a solemn declaration,[80] which would not require formal accession or ratification by states, should be a priority concern of the international community.

The choice of the competent organ would pose additional problems. Should such a task be undertaken by the ICRC or by the United Nations? We have seen that the fundamental idea of humanity is shared by both human rights and humanitarian law. The subject resides in an area where these two systems meet and mesh. The initiative for action can therefore start from either perspective, but the expertise, the objectivity, and the apolitical character of the ICRC, taken together with the humanitarian law principle of nonderogation, are important arguments in favor of that body.

One day, perhaps, such a declaration could become a basis for Geneva Protocol III, or another international agreement. But even a declaration would strengthen the ICRC, which, without a precise legal mandate and without a clear articulation of international standards, has already been performing the important task of visiting detainees in situations of internal strife.[81] It would be an important addition to the corpus of international human rights.

THEODOR MERON*

CORRESPONDENCE

The *American Journal of International Law* welcomes short communications from its readers. It reserves the right to determine which letters shall be published and to edit any letters printed.

TO THE EDITORS-IN-CHIEF:

March 22, 1983

I am writing you in connection with Mr. John Norton Moore's Editorial Comment, *The Inter-American System Snarls in Falklands War* (76 AJIL 830 (1982)).

Force shall not be used to settle disputes in international relations. No doubt. But oversimplifications are always dangerous.

[80] For the value of declarations, see UN Doc. A/36/245, Annex, at 3 (1981). *See generally* Schachter, *Alf Ross Memorial Lecture: The Crisis of Legitimation in the United Nations*, 50 NORDISK TIDSSKRIFT INT'L RET 3 (1981); and his *The Evolving International Law of Development*, 15 COLUM. J. TRANSNAT'L L. 1, 3–6 (1976).

[81] *E.g.*, in Argentina and Poland. *See* INT'L REV. RED CROSS, No. 230, Sept.–Oct. 1982, at 289, 299, 304. It should be observed that the four Geneva Conventions contain an identical article on the right of "initiative" of the ICRC. *See, e.g.*, Article 10 of Geneva Convention IV, which reads as follows:

> The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of civilian persons and for their relief.

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For example, R. Y. Jennings (in *The Acquisition of Territory in International Law,* at p. 72 (1963)), when considering the case where a state claims legal title to territory actually in the possession of another state, and proceeds to use force in order to *recover* its possession, states:

> If in fact its claim is justified, that is to say *if it does indeed have the legal title to the sovereignty,* then it would seem that this is *not* an employment of force contrary to the provisions of Article 2(4) of the Charter. It cannot be force used against the *territorial integrity* or political independence of another State because the actor State is merely occupying its own territory. The matter is one within its domestic jurisdiction [emphasis added].

The above paragraph serves to illustrate to what extent a violation of the UN Charter might not be as clear-cut as Mr. Moore seems to suggest.

In addition to this, the "use of force" did not start on April 2, 1982. The Argentine Government has argued that the April 2, 1982 reoccupation came "*after*" a British ultimatum threatening the use of force against Argentina unless it evacuated a group of Argentine workmen who had arrived as per the existing agreements at South Georgia Island for the sole purpose of dismantling a whaling station, after having visited the site twice before. In fact, during the second half of March 1982, the British Government sent the H.M.S. *Endurance* (and eventually a second ship) to evict the Argentines. At the least, a nuclear submarine was also sent to the area. The events of April 2 (in which the British suffered no casualties) were, therefore, not action but escalated reaction to a concrete British threat to "use force." The blame should, in view of the foregoing, be distributed in a different manner, and suggesting that resort to force on the part of Argentina was purely unilateral is adding fuel to the fire.

One cannot silence the fact that the Malvinas dispute became a matter of universal concern in the United Nations when in 1946, and in the face of Argentina's opposition based on its territorial claim, the United Kingdom included the islands among the cases under the *decolonization* process. Resolution 1514 (XV) (December 14, 1960) of the UN General Assembly states that "the continued existence of colonialism . . . *militates against the United Nations ideal of universal peace*" and solemnly proclaims "the necessity of bringing to a *speedy and unconditional end colonialism in all its forms and manifestations*" (emphasis added).

Colonialism is not only contrary to the purposes and principles of the UN Charter, but endangers *per se* the world's peace and security. There are UN resolutions which go to the length of stating that colonialism is both an *anachronism* and an *international crime* and thus render legitimate the struggles of peoples, like the Argentine, whose *national unity* and *territorial integrity* have been and are disrupted by alien domination. (See UN General Assembly Resolutions 2105 (XX) (December 20, 1965); 2189 (XXI) (December 13, 1966); 2326 (XXII) (December 16, 1967); 2465 (XXIII) (December 20, 1968); 2548 (XXIV) (December 11, 1969); 2708 (XXV) (December 14, 1970); 2878 (XXVI) (December 20, 1971); 2908 (XXVII) (November 2, 1972); 3163 (XXVIII) (December 14, 1973); 3328 (XXIV) (December 16, 1974); etc.)

A loose reference to "15 active island disputes" and "hundreds of [other] land and sea boundary disputes" (Moore, p. 830) does not overshadow the issue of *colonialism* or the different resolutions enacted by the UN General

Assembly (*i.e.*, 2065 (XX) (December 16, 1965); 3160 (XXVIII) (December 14, 1973); and 31/49 (December 1, 1976)) on this particular case. All of them urged Great Britain and Argentina to find a peaceful solution. Some expressed "grave concern" for the lack of "substantial progress."

The recent General Assembly Resolution 37/9 of November 9, 1982 restated the *incompatibility of the colonial situation on the islands with the UN ideal for peace.* This is the heart of the problem. This is what must be resolved. It furthermore requested (once again) negotiations between both countries on the "sovereign dispute." This time, the United States took a different side, much to the British Conservative Government's regret.

Resolution 502 (April 3, 1982) of the UN Security Council did *not* determine that the Argentine *reoccupation* of the islands was the "act of aggression" (Mr. Moore does). Had it not been a "*colonial dispute*" (evoking Article 7 of the UN Definition of Aggression (GA Res. 3314 of 1974), which excludes the struggle of peoples forcibly deprived of their independence or subject to "*colonial*" or *alien* domination from the meaning of "aggression"), the resolution might have done so under Article 39 of the Charter.

It ordered *both* parties to cease the hostilities. And both appear to have failed to comply. It did determine that there was a "breach of peace," without, curiously enough, stating explicitly which party was responsible for such breach.

One should ask to what extent the spirit, if not the very letter, of the UN Charter is violated when nations holding overseas *colonial* territories taken by force *refuse systematically to negotiate in good faith,* thus violating every single UN General Assembly resolution on the issue, as well as the Charter of the United Nations whose Article 2, paragraph 4 orders its members to settle their international disputes by peaceful means in such a manner that international peace and security, and *justice,* are not endangered (emphasis added).

It might also be worth remembering that Article 51 of the United Nations Charter, which prohibits states from taking justice into their own hands once the Security Council has intervened, was also a victim of the crisis.

Let us now turn to the principle of self-determination in the decolonization process, keeping in mind that, unfortunately, due to the recent events there is, now, one dead soldier (approximately) for each "kelper" (the "kelpers," very recently, have been made full British citizens).

As regards decolonization, Resolution 1514 (XV) of the United Nations General Assembly reaffirmed this principle in its Article 2, but with the specific qualification that it could not be applied to bring about a total or partial disruption of the national unity or territorial integrity of any given country (Article 6). Said caveat cannot be ignored.

Therefore, the principle of "self-determination" is an instrument of decolonization and, evidently, not a vehicle to perpetuate colonial situations that the overwhelming majority of the countries wish and have wished to see terminated.

The principle was aimed at protecting "peoples" (not populations), and this presupposes both geographic separation and ethnic individuality.

The inhabitants of the Malvinas by no yardstick recognized in international law can be characterized as a "people." They can, however, be called a population or a group of inhabitants.

It must be emphasized that Great Britain has had her own experience on this matter, which she obviously tries to dissimulate, but which must be divulged and taken into account. We refer to what happened in another of her colonial enclaves: Gibraltar. The British experience there is, in this connection, very instructive. In 1967, trying to "improve" her position, Great Britain produced a referendum in which the population of Gibraltar exercised its alleged right to "self-determination." The result (as expected) produced 12,138 votes in favor of the permanence of Gibraltar in association with the United Kingdom, and only 44 of all votes cast revealed the wish to be a part of Spain. In the face of the "success" obtained, the British promptly presented the results to the United Nations. There were, notwithstanding, no surprises. The "Committee of 24" (created in 1963 by the General Assembly of the United Nations to implement the decolonization resolution (1514 (XV)), rejected the British claim, stating that the referendum lacked validity because, as in the case of our Malvinas Islands, "imported" population that has replaced a previous one could not give rise to the right of self-determination.

Immediately thereafter, the General Assembly, by Resolution 2353 (XXII) (December 19, 1967), found the referendum contrary to the goals of decolonization and invited the parties to continue negotiations.

The process of decolonization refers not only to the question of people, but also includes cases having to do with territories illegally occupied by colonial powers (irrespective of whether or not there is a local population). The territorial integrity of each country must always be respected. The resolutions of the United Nations General Assembly have expressed, both in the case of Gibraltar (Resolution 2070 (XX) (December 16, 1965)) and in the case of the Malvinas Islands (Resolution 2065 (XX) and Resolution 3160 (XXVIII)) that what must be taken into account is the "interests" of the population, and they have rejected the use of the expression espoused by the British, which referred to the "wishes" of the local population. This, certainly, implies a significant difference.

The interest of the inhabitants of the islands must be taken into account, with all justice and fairness, even though these inhabitants may not amount to a "people," strictly speaking. In doing so, however, one cannot forget the rights of the Argentine people, stripped once and again by force of their legitimate right to the islands.

Some time ago, Martin Luther King said: "For years I have heard the word 'wait.' This wait always meant never. It has been a tranquilizing thalidomide, relieving the emotional stress for a moment only to give birth to an ill-formed infant of frustration." His words seem ironically appropriate in connection with the South Atlantic conflict. (See *What manner of man* by Lerone Bennett, Jr., at p. 141 (2d ed. 1968)).

I would appreciate it if you could publish this letter in full in your Correspondence section. It might help in understanding the Latin American reaction. One-sided approaches, full of bias, do not help to resolve a difficult problem. All matters must be considered. Only then will a lasting peace be gained. Good faith and reason and not the point of a gun shall prevail.

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