FALKLANDS FACTS AND FALLACIES: SETTING THE RECORD STRAIGHT

by

Graham Pascoe

[In July 2021 Professor Marcelo Kohen and Mr Facundo Rodríguez submitted to the Falkland Islands Journal an article entitled "On Dr Pascoe's book 'Falklands Facts and Fallacies'. I felt Dr Pascoe had a right to reply to this article to draw the correspondence to a close so we invited him to make his comments on it. I here print both the original article, in full (as per the previous article), without omission or alteration, in italics, with Dr Pascoe's comments interpolated into it at appropriate places, in roman print. All footnotes are by Dr Pascoe. Editor.]

Kohen and Rodríguez*: In the 2020 edition of the Falkland Islands Journal there are two articles relating to* Falklands Facts and Fallacies *published by Dr G. Pascoe.*[1] *The purpose of this publication is supposed to rebut our book entitled "The Malvinas/Falklands Islands between History and Law", which in turn is a rebutal of booklets previously published by Dr Pascoe and Mr Pepper.*[2] *In the limited space available here, we comment only briefly about some salient aspects of the book, which notably dismantle arguments advanced by the British government to justify the expulsion of Argentina in 1833.*

There is a recognition that Great Britain did not discover the islands, a major argument developed by the British government in its reaction to the Argentina's display of sovereignty. It is also recognised in the book that when Spain prevented the British government from sending an expedition to the islands in 1749, Great Britain did not take any action in response. It is not refuted that the British representative in Madrid argued that the British intention was only exploration, not settlement.

Pascoe: All those things have little relevance to sovereignty over the islands today.

Kohen and Rodríguez*: In its attempt at minimising the effect of the 1790 Nootka Sound Treaty with an extravagant division of the Islands in three zones, the author accepts that the entire archipelago was Spanish and that this was recognised by Great Britain.*

Pascoe: That is nonsense – I say nothing of the sort. I did not invent the division of the islands into zones; the zones are laid down in the text of the Nootka Sound Convention itself. It abolished Spain's claim to 100% sovereignty over the whole of

Spanish-held America, and imposed measured limitations on Spanish sovereignty as against Britain (only Britain's rights were extended; other countries were unaffected). The treaty divided the coasts of all Spanish America into three zones, including the Falklands of course: a zone up to 10 leagues (30 miles or 50 kilometres) from actual Spanish settlements, where Spain held exclusive rights; a second zone more than 30 miles from Spanish settlements (i.e. most of the American coastline), where Britain had the right of economic exploitation (mainly sealing), and a third zone where Britain had the right of exploitation and also settlement, within the second zone and north of the southernmost Spanish settlement.

Thus in the north-eastern fifth of the Falklands around Puerto Soledad (Port Louis) Spain had exclusive rights; in the north-western fifth (including Port Egmont and West Point Island) Britain had the right of exploitation and permanent settlement, and in the remaining three-fifths Britain had the right of exploitation.

Spain had been forced to accept those limitations of its sovereignty by the threat of war with Britain. I say in *Falklands Facts and Fallacies* (here "*FFF*" for short; all quotes from the 2020 edition, which Kohen and Rodríguez were using):

> "… the Nootka Sound Convention was in fact a great triumph for Britain. Before 1790, Spain had asserted total "blanket" sovereignty over all of Spanish South America whether there was any local Spanish presence or not… But from 1790 Spain was forced for the first time to accept that there was a difference between territories physically occupied and territories not occupied… Spain now accepted that as against Britain (though not other countries), Spanish rights in the Falklands were divided into… three "zones"… Spain's rights in one part of the islands did not confer rights in the rest, so… from 1790 there were territories that Britain… could treat as *terrae nullius*…
>
> The change was reflected in Spain's behaviour in the islands – from 1790 onwards the Spanish commandants were under orders to permit activity by British citizens, but not by those of other nationalities... Thus by the 1820s... Britain already possessed extensive and long-standing prior rights in the islands. Argentina could not inherit more rights than Spain had possessed, so it was not possible for Argentina to inherit total unrestricted sovereignty over the islands without Britain's consent." (*FFF* p. 29)

***Kohen and Rodríguez**: It also accepts that it was Spain that authorised British subjects to temporarily carry out activities of a private nature on their possessions*.

Pascoe: Nonsense – I say the exact opposite:

> "There was no question of Spain being entitled to 'authorise' British activities. 'Authorisation' presupposes that the 'authoriser' has the right to deny authorisation, but if one is obliged to permit something, one cannot be said to be authorising it. Under the Nootka Sound Convention Spain had lost the right to

prevent British commercial activities in most of the islands and to form settlements in part of them, so Spain had lost the right to authorise such activities… from 1790 the activities of private British individuals constituted a limitation of Spanish sovereignty since Spain had lost the right to prevent them. Those individuals possessed rights in the islands which overrode Spain's claimed authority, so Spanish sovereignty was no longer exclusive." (*FFF* p. 47)

***Kohen and Rodríguez**: Dr Pascoe contends that since 1790 Great Britain could consider some parts of the archipelago as terra nullius, which obviously implies that they were not British.*

Pascoe: Yes, but they were therefore not Spanish either, and the Nootka Sound Convention made them potentially British by opening them up to British exploitation and settlement.

***Kohen and Rodríguez**: With regard to the settlement of the islands, the book recognises that the first was French and what is more interesting, that the Byron's expedition was kept secret and implemented with the purpose to impose a fait accompli vis-à-vis Spain. It kept silent about the fact that Byron did not have instructions to take possession of the Falklands, that Great Britain did not protest the French and then the Spanish presence in the islands, something indispensable if the British Government claimed that the islands were under its sovereignty. The book also recognises that the rights granted by Spain to Britain in the 1790 Nootka Sound Treaty were exiguous. In fact, as we demonstrated in our book, these rights were granted by the sovereign (Spain) and not implying British exercise of authority.*

Pascoe: That is the opposite of what I say in *FFF*. I do not say the rights granted by Spain to Britain in the 1790 Nootka Sound Convention were "exiguous" (meagre, minimal) – I say:

> "The truth is that the Nootka Sound Convention did not *reduce* Britain's rights in the Americas; it greatly *extended* them at the expense of Spain – that was why the British welcomed it and the Spaniards condemned it. As William Manning explained in 1905:[3]
>
> "The immediate result for England was that she obtained free access to an extended coast… It was the first express renunciation of Spain's ancient claim to exclusive sovereignty over the American shores of the Pacific Ocean and the South Seas. It marks the beginning of the collapse of the Spanish colonial system."

> The Swiss historian Jörg Fisch agrees with Manning; he heads his section on the Convention 'The Opening of the South Sea 1790', and shows that the rights given to British subjects were extensive with only minor limitations. [4] (*FFF* p. 28).

***Kohen and Rodríguez**: In its attempt at denying the Argentine succession to Spanish rights, the author repeats old arguments opposed to the principle of uti possidetis iuris that were disregarded in the case law of the International Court of Justice (ICJ). No serious jurist would reject the idea of State succession to territory at the time of independence, a matter recently recognised even by the British Government before the ICJ. Dr Pascoe considers that the first act accomplished by the first Argentine government only five days after it was constituted was "insignificant" (namely the decision to pay the wages of the personnel in the islands). In fact, this was an undisputable act showing continuity to the Spanish exercise of authority over the islands.*

Pascoe: The "personnel" concerned were actually a single person, the former Spanish commandant of the islands, Gerardo Bordas; he was no longer in the islands but in Buenos Aires, and the decision to pay him was indeed insignificant – I call it:

> "an infinitesimally tiny event, which in any case had absolutely no effect on the Falklands since at that time, and for eight months afterwards, there was a Spanish commandant in the islands, Pablo Guillén Martínez, who had served from January 1810 and remained in office at Puerto Soledad until February 1811." (*FFF* p. 54)

And I do not "deny the Argentine succession to Spanish rights"; I simply point out (see above) that under Nootka, Spain had lost her former claim to absolute sovereignty in the islands and had been forced to concede extensive rights to Britain. Argentina inherited Spanish rights in the Falklands, but they were far short of absolute sovereignty, while Britain's extensive rights continued.

***Kohen and Rodríguez**: Contrary to what is argued in Pascoe & Pepper's booklet, now Dr Pascoe's book contends that Spain did not abandon their claim to Islands in 1811 when it left them. Indeed, this would be irrelevant for the current case, since at that time Spain and its South American provinces were in a situation akin to a civil war. What Spain claimed was sovereignty over the entire provinces, not just the islands. The author remains silent about the British silence or lack of reaction concerning the abundant display of Argentine state authority over the islands, a position the British government only modified when the Argentine settlement was firmly flourishing, attracting the imperial appetite.*

Pascoe: There was no "abundant display of Argentine state authority over the islands". In fact for most of that time there was zero presence by Argentina in the islands – but a constant presence of British ships and seamen. And there was at that time no "imperial appetite" in Britain for acquiring colonies – that betrays ignorance of history (see below).

***Kohen and Rodríguez**: Dr Pascoe's accusations concerning the falsifying documentation are outrageous. We cite only one here. Trying to justify the British silence at the time of the conclusion of the 1825 Anglo-Argentine Treaty, when the Buenos Aires' government was exercising sovereign acts over the islands, the author wrongly refers to a publication by Mr. Nuñez. He confuses the official document of Nuñez's response to Woodbine Parish - which we quote in our book and is publicly accessible - with a book that Nuñez published in his personal capacity a year later. Dr Pascoe is also wrong when he suggests that Parish requested a description from all the provinces and their territories. A simple perusal of the document shows that this is not the case. Furthermore, the British Minister in Buenos Aires did not ask anything about the islands.*

Pascoe: It is nonsense to say that in 1825 "the Buenos Aires government was exercising sovereign acts over the islands". Throughout that year there was zero presence from Argentina in the Falklands – but Mathew Brisbane was there for roughly half that year in the cutter *Beaufoy* – he spent almost six months in the islands from April 1825 (*FFF*, p. 87).

As regards the "British silence at the time of the conclusion of the 1825 Anglo-Argentine Treaty" (i.e. the Treaty of Amity), I point out in *FFF* (p. 86) that Britain's representative Woodbine Parish asked for a description of Argentina (without mentioning any specific places). Ignacio Núñez (secretary to Bernardino Rivadavia, foreign minister of the Province of Buenos Aires) responded with a long report, which was published the following year as a 300-page book, printed in Spanish, English and French,[5] which included a detailed description of each of the provinces of Argentina including the exact extent of their territories, but with no mention of the Falkland Islands. That strongly suggests that Argentina did not regard the Falklands as part of its territory.

***Kohen and Rodríguez**: In blatant contradiction with the British argument advanced in the 1829 protest, now Dr Pascoe claims that the islands were terra nullius, in order to justify the British seizure of them in 1833. This is tantamount to recognizing that Great Britain did not have sovereignty over the islands at that time. It is telling the manner in which the author attempts to minimise situations demonstrating the lack of a British reaction to Argentine acts of sovereignty. We mention just one example among many. The fact that the British Vice-Consul in Buenos Aires certified the signatures of documents showing the Argentine exercise of sovereignty over the islands without reacting in any way is simply justified by the fact that the Vice-*

Consul "merely confirmed the authenticity of signatures, quite possible without reading the document - it was not necessary to know the content of documents in order to confirm that they were valid where issued"!

Pascoe: The lack of a response by Britain is explained by the fact that neither in 1826 nor in 1828, when Louis Vernet presented his concession documents to the British consulate in Buenos Aires, did the British Vice-Consul inform the British government of the fact (*FFF* pp. 90-91; 96). And Louis Vernet's 1828 concession was retrospectively ruled illegal and invalid by the Argentine Congress in 1882 (*FFF* pp. 95-96, 244).

***Kohen and Rodríguez**: With regard to the period of Argentine presence in the islands, the book raises a number of assumptions and conjectures in order to try to explain away uncontroversial facts in a manner that lessens the significance of this presence. Notwithstanding, acts of exercise of Argentine authority not only in the Eastern island but also in the Western one are recognised in the publication, a point that undermines the idea that Argentina only claimed Soledad (East Falkland). What is also interesting is the acknowledgment in the book that Captain Oslow only had instructions to go to Port Egmont, not to Port Louis/Soledad.*

Pascoe: I'm mystified – what acts of Argentine authority in West Falkland were there? I don't know of any. I certainly don't "recognise" any in *FFF*. And he was Onslow, not Oslow.

***Kohen and Rodríguez**: Not a single word is spent rebutting our analysis that the British act of 1833 was illegal under international law at that time. Interesting enough, the author accepts that "it is universally accepted among jurists that official protests are essential in maintaining a claim by one government against other". If this assertion is applied to the British conduct with regard to 55 years of unique Spanish presence in the archipelago, then the consequence of this lack of protest is evident.*

Pascoe: There was not "55 years of unique Spanish presence". Throughout that time there was a constant presence of British sealing crews, who sometimes spent long periods in the islands and built stone buildings. And over and above that, the 1771 Anglo-Spanish agreement had forced Spain to tolerate Britain's claim to the islands and to refrain from asserting that Spain had prior rights there (*FFF* p. 42), so it would have been illogical for Britain to protest against Spain's presence in the islands (*FFF* p. 46). Moreover, Spain had been forced by the Nootka Sound Convention of 1790 to concede extensive rights to Britain including the right to establish permanent settlements (see above). And Britain's actions in 1833 were not illegal at all; they were a legitimate action to defend British interests after the American intervention in the islands (the "*Lexington* raid") in 1831-2.

***Kohen and Rodríguez**: Other arguments employed in the book are astonishing and not only with regard to the Anglo-Argentine dispute. The assertion that Britain was "anti-colonialist" at that time, when during the same period it colonised territories in all continents, merits no comment.*

Pascoe: That betrays an ignorance of history on the part of Kohen and Rodríguez. In the 1830s Britain was indeed anti-colonialist and was not colonising "territories in all continents". The Whig government of Charles Earl Grey (1830-34) was resolutely against the acquisition of colonies, and in 1835 even considered completely withdrawing the British presence from the Falklands (*FFF* pp. 172-173). It was only half a century later, from around 1880, that Britain did indeed become colonialist and imperialist.

***Kohen and Rodríguez**: The book also weakens the British position maintaining that during the 1840s no State could validly advance possessing de iure sovereignty. The main argument developed in the book to sustain the proposition of existence of British sovereignty is the Arana-Southern Treaty of 1849, repeating similar arguments already largely rebutted in our book.*

Pascoe: Kohen and Rodríguez seem to assume that all titles to sovereignty were 100% clear, an absurd position to take. Many titles to territories are disputed even today, and in the 1840s title to the Falklands was disputed – Britain, Spain, Argentina and France could all claim rights of various kinds, while until the 1870s the United States maintained that there existed no title to the Falklands at all, and that the Falklands were part of the high seas.

And of course Kohen and Rodríguez insist on referring to "the Arana-Southern Treaty" instead of using its actual name, which was "the Convention of Peace" ("la Convención de Paz"), as is demonstrated in *FFF* by many quotes from official contemporary Argentine sources (*FFF* pp. 180-200). And it was Argentina, not Britain, that insisted on a full peace treaty to end Britain's military intervention around the River Plate. General Juan Manuel Rosas, who held dictatorial power over the whole of Argentina, insisted on a peace treaty because it would confirm that Argentina was a belligerent and thus an equal to Britain or France on the world stage.

As demonstrated in *FFF* (pp. 194-197), jurists agree that a peace treaty "re-sets the clock" in the relations between countries; it ends all disputes, so any territories not mentioned are fixed by the treaty in the possession of the party that held them when the treaty was signed. The Falklands are not mentioned in the Convention of Peace, so it fixed them, by Argentina's agreement, in Britain's possession.

Kohen and Rodríguez naturally do not draw attention to an important exchange between General Rosas and Henry Southern, the British negotiator, on the night of 10-11 December 1849, after the treaty had been signed (24 November 1849) but before it was ratified (15 May 1850). Rosas recited a list of ways in which Argentina

had shown good faith, including the fact that in the Convention of Peace "It has not introduced the grave question which is pending of the Falkland Islands."[6]

At which Southern immediately stated: "All national differences are terminated by solemn and public Conventions of Peace…".[7] That confirms that a peace treaty ends all disputes. Southern thus confirmed to Rosas that any Argentine title to the Falklands had been ended by the Convention of Peace. And Rosas did not demur – he did not contradict Southern's statement, but later repeated it.[8] By repeating Southern's statement without contradicting it or limiting it in any way, Rosas showed unambiguously that he accepted the ending of the Falklands dispute (*FFF* pp. 199-200).

He could have continued the dispute by failing to ratify the Convention of Peace, but no, the Convention was ratified by both sides in Buenos Aires on 15 May 1850 and thereupon came into force. It ended the Falklands dispute between Britain and Argentina and hence definitively ended any Argentine title to the islands. That was confirmed by Argentine Vice-President Marcos Paz in his official statement at the ceremonial opening of the Argentine Congress on 1 May 1866 – he mentioned some old claims for private losses in 1845 by British citizens, and added "This question, which is the only one between us and the British nation, has not yet been settled."[9] That confirmed that there was no dispute over the Falklands. Argentina confirmed the ending of its Falklands claim by several top-level statements by Argentine leaders (FFF pp. 232-233), and dropped all protests to Britain for 38 years. Meanwhile Britain performed innumerable acts of sovereignty in the islands, including the first settlement of West Falkland, without any reaction from Argentina. Argentina had accepted that the Falkland Islands were British territory.

***Kohen and Rodríguez**: We also demonstrated that Argentina maintained its claim after that treaty, and that the British Government recognised that Argentina has maintained its claim at different moments during the second half of the 19th and the first half of the 20th centuries.*
The book struggles when its author attempts to apply legal terms such as "critical date" and "acquiescence". This is understandable since Dr Pascoe does not have a legal background, nor any formal education in international law. It is perhaps for this reason that he remains silent in response to many of our analysis.

Pascoe: Actually, I don't remain silent in reponse to any of the account by Kohen and Rodríguez; I analyse and refute every single one of their major points, with extensive original documentation including many documents from Argentine archives. As a result, my book is over three times as long as theirs (267,000 words to their 80,000).

They are right in saying I do not have a legal background, nor any formal education in international law, but I do not set myself up to be an authority on terms such as "critical date" and "acquiescence". I quote definitions of "critical date" by two legal experts, L. F. E. Goldie and Professor Giovanni Distefano, the latter in a

book co-edited by Professor Marcelo Kohen himself (*FFF* pp. 202 and 204). My interpretation, based on their definitions, is that:

> "The critical date in the legal history of the Falklands is Wednesday 15 May 1850; after that date Argentina no longer claimed the Falkland Islands, and for over a third of a century gave repeated overt confirmation of its acceptance that the Falklands were *de jure* British territory." (*FFF* p. 210)

As for "acquiescence", I include two very clear quotes from the *Research Handbook* edited by Marcelo Kohen and Mamadou Hébié, who say in their introductory chapter to the book:[10]

> "What generally remains crucial in territorial disputes is the demonstration that one side accepted in some way the existence and validity of the claim invoked by the other." (*FFF* p. 234)

That is a textbook definition of the term "acquiescence", which means no more than consent by one party to the claim of an opposing party. Kate Parlett says in the same book:[11]

> "Underlying all of the legal devices used to establish sovereignty to disputed territory based on state conduct examined here is the principle of consent: international courts and tribunals search for evidence that states have consented to the sovereignty of one state. In considering that question, both positive acts and omissions may be relevant, and consent need not be express, but may be tacit, provided there is compelling evidence." (*FFF* p. 234)

That is a clear exposition of the distinction I make between "overt" and "silent" acquiescence (*FFF* p. 159, 216). And I quote Marcelo Kohen himself, who emphasises in his own concluding chapter of his book: [12]

> "… the critical importance of consent in the creation and extinction of territorial sovereignty in international law." (*FFF* p. 234)

By the Convention of Peace and by many later acts of omission and commission, Argentina demonstrated definitive consent to Britain's possession of the Falkland Islands. The evidence is extensive and overwhelming. (*FFF* pp. 232-234, 347-349)

***Kohen and Rodríguez**: We suggest that those interested in this topic should read both books simultaneously and compare their content. Sometimes, rebuttal texts are more interesting not just for what they say, but also for what they do not say.*

Pascoe: Yes indeed. In fact any reader of both books will find that the documentation in *FFF* disproves all major contentions by Kohen and Rodríguez in their book.

Kohen and Rodríguez*: Regarding the principle of self-determination, the book only sets out the British position. These arguments are already rebutted in our book. The 2019 Advisory Opinion of the ICJ on the separation of the Chagos Archipelago from Mauritius confirms our analysis: 1) There is no uniform application of this principle and for this reason the UN General Assembly has not applied this principle in certain situations based on the consideration that a certain population does not constitute a 'people' entitled to self- determination. This was the proper interpretation made by the General Assembly when it adopted resolution 2065 (XX) and subsequent resolutions on the Question of the Falkland Islands (Malvinas);*

Pascoe: In *FFF* I quote extensively from recent statements by the International Court of Justice (ICJ), for example in its Advisory Opinion on the Chagos case (2019):

> "the subsequent development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them." (*FFF* p. 336)

In other words, there are no exceptions to the principle of self-determination. And as Marcelo Kohen and Mamadou Hébié state in their *Research Handbook*:[1]

> "… from the establishment of self-determination as a principle of international law, peoples that have not yet achieved statehood are also holders of territorial sovereignty." (*FFF* p. 288)

In short, the inhabitants of the Falklands possess the full right of self-determination; they are holders of territorial sovereignty over their country, the Falkland Islands.

Kohen and Rodríguez*: 2) It is the General Assembly, and not the colonial power, that must decide on the application of the right of self-determination; 3) It is the General Assembly which is the body in charge of determining the procedures to be followed in order to put an end to a colonial situation.*

Pascoe: UN Resolution 2065 was passed well over half a century ago (in 1965), and merely calls for dialogue between Britain and Argentina on the Falklands question. A lot of time has passed since then, and later UN resolutions on decolonisation make it abundantly clear that decolonisation must take place according to the wishes of the people concerned. For example, UN Resolution 2625 of 1970 states that colonialism must be ended in all non-self-governing territories according to the "freely expressed

[1] Marcelo Kohen and Mamadou Hébié, in Marcelo Kohen and Mamadou Hébié (eds.), *Research Handbook on Territorial Disputes in International Law*, Cheltenham (UK) and Northampton (USA), 2018, p. 25.

will of the peoples concerned", and as well as listing the three options for the realisation of self-determination given in Resolution 1541 (independence, free association with an independent state, or integration with an independent state), it includes a new fourth option: "the emergence into any other political status freely determined by a people", which covers any arrangement the Falkland Islanders may choose (*FFF* p. 349). It thus confirms that since they have this fourth option for decolonisation, the Falkland Islanders are holders of territorial sovereignty. Freely exercising their right to external self-determination, they chose by an overwhelming majority in the Falklands Referendum of March 2013 to remain in partnership with Britain. That is entirely in accordance with international law under resolution 2625 (*FFF* pp. 287-289).

***Kohen and Rodríguez**: Accepting that the British subjects living in the islands may themselves decide the Anglo-Argentine dispute would result in a flagrant and arbitrary example of imposing a fait accompli. This does not mean that the Islanders do not possess individual and collective rights that must be respected and promoted. However, there are a people who are a victim of colonialism they are the Argentine people.*

Pascoe: Nonsense – the European population of Argentina didn't suffer much under Spanish colonialism – unlike the original native population, who were largely slaughtered.

***Kohen and Rodríguez**: In sum, this book panders to people who already take a pro-British position as well as those who are nostalgic of the British imperial past and who are not familiar with international law. However, it does not contribute to serious legal debate. Indeed, at the end of the day, the book achieves the opposite objective than the one intended: it renders the British position weaker and bolsters the Argentine one.*

Pascoe: Their final conclusion is absurd – hardly anyone in Britain these days is nostalgic for the "British imperial past", and *FFF* demonstrates with abundant evidence that the Falkland Islands are British territory in international law. That confirms the British position and demolishes the Argentine one.

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[1] Graham Pascoe, *Falklands Facts and Fallacies: The Falkland Islands in History and International Law*, Luton 2020 (360 pages); a revised second edition is currently in course of preparation.

[2] The two online pamphlets here referred to are by Graham Pascoe and Peter Pepper: *Getting it right: the real history of the Falklands/ Malvinas*, with its Spanish translation *Más Allá de la Historia Oficial: La Verdadera Historia de las Falklands/ Malvinas* ["Beyond the Official History: the True History of the Falklands/ Malvinas"], (40 pages), both online from 2008 to

2012, and *False Falklands History at the United Nations: How Argentina misled the UN in 1964 – and still does*, with its Spanish translation, *Historia falsa sobre las Falklands/Malvinas ante la Organización de las Naciones Unidas: Cómo la Argentina engañó a la ONU en 1964 – y sigue haciéndolo*, (10 pages), both online from 2012 to 2016. The book by Marcelo Kohen and Facundo Rodríguez purports to refute those two pamphlets, but fails to do so, as explained in this present article. Their book is entitled in Spanish *Las Malvinas entre el derecho y la historia: Refutación del folleto británico "Más allá de la historia oficial. La verdadera historia de las Falklands/Malvinas"* ["The Malvinas between law and history: Refutation of the British pamphlet 'Beyond the official history. The True History of the Falklands/Malvinas' "], Buenos Aires 2015, and its English translation, *The Malvinas/Falklands between History and Law: Refutation of the British Pamphlet "Getting it Right: The Real History of the Falklands Malvinas"* (online and as a print-on-demand book from 2017).

[3] William Ray Manning, "The Nootka Sound Controversy", in *Annual Report of the American Historical Association for the Year 1904*, Washington DC 1905, pp. 461-462.

[4] Jörg Fisch, "The Falkland Islands in the European Treaty System 1493-1833", in *German Yearbook of International Law / Jahrbuch für Internationales Recht*, Berlin, vol. 26, 1983, pp. 120-123.

[5] Ignacio Núñez, *Noticias históricas, politicas, y estadísticas de las Provincias Unidas del Río de la Plata…*, London 1825; English translation: *An account, historical, political, and statistical, of the United Provinces of Rio de la Plata…*, London 1825; French translation: *Esquisses, historiques, politiques et statistiques de Buenos-Ayres, des autres Provinces Unies du Rio de la Plata…*, Paris 1826.

[6] Memorandum from Rosas to Southern, 15 December 1849, English translation in Southern's despatch to Palmerston of 17 December 1849, in the Public Record Office, London, PRO FO 6 145, fol. 213 *verso*.

[7] English translation of Southern's memorandum to Rosas, 11 December 1849, enclosed in Southern's despatch to Palmerston of 17 December 1849, in PRO FO 6 145, fol. 203 *recto*.

[8] English translation of Rosas's reply to Southern's memorandum, in PRO FO 6 145, fol. 214 *verso*.

[9] This translation from *British and Foreign State Papers 1866-1867* (London 1871), p. 1009.

[10] Marcelo Kohen and Mamadou Hébié, in Marcelo Kohen and Mamadou Hébié (eds.), *Research Handbook on Territorial Disputes in International Law*, Cheltenham (UK) and Northampton (USA) 2018, p. 33.

[11] Kate Parlett, in Kohen and Hébié (eds.) 2018, p. 192.

[12] Marcelo Kohen, in Kohen and Hébié (eds.) 2018, p. 438.

Dr Graham Pascoe, August 2021