on April 1, 1982. By this time there had already been talk of the pending invasion on the Falklands by Argentina.(17) At that meeting, the President of the Council issued appeals to both the Tory government of Great Britain and to the military regime in Argentina, in an attempt to prevent a conflict.

The very next day, Argentine forces landed on the islands. On the request of the representative of Great Britain, the Security Council met immediately on April 2 to discuss a draft resolution.(18) With minor changes, the draft proposed by Great Britain was then adopted the next day, April 3.(19) This gave the Thatcher government a broad and solid base of support.

The Security Council's resolution called for an immediate withdrawal of all Argentine forces. It also demanded that the Argentine and British governments get together to discuss non-military solutions to their dispute. Invoking Article 51 of the UN Charter, which grants nations the right of individual and collective self-defense, Britain began its build-up of forces to repell the foreign forces from the Falklands in the event that Argentina would not abide by the Security Council resolution. The British government also proceeded to use economic and diplomatic means to put pressure on Argentina to give back the South Atlantic islands. (20)

At this point the UN became quite involved in the negotiation process. Meanwhile, the US government also stepped in to try to avert an armed conflict, using then Secretary of State Alexander Haig as a mediator between the two sides. The US proposal called for: a withdrawal of all troups, an immediate

cease-fire, ending of all sanctions, interim authority of Argentina, continuation of local administration which included Argentina's participation, procedures to encourage development in the islands, and a plan for a negotiated settlement taking into account the sentiments of the inhabitants of the Falkland Islands.(21)

In short order, on May 1, 1982, the Reagan administration announced its own punitive sanctions against Argentina.(22) These included: ending all military exports and security arrangements for Argentina; taking away Argentina's eligibility to purchase military hardware; suspension of new guarantees and credits in the Export-Import Bank; and suspension of guarantees in the Commodity Credit Corporation. Secretary Haig then announced that the US would grant British requests for military hardware to support British forces, but the US would not send any military personnel to join in the effort to regain the Falklands.

On the verge of the British invasion, Argentina requested the convocation of the Organ of Consultation of the OAS, on April 19, according to Articles 6 and 13 of the Rio Treaty.(23) Two days later, on the 21st of April, the Permanent Council of the OAS granted the request and ordered the Organ of Consultation to meet on April 26, 1982. At this point the seeds of conflict over jurisdiction were planted. Yet no conflict ever materialized.

Meeting of the OAS to resolve a dispute which is already under consideration by the UN is not in and of itself inconsistant with the jurisdiction of the UN Security Council. To be sure, the move was however unusual. Yet, both the OAS and the UN have the goal of international peace and security. Thus

the efforts of the two could be combined to arrive at a mutually reinforcing outcome.

Some of the matters dealt with by the Meeting of Consultation of the OAS were not directly relevant to the issue of competence. Twice the matter came before the Twentieth Meeting of Consultation. The first time, on April 26, 27, and 28, the meeting urged Britain to immediately cease military operations and to refrain from any act which might jeopardize the peace and security of the region. The meeting's resolution also called for both governments to resume with negotiations leading towards a peaceful settlement of the conflict.(24) Although these issues did not directly relate to jurisdiction, discussion of the conflict did reveal that a number of American nations might wish to have the ability to take matters directly to the UN. These views can be examined in basically four groups: those who advocate the exclusive competence of the UN to deal with the South Atlantic conflict; those who would argue for concurrent jurisdiction; those who whould prefer to have a choice; and those who accept OAS jurisdiction without qualification.

### a) Differing views on competence

#### i. Exclusive competence of the UN

Citing Resolution 502, Columbia's Foreign Minister, Mr. Carlos Lemos Simmonds, took the extreme position of insisting that the Security Council was most important. He argued that a dispute would be a disturbance of peace and thus should be a concern of the UN without regard to what could be done on a more

local level. Addressing the Falklands specifically, he claimed that Argentina's right to affirm "... her full sovereignty over the Malvinas Islands is controverted by the allegations that for more than a century..." Argentina has been using diplomatic means to seek full recognition.(25) He then noted that after 150 years of British rule, "... we wonder why (Argentina) did not request the application of the Rio Treaty immediately after the treaty was adopted in 1947 to repell the act of aggression..." of the British.(26) He concluded that Argentina was in a strange position to request OAS help, having just used force to solve "... the so-far diplomatically unresolved problem of sovereignty over the Malvinas."(27)

The central message of Sr. Lemos' argument is that the Rio Treaty was inapplicable. The OAS should not interfere when the UN Security Council has already begun to consider the matter. Yet this view appears to defy the purposes of the Rio Treaty itself and the very purpose of having a regional organization for the Americas.

Mr. Carlos Simmonds felt that the Rio Treaty was ineffective, since the OAS had no power to use any of the remedies listed in Article 8. In his view, only when the Organ of Consultation takes measures for self defense or for the maintenance of peace and security is the Rio Treaty relevant.(28) Yet this view cannot be supported looking to the OAS provisions or to the practical application of those provisions.

There are two reasons the argument for exclusive jurisdiction of the UN in the Falklands War is weak. First, the

Rio Treaty contains no autonomous system of collective security in a technical sense. Yet there have been instances where the Organ of Consultation has met without adopting a single measure from Article 8. Second, the Treaty could prove invaluable politically, allowing one side to retreat from its demands without the appearance of giving in to the other side. In this particular instance, the Military government of Argentina could have accepted a peace offer and retreated from its demands. Possible peace initiatives at the time included the US proposal brought forward by Secretary of State Alexander Haig, and the UN proposal by the Secretary General, among others. If this had been the case, the Rio Treaty would have been a valuable tool.

ii. Concurrent Jurisdiction under UN Resolution 502

Trinidad and Tobago and Chile promoted concurrent jurisdiction of the UN and the OAS. (29) Yet their position was restricted to the framework provided in UN Resolution 502 of the Security Council. (28) The delegate of Trinidad and Tobago stated openly that the UN's provisions should be "... preeminent in (the) establishment and maintenance of the rule in international law." (31)

As Professor Gorden Connell-Smith has noted, Mexico and Colombia both felt that the proper forum was the UN. Both of these nations argued that the forum should be based on the Framework of Resolution 502. (32)

The US view was not directly revealed during the Falklands War. In principle, it appears that the US supported a plan under

Resolution 502 as well. Yet the US did not explicitly state its view. Indeed, the US seemed to avoid the issue of competence of forum. When the vote on the OAS resolution took place, the US abstained from voting. There was no indication, however, that the abstention came as a result over a jurisdictional dispute. Rather, after the OAS resolution had passed, the US delegate claimed that the reason for the US abstention was "... Secretary Haig's mission is still in a delicate stage and we want (his efforts) to be continued." (33)

iii. Freedom of Choice Advocates

Ecuador, Mexico, and interestingly Nicaragua argued for the option of choice.(34) Under this scheme, the OAS would have jurisdiction over the cases. Yet a nation could opt to bring their concern directly to the Security Council. Nations might prefer the more worldly tribunal for political reasons.

The delegate from Nicaragua explained his nations view of the politics of the UN versus the OAS. On March 25 of 1982, the Ortega government brought a complaint to the Security Council alleging US interference. The delegate expressed at that time members of both the UN and the OAS had fundamentally two options. One the one hand they could take their case to a diversified UN. On the other, the could take it to the regional authority, asserting that the US may play a larger role in the administration of the OAS.(35)

This point of view, preferring an option for states which are members of both organizations, is not necessarily in conflict with the preference for the "concurrent juridsiction" preference

under Resolution 502, as discussed above. Indeed the delegation from Mexico stated that the OAS was in this instance clearly subordinant to the UN.(36) That same delegate affirmed that no OAS member state should be denied the priviledge of taking a case directly to the Security Council.(37) In fact in this instance, Mexico strongly suggested that the OAS was an inapproriate forum for the dispute between Britain and Argentina. Instead it insisted the UN Security Council should be the preffered forum. (38)

iv. Unqualified acceptance of OAS jurisdiction by implication.

To the remaining member states it did not seem to matter that the UN was already addressing the situation in the South Atlantic. By the time the Meeting of Consultation reconvened to discuss the conflict, the US Secretary of State had already given up his pursuit of a settlement. Indeed, by that date, May 27, 1982, the US had already officially joined sides with the United Kingdom. Two days later, the OAS adopted Resolution II which allowed regional action directly contrary to the UN mandate from the Security Council.

b) An Overview of OAS Action and the Jurisdictional Issue In the Flaklands War

John Norton Moore states that under certain conditions, joint jurisdiction can immerge when the UN does not expressly

rule to the contrary.(39) The UN would seem to have a number of sources from which it could derive the authority to limit the competence of a regional agency such as the OAS. These sources include Articles 24, 25, 39, 51, 52, and 53 of the UN Charter.

The Falklands War, however, is unique when compared to other disputes previously addressed to the OAS Meeting of Consultation. In this instance the OAS asserted jurisdiction to deal with the case eventhough the UN Security Council had already begun to address the conflict. It is true that in the past there have been instances where the UN and the OAS exercised joint jurisdiction. Yet these cases are distinct on one of two grounds: either the Security Council of the UN requested that the case be sent to the regional agency (40); or the matter was dealt with first by the OAS only to be dealt with later by the UN. (41) Thus the Falklands War was a unique instance in which the OAS assumed concurrent jurisdiction after the UN had already begun to investigate the dispute.

Beside the timing of joint jurisdiction, there are three other factors making the OAS rulings regarding the Falklands War important. These factors are the adoption of UN Resolution 502, the involvement of a non-OAS member nation, and the usefulness of the regional agency.

First, prior to the convocation of the Meeting of Consultation at the OAS, the UN Security Council had already adopted Resolution 502. This resolution called for an immediate cease-fire, the withdrawal by Argentina of their armed forces, and for swift negotiations between Argentina and Britain to settle the dispute diplomatically instead of militarily.

Second, the usefulness and effectiveness of the OAS was compromised since the conflict involved a non-member state. This was further complicated since Britain is a major world power. Without the prior consent of the United Kingdom in this instance, it would seem reasonable that the logical forum should be the "more international" forum, the UN. Indeed it would be strange to rule otherwise, given that the OAS is subordinant to the UN according to the provisions of the UN Charter.

Third, in conflicts where one nation is not "western" and the other party is an American state. Although in the Falklands War Britain was certainly a "western" state, there is another example of an American versus non-western conflict--the Missile Crisis in Cuba. The OAS was able to reinforce and give legitimacy to the US reaction against Cuba and the Soviet Union. Without the contribution of the OAS, the US would have had to obtain legitimacy for their actions under Article 51.

The Rio Treaty provides for Pan-American military assistance in the event that an American state is attacked. The main issue of jurisdiction at the Meeting of Consultation thus dealt with, on jurisdictional grounds, the Treaty applied to areas in the South Atlantic, and whether this area was included in the region as described in Article 4. The United States, Trinidad and Tobago, Colombia and Chile all argued that the Rio Treaty did not apply in this instance. Mexico joined these four as well but did not participate in the debate with as much vigor as the others. The reasons given for the inapplicability of the Rio Treaty varied among these five members and in the end, the

Meeting of Consultation finally did condemn the British aggression and called it "unjustified and disproportionate".(40)

It is doubtful whether Argentina's act could be justified under International Law. UN Resolution 502 appears to state that the South American country's actions were in violation of international standards. Yet had the British government exceeded their limits as stated in that resolution, the issue of OAS competence to address the matter would not have been nearly as debateable.

In an editorial opinion, Professor John Norton Moore has written that the OAS could have done several things better in this conflict. It could have sought to support the US peace initiative. Alternatively, it could have suggested that both parties accept international arbitration. Still another option available was "... jurisdiction of a Special Chamber of the International Court of Justice as Canada and the United States have done in the Gulf of Maine dispute."(43) At minimum, Professor Moore suggests that the OAS could have issued a statement supporting the Security Council resolution.(44)

There are several important implications from Professor Moore's sugestions. It seems in his view the most compelling act for the OAS would have been to support 100% the resolution endorsed by the UN. Indeed this seems to be the major reason Moore does not question the competence of the OAS to hear the matter. If the OAS had backed the US plan or some other alternative, would that have justified OAS competence? Politically, it may be that this would be a sufficient justification. Yet it does not make a great deal of sense from a

legal vantage. Justification for parallel activity by the OAS endorsing the unilateral efforts of the US government or any other initiative would be difficult since a unilateral proposal could be accused of serving the best interests of the proposing party. Indeed, all UN member states are required to accept the decisions of the UN Security Council under Article 25 of the UN Charter. Thus, because the Security Council had already taken up the issue, Professor Moore's stand seems founded more on politics than legality. While this may be the case, given the unique qualities of the Falklands War, Professor Moore's analysis seems appropriate.

## 2. The Situation in Nicaragua

Beginning March 25, 1982, the Managua government began to bring complaints regarding aggressive acts of the Reagan administration against the Sandinista government and their revolution. According to the popular press, the US was sponsoring "contras" or counterrevolutionaries based in Honduras. Reports claimed the CIA was providing funds, arms and training to the rebels, in order to destabilize and possibly topple the government of Daniel Ortega.(45)

The Nicaraguan government brought a claim to the Security Council of the UN on March 23, 1983 alleging an increase in the acts of aggression taken by the US against their country. Their complaint also alleged that this US involvement threatened international peace.(46)

Interestingly the complaint alleged that the object of the

aggression was the "Sandinista people's revolution" and not "Nicaragua." The delegate from Great Britian used this to assert that if the aggression were truly against the Sandinista people's revolution and not Nicaragua, then the UN should not be discussing the matter, since that would be consideration of the "internal affairs of Nicaragua."(47) From March 23 to the 29th other arguments were also brought forward questioning the UN's authority to hear the matter. Then the President of the Council at that time (who happened to be the delegate from the United Kingdom), Sir John Thompson suggested that the UN should address the matter because the issue seems to have "wider dimensions" than just Central America.(48) The statement appears to say that the matter should not be left in the hands of the Central American nations to resolve by themselves, but rather should be examined by the world community.

The very next day, the Honduran representative brought the matter to the OAS.(49) He requested a meeting of the Permanent Council of the OAS to discuss what the Foreign Minister of Honduras had said was the need for "... a process of overall and regional negotiations between Honduras, Costa Rica, El Salvador, Guatemala and Nicaragua to reach responsible, serious and lasting agreements to restore the peace and security.." in the region.(50) On April 5, 1983, the OAS Permanent Council convened to discuss the Honduran draft for negotiations.

At the meeting of the Permanent Council, the Nicaraguan representative indicated that the matter was in the jurisdiction of the UN, because Nicaragua had already submitted a complaint to

the Security Council. He also restated Nicaragua's position regarding free choice of forum. Of note is that he did not rule out the option of dialog within the OAS. However, he left no doubt that the UN was considering the matter.(51) Later he suggested that the OAS would not be capable of solving the crisis. He maintained that the Honduran proposal was the result of US influence, an attempt to put Nicaragua at a disadvantage negotiating with four Central American states dominated by the northern giant.(52)

The Nicaraguan delegate made other arguments. He claimed that Nicaragua's conflict was mainly with the USA. He claimed that Nicaragua and Guatemala had good relations already. Further, bilateral dialog had already been established to soothe relations with Costa Rica. El Salvador's view, he contended, was the result of US influence. Even Nicaragua's conflict with Honduras, he expressed, was the result of US pressure, forcing Honduras to allow the US to use Honduran soil as a base for CIA backed "contras."

As a result of the Nicaraguan representative's comments, the OAS Permanent Council did not take any action. Instead, it decided to meet on April 11 to discuss the jurisdictional problem again. On that day, a new alternative entered the peace process in the Americas--the "Contadora Group." The OAS decided to postpone a decision on the jurisdictional question pending the results of the Contadora peace plan.

Contadora includes four Latin American states: Mexico, Venezuela, Panama and Colombia. According to Professor Susan Kaufman Purcell: