908**

24.—(1) The existence of British claims, not only to South Georgia but to other territories in Antarctic and sub-Antarctic regions was known in *Norway* before the formal constitution of the five principal territories as Dependencies of the Falkland Islands by the Letters Patent of 1908. The Norwegian Government, as stated in paragraph 15 above, addressed an enquiry to Great Britain in 1905 concerning the sovereignty of the territories situated between 35° and 80° West, and was informed in reply that South Georgia, the South Orkneys, the South Shetlands and Graham Land were British possessions. When Norway made a further enquiry in 1907, Great Britain reasserted her claim. Norway, neither then nor after the issue of the Letters Patent of 1908, made any protest or reservation against the assertion and exercise of British sovereignty over the Dependencies. At the same time numerous Norwegian whaling companies took out British licences and otherwise complied with the laws of the Falkland Islands Government. These facts establish by implication Norway's recognition of British sovereignty over the Dependencies in or about 1908. This implication is completely confirmed by the Norwegian Proclamation of January 14, 1939, in which the western boundary of Norway's own Antarctic claim was defined by a line



coinciding with the eastern boundary of the Falkland Islands Dependencies. It was further expressly stated in the Proclamation that the area named the Falkland Islands Dependencies had been brought under Great Britain's dominion in 1908.

(2) The existence of British claims to at least some of the Dependencies was also well known in *Argentina* before the issue of the Letters Patent of 1908. It has been mentioned above (paragraph 15) that as early as 1906 an Argentine company, the *Compania Argentina de Pesca*, took out a British lease of land in South Georgia for 21 years. *Indeed, it was the then Director of Armaments of the Argentine Ministry of Marine who, in his capacity as technical adviser to the company, visited the British Legation in Buenos Aires to apply for the lease.* In the same year Great Britain, in order to remove any possible misconception as to the legal basis on which operation of the meteorological station on Laurie Island in the South Orkneys had been transferred to the Argentine Meteorological Office (see paragraph 14 above), addressed a note to the Argentine Government emphasising that the islands were a British possession. This reservation of the British sovereignty over the South Orkneys was repeated to Argentina in January 1907. Shortly afterwards, when Chile proposed to Argentina the negotiation of a treaty dividing between the two countries "the islands and the American Antarctic continents", the Argentine Foreign Minister, in rejecting the proposal, said expressly that "Chile ought to know that England claimed all these lands". In 1908, after the issue of the Letters Patent formally constituting the Falkland Islands Dependencies, the Argentine Foreign Minister asked to be informed of the terms of the British "declaration". Accordingly, the British Minister in Buenos Aires in a note of February 20, 1909, transmitted to the Argentine Foreign Minister a copy of the *Falkland Islands Gazette* containing the text of the Letters Patent. The Argentine Foreign Minister replied in a note of March 18, 1909:—

"I have the pleasure of acknowledging the receipt of your Note dated the 20th of February last with which you were good enough to forward a publication called *Falkland Islands Gazette* containing a Decree by which the 'South Orkneys' are declared a dependency of the 'Falkland Islands'.

While thanking you for this attention, I am happy to renew to you the assurances of my high consideration."

The British Minister, in communicating this reply to the British Foreign Office, commented that he concluded from its terms that

“Argentine Government do not dispute the rights of Great Britain over the South Orkneys”. *A fortiori* it is to be concluded from the terms of her reply that in 1909 Argentina did not dispute the British title to South Georgia, the South Sandwich Islands, the South Shetlands and Graham Land, which territories were also covered by the communication sent to the Argentine Government, but were not mentioned in the Argentine reply<sup>7</sup>. Three years later, negotiations were begun for the cession by Great Britain to Argentina, of the South Orkneys in return for a Legation site in Buenos Aires and on condition of respecting any existing British whaling rights. By 1914, the final text of a treaty of cession had been agreed between the two countries but, on a change of Government in Argentina, the new Government declined on financial grounds to complete the transaction. The terms of this draft treaty provide further evidence of Argentina’s recognition of the British title of the South Orkneys at this time, *notwithstanding the presence of the Argentine meteorological station on Laurie Island*. Again, Argentina made no protests or reservations against the issue of the British Letters Patent of 1917. Nor did she make any protests or reservations against the promulgation of British Laws for the Dependencies, nor against the application of those laws to the Argentine company, the *Compania Argentina de Pesca*, and to other foreign companies. Nor did she make any protests or reservations against the exercise of authority by British magistrates in the several territories of the Falkland Islands Dependencies and, in particular, in the South Orkneys, South Shetlands and *Graham Land*. These facts establish beyond question that at this period Argentina recognised British sovereignty over the Dependencies.

(3) The existence of British claims at least to some of the Dependencies was equally known in *Chile*, even before the issue of the Letters Patent of 1908. Three years earlier, in 1905, a Chilean company, as stated in paragraph 15 above, applied for a British lease of land in South Georgia from the Falkland Islands Government. In 1907, another Chilean company, the *Sociedad Ballenera de Magallanes de Punta Arenas*, took out a British whaling licence for the South Shetlands and *Graham Land*. In the same year, when Chile invited Argentina to negotiate a division of “the islands and American Antarctic continents”, she was expressly warned by Argentina that “England claimed all these lands”. Neither then nor after the issue of the Letters Patent of

<sup>7</sup> It seems clear in fact that Argentine interest at that date hardly extended beyond the South Orkneys, where the Argentine meteorological station was situated.

1908 or of 1917 did Chile make any protest or reservation against the assertion and exercise of British sovereignty over the Dependencies. She maintained a Consular Officer in the Falkland Islands, but at no time did she make any representations either to the Government of Great Britain or to the Falkland Islands Government in regard to the Letters Patent, or to the promulgation of British laws for the Dependencies, or to the application of those laws to the Chilean company, the Sociedad Ballenera de Magallanes, and to other foreign companies. Nor did she make any protests or reservations against the exercise of authority by British magistrates in the several territories of the Falkland Islands Dependencies and, in particular, in the South Shetlands and Graham Land. All these facts establish beyond question that at this period Chile recognised British sovereignty over the Dependencies.

25. The facts recited in the three immediately preceding subparagraphs show conclusively that, during the years at the beginning of the present century, when Great Britain was confirming and consolidating her ancient titles to the Dependencies, Norway, the State principally interested in Antarctic whaling, and Argentina and Chile, made no reservations in regard to Great Britain's display and exercise of State activity in those territories. They further show that these three States in fact recognised Great Britain's sovereignty over the Dependencies. Nor did any other State during this period make any reservations or enter any protests against the British claims.

#### **Announcement of Chile's Pretensions to the South Shetlands and Graham Land on November 6, 1940**

26. The Chilean Government, as related in paragraph 24 (3) above, made no protests or reservations in respect of the issue of the British Letters Patent of 1908, or those of 1917, or in respect of the frequent and public display of State authority by Great Britain in and in regard to the Dependencies. For more than 30 years after the issue of the Letters Patent of 1908, no interest was shown by the Chilean Government in the South Shetlands or Graham Land. The only Chilean interest in those territories during this period was that of the whaling company, the Sociedad Ballenera de Magallanes which, as mentioned in paragraph 24 (3) above, took out British whaling licences for the two territories between 1907 and 1914, and conducted their operations under British laws and regulations. Although one of the principal objects of the important international conferences

for the regulation of whaling held between 1927 and 1939 was the preservation of the whale stocks in the seas surrounding the Dependencies, and especially in the Bransfield Strait between the South Shetlands and Graham Land, Chile neither took any part in those conferences nor acceded to the resulting conventions, which, if she had had sovereignty over these territories she might be expected to have done. Nor did she voice any objection to the fact that the United Kingdom took a leading part in those conferences in its capacity as the State responsible for the regulation of whaling in the Dependencies, and especially in the South Shetlands and Graham Land. It was only after the outbreak of the second world war that the Chilean Government, by a decree of September 7, 1939, established a special commission to examine into Chile's interests in the Antarctic. Thirteen months later, the Chilean Government issued the Presidential Decree of November 6, 1940, the text of which is given in paragraph 3 of the present Application, and by this decree laid claim, *inter alia*, to the British territories of the South Shetlands and Graham Land.

### **Rejection of the Chilean Pretensions by the United Kingdom and Continued Display of British Sovereignty after November 6, 1940**

27. The British Ambassador in Santiago, a few days after the issue of the Presidential Decree of November 6, 1940, drew the attention of the Chilean Government to the fact that Chile's pretensions in the Antarctic encroached upon British territory in the Falkland Islands Dependencies. Subsequently, in a diplomatic Note of February 25, 1941, the United Kingdom Government lodged a formal protest with the Chilean Government against the Presidential Decree, declaring that it could not recognise that Decree as conferring title on the Republic of Chile to any territory within the limits of the Falkland Islands Dependencies.

28. The United Kingdom Government was, meanwhile, occupied in the North and South Atlantic in dealing with attacks by Axis naval forces on Allied and Neutral sea-borne trade; and in March 1941 despatched H.M.S. *Queen of Bermuda* to the South Shetlands to destroy oil tanks and stocks of oil left on Deception Island by the Hektor Whaling Company, one of the companies holding a lease of land on that island from the British Crown. This measure, which was taken to deny the use of the oil tanks and fuel stocks to Axis raiders, constituted a most significant display and exercise of British sovereignty over the South Shetlands. In January 1943, another British warship, H.M.S. *Carnarvon Castle*, was dispatched to the

South Orkneys and South Shetlands, to examine the anchorages in those territories for any signs of use by enemy raiders, and to investigate rumours of purported acts of sovereignty there by the Argentine naval transport, *Primero de Mayero*. H.M.S. *Carnarvon Castle*, after visiting Signy and Laurie Islands in the South Orkneys, went to Deception Island in the South Shetlands and obliterated from the walls of the Hektor Whaling Company's factory the national colours of Argentina which had apparently been painted there recently by the *Primero de Mayero*. A writ was at the same time affixed to the building proclaiming that the company's lease had lapsed and that the building was the property of the British Government. Soon afterwards, the Argentine Government was notified of the visit of H.M.S. *Carnarvon Castle* to Deception Island and was informed that the United Kingdom Government had no intention of allowing the British title to the island to be usurped by Argentina. In February of the same year the *Primero de Mayero* was reported to be departing again for the Falkland Islands Dependencies, and to have two Chilean naval officers on board. The British Ambassador in Santiago on making representations to the Chilean Government in regard to these officers, was informed that they were sailing in the Argentine ship merely as observers and that the Chilean Government had itself protested against Argentine attempts to establish a claim to Deception Island<sup>8</sup>.

29. The United Kingdom Government, in view of the apparent intention of Argentina and Chile to disregard British territorial rights in the South Orkneys, South Shetlands and Graham Land, dispatched H.M.S. *William Scoresby* and s.s. *Fitzroy* to those territories at the end of January, 1944. These ships visited the mainland and coastal islands of Graham Land, Deception Island in the South Shetlands and Signy Island in the South Orkneys. A permanent shore base was established at Deception Island and another at Port Lockroy in the Palmer Archipelago off the west coast of Graham Land, meteorological stations being attached to both bases. Further visits were paid by H.M.S. *William Scoresby* to these two bases in March and, again, in April 1944. Magistrates were sworn in for the South Orkneys, South Shetlands and Graham Land, and a special series of postage stamps was issued for the use of British establish-

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<sup>8</sup> It will be observed that both these States had now started to lay claim to the same British territories (see separate Application respecting Argentina)—a circumstance that can hardly fail to reflect adversely on both the motives and the validity of both sets of claims.

ments in those territories and in South Georgia. Since 1944 the United Kingdom has maintained a number of British bases in the Dependencies, the following being the bases (either constructed or re-established) in the territories to which Chile advances pretensions and has made encroachments:

*South Shetlands—*

Port Foster, Deception Island (1944) <sup>9</sup>.  
Admiralty Bay, King George Island (1947).

*Graham Land and its Archipelagos—*

Port Lockroy, Palmer Archipelago (1944).  
Hope Bay, Trinity Pensinsula (1945).  
Stonington Island, Marguerite Bay (1946).  
Barry Island, Debenham Islands (1946) <sup>10</sup>.  
Argentine Islands (1947) <sup>10</sup>.  
Duse Bay, Trinity Peninsula (1953).

The United Kingdom Government has sent ships to the South Shetlands-Graham Land area every Antarctic summer since 1944; and all the above bases, with the exception of that in the Debenham Islands, have been occupied either continuously or intermittently by British parties. A special organisation, the *Falkland Islands Dependencies Survey*, was set up in 1945 to administer these bases, together with three others in the South Orkneys, and to supervise their work. Under its direction extensive surveys and explorations were carried out in the Dependencies, including ground surveys, over large stretches of the Graham Land peninsula, and meteorological stations were established. Sovereignty was also displayed in other ways as, for example, by the appointment of magistrates, the issue of postage stamps, and the lodging of protests both locally and through the diplomatic channel against encroachments by Chilean and Argentine parties. Thus the United Kingdom Government has at all times taken all such steps as were open to it in the circumstances to assert and maintain its title.

**Chile's Persistence in the Pretensions Advanced in the Presidential Decree of November 6, 1940, and Her subsequent Physical Encroachments on the British Territories of the South Shetlands and Graham Land**

30. In a Note to the United Kingdom Government of September 29, 1944, the Chilean Government, in connexion with the issue

<sup>9</sup> Headquarters of British Magistrates, 1910-30.

<sup>10</sup> Built and occupied by the British Graham Land Expedition, 1935-37.

of British postage stamps for the South Shetlands and Graham Land, drew attention to the fact that these territories were covered by the terms of the Chilean Decree of November 6, 1940. In a further Note of January 23, 1946, the Chilean Government at length replied to the United Kingdom's protest of February 25, 1941, against the claims apparently made by Chile in that Decree to British territories. The Chilean Government contended, *inter alia*, that it had never been officially notified of the text of the British Letters Patent of 1917, and that the regions in question had always been held to be Chilean on geographical, juridical, historical, diplomatic and administrative grounds. Mention was also made of an award given by His Majesty King Edward VII in 1902, in a boundary arbitration between Argentina and Chile, in consequence of which, it was stated, the regions now in question had been considered by Chile as incorporated in her national economy, and she had issued various—unspecified—decrees relating to “occupation, fishing rights, &c.”. In a Note of November 11, 1946, the United Kingdom Government replied to the Chilean assertions, pointing out, *inter alia*, that:—

- (1) The British Letters Patent of 1917 were by their nature open and public documents, and had in fact been published in the *Falkland Islands Gazette*, and in the *British and Foreign State Papers* (Volume III, pages 16-17).
- (2) The United Kingdom's attitude was in no way based solely on the Letters Patent of 1917, but also on the long-standing responsibilities which it had assumed for the administration of the territories, for the equitable control of whaling and sealing, and for the accumulation of scientific and meteorological data. The only recorded Chilean enterprise in the area in question had operated entirely under British licence.
- (3) The alleged “geographical grounds” for a Chilean title were without any basis in international law, and were in contradiction with the decision in the *Island of Palmas* arbitration.
- (4) Having regard to accepted usage and law, British discoveries, British scientific investigations in the area, British administrative activity and the continuity of the British display of the functions of a State, all “juridical”, “historic” and “administrative” factors would seem to point unreservedly to British sovereignty.

- (5) The boundary arbitration of 1902 between Argentina and Chile related solely to the continent of America, and in the course of it nothing was ever said by either party about claims to Antarctic territory.

For the purposes of the present Application, it suffices to add that in the subsequent diplomatic correspondence the United Kingdom and Chile have maintained their respective positions.

31. The Chilean Government, however, has not remained content with challenging the United Kingdom's titles to the South Shetlands and Graham Land in diplomatic correspondence. It has proceeded to establish in these British territories the following Chilean posts :—

- South Shetlands—Discovery Bay, Greenwich Island (1947).  
—Pendulum Cove, Deception Island (1955) <sup>11</sup>.
- Graham Land —Cape Legoupil, Trinity Peninsula (1948).  
—Paradise Harbour (1951).

Protests against these Chilean encroachments on British territory have been lodged by the United Kingdom, both through the diplomatic channel, and locally by officials of the British administration in the Falkland Islands Dependencies. The Chilean Government has nevertheless maintained the above-mentioned posts in the South Shetlands and Graham Land, and has repeatedly stated or manifested its intention to continue to disregard the United Kingdom's prior and well established legal titles to those territories.

32. In the opinion of the United Kingdom Government, these Chilean acts, taken together, and related to the complete absence of any Chilean claim prior to 1940, and to the previous complete Chilean indifference to, and even recognition of, the British claim, are evidence of a quite recent and deliberate and considered policy of infiltration on the part of the Chilean Government directed to creating a semblance or fiction of Chilean sovereignty, and to placing that Government in a position, after a sufficient lapse of time, to argue that any previous British sovereignty was now replaced or overlaid by Chilean sovereignty. In effect, this is a policy of usurpation.

<sup>11</sup> The very recent character of this encroachment will be noted. An attempt in February 1953, to establish a Chilean hut on the actual ground of the existing British base on Deception Island met with forcible resistance (see footnote 13 to paragraph 38 below).



### Limited Relevance in Point of Law of Events after November 6, 1940

33. The acts of the Parties after November 6, 1940, are of limited relevance for two reasons. First, the dispute crystallised in or about November, 1940, when Chile first asserted her claim; and according to well-established principles of law, it is at the date of crystallisation that the rights of the parties are to be adjudged. The subsequent acts of the Chilean Government were clearly taken with a view to improving Chile's legal position—an attempt to create a title, not action in pursuance of an existing one. They are not, therefore to be taken into consideration (*Minquiers and Ecrehos Case*, I.C.J. Reports, 1953, p. 59). Secondly, even if the United Kingdom had not previously acquired a good title, it undoubtedly displayed and exercised its sovereignty in and in regard to the South Shetlands and Graham Land during the period July 21, 1908–November 6, 1940. Therefore, quite independently of its earlier titles, the United Kingdom had already in the period 1908–1940 established as against Chile, an unimpeachable title to the sovereignty of these territories. Accordingly, the Chilean Decree of November 6, 1940, and all Chile's subsequent acts in and in regard to the South Shetlands were and always have been illegal and invalid (*Eastern Greenland Case (1933) Series A/B 53*, page 64). Events subsequent to November 6, 1940, are thus primarily relevant for the purpose of showing that, in face of the Chilean pretensions, the United Kingdom did not abandon, but actively maintained, its titles to the territories in question. This is conclusively demonstrated in paragraphs 26–29 above. The United Kingdom, by its continued display of State activity; by protests or counter-measures which were always prompt, and evidence of the exercise of due vigilance; by attempts to settle the dispute through diplomatic negotiations; by actively seeking to bring the dispute to arbitration or judicial settlement (see paragraph 38 below); and by submitting the present Application to the Court, has energetically prosecuted its case, upheld its sovereignty and maintained its rights and titles.

### The Jurisprudence of International Tribunals Negatives the Chilean Claims and Supports the United Kingdom's Titles

34. The jurisprudence of international tribunals both negatives the Chilean claims and supports the legal titles of the United Kingdom, more especially the awards and judgments in the following well-known cases:—

The Island of Palmas (1928) 2 Reports of International Arbitral Awards, 831 ;

Clipperton Island (1931) 2 Reports of International Arbitral Awards, 1105 ;

Legal Status of Eastern Greenland (1933) Series A/B 53 ;

Minquiers and Ecrehos I.C.J. Reports, 1953, p. 47.

35. These modern cases of high authority, negative completely any Chilean claim based on alleged historic grounds of title deriving from succession to supposed titles acquired by Spain. Apart from the fact that, on the evidence, no original Spanish titles can be established at all<sup>12</sup>, the *Island of Palmas* Case (page 846) and the *Clipperton Island* Case (page 1109) clearly show that any such early Spanish titles could not prevail to-day against long continued British display and exercise of sovereignty. Again, even if it were possible to apply the doctrine of geographical contiguity to islands distant some 400 miles, or to a separate continent distant some 500 miles, from Chilean territory, the *Island of Palmas* Case (pages 854-855, 869 and 870) negatives completely any Chilean claim based on so-called geographical grounds of title, and clearly lays down that they could not prevail against actual display and exercise of sovereignty. As to Chile's plea (see paragraph 30 above) that she was ignorant of the British titles, it is enough to recall the facts set out in paragraph 24 (3) above which establish Chile's acquiescence in and recognition of these titles. Moreover, the British title was a question of fact and law, in no way dependent on Chile's recognition of it. In any event, the *Island of Palmas* Case (page 868) and the *Clipperton Island* Case (page 1110) emphatically state that official notification is not requisite under general international law, while the *Eastern Greenland* Case (page 62) and the *Minquiers and Ecrehos* Case (page 66) clearly show that any reservations which might have been made by Chile would not have altered the character and effect of the British Letters Patent, or of the other British legislative and administrative acts as manifestations of British sovereignty.

36. At the same time, the above-mentioned leading cases show conclusively that the "juridical" and "administrative" grounds referred to by the Chilean Government strongly support the claims of the United Kingdom, and not those of Chile. Thus, the *Island of Palmas* Case (page 870) and the *Clipperton Island* Case (page

<sup>12</sup> The territories concerned were barely discovered in Spain's day, and then not by Spain (see paragraphs 6-11 above). They were never part of any Spanish dominion.

1110) indicate that the British takings of possession described in paragraphs 6-11 of the present Application created initial British titles superior to any of Chile's pretended historical or geographical titles. The *Island of Palmas Case* (pages 838-840 and 876), *Eastern Greenland Case* (pages 52, 54 and 63) and *Minquiers and Ecrehos Case* (at page 65) conclusively show that to-day, in case of dispute, the primary test of sovereignty is the actual display and exercise of the functions of a State in and in regard to the disputed territories during the relevant periods. In the present case, it is evident from the facts set out in the present Application that it is the United Kingdom, not Chile that has displayed and exercised the function of a State in regard to the South Shetlands and Graham Land, and especially during the decisive period of 32 years immediately preceding the critical date, namely, November 6, 1940, as well as earlier.

37. The United Kingdom, in its pleadings, will refer with greater particularity to the numerous passages in the four above-mentioned leading cases and in other authorities which support its titles to sovereignty over the Falkland Islands Dependencies. Although the present Application is necessarily preliminary in character, the special circumstances appear to justify drawing attention to the jurisprudence of the four leading cases, merely as an indication of how solid are the legal bases of the British titles, and how devoid of any foundation the Chilean pretensions.

#### Acceptance of the Court's Jurisdiction in the Case

38. The United Kingdom, having regard to the long period during which British sovereignty has been effectively exercised in and in regard to the South Shetlands and Graham Land, would have been justified in taking strong measures to put an end to Chile's encroachments on these British territories<sup>13</sup>. Firmly believing in the pacific settlement of disputes among nations by judicial procedures and on the basis of law, it has preferred, when negotiations proved fruitless, to seek to have its dispute with the Republic of Chile regarding these territories submitted to the International Court or other judicial or arbitral tribunal. Thus, in Notes of December 17, 1947, the United Kingdom Government invited Chile and Argentina to whom a separate invitation was sent, to challenge the British titles to sovereignty by invoking the jurisdiction of the International Court of Justice, which the United Kingdom would then accept. Chile, in a Note of January 31, 1948, replied to the effect that, since she regarded

<sup>13</sup> Forcible action had in fact to be taken in one case (namely at *Deception Island* in February 1953) when a particularly flagrant attempt was made to erect a Chilean hut actually within the precincts of the existing and occupied British base on that island.

her own pretensions as irrefutable, it would not be logically justifiable for her to approach the Court<sup>14</sup>. The United Kingdom, in a Note of March 11, 1948, reaffirmed its willingness to collaborate with Chile and Argentina in submitting the dispute to the Court. The United Kingdom renewed its offer to go before the Court in Notes of April 3, 1951, and January 16, 1953, without, however, obtaining a favourable response from the Republic of Chile. As the continuance of the dispute concerning the sovereignty of the territories of the Falkland Islands Dependencies necessarily threatens to impair the existing friendly relations between the two countries, the United Kingdom addressed a further Note to Chile on December 21, 1954, inviting her, jointly with the United Kingdom, to refer the dispute to an independent *ad hoc* arbitral tribunal. On the same date, the United Kingdom addressed an identical Note to Argentina. Neither of these countries, however, has thought fit to accept the United Kingdom's proposal<sup>15</sup>.

39. The United Kingdom, in its Notes of December 21 last, stated that in the event of Chile (or equally Argentina) failing to accept its offer of arbitration, it reserved the right to take such steps as might be open to it to obtain an adjudication of its legal rights. One of the steps open to the United Kingdom is to bring the dispute before the Court by a unilateral Application under Article 40 (1) of the Statute and Article 32 (2) of the Rules and, as indicated in paragraph 1 above, it is this procedure which the United Kingdom has elected to adopt.

40. The United Kingdom Government, therefore, declares that it hereby submits to the jurisdiction of the Court for the purposes of the case referred to the Court in the present Application—(for the precise scope of this submission, see footnote 1 to paragraph 1 above). The Chilean Government has not, so far as the United Kingdom Government is aware, yet filed any declaration accepting the Court's jurisdiction either generally under Article 36 (2) of the Statute or specially in the present case. The Chilean Government, which has frequently expressed its adherence to the principle of judicial settlement of international disputes, is, however, legally qualified to

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<sup>14</sup> The corresponding application regarding Argentina (paragraph 40) shows that the latter country, to which a similar offer was made, took the same line. Yet *both* claims (each relating to the South Shetlands and Graham Land) cannot have been good; and the inference is that neither was.

<sup>15</sup> The present Application is of course, formally, quite separate from the corresponding Application respecting Argentina; but the significance of these rival claims to the same area will not be overlooked. It is a clear case of two rival and incompatible attempts to oust and usurp the legitimate sovereignty of the United Kingdom.

submit to the jurisdiction of the Court in this case. Consequently, upon notification of the present Application to the Republic of Chile by the Registrar in accordance with the Rules of Court, the Chilean Government, under the settled jurisprudence of the Court, can take the necessary steps to that end, and thereby cause the Court's jurisdiction in the case to be constituted in respect of Parties.

41. The United Kingdom Government founds the jurisdiction of the Court on the foregoing considerations and on Article 36 (1) of the Court's Statute ; and asks that a copy of the present Application be transmitted to the Government of Chile in accordance with Article 33 of the Rules of the Court and to all Members of the United Nations and other States entitled to appear before the Court, under Article 34 of the said Rules.

42. The attitude of the Chilean Government in this case has compelled the United Kingdom to take the initiative in placing the matter before the Court, and therefore in effect to appear as applicant. The United Kingdom Government nevertheless wishes to make the fullest reservations on the question of the onus of proof of title. It considers that the manifest priority in time of the British possession of the territories dating back to periods varying between 110 and 180 years ago, and the complete absence during virtually the whole of those periods, until a quite recent date, of any activities of a sovereign character other than British, in the territories, is indicative of a self-evident British title, which it is for any country challenging that title to rebut.

### **The Contentions and Claims of the United Kingdom Government in the Case**

43. The Government of the United Kingdom, in submitting this application to the Court, accordingly contends :—

- (1) that by reason of historic British discoveries of certain territories in the Antarctic and sub-Antarctic ; by reason of the long-continued and peaceful display of British sovereignty from the date of those discoveries onwards in, and in regard to, the territories concerned ; by reason of the incorporation of these territories in the dominions of the British Crown ; by virtue of their formal constitution in the Royal Letters Patent of 1908 and 1917 as the British Possession called the Falkland Islands Dependencies : the United Kingdom possesses, and at all material dates has possessed, the sovereignty over the territories of the Falkland Islands Depend-

- encies, and in particular the South Shetlands and Graham Land ;
- (2) that the legal titles of the United Kingdom to the Falkland Islands Dependencies, and in particular to the South Shetlands and Graham Land, are, and at all material dates have been, superior to the claims of any other State, and in particular to those of the Republic of Chile ;
  - (3) that in consequence, the pretensions of the Republic of Chile to the South Shetlands and Graham Land and her encroachments and pretended acts of sovereignty in those territories are, under international law, illegal and invalid.

44. The Government of the United Kingdom, therefore, asks the Court to declare—

- (1) that the United Kingdom, as against the Republic of Chile, possesses, and at all material dates has possessed, valid and subsisting legal titles to the sovereignty of the South Shetlands and Graham Land ;
- (2) that the pretensions of the Republic of Chile to the South Shetlands and Graham Land and her encroachments and pretended acts of sovereignty in or relative to those territories are, under international law, illegal and invalid ;
- (3) that the Republic of Chile is bound to respect the United Kingdom's sovereignty over the South Shetlands and Graham Land, to cease her pretensions to exercise sovereignty in, or relative to those territories and, if called on by the United Kingdom, to withdraw from them all or any Chilean personnel and equipment.

I have the honour to be,

Sir,

Your obedient Servant,

(Signed) G. G. FITZMAURICE,  
Agent for the Government  
of the United Kingdom.

## ANNEXES

*Annex I*

- (1) Letters Patent of July 21, 1908. (*British and Foreign State Papers*, 1907-08, Vol. 101.)

[See pp. 39-40]

- (2) Letters Patent of March 28, 1917. (*British and Foreign State Papers*, 1917-18, Vol. 111.)

[See pp. 40-41]

- (3) Presidential Decree of the Republic of Chile of November 6, 1940. Translation from *La Antártida Chilena* by Oscar Pinochet de la Barra (Santiago, 1944), pp. 23-24.

## DECREE NO. 1747

Santiago, November 6, 1940.

## WHEREAS :

It is the duty of the State to fix, with exactitude, its territorial limits ;

Up to the present the Chilean territorial limits in that part which extends towards the polar region known as the American Antarctic have not been defined ;

The Ministry for Foreign Affairs publicly declared in 1906 that the delimitation of the territory referred to was the subject of preliminary investigations which had not yet been completed ;

The actual state of these investigations now enables a decision to be reached in this respect ;

The special commission appointed by the Ministry for Foreign Affairs' decree No. 1541 of the 7th September, 1939, have established the boundaries of the Chilean Antarctic territory in accordance with the data supplied by geographical, historical, juridical and diplomatic precedents which have been consulted and authenticated up to the present time ;

## I decree :

All lands, islands, islets, reefs, glaciers (pack-ice), &c., already known or to be discovered, and their respective territorial waters, in the sector between longitudes 53° and 90° West of Greenwich, constitute the Chilean Antarctic or Chilean Antarctic territory.

Take note, communicate, publish and insert in the Bulletin of Laws and Decrees of the Government.—AGUIRRE CERDA.—MARCIAL MORA M.