Ambassador Oliveri López takes a novel approach to the dispute over the Falkland/Malvinas Islands: He uses not a single Argentine source. Rather, in shredding the British legal case, he refers to and quotes only British documents and statements, some official, others the observations of academics.

Some readers will feel he overstates the degree to which he has proved his case. Especially questionable is his repeated assertion that British "confessions" prove the Argentine case, because "one party's confession removes from the other the onus of proof." This is not a maxim recognized in Anglo-Saxon law. Confessions are frequently thrown out of court, and even with an admissible one prosecutors must still prove the rest of their case—though, of course, a confession that stands up in court does make their job a good deal easier.

Moreover, certain of the statements Ambassador Oliveri López calls "confessions" are not that at all; they are simply the expressed opinions of British academics or politicians who do not speak for the government. They may be seen as expert witnesses whose testimony bolsters the case for the prosecution rather than helping the defense. But their testimony is by no means conclusive.

Even acknowledging all this, however, it must be said that Ambassador Oliveri López, having limited himself essentially to British sources, has succeeded to a rather amazing degree in cutting the ground from under British claims to the islands. He notes, for example, that in 1834, just after the British had seized the islands, Lord Palmerston stated flatly that British rights were based on "original discovery and the subsequent occupation of those islands."

Yet a British Foreign Office note of December 17, 1982, says the British claim to first discovery is "obscure and uncertain," and goes on to
insist that this "has never of itself formed the basis for our claim to sover-
eignty over the islands."

Virtually no one today still believes that the British, in the person of
John Davis, discovered the islands in 1592. And even if they had, discov-
ery has to be followed by occupation to have meaning. But occupation did
not follow. Indeed, over 170 years passed before the British showed any
further interest in the islands. Meanwhile, the Treaty of Utrecht had, in
1713, given Spain the right to control the seas and islands around its do-
mains in the New World, and this had been confirmed by the Treaty of
Paris in 1763. Thus, when the British established Port Egmont in the is-
lands in 1766, they were trespassing on Spanish territory. Spain protested
and in 1770 drove them out. True, the British were allowed to return for a
short period of time, apparently to save face and avoid a war, though Spain
stressed that this gesture in no way diluted its claim to full sovereignty.

True also, as the British departed again in 1774, they left behind a
plaque claiming the islands for the Crown. If there was any ambiguity in
the situation at that point, however, it was subsequently overcome by two
things: (1) the Nootka Sound Convention of 1790, under which Great
Britain acknowledged Spanish sovereignty and gave up any right to estab-
lish colonies in the southern ocean just off the mainland, and (2) British
failure to make any efforts to occupy the islands between 1774 and 1833,
a period of almost 60 years. If occupation is to confer title, it must be more
or less uninterrupted (except in cases of force majeure). British occupation
was not.

Meanwhile, sovereignty passed from Spain to Argentina, which be-
came an independent state in 1817 (in the form of the United Provinces of
the River Plate). In 1820, the new country took formal possession of the
islands and in 1823 appointed Luis Vernet to set up a colony, which he did
in 1826. This colony flourished until 1831, when it was disrupted by the
attack of a U.S. warship, the USS Lexington. Colonists remained on the is-
lands even after the attack, however, and in 1832, the government in
Buenos Aires sent out a small military garrison under a Lieutenant Pinedo
to reassert Argentina’s authority over the islands and to give assistance to
the colonists.

The British frequently assert, or suggest, that the islands were unoc-
cupied at the time the British squadron arrived in 1833 to take them over.
As Oliveri López points out, however, British records themselves refute
such assertions. Captain James Onslow of the British navy called on Lieu-
tenant Pinedo to surrender. Having no cannon or fortifications, the latter
was compelled to do so. Clearly, though, this was not unoccupied territory
at the time the British arrived. Argentina had clear title to it and had es-
lished a colony on it. British records themselves, while they do not so
state, make it clear that this was the seizure of territory from a weaker
adversary—territory that was regarded as of strategic value. This was hardly an isolated case. Land grabbing was a favorite sport of nations in the nineteenth century. The United Kingdom was not the worst offender, but also was not an exception.

As Oliveri López then goes on to point out, while British claims at the time of seizure were based on assertions of discovery and occupation prior to 1833, later reviews conducted by Whitehall pointed up the weakness of those arguments. Hence, new bases for the claims have been brought forth, and in 1982 we have Foreign Minister Francis Pym saying that British sovereignty rests not on discovery and occupation, but on “prescription and the principle of self-determination.”

But these bases are no more valid than the earlier ones. True, to acquire title under the principle of prescription, a nation effectively occupies the territory over a period of time. But the occupation must be uncontented. If another nation claims the territory and consistently protests the first nation’s occupation, then prescription goes out the window. With his usual methodology, Oliveri López cites British sources, from 1833 to the present day, that acknowledge periodic Argentine protests of British seizure and occupation. Again, it is British records themselves that destroy the case for acquisitive prescription.

The principle of self-determination is perhaps the most inapplicable of all. What we have in the Falkland/Malvinas Islands is a transplanted population. Let us imagine a hypothetical case in which the Germany of Bismarck has near the end of the last century seized the entire Jutland peninsula from Denmark, driven off its Danish inhabitants, and brought in thousands of German colonists. Denmark, of course, protests but is powerless to redress the wrong. Years pass and Denmark takes its case to a gathering of European governments called to settle disputes among them. Germany’s response is to fall back on the principle of self-determination. It is, says the German foreign minister, up to the German colonists to decide whether they wish to be German or Danish!

Absurd? Of course. But no more so than to apply self-determination in the case of the Falkland/Malvinas Islands. The numbers involved and the time frame differ from our hypothetical case, but the principle is exactly the same. If all one nation had to do to legitimize its seizure of land from another was to drive off the inhabitants of the first nation, bring in its own colonists, and then claim for them right of self-determination, chaos would reign in the international community (to an even greater extent than it already does).

None of the bases for British claims, in short, are valid. The United Kingdom simply does not have a juridical case and well knows it. Oliveri López cites official British sources as acknowledging that it would be risky to take the case to court or to international arbitration. They know
they would lose—or at least strongly suspect that they would. To establish that the United Kingdom has no legal claim to the islands is not, however, to solve the matter. Ambassador Oliveri López is quite realistic on that score and fully acknowledges that the matter will be resolved through a negotiated accommodation or not at all. The Islanders may not have rights of self-determination, but their wishes must be taken into account. To be fair and acceptable to all sides, any accommodation would have to allow them to continue their traditional lifestyle.

There are, however, many ways of accomplishing that objective. Oliveri López wisely calls on all sides to put aside emotion and concentrate instead on what their real interests are and how they can best advance them. At the time the United Kingdom took the islands, for example, they were of strategic value to a British empire with the mightiest fleet on the face of the globe. Today, given the United Kingdom's changed role and a drastically altered world situation, they are of no strategic value at all.

Both sides have an interest in exploiting the maritime resources of the area, but, as Oliveri López points out, they really must cooperate if they are to succeed in that endeavor. Their respective interests in the area, then, militate in favor of an accommodation, not of continued confrontation.

Oliveri López's suggested solution—divided administration under which West Falkland would pass directly to Argentine sovereignty and administration, while sovereignty over East Falkland (where the bulk of the population resides) would pass to Argentina, but with its administration remaining with the United Kingdom under a long-term leaseback—may not be the best one available, but it does point toward imaginative thinking, and that is what is needed.

In the final analysis, it seems to me that the key to this dispute is for the British to acknowledge that a wrong was done all those years ago and then through careful and patient diplomacy begin moving toward an accommodation that, while redressing that wrong, protects the basic interests of the Islanders and makes possible the effective and sensible use of the maritime resources of the area to the benefit of all sides. Not to do so is to risk, eventually, another armed conflict, and this time under circumstances in which the sympathies of the international community are not likely to be with the United Kingdom.