

Amaral Jr., from Brazil. This is the first time that the Parties will submit a dispute to an entire Latin-American Court. The seat of the arbitration is Rio de Janeiro, at the headquarters of the Inter-American Juridical Committee. The working language is Spanish, although pleadings might be possible in another language. The written proceedings will consist of Memorials and Counter-Memorials, the time-limits of which have been fixed for September 1, 1992 and June 1, 1993 respectively. Oral proceedings shall commence on October 1, 1993 and the tribunal will endeavour to make its decision no later than March 1, 1994. The Award shall fix by whom, in what manner and the time within which it shall be executed, including any demarcation which the Award may direct, and the Arbitral Tribunal shall not be *functus officio* until it has approved any such demarcation and has notified the Parties that in its opinion the Award has been executed.

Argentina is represented by Ambassadors Susana Ruiz Cerrutti, Federico Mirré and Horacio Basabe. Its counsel are Judge José María Ruda (former President of the International Court of Justice), Professor Daniel Bardonnnet (University of Paris) and Professor Julio González Campos (University of Madrid). The Chilean Agents are Ambassadors Javier Illanes and Eduardo Vio, and Counsel for Chile are Professor Prosper Weil (University of Paris) and Elihu Lauterpacht (C.B.E., Q.C.; Fellow of Trinity College, Cambridge). Chilean Foreign Ministry has also appointed a national commission of jurists, to provide advice for the elaboration of the Chilean case.

Although appearing to be a rather minor dispute, there have occurred various incidents of different kinds in the zone of Laguna del Desierto since the sixties, one of which ended by an exchange of fire which caused the death of a Chilean carabinero in 1965. Since this kind of dispute can lead easily to a threat to the peace and international security, it is to be hoped that the Argentine-Chilean example of peaceful settlement of disputes, as signalled by these recent agreements, will be the trend not only between these Countries but for the settlement of the increasing boundary and territorial disputes all over the world.

1. Assistant Professor, University of Geneva.
2. "Presidential Declaration on Limits", Buenos Aires, 2 August, 1991.
3. British and Foreign State Papers, Vol. 96: 379.
4. United Nations, Report of International Arbitral Awards, Vol. IX: 29.
5. Ibid, Vol. XVI: 109.
6. Award of Her Britannic Majesty's Government, London, H.M.S.O., 1977.

The Maritime Limits of the Falkland Islands¹

Patrick H. Armstrong and Vivian L. Forbes²

Following the recapture of the Falkland Islands after the Argentine invasion of April 1982, Britain announced that she would retain a substantial military garrison on the Falklands for an indefinite period. As if to reinforce her commitment to maintain her presence on the Falklands Islands, Britain has enacted appropriate legislation, including, statutory instruments establishing maritime jurisdictional zones for the Falkland Islands and their dependencies in the South Atlantic Ocean. Argentina persists in her claim, however, and continues to pass legislation appertaining to the islands.

The sovereignty of a coastal state under international law extends beyond its land territory

and internal waters to an adjacent belt of sea defined as the territorial sea. Such sovereignty is commonly held to extend to the air-space over the territorial sea as well as to its bed and substratum. Customary international law also makes provision for coastal states to declare maritime zones for specific purposes. The rights to establish such zones were confirmed in the 1958 *Geneva Conventions on the Law of the Sea* and reconfirmed in the 1982 *Third United Nations Convention on the Law of the Sea* (UNCLOS).

There has been a tendency over recent decades for some states to make claims over ever-increasing areas of the ocean. Some states have claimed territorial seas of 200 nautical miles (nm) width, in contrast to the traditional three nautical miles. UNCLOS, however, attempting to regulate the position, provided for the extension of certain maritime zones, namely the territorial sea and contiguous zone, and for establishment of a new zone to be referred to as the Exclusive Economic Zone (EEZ). The maximum limit of the territorial sea was not to exceed 12 nm, and the combined total of the *territorial sea* and *contiguous zone* was not to exceed 24 nm (UNCLOS Articles 3 and 33). The maximum width of the EEZ is 200 nm (Article 57).

The datum from which these zones are measured is the territorial sea baseline. Article 5 of UNCLOS defines it as “*the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast*”, except where otherwise provided in the Convention. It is the duty of the coastal state to declare the baseline system it employs and such a system must be marked on large-scale charts officially recognised by the coastal state. The coastal state must “give publicity” to such charts or lists of geographical coordinates and deposit a copy of such chart and list with the Secretary-General of the United Nations (Article 16).

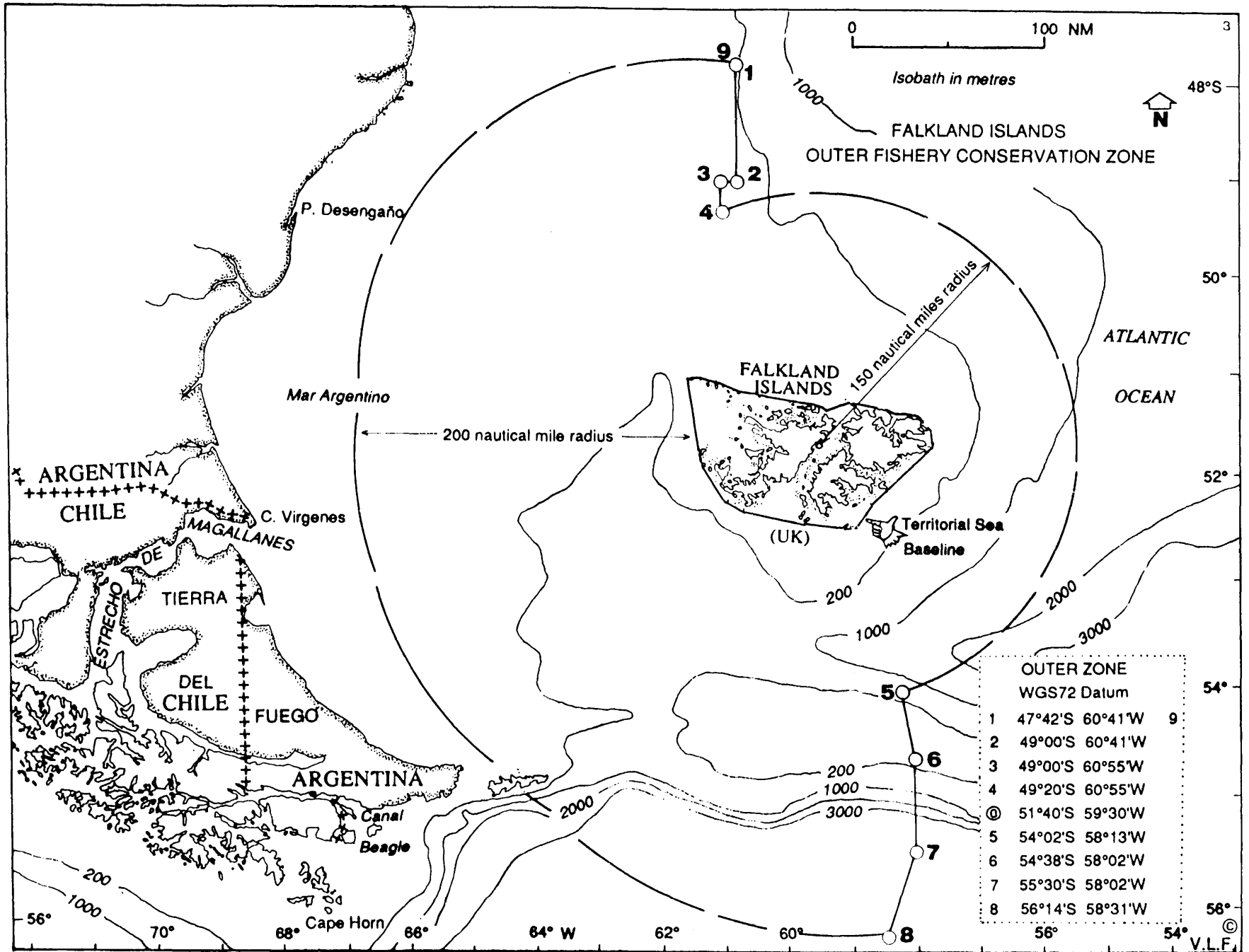
In accordance with international law (as perceived by the British Government) and in pursuance of the *Colonial Boundaries Act* 1895 the British Parliament enacted *The Falkland Islands (Territorial Sea) Order* 1989. It entered into force on 1 January 1990.

Section 3:1 of this (Order No. 1993) of 1989 states that “...*the baseline from which the territorial sea adjacent to the Falkland Islands is measured shall be the low-water line along the coast of all the islands...*” However, in paragraph three of the same section it is noted that the baseline system comprises a series of loxodromes (straight line between two points on a constant azimuth) drawn so as to join successively the turning-points whose geographical coordinates are set out in the Schedule attached to the Order. The values of the coordinates are based on the Falkland Islands Datum (1943).

A list of 22 turning-points is given, each point being located on the low-water line on, or adjacent to, a significant geographical feature (Figure 1).

The baseline system as defined was plotted on a medium-scale map for the purpose of this analysis. The greatest length of any segment, which is between Points 12 and 13 was 41.7 nm and the least was 0.54 nm, which is between points 14 and 15. The baseline system commences at Cape Carysfort (Point 1) on East Falkland and continues clockwise to connect Cape Meredith (Point 9) on West Falkland, New Island (Point 12), Steeple Jason Island and Cape Bougainville (Point 21) on East Falkland. The system encompasses Seal Rocks, Lively Island, Sea Lion Islands and most of the islands in the group collectively known as Jason Islands. A status of *internal waters* for Falkland Sound is created by virtue of the lines connecting Points 8 and 9 and Points 19 and

Figure 1



20. Indeed, the baseline system employed here has been constructed in a manner somewhat similar to an *archipelagic baseline system* as it joins the outermost points of the outermost islands and drying reefs of the archipelago and satisfies the prescribed ratio of land to water encompassed by such a baseline system (Article 47 of UNCLOS). The overall lengths of the system, comprising 22 line segments is calculated to be 360.84 nm giving an average segment length of 16.4 nm.

However, on 14 August 1991 Argentina enacted legislation (Act 23.968). (See *Boletín Oficial de la República Argentina*, No 27.278, 5 December 1991). The Act defined the territorial sea baselines and established marine-area boundary lines for the Republic of Argentina. Anexo 1 (Annex 1) of the Act lists the geographical coordinates of the baseline turning-points employed to define the inner limit of the territorial sea of Argentina. Incorporated in the annex are the geographical coordinates and respective geographical features of the turning points that comprise the baseline system for "Islas Malvinas".

The Argentine version nominates 108 points which are located on the low-water line on the coast of the islands. The points are numbered consecutively from 207 to 315. The proclamation refers to the hydrographic chart numbers in listing the basepoints and the corresponding geographical coordinates of those points. A simplified representation of this baseline system appears on a recent Argentinian hydrographic chart, i.e. the 1992 edition of Argentina's Chart No.50.

Gran Malvina (West Falkland) is encompassed by a series of loxodromes joining Points 207 (Jason West Cay) to 258 inclusive. Soledad (East Falkland) is encircled by similar lines linking Points 259 (Eddystone Rock) to 315 inclusive. Thus, according to the Argentine version, Falkland Sound is not considered as internal waters (Figure 2). This raises the question: Why adopt this rather complex baseline system?

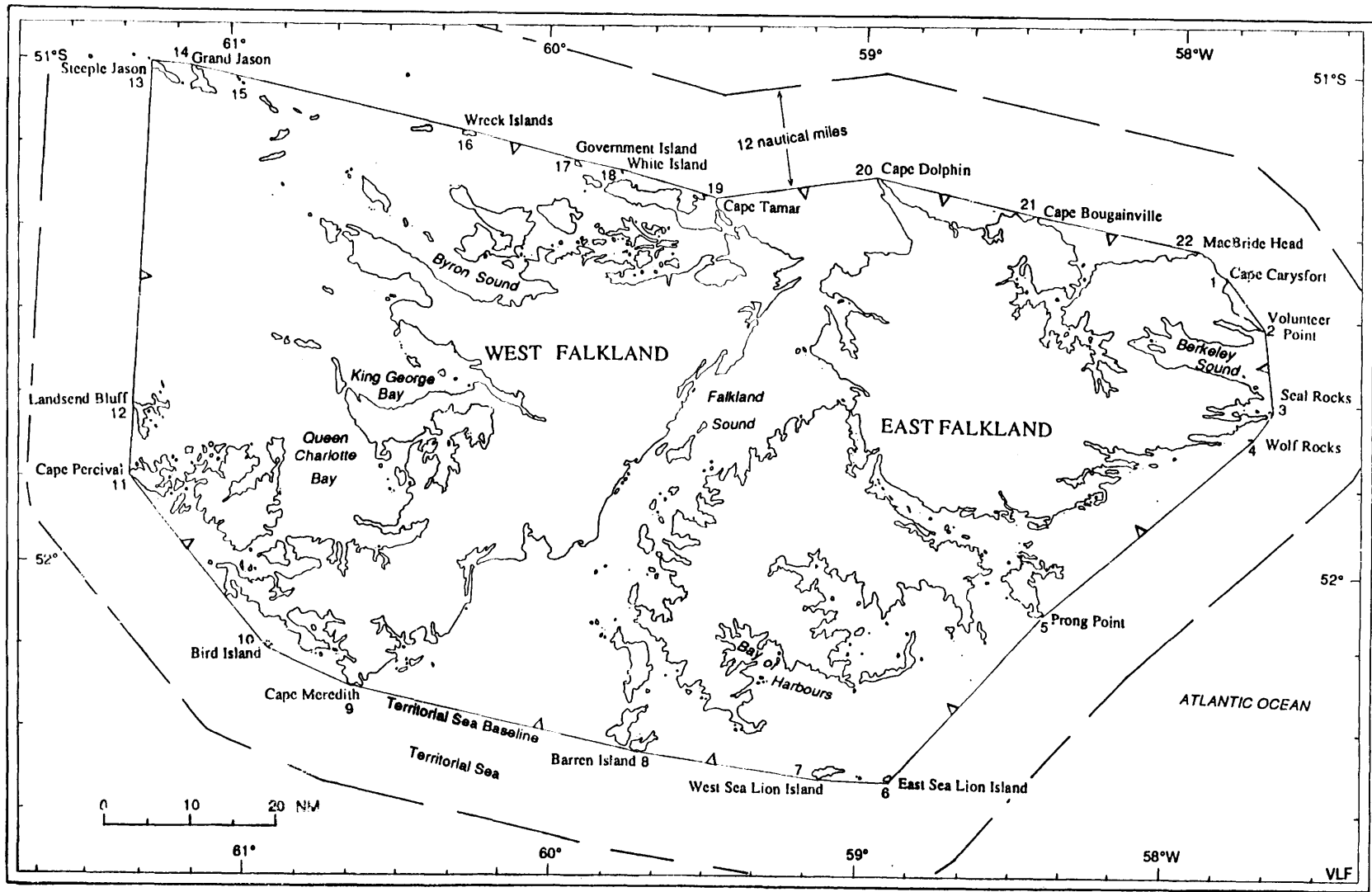
Both states appear to have acted within the letter of the law in defining their respective systems. However, the Argentine claim is more meticulous and conservative in that the segments between the chosen basepoints are relatively short. Indeed, it could be argued that there was no need on the part of Argentina for such detailed accuracy. It is possible that the claim is designed to impress the international community in any future negotiations on the sovereignty issue of the islands.

Collectively, the length of Argentina's declared baseline for the Malvinas totals 546 nm. The greatest length of any segment is 17.55 nm and the least distance is a mere 0.3 nm. The sum of the length of the segments around Gran Malvina is 286.39 nm and for Isla Soledad it is 259.72 nm. These segments comprise normal and straight baselines. Article Two of the Argentine instrument stipulates that the waters within the baseline forms part of the inland waters of the Argentine Republic.

Although both states now adopt a zone of 12-nm for a territorial sea, a comparison of the two maps illustrates a significant difference in delineating the limit of this maritime jurisdictional zone around the islands. In the map depicting the British version, the belt of territorial sea is delineated as *being parallel to the straight baseline system*. On the other hand, *arcs of 12 nm radius* have been drawn from the nominated turning-points located along the baseline system adopted by Argentina. The former version appears to offer an advantage in terms of sovereignty over additional surface area.

It must be stated that in drawing the map of the Argentine version (Figure 2) it was

Figure 2



necessary to modify the coastline of the islands to fit the baseline system as defined by the geographical coordinates listed in the legislation. Although the geographical coordinates were given to the nearest 0.1' of arc value for each of the turning points these figures did not match the geographical features depicted on the 1:250 000 British produced maps of the islands (DOS 653; 2nd Edition, 1977). There was a consistent mismatch of position of the geographical features. There is evidence that the Argentine information was taken from their national maps of scales 1:200 000 produced in 1981.

The Argentine proclamation makes no mention of the geodetic datum employed, whereas the British system is based on the Falkland Islands Datum (geodetic) of 1943. This might perhaps provide one reason for the difference.

Another significant difference is that the British claim does not make use of Jason West, Jason East Cays, and Eddystone Rock as end points of baselines. The reason for this is unclear as it would seem to very slightly reduce the area of which the UK might exercise a claim. All are very small rocky islets, but they are, nevertheless, within the prescribed 12-nm range of the baseline system.

A further important use of baselines is the delimitation of claims to the continental shelf. A proclamation by the British Government on 22 November 1991 (No.1 of 1991) stated that a continental shelf around the Falkland Islands extends beyond the outer limit of the territorial sea of the islands to a distance of 200 nm from the baselines "*or to other such limit as prescribed by the rules of international law*" (*Falkland Islands Gazette*, Vol. XCX, No.33: 23-25). It further noted that all rights are exercisable over the seabed and substratum of the continental shelf including the natural resources therein. A very rough sketch-map produced with the proclamation shows an area extending less than the full 200 nm on the western side of the Falkland Islands, indicating, perhaps, some future scope for negotiation and compromise with Argentina.

Despite the legacy of strained relations between the governments of the United Kingdom and Argentina following the 1982 War, and the continuance of Argentina's claim (of which the designation of baselines is but one manifestation) there are signs that in maritime affairs there have been improvements.

The establishment of joint development zones as a mechanism for dealing with disputed maritime boundaries has been accelerating recently. Examples include the Bahrain and Saudi Arabia Joint Development Zone in the Persian Gulf created by agreement in 1958, the *Timor Gap Treaty* which established a Zone of Cooperation in the Timor Sea between Australia and Indonesia in 1990 and the Joint Development Area now in operation in the Gulf of Thailand between Malaysia and Thailand which was ratified in February 1991.

On 28 November 1990 following a series of meetings a Joint Statement on the Conservation of Fisheries was issued. Under it, it was agreed that the two governments would cooperate over the conservation of fish stocks in the South Atlantic Ocean between Latitude 45°S. and 60°S. Fishing would be controlled in certain waters around Falklands Islands. In a Proclamation (No.2 of 1990) issued on 20 December at Stanley, Falklands Islands, an "Outer Fishery Conservation Zone" or "outer zone" was established for the Falkland Islands giving legal status to that agreement in the Falklands. The zone's geographical limits were defined in the schedule of the Proclamation (Figure 3). Provision was incorporated for variation of the limits of the zone. The

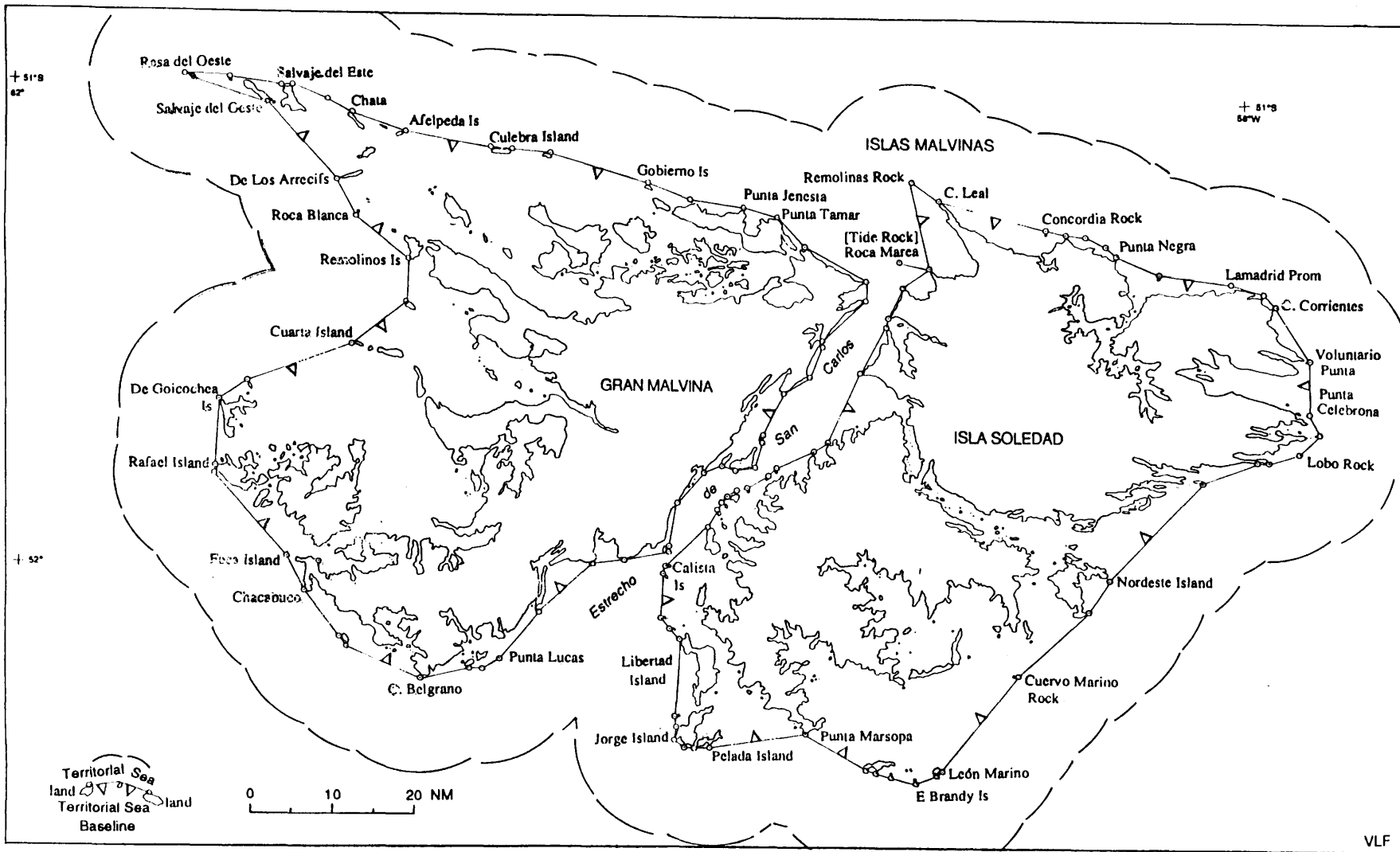


Figure 3

Proclamation became effective six days later.

Other agreements such as a Joint Statement issued in Madrid following meetings in February 1990 dealt with:

- establishment of a system of reciprocal information and consultation for movements of their armed forces in areas of the southwest Atlantic;
- establishment of direct communication link between the Falkland Islands and the mainland in order to reduce the possibility of incidents;
- formulating a set of guidelines of reciprocal behaviour for aid and naval units of their armed forces when operating in proximity;
- agreeing on a mechanism for emergencies designed for facilitating air and sea search and rescue operations in the Southwest Atlantic;
- establishment of a system of exchange of information on the safety and control of air and maritime navigation;
- continuance of bilateral consideration of the above issues.

Despite the apparent irreconcilability of the positions of United Kingdom and Argentina on the sovereignty of the Islands there are, in the agreement for the conservation of fisheries, and other maritime matters, ground for cautious optimism. The substantial increase in the utilisation of the fishery resources of the waters surrounding the Falklands, particularly squid, has increased the need for careful management. Confidence building measures such as those mentioned in the Joint Statement and the establishment of a fisheries conservation zone can only be positive steps toward the long-term benefits to not only the inhabitants of the islands of the southwest Atlantic Ocean but also to the people on the adjacent mainland.

1. We thank Lt. Commander C.M. Carleton, Territorial Waters officer, UK for providing copies of some of the statutory instruments on which this article is based, and Gerardo E. Bompadre, Secretary of the Argentine Embassy, Canberra for analogous material from Argentina.
2. Dr Patrick H. Armstrong is a Senior Lecturer in Geography, specialising in the geography and biogeography of remote islands. Mr Vivian L. Forbes, a former merchant mariner, is a professional cartographer and Map Curator. His research interests lie in the determination of maritime boundaries. Vivian Forbes and Francis Auburn, *The Timor Gap Zone of Cooperation*, Boundary Briefing No.9, International Boundaries research Unit, Durham, UK, 1991.