International Boundaries Research Unit

BOUNDARY & TERRITORY BRIEFING

Volume 2 Number 4

How to Prove Title to Territory: A Brief, Practical Introduction to the Law and Evidence

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Boundary and Territory Briefing

Volume 2 Number 4
ISBN 1-897643-29-2
1998

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Author's Note

How to Prove Title to Territory: A Brief, Practical Introduction to the Law and Evidence is based on a lecture given by the author at the IBRU workshop on Negotiating International Boundaries in December 1997. It is aimed primarily at readers with little or no background in the rules of international law concerning land boundary problems between states. Its purpose is to provide an overview of these rules (albeit a somewhat simplified one) and to offer some practical advice on the assessment of the strength of a claim, and how to prepare it. Inevitably, a paper of this length can only touch the surface of a vast subject. The author trusts that this will be understood.

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1. Introduction

In most domestic legal systems, or 'municipal' legal systems as they are often called in international law, there is generally something approaching absolute title to property, in practice if not always exactly in theory. In many, if not most, countries it is possible to go to a Land Registry and inspect a Certificate of Title, which is, by and large, good against all. This is not the case in international law.

In international law, a state is concerned to show that its title to a territory is better than that of the state with which it is in dispute. It is therefore a question of which party can show the better case. The cases may be tested against each other in some form of third party arbitration, or considered by a mediator. A case may also be prepared and published – even distributed to all members of the United Nations – by a state which wishes to show the strength of its claim. This is called a 'white book'. It will help to keep the claim alive, and may also be given to the other side as part of a negotiation process. It will set out the arguments which support the claim. However, there will also need to be another very important document prepared as a preliminary to the preparation of the case.

This is an objective assessment of the strength of the claim in international law. Ideally, such an objective memorandum investigating the legal and factual issues should be ready before any negotiations commence, so that political decisions (including the decision to enter into negotiations or to proceed to arbitration) can be taken on the basis of an accurate assessment of the strengths and weaknesses of the different aspects of a state's claims. But, in practice, this is not always possible.

The assessment of the strength of the case will need to consider the rival claims from the time when each arose (and should also take into account any possible third party claims). Title may be consolidated over time, but it can also be lost. Sovereignty may be abandoned, but also re-acquired.

A very important doctrine in international law is that of the *"inter-temporal law"*[1], under which a state must show that it has maintained a good title according to the rules of international law as they have developed over the years. What may have been appropriate to acquire or maintain a title in one century may no longer be adequate at a later stage. For this reason, a little must be said about the rules for acquiring and maintaining title in international law.

[1] For a brief discussion, see eg. Jennings (1963) *The Acquisition of Territory in International Law*, Manchester: 28-31; Brownlie (1990) *Principles of Public International Law*, 4th Ed., Oxford: 129-30; Shaw (1997) *International Law*, 4th Ed., Cambridge: 346-7.

However, there is also an important, geographical point which must be borne in mind at the same time. What will constitute good evidence of title and maintenance of title will vary according to the nature of the territory in question. A state may acquire and maintain title to a barren and remote territory, or an uninhabited or sparsely populated island, with considerably less in the way of acts of sovereignty than would be necessary in the major centres of its political power. As Huber stated in his award in the *Island of Palmas* arbitration:[2]

> *Manifestations of territorial sovereignty assume, it is true, different forms, according to conditions of time and place. Although continuous in principle, sovereignty cannot be exercised in fact at every moment on every point of a territory. The intermittence and discontinuity compatible with the maintenance of the right necessarily differ according as inhabited or uninhabited regions are involved, or regions enclosed within territories in which sovereignty is incontestably displayed or again regions accessible from, for instance, the high seas.*

When considering a claim of title to territory, one can thus perceive a kind of matrix. One must find adequate evidence to support the claim according to the law as it has evolved throughout the period of the dispute. This must be matched against the territory itself. If the territory is remote, and was historically considered of small importance, surprisingly little may be adequate in order to establish and maintain title. This is fortunate, since such a territory will be likely to be rarely mentioned, and finding references to it in archival and other sources may be like looking for a needle in a haystack. But, just as the relevant rules of law may change, so can the nature of the territory. A neglected, remote area is likely to change its nature quite quickly if oil is discovered there in commercial quantities, or if it becomes of strategic importance.

The three essential elements in preparing the case are research, objective assessment, and presentation of the case. Obviously there is something sequential about these, but they do not represent three neatly separable stages. Research has to come first, but in practice it never ends. The objective assessment must come before the preparation of the presentation, and will define the latter's direction. However, as research will always continue, the objective presentation will be subject to constant updating and renewal. This, in turn, will demand revisions to the presentation as it is being prepared. The objective assessment and the presentation will each, in practice, almost certainly lead to further areas of research, with the consequence that research and the revision of the objective assessment will continue until the end of the case.

2. The Basis of Sovereignty over Territory and Loss of Title

What, then, are the legal bases on which sovereignty may be acquired? The following is a brief, rather over-simplified analysis of the main, traditional 'modes' of acquiring territory in international law: cession, conquest, occupation and prescription.

[2] Jennings, *op. cit.*:93. The text of Huber's award in the *Island of Palmas* Case is included as an appendix to Jennings's work at pp. 88-126.

There is a degree of academic discussion as to the extent that they are still appropriate today, and the reasoning in judicial and arbitral decisions does not always make it clear which 'mode' is the one that underpins the decision. This is because the task of the tribunal is to weigh the relative strengths of the claims in the balance, and to satisfy itself which is the better claim. Moreover, each party may well advance arguments based on more than one mode. The modes are not legal straitjackets into which arguments must fit, but are mentioned here because they provide a convenient starting point to assess the significance of possible evidence which will build a claim.

2.1 Cession[3]

The first method, cession, means the establishment of title by agreement, by a treaty. If State A grants certain territory to State B, then – provided the treaty is clear and sufficiently comprehensive, and provided also that nothing in the subsequent conduct of the parties alters matters – then this will be good title against State A, and probably against all-comers if State A's title had been generally recognised. International law is one of the colder branches of law. It does not matter whether the treaty was executed by a state defeated in war, or if it is executed when diplomatic pressure is exerted by a stronger party on a weaker one. International law is concerned first with stability and order. The weaker state will at least have gained the benefit of a stable frontier, and the defeated state will have gained the benefit of peace.

2.2 Conquest[4]

The second method is conquest, or 'subjugation'. Until some point in the first half of this century, it used to be possible to obtain good title in international law by conquest.[5] We have already mentioned, under the doctrine of the inter-temporal law, that acquisitions of territory by conquest during earlier periods constituted good title which remain valid, although today such acquisitions would be impossible, since a purported conquest would be in breach of the UN Charter. In the days when conquest could give a good title, this would only occur when the war was over and the subjugation of the territory complete. However, frequently the conquest of a territory was concluded by a treaty with the defeated power, and the acquisition thus took place by cession.

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3 See Jennings and Watts (1992) (eds) *Oppenheim's International Law*, 9th edition, Volume 1, London, Longman: 680-82; Jennings, *op. cit*.: 16-19, Brownlie, *op. cit*.: 133-4, Shaw, *op cit.:* 339-40.

4 See Jennings and Watts, *op. cit.:* 698-705, Jennings, *op. cit*.: 20-23, Brownlie, *op. cit*.: 138-145, Shaw, *op. cit.*: 342-346.

5 If acquisition of a territory by conquest had not already ceased to be legal at an earlier date, it became so with the establishment of the United Nations and the adoption of the prohibition on the use of force against the territorial integrity of another state in Article 2(4) of the UN Charter. Oppenheim is of the view that war waged for the purpose of acquisition of territory has probably been unlawful since Article 10 of the League of Nations Covenant. In addition, in 1928 the *Kellog-Briand Pact* made war illegal as an instrument of national policy.

2.3 Occupation[6]

The third method is occupation. If territory is uninhabited or, perhaps, only spasmodically inhabited by groups of people with no political organisation, then it is deemed in international law to be *terra nullius – "the territory of nobody."* It is therefore open to acquisition merely by occupation, the taking of possession with the intent to possess. This presupposes some actual exercise or display of authority.

What constitutes adequate political organisation by the inhabitants of a territory in order for them to enjoy sovereignty in international law is not entirely clear. In the 19th Century, the Privy Council in London was of the view that the aboriginal peoples of Australia did not have sufficient political organisation in order to prevent Australia from being *terra nullius* before its acquisition by Great Britain. Ideas change over time and, in recent years, the Australian Courts have taken a different view.[7] However, it is a striking feature of most colonial acquisitions in North America, South America, Africa, Asia, and also New Zealand and the Archipelagos of the Pacific Ocean, that the indigenous rulers of these territories were by and large regarded by the colonial powers as enjoying sovereignty which they either ceded to the colonial powers by treaty, or which was taken from them by conquest.[8]

In the 17th century, it was possible to acquire a provisional, 'inchoate' title by discovery. Discovery probably did not in itself confer possession, because it did not, of itself, imply the taking of possession with the intention to possess. However, it was recognised that when a power discovered territory, this of itself gave that power the right to acquire that territory within a reasonable period of time, against the right of other powers.[9]

During the great European colonial expansion of the late 19th century, and in particular during the 'Scramble for Africa', the European powers divided the continent into spheres of influence, in which each individual power concerned was given a free hand by the others. As has already been mentioned, there is a certain coldness in international law. A colonial power would not attempt to acquire territory in the sphere of influence of another, but international law would not prevent it from acquiring territory inside its own sphere of influence either by conquest or, in the greater number of cases, by treaty with the indigenous rulers. The fact that sometimes an indigenous ruler entered into a treaty which he did not understand, or which he practically had to sign at gunpoint, or which represented an extremely bad 'unconscionable bargain', did not prevent that treaty being treated as valid against rival colonial powers, which might have liked to acquire the territory concerned themselves.[10]

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6 See Jennings and Watts, *op. cit*.: 686-692, Jennings, *op. cit*.: 20-23, Brownlie, *op. cit*.: 138-45, Shaw, *op. cit*.: 342-346.

7 See Lindley (1926) *The Acquisition and Government of Backward Territory in International Law*, at pp.40-41 referring to *Cooper v. Stuart* (14 A.C. at 291) which came before the Privy Council in 1889. Cf. *Mabo and Others v. State of Queensland* (1992) Australian Law Reports, 107: 1.

8 Lindley, *op. cit*.: 24-44 and in particular at pp.43-44. In the *Western Sahara* Advisory Opinion, the ICJ stated that *"the State practice of the relevant period* [ie. 1884 onwards] *indicates that territories inhabited by tribes or peoples having social and political organisations were not regarded as terrae nullius"* (ICJ Reports 1975: 39).

9 Lindley, *op. cit*.: 136-8.

10 *Ibid*: 32-40, 43-4. The dubious morality of many such treaties was sometimes questioned at the time.

2.4 Prescription[11]

It is also possible for a party to acquire territory which previously belonged to another state by a similar method. There must be an intention to acquire the territory and an act intended to exercise sovereign authority. After a reasonable period of time, to be determined in each case on an *ad hoc* basis, title will vest in the new state in the absence of protest. It might be mentioned at this point that protests are extremely important in international law. If rights are infringed, and no protest is made at the appropriate time, then the right in question will be likely to lapse. If there is no protest, the actions of the state which acquires the territory are likely to be considered to have been peaceful. Prescription may be summed up in the words of Jennings:

> *For prescription, therefore, the possession must be long-continued, undisturbed, and it must be unambiguously attributable to a claim to act as sovereign. It depends as much on the quiescence of the former sovereignty as on the consolidation through time of the new.*[12]

2.5 Examples

Title must be maintained, or it will be lost as a result of failure to exercise sovereignty or to protest against the actions of an acquiring power. *Conduct* is thus very important. Let us consider a few examples taken from different centuries which will illustrate some of the points made above.

2.5.1 St Lucia in the Treaty of Utrecht (1713)

The first example concerns the negotiations over the West Indian Island of Saint Lucia prior to the treaty of Utrecht in 1713 which recognised French sovereignty over it.

In 1639, an English settlement was formed on the island. The settlers were killed by the indigenous population the following year, and England made no attempt to re-establish her position. In 1650, French settlers established themselves on the island under a grant from the King of France and successfully withstood attempts by the native population to expel them. In 1663, an English force drove the French settlers into the mountains on the island, but the island was restored to France at the peace of Breda in 1667.

The French position was that England had abandoned the island without the intention of returning after the English settlers were killed in 1640. France maintained that the island therefore automatically became French when France seized it in 1650, and that there was no need for a prescriptive period to run before French sovereignty would be good against that of England. Although the English negotiators contended that England had not abandoned the island without the intention to return, they were unable to make their position prevail, and French sovereignty was confirmed in the Treaty of Utrecht.[13]

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11 Jennings and Watts, *op. cit.*: 705-08, Jennings *op. cit.*: 20-23; Brownlie, *op. cit.*: 153-9; Shaw, *op. cit.:* 343-6.

12 Jennings, *op. cit.*: 23.

13 Lindley, *op. cit.*: 49, Oppenheim, *op. cit.*: 718.

2.5.2 Sudan (1885-1898)

In 1885, Anglo-Egyptian forces were forced to withdraw from the EgyptianSudan by the Mahdi. Britain (on behalf of Egypt) announced her intention to reconquer the region later that year and, in 1890-91, Germany and Italy recognised part of the region as being within the British sphere of influence. In 1894 Britain made a lease to King Leopold of a large part of this sphere which Germany and Italy had recognised. In doing so, both Britain and King Leopold recognised *"the claims of Turkey and Egypt in the basin of the upper Nile."* Despite this, France objected to the lease to King Leopold, on the grounds that:

> *...for many years, these provinces have been occupied and administered by Egypt, and, although the Agents of the Khedive, in consequence of events beyond their control, have been obliged quite recently to abandon them for the moment, the Khedivial Government has never ceased declaring its wish to re-establish its authority there.*

In other words, France argued that Egyptian claims to the territory remained good, since Egypt had consistently maintained her claim, despite the *de facto* loss of the territory.

In the following year, 1895, Britain took it upon herself to reassert the Egyptian claim, and in 1896 an Anglo-Egyptian Army advanced into the Sudan, reconquering the region in September 1898 by its victory at Omdurman. But then a controversy arose between Britain and France, because it emerged that a French force had taken possession of the district around Fashoda in Southern Sudan. France now claimed that the territory in question had become *res nullius* because of its abandonment by the Egyptian Government. Britain, however, adopted, perhaps rather sanctimoniously, the position which France had taken a few years earlier with regard to the lease to King Leopold. Had Egyptian sovereignty over the area of Fashoda been abandoned? Lord Salisbury, the British Prime Minister, said:

> *How much title remains to Egypt, and how much was transferred to the Mahdi and the Khalifa, was a question that could practically be only settled, as it was settled, on the field of battle. But their controversy did not authorise a third party to claim the disputed land as derelict. There is no ground in international law for asserting that the dispute of title between them, which had been inclined one day by military superiority in one direction, and a few years later had been inclined in the other, could give any authority or title to another Power to come in and seize the disputed region as vacant or relinquished territory.*

Lindley, writing in 1926, was uncertain whether the delay by the Egyptian Government in reconquering the territory had been sufficiently long in order to constitute abandonment. But he points out that in August 1894 France had still regarded the region as belonging to Egypt, and therefore although France took a different view in 1898, it is hard to see how the abandonment could have occurred between 1894 and early 1896, when Egypt began to reassert her sovereignty.[14]

[14] Lindley, *op. cit.*: 52-3.

2.5.3 The Temple of Preah Vihear (1962)

The case of the *Temple of Preah Vihear* was decided by the International Court of Justice in 1962. It is a case in which the consistent behaviour of both parties was held to have given rise to a course of conduct which effectively altered the terms of a treaty. Thailand (or Siam as she was then called) and France (on behalf of the Protectorate of Cambodia) agreed a treaty to delimit their boundary in 1904. The treaty provided that the boundary would go along the watershed in a mountain range. If the boundary had been so drawn, this would have left the Temple of Preah Vihear in Siam. Commissioners, French surveyors instructed by both states, delineated the boundary, but it seems that the evidence was inconclusive as to where the line ran in the area of the Temple. A map, produced in 1907, was seen by the Siamese officials concerned, who raised no objection (see Figure 1). It showed the Temple on the French side of the boundary. The Siamese even thanked the French for the map, and asked for further copies. They accepted it as representing the outcome of the work of delimitation. Over the course of the years, both sides proceeded on the assumption that the Temple indeed lay on the French side of the boundary. In 1930, Siamese officials visited the Temple, where they were received as guests by the French political resident. The ICJ held that, on these particular facts, an *estoppel* had arisen preventing the Thai claim from succeeding.

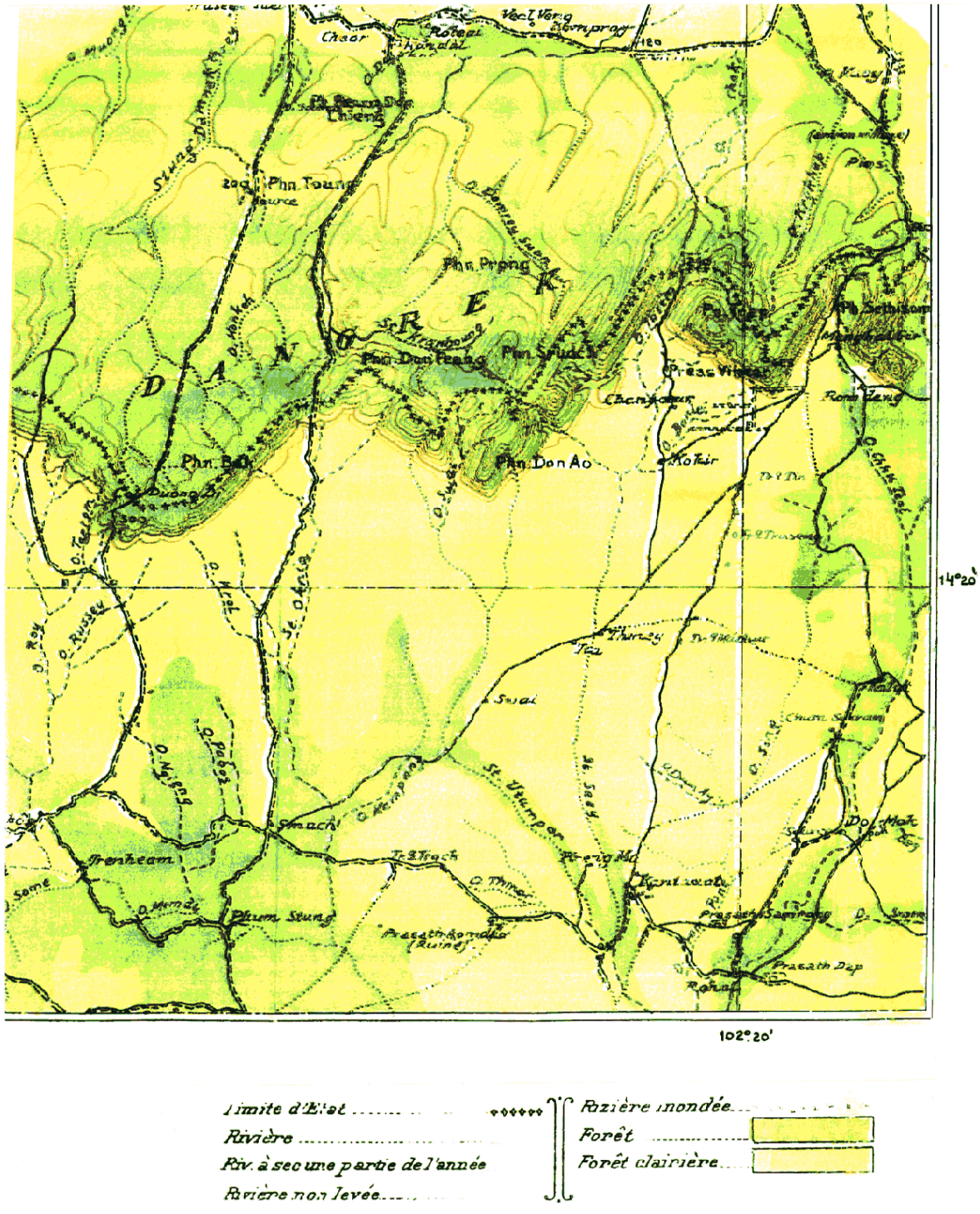
Thailand also argued that since the original promulgation of the map in 1908 she had believed that the boundary line and the watershed line laid down in the 1904 treaty coincided. On this basis, she attempted to argue that her acceptance of the line on the map had only occurred in the mistaken belief that the map line reflected the line of the watershed. In order to prove her title to the area, she pleaded various acts of sovereignty. Jennings has drawn attention to an obvious inconsistency here which the Court identified.[15] If Thailand did indeed believe the map to be accurate, then her attempted acts of sovereignty in the area of the Temple were violations of Cambodian/French sovereignty. Jennings commented on the reasoning which led the Court to its decision:

> *Indeed, looking simply to the majority judgment one is hard put to it not to lump all together in an omnibus concept of "consolidation of title by lapse of time." What is immediately striking about the case is the exiguous assistance that the Court derived from acts of either party on the ground – acts which indeed by themselves merely indicated a situation of ambiguity.*[16]

These examples all show how it is necessary to follow closely the conduct of the parties throughout the period during which the dispute was current, and for the parties to be consistent in their assertions and their conduct. The precise mode by which sovereignty is acquired is not always entirely clear. It is a question of putting together legal arguments based on the evidence, and producing a case which is stronger than that of the rival state. It is often said

15 ICJ Reports, 1962: 33.
16 Jennings, *op. cit.*:50.

Figure 1: The Temple of Preah Vihear



Source: Extract from *Commission de Délimitation entre L'Indo-Chine et le Siam* map at 1:200,000 included in the *Temple of Preah Vihear* case, 1962.
N.B. Preah Vihear is spelt *"Preas Vihear"* on this map.

that title can be consolidated, but possession (coupled with the intention to possess) is the only way to begin that process.[17] The display of continuous sovereignty, in which the other party acquiesces, will lead to consolidation. Other events, such as recognition by third parties, will also be helpful. But they cannot tip the balance against the open, continuous, and peaceful display of uncontested sovereignty. This means that the territory must have been administered. But, as already indicated, what administration will be needed as evidence will vary according to the geographical characteristics of the territory in question.

2.6 *Uti Possidetis*[18]

When a new state emerges out of a former state, or when a colonial territory becomes independent as a sovereign state, it will inherit the old international boundaries which surrounded the territory. Under the principle known as *Uti Possidetis*, which originated in Latin America when it became independent from Spain, administrative boundaries from the colonial period were deemed to be transformed into international frontiers between states which had previously been different provinces (or groups of provinces) all under one sovereignty. When Africa became independent, colonial frontiers were specifically reserved through the sovereign will of the new African states, as expressed in the 1964 Declaration of the Organisation of African Unity. The principle has been adopted across the world. Thus, the existing boundaries between the new states which have emerged from the former Soviet Union have been upheld. Likewise, the boundaries between the Republics which have emerged from the former Yugoslavia correspond to those which existed before that state was split asunder.[19]

When assembling evidence, it may therefore be necessary to study the extent and evolution of administrative unities within a former territory, as well as other entities (such as constituent members of a federation) whose boundaries were not international frontiers. Similarly, it is frequently pointed out that many of the former colonial boundaries, particularly in Africa, bore little relation to the facts of human or physical geography: and they frequently cut through the political entities and ethnicities of the pre-colonial period. Nevertheless, the history of those political entities and ethnicities may often be significant, since there were also many colonial boundaries which were determined by reference to them. When, at independence, a boundary was constituted as being, say, that between the territories of two indigenous rulers, who were in a special treaty relationship with neighbouring colonial powers, then the organisation and extent of their rule are worth studying, since this will help to establish the rightful course of the boundary.[20]

An international boundary, once established in international law, may only be changed by agreement. Even a fundamental change of circumstances, or the termination of a valid treaty will not enable a state (or its successor state) to terminate or suspend a boundary established

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17 See the discussion on historical consolidation of title in Jennings, *op. cit*.: 23-28 and in particular at p.26.

18 The phrase is part of a Roman Law maxim, which might be translated into English as: *"as you possess in law, thus may you possess."*

19 For an exhaustive and very recent study of *uti possidetis* and its application today, see Shaw (1996) 'The Heritage of States: the principle of *uti possidetis* today'*, The British Year Book of International Law*: 75-154.

20 On African boundaries, see in particular Shaw (1986) *Title to Territory in Africa*, Oxford: Clarendon Press and Brownlie (1979) *African Boundaries: A legal and diplomatic Encyclopaedia*, London: Hurst.

by that treaty. Similarly, as Shaw has written, *"the application of uti possidetis will not be overridden by the norm of self-determination."*[21]

3. Evidence

3.1 General Remarks

We can now turn to evidence itself. What should a state produce in order to show it has acquired and maintained title? What should it search for in order to show that the rival state's title is not valid?

Although evidence is important throughout the period of dispute, in practice there can be little doubt that a tribunal will place more regard on what has happened in more recent years. The resurrection of old disputes will not be welcomed by the international community, since they will not be conducive to stability. This is not to say there is a presumption against the value of older evidence: it is just that a tribunal is likely to be interested in the immediate past before it is interested in the more remote past. The more recent conduct of states will in any event be likely to override or modify their earlier conduct.

This brings us on to another concept, the Critical Date.[22] The Critical Date is the point at which the dispute can be said to have crystallised. Evidence of events after this date has no legal significance, save to the extent that it confirms pre-existing circumstances. However, the point at which the dispute may be said to have crystallised may not be readily apparent, and the parties may well disagree as to when this occurred. The Court may also be reluctant to restrict its survey of the case by reference to a point in time, save with regard to acts undertaken by a party in order to improve its legal position.

Although the law of evidence is less developed in public international law than in most domestic legal systems, it is a cardinal rule that evidence should be as close to the original as possible. It may be necessary to produce the original itself. Although the writings of historians and other specialist academics may play a vital role, remember always that what is required is an eye witness account, or that precious original document which relates to a specific event. Second-hand accounts and work carried out analysing original source materials are, by their very nature, secondary. Specific events which prove the case must be pinpointed in order to substantiate all assertions. One soon develops a skill to detect those parts of a pleading or memorandum which have been written in broad brush terms, and contain unsupported general statements. They are likely to deal either with events and issues concerning which little evidence has been discovered, or else be an attempt to conceal a weakness in the case advanced.

In international law the onus will be on a party to prove its own contentions. International lawyers sometimes use a Latin maxim which means this, *actori incumbit probatio*. In a negotiation or arbitration proceedings neither party will normally be in the position of plaintiff or defendant. There is also another Latin maxim, *ei incumbit probatio qui dicit non qui negat*, *"the burden of proof lies on him who asserts, not on him who denies."* Arguments must

21 See Shaw, 1996: 152.

22 Jennings, *op. cit.*: 31-5; Oppenheim, *op. cit.*: 710-12; Brownlie, *op. cit.*: 130-1.

therefore be under-pinned by facts, and once facts have been established satisfactorily, they become pieces of the jigsaw which will show which party has the stronger case.

3.2 Exercise of Sovereignty and Protests

We are thus looking for all evidence of the exercise of sovereignty. Claims are not enough. However, it is also possible that acts which could in themselves constitute an act of sovereignty will not be regarded as such because they were not carried out with the intention of acquiring or maintaining sovereignty. If a ruler or a senior government official can be shown to have visited the territory which subsequently became the subject of dispute, did he do so in order to assert the authority of the state he represented? Or did he, as in the *Temple of Preah Vihear* case, do so as a guest of the other power?[23] In either case, it will be evidence. But in the first case, it will be good evidence for the state which he represented, whilst in the second example it will be good evidence for the rival state.

What about actions that are protested? A state will be expected to make protests when its rights are infringed. If one state is in occupation of the disputed territory, a search should be made for protests by any rival state. What may be particularly damaging to the rival state is if it protested about other matters, but did not protest at the purported exercise of sovereignty.[24]

When talking of the exercise of administration and control, of acts of sovereignty and *effectivétés*, one is really looking at any official action which implies sovereignty: evidence of civil control by the military and police authorities; the establishment of courts and the hearing of court cases in civil or criminal matters; any of the actions carried out by the numerous ministries of a modern Government; the establishment of schools and educational institutions; the establishment of state-run hospitals and medical facilities; the establishment of a postal service or telegraph and telephone systems; the granting of concessions by a state to conduct mining activities or establish utilities; vaccination programmes; the conducting of censuses; the construction of roads; mapping and triangulation activities; treaties with local rulers under which an element of sovereignty was transferred to the colonial power, and which made these rulers, conversely, agents of the colonial power in a certain sense. In offshore areas, evidence of regular coastguard and fishery protection patrolling, responsibility for navigational aids such as lighting and buoying and other activities carried out by the state may be of significance. It is pointless to try to extend the list. When examining the source material from which the evidence will be extracted, one must develop an instinct as to what will be persuasive in the case in question.

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23 See above, paragraph 2.5.3.

24 An example of this can be seen in the discussion of the *Minquiers and Ecrehos* case at paragraph 4.2 below. France protested at British conduct which treated the *"Ecrehos rocks"* as British Territory on the grounds that it breached a fisheries convention between the two states. France did not claim that the British action also amounted to an infringement of French sovereignty over the rocks. This made it hard for France to argue subsequently that the *"Ecrehos rocks"* had been French at the time of her protest.

3.3 The *Dubai/Sharjah* Border Award (1981)

This brings us back once again to our starting point: there is no such thing as absolute title, and therefore a state must show that it has a better title than its opponent. A tribunal will be prepared to take into account local concepts of sovereignty, if evidence can be presented in the light of these, whilst evidence which would support control and administration under more internationally accepted concepts of sovereignty is lacking.

In the *Dubai/Sharjah* border award, the tribunal held that certain inland, desert areas belonged to Sharjah, and not to Dubai, because control was administered there through the allegiance of the Bani Qitab tribe to Sharjah. Conventional acts of sovereignty in this remote area were few, but the tribunal satisfied itself that under local concepts this tribe controlled the area. Since it gave its allegiance to Sharjah, it was held that this allegiance involved a form of administration and control by Sharjah. This was also something that had been recognised by the British Government, with which both Emirates were in special treaty relationship.[25]

By contrast, the coastal area, where the main centres of population of both Emirates existed, was somewhat different. This area was much more developed, and it was therefore possible to decide where the boundary lay on the basis of more easily recognisable international criteria of administration and control, which provided the evidence for sovereignty.

Territory can change its geographical character as development occurs. If the *Dubai/Sharjah* border arbitration had never taken place, and the critical date at which the dispute crystallised was in 1998, then it is perfectly possible that a tribunal would not place such weight on the evidence of the bonds of tribal allegiance. It might be possible that today a tribunal would be presented with fresh evidence of the construction of police stations, military installations, roads, grants of land and other governmental activities in parts of the area concerned. It would only be if consideration of such activities (and no doubt the granting of oil concessions and production sharing agreements etc.) were insufficient to provide adequate evidence as to which Emirate owned the territory in question, that evidence of traditional concepts of tribal allegiance, as they existed in the first half of the 20th century in the north-eastern Arabian peninsula, would still be persuasive.

Evidence must also be sought for third party recognition which will reinforce a claim. Has there been third party recognition, either expressly or by implication? Acts recognising the sovereignty of one state over a disputed territory may not have been expressly designed to constitute recognition, but they can be said to provide evidence of the 'state of mind' of the state which made the recognition.

3.4 Sources of Evidence

One of the first ports of call when searching for evidence will be the United Nations. The records of discussions in the Security Council and the General Assembly, as well as in any relevant committees, may contain useful evidence of the claims made by states, protests and third party recognition. If there is a particular area of law (such as the Law of the Sea) which

[25] International Law Reports, 91: 635-652 see also Bowett (1994) 'The Dubai/Sharjah Boundary Arbitration of 1981', *British Yearbook of International Law 1994*: 103-133 and in particular at pp.123-5.

is of great relevance to the dispute in question, then the *travaux préparatoires* of the negotiations which led to the convention should also be searched. States will be expected to show a consistent attitude, and evidence of such consistency or the lack of it may be found in the statements of their representatives preserved in such records.

When assembling evidence, all political developments from the time when the dispute arose must be traced. Some of the first research to be carried out will be into the archives of the countries which had a historical involvement in the area in question. Those archives, if they are publicly available, are the obvious place to begin research. If the dispute concerns successor states to one of the colonial empires, then the archives of that empire will be a priority. A succession of different powers may have been involved in one territory.

The archives of other powers which were never able to establish themselves in a particular territory may also be relevant. This is particularly the case, for instance, during the period in which tremendous pressure built up between the rival ambitions of the world powers which led to that earthquake in world politics called the First World War. The views of other powers that never established their own sovereignty may be particularly relevant when it comes to questions of recognition. The case of the Sudan in the last two decades of the 19th century, which is mentioned above, is a good example of this.

There may also have been rivalry on commercial matters which led to interesting reports being filed at the relevant Ministry. Powers frequently spy on each other. Even in parts of the world where one power might have no obvious political or strategic interests, it is perfectly possible that reports were sent back home and are now publicly available many years later.

3.4.1 Governmental Archives

States vary tremendously as to the amount of their archives which are made available to the public. They probably also vary tremendously as to the quantity of archival material which they retain. However, many major democratic countries today publish their archives after a particular period of time and allow researchers access to them. The rules vary from time to time, as new legislation is promulgated. By contrast, there are some states which do not make their archives available to the public, but publish selections from them. Obviously such selections must be treated with an element of caution, since an inference is possible that the selection will be self-serving. The degree to which states have catalogued their archives also varies. Never despair of obtaining material which dates from a later period than that for which a state has opened its archives. It may well be possible to persuade someone to exercise a discretion. However, if you do this, be prepared to be asked the reason why you are making the request, and also the possibility (or probability) that the state will open the papers in question to both parties to a dispute impartially.

Most states will not just have one single archive. Government ministries may have parallel or overlapping jurisdictions, and the frontiers between them are not always clear. Different officials, in different ministries and even in different territories, may have had files on the same or overlapping subjects.

3.4.2 Other Archives

In addition to state archives, there are, of course, important private archives. It is not possible to give a comprehensive list, but as research develops into the international boundary or territory in question one develops an instinct for which kind of organisations may have files which are relevant. Two very frequent ones are religious organisations, such as missionary orders and, of course, the archives of commercial companies – particularly companies which may have had a direct interest in the extent of a ruler's territory, such as an oil or mining company.

During the ages of European expansion, companies which were founded for trading sometimes took on much wider activities, including the maintenance of armed forces and the occupation and subjugation of territory. Companies were even founded with concessions for such purposes, and exercised sovereignty themselves. It will certainly be worth inspecting their archives. Navigational materials such as pilots and almanacs will contain physical descriptions of coastlines and islands, and often will provide evidence about political powers at the time. They may be particularly valuable with regard to remote areas, in respect of which little other archival material may be available.

3.4.3 Maps

At first glance, maps are always attractive as evidence. It is a relief to look at a prettily coloured page rather than to have to read dense acres of legal and factual verbiage. However, maps printed and published by third parties who have no standing in the dispute are of little value in comparison to the acts of administration and control which provide the evidence for a successful claim to sovereignty. As Judge Huber said in the *Island of Palmas* case:

> *If the arbitrator is satisfied as to the existence of legally relevant facts which contradict the statements of cartographers, whose sources of information are not known, he can attach no weight to the maps, however numerous and generally appreciated they may be.*[26]

But what of maps produced by a cartographer who has based his map on information specially collected for the purpose concerned? In the *Temple of Preah Vihear* case, to which we have already referred, the court looked at the historical facts surrounding the publication, communication and use of the map, and came to the conclusion that the parties had adopted it as representing the outcome of the work of the delimitation of the frontier in the region concerned. This conferred a binding character on the line shown on the map. Note, however, that this came from the way in which the parties treated the map, not from the map itself. The distinction is very important.

A map may likewise be significant when it is produced by a state and can give evidence of an admission by that state that it did not enjoy sovereignty over the territory concerned. This was the case with the Latzina map, which was published under the auspices of the Argentinean government within a couple of years of an 1881 boundary treaty with Chile. It showed the islands of Picton, Neuva and Lennox (PNL) as belonging to Chile. The tribunal in the *Beagle Channel* arbitration commented that the circumstances of its production and dissemination

[26] Jennings, *op. cit.*: 106-7.

made it of high probative value on account of the evidence it showed of official Argentine recognition, at the time, of the Chilean character of the PNL group:[27]

> *The Latzina map of 1882-3 provides an excellent example of the relevance of a map not so much for its own sake – (it could, theoretically, have been inaccurate) – but for the circumstances of its production and dissemination, making it of high probative value on account of the evidence afforded by this episode, namely of official Argentine recognition, at the time, of the Chilean character of the PNL group. The force of this, as illustrative of Argentine official opinion in the immediate post-Treaty period, is therefore in no way lessened by the fact that the 1882 Latzina map fell out of favour with the authorities a decade or so later, or that Dr Latzina himself, having again, in 1888, published a map showing a Chilean attribution for the PNL group, proceeded the year after, in 1889, to publish or at least write an introduction to a work containing a map showing the group as Argentine.*

It is possible to carry out very extensive map searches, not only going through official map collections but also searching through public collections of atlases such as that in the British Library. The work of cartographers published in atlases will almost certainly have no official standing with regard to the dispute in question. However, they may indicate a pattern which has a certain degree of interest. When dealing with a remote territory, in connection with which there are few or no traceable acts of sovereignty, then any pattern of overwhelming preponderance which can be established from such maps may be better than no evidence at all. But beware of the fact that atlases have family trees: their compilers frequently rely on the work of earlier mapmakers. As Huber pointed out, they may be of little or no probative value. Nevertheless, they may provide clues for other forms of research: the degree of detail in which an area is shown in published maps may help to show how significant or remote, and perhaps how frequented, it was at any given time.

3.4.4 The Contribution of Experts

Expert evidence may be needed on a number of matters of fact and interpretation. There is an obvious need for a hydrographic expert to determine questions relating to the low-water line and related matters. With regard to onshore matters, there will frequently also be a role for geographic experts of one sort or another. The cartographer is an obvious example. But every dispute has its own characteristics, and the evidence concerning them may need to be supported by expert witnesses. There may be specific areas of arcane historical knowledge which have to be investigated, and an archaeological report on a territory may produce useful information. But, as with the sources of evidence, there is no point in attempting to give a comprehensive list. It will all depend on the facts of the dispute in question.

[27] International Law Reports, 52: 198.

4. Extracting the Evidence which is Legally Significant

Evidence should concentrate on the conduct of the parties, and on acts of sovereignty and the exercise of administration and control. It should be as specific as possible, and backed up by unimpeachable documentation. Let us consider the evidence which was deemed persuasive by the tribunals in two well-known decided cases: the arbitration between the Netherlands and the USA over the *Island of Palmas*,[28] and the *Minquiers and Ecrehos* case at the International Court of Justice between France and Great Britain.[29] In each case a consistent pattern emerged, which left little room for doubt as to the outcome. But it must be stressed that these patterns could only become clear once the legal argument and elements of evidence submitted by each side had been assessed. These cases illustrate a number of points made in this paper.

4.1 The *Island of Palmas* Case

This case concerned a remote island, which today forms part of Indonesia, but which was disputed between the colonial powers in the region in the 1920's, namely the Netherlands (which possessed what is now Indonesia) and the USA (which possessed the Philippines) (see Figure 2).

The dispute crystallised in 1906 when an American general visited the island, believing it to be part of the Philippine archipelago which the USA had acquired from Spain under the *Treaty of Paris* in 1898 which terminated the Spanish-American War. It was accepted that the USA could obtain no better title than what Spain had possessed and transferred. However, the treaty had set out geographical coordinates for the Philippine archipelago, and the island lay within that area.

The evidence on which the USA relied was essentially that of the old Spanish title.

The USA claimed that the island had been discovered by Spain in 1526 and argued that this gave Spain title under international law as it stood at the time. In 1604, there was mention of a letter sent by a Spanish pilot from the island itself. There was also archival material from the Franciscan religious order (which had brought Catholicism to the Philippines under Spanish rule), which suggested the possibility that Spain had actually occupied the island between 1606 and 1666, when Spain withdrew from certain possessions which may have included the island (if, indeed, it was occupied by the Spanish), whilst reserving her sovereignty.

There were a number of treaties terminating wars in Europe in the 17th and 18th centuries, which included a recognition by Spain and the Netherlands of each others' territories in the area. The arbitrator did not find that Spanish occupation of the island in the early 17th century was established on the facts, and he noted that in the *Treaty of Münster* of 1648 the Netherlands recognised territories in the area actually possessed by Spain, but not any to which title had been acquired merely by discovery.

At the *Treaty of Utrecht*, the earlier *Treaty of Münster* was reaffirmed, save to the extent that it had been subsequently modified by the actions of the parties. There was nothing to suggest

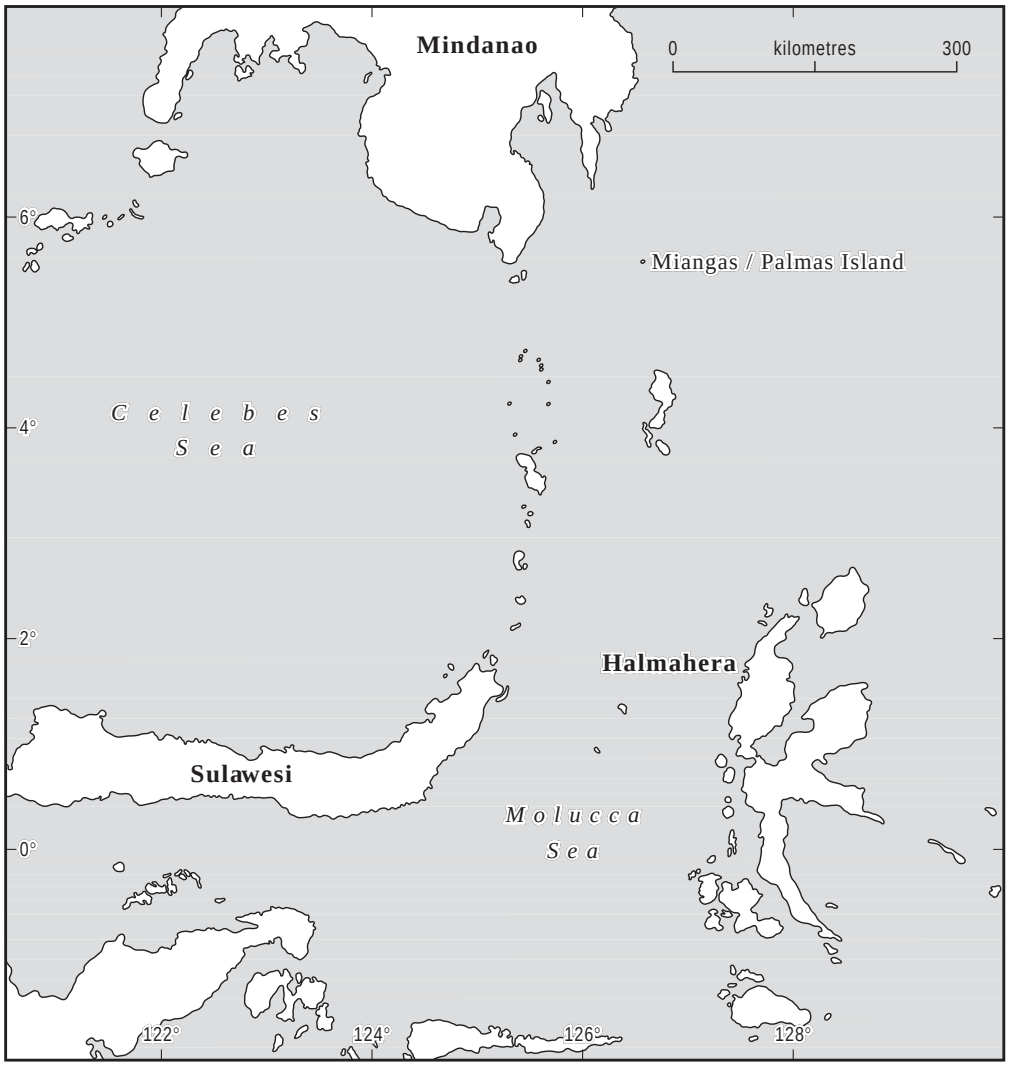
[28] The text is reproduced in Jennings, *op. cit.*: 88-126.
[29] ICJ Reports, 1953: 47-109.

any modification in relation to the island of Palmas itself, and no proof that Spain was in possession of it in either 1648 or 1713.

Nevertheless, it was possible that Spain had possessed indirect sovereignty, because of Spanish authority over the semi-independent Raja of Tabukan, whose possession the island may have been. But in 1677 the Dutch drove the Spanish from Tabukan, so any indirect title that belonged to Spain would have passed to Holland at that time.

The USA also produced evidence that certain Dutch maps in the second half of the 19th century did not indicate that the island was a Dutch possession. The cartography in these maps was copied and reproduced in later Dutch maps, but the arbitrator pointed out that these maps had not been produced with the express purpose of considering the island of Palmas. The USA also submitted evidence of trade links between the island and the Philippines (to which it was nearer), and some knowledge of Spanish and native languages of the Philippines among the island's inhabitants. The arbitrator found that this, in itself, was too vague.

Figure 2: Palmas/Miangas Island



The Dutch claim seems to have gone back at least to 1677, when the Raja of Tabukan entered into special treaty relations with the Dutch East India Company. Right through the 17th, 18th and 19th centuries, subsequent treaties were entered into by this ruler with the Dutch authorities. Indeed, in the 18th century, the ruler was defeated by another ruler who was also in special treaty relations with the Dutch authorities, and whatever title he possessed was transferred to the second ruler, but this made no difference as to the position between the Netherlands and Spain.

These treaties were executed in 1677, 1697, 1720, 1758, 1828, 1885 and 1899. They showed a consistent pattern of acknowledgement of the concept that the prince received his principality as a fiefdom of the Dutch East India Company or the Dutch state, which was his suzerain. Apparently this went back to the very earliest treaty, in which the prince undertook only to allow the Protestant religion as established by the Synod of Dordrecht to be practised in his domains. But as time went on, Dutch control obviously increased, and the obligations became more specific. In the 1885 treaty, the prince was prevented from engaging in relations with other governments and undertook to use the Dutch currency as legal tender. The 1885 and 1899 treaties specifically mentioned the island of Palmas.

As early as 1700, there had been a report of the inhabitants of the island waving the flag of a prince in special treaty relations with the Dutch. There was evidence that his criminal justice regulations were exercised on the island in 1701, and an explicit report by a Dutch governor that it belonged to him in 1706. The Dutch were also able to produce some evidence of the island paying tribute to its prince in the latter years of the 19th century, and that that prince was under an obligation to help the islanders in case of distress. In 1896, a Dutch coat of arms was even erected on the island by a chief who received it from Dutch colonial officials.

Finally, in 1906 when an American general visited the island, expecting it to be part of the dominions which the USA had acquired from Spain, he noted *"to his surprise"* that there was a Dutch flag flying on the island and on the boat which came to greet him. He was told that the flag had been there for 15 years or longer.

Comment

There was a consistent thread of evidence from the 17th century onwards of possession and administration with the intention to act as sovereign either by the Dutch authorities themselves, or indirectly by princes in special treaty relationships with them. Against this, the USA failed to present any evidence of acts of sovereignty from the more recent past, and there seems to be no suggestion that Spain had protested at the Dutch activities. Spain probably had a better title until some point in the 17th century, but failed to maintain it.

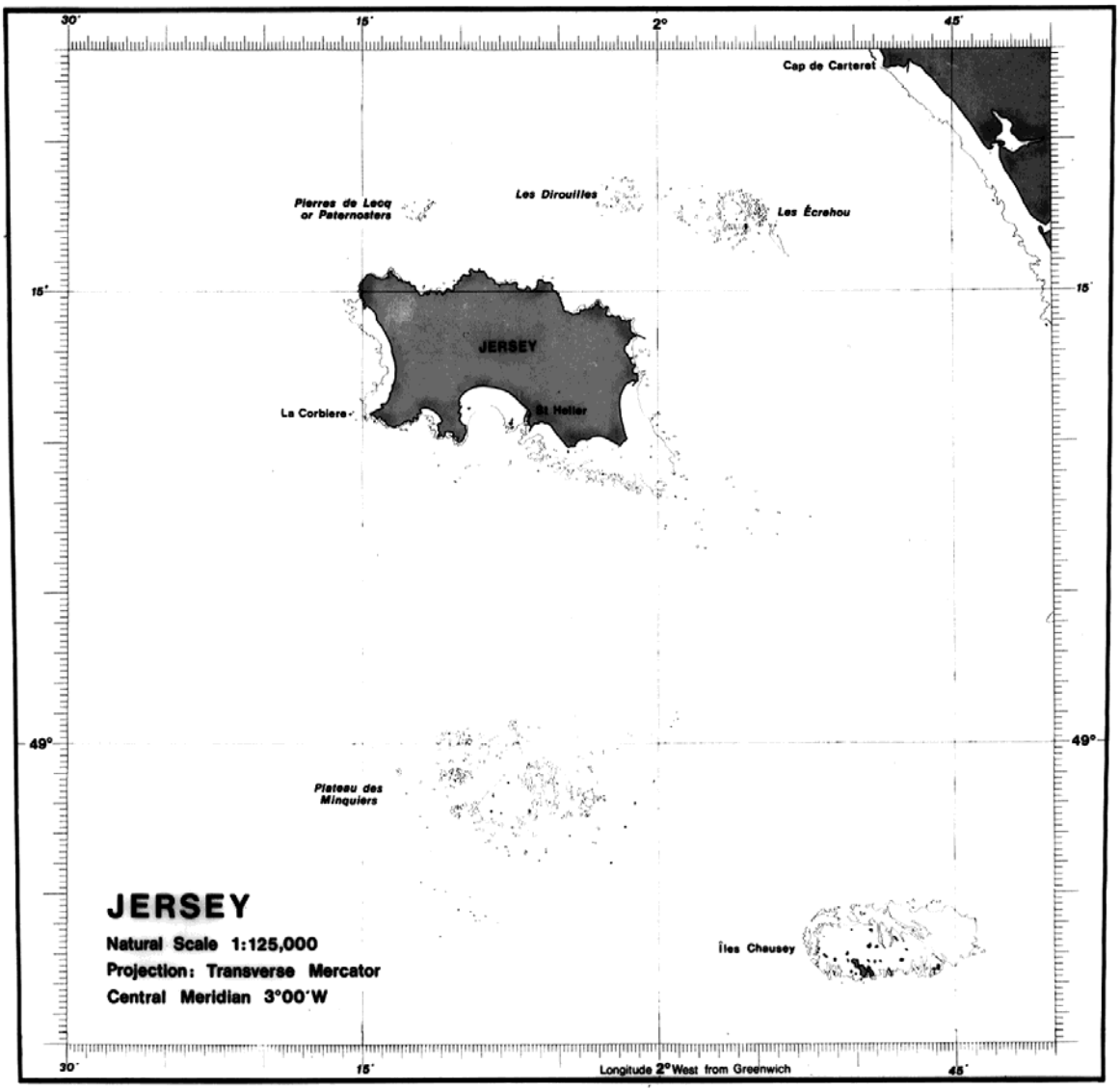
The Arbitrator rejected the American argument that discovery, without occupation, would have given a good title at that time. Throughout the period which he had to consider, the island was remote and of little interest. Yet the increasing grip exercised by the Dutch authorities over the island's ruler implied Dutch sovereignty, and the USA could give no evidence to rebut this.

4.2 The *Minquiers and Ecrehos* Case

This case concerned two small groups of islets and rocks lying in the English Channel between the Channel Islands (which belong to Great Britain) and the French coast (see Figure 3). For all practical purposes, they had to be considered separately, since the evidence of acts of sovereignty on one group could obviously not be evidence with regard to the other group.

In 933, William Longsword received the Channel Islands in fee of the King of France, and did homage to the King of France in respect of all of Normandy. France essentially attempted to argue that, on the basis of this, there was a presumption that all the Channel Islands had once belonged to France, and therefore French sovereignty survived, save to the extent that France had specifically lost it.

Figure 3: Minquiers, Ecrehos and the Chausey Islands



In 1066, Normandy was joined to England and the Duke of Normandy also become King of England, but his authority as Duke of Normandy continued to stem from the King of France.

In 1204, France conquered Normandy, but not the Channel Islands. Wars continued between England and France intermittently over the following centuries, and a number of treaties were executed between them, particularly the *Treaty of Lambeth* in 1217, the *Treaty of Paris* in 1259, the *Treaty of Calais* in 1360 and the *Treaty of Troyes* in 1420. All of these accords dealt with territorial arrangements, including islands, but none of them was specific as to whether the Minquiers and Ecrehos groups formed part of the Channel Islands (which remained with England) or not.

In 1203 a gift was made of Ecrehos by a certain Piers des Préaux, who stated that the King of England *"gave me the islands."* There were a number of other mediaeval documents which referred to the Channel Islands as a group, but they tended not to specify them all – and it seems that none was produced mentioning Ecrehos or Minquiers. France also asserted that there had been a court case in Paris in 1202 in which King John of England had been deprived of all his French possessions, and that this would have given France title. Britain denied that France had established the facts adequately, or that France had even been able to prove her contentions concerning William Longsword in 933. When considering such evidence the court stated that what was of decisive importance was not indirect presumptions deduced from events in the Middle Ages, but the evidence which related directly to the possession of the Ecrehos and Minquiers groups.

Here, Britain was able to show some evidence dating from the Middle Ages. In 1309, proceedings indicated that a right to a presentation to the priory of Ecrehos (a right *in rem* under Norman Law) stemmed from the King of England. In 1323 and 1331 the Prior of Ecrehos became involved in legal proceedings in Jersey. Although these did not concern Ecrehos itself, it was evidence of some kind of connection. In 1337, protection was given to the Priory on Ecrehos because it was under the authority of the King of England. In the 15th century, there was a form of tithe or tax in the Channel Islands called wheat rents. There was some evidence that these were paid by certain parishioners in Jersey *"by cause of Ecrehos."* In 1528, the King of England appropriated these wheat rents, which led to the Priory of Ecrehos falling into ruin and being abandoned. Thereafter, the islands were *"only occasionally visited by Jerseymen for the purpose of fishing and collecting seaweed."* Now this could have been a crucial point in the case, because England seemed to have a good title at that point, but was in grave danger of losing it because evidence of English authority exercised on Ecrehos ceases. In fact, there were some other islands in the Channel Islands group, called the Chausey Islands, which did eventually pass to France as a result of English abandonment of them.

In the 19th century the story starts again. There is nothing to suggest that the French had done anything to establish their own position in respect of Ecrehos. Instead, there are further examples of British authority and control. Thus, there was a court case in Jersey in 1826 against a man who had shot somebody on Ecrehos, and in respect of other criminal offences committed there in 1881, 1891, 1913 and 1921.

The law of Jersey required the holding of inquests on corpses found within the Bailiwick. Inquests were held regarding corpses found on Ecrehos in 1859, 1917 and 1948.

From 1820 onwards, a number of houses and huts were built on the Ecrehos group by people from Jersey. Rates had to be paid to a Jersey parish in respect of them, and rate schedules from 1889 and 1950 were produced as evidence. Furthermore, in 1872, a fishing boat on Ecrehos was registered in Jersey.

In 1863, 1881, 1884 and later, contracts relating to real property on Ecrehos were registered in the Jersey land registry. In 1884, Jersey even built a customs post there, and in 1901 the island was included in a Jersey census. There was evidence that visits were made there by the Jersey authorities from 1885 onwards, and in particular a slipway was built in 1895, a signal post in 1910 and a mooring buoy in 1939.

Against all this, France made her first claim to Ecrehos in 1886, which was well after the islands were in the effective possession of Britain. France relied, however, on an oyster fishing convention of 1839. According to France (although Britain did not accept this) the fisheries around the Ecrehos and Minquiers islands were to be shared jointly, but the convention did not state that there was joint sovereignty over the islands. However, in 1875 a British Treasury Warrant included *"Ecrehos rocks"* within the limits of the port of Jersey, and the court held that this was a clear act of sovereignty. Now France had protested at this, alleging it was a breach of the 1839 fishing convention, but France did not claim sovereignty over the islands in that protest. The reason for this seems to be that France considered the islands at the time to be *res nullius*.

With regard to Minquiers, there was evidence that a number of wrecks there in the 17th century (1615, 1616 and 1617) were dealt with according to the procedures of the Jersey courts, and on one occasion a court hearing was even held on the island.

There were also a number of cases in the 19th and 20th centuries of corpses being washed up on the island. Once again, they were dealt with according to the law of Jersey.

From 1815 onwards, again as in the case of Ecrehos, huts were built on Minquiers for the fishing season, and were included for rating purposes in a parish on Jersey. Likewise, there were contracts of sale of real property registered in the Jersey land registry in 1896 and 1909, and in 1909 a customs house was built there. A slipway was also built in 1907, a mooring buoy in 1913, and beacons and buoys were placed there in 1931, and a winch in 1933. In 1813-15, a hydrographic survey was carried out by the British authorities (although that was probably not considered an act of sovereignty).

France seems to have had slightly more by way of evidence in respect of Minquiers, but much of this was not conclusively carried out as acts of sovereignty. France conducted a hydrographic survey in 1888, erected beacons, and claimed ever since 1861 that she had had sole charge of lighting and buoying there. The lighting and buoying was even inspected by the French prime minister in 1938, and in 1939, a Frenchman had erected a house there with a subsidy from the mayor of Granville on the French mainland.

Nevertheless, the French claim was only made in 1888, and Britain was able to show exercise of sovereignty both before and after that date. Also, there was some interesting 19th century diplomatic correspondence, including a letter from the French Minister of Marine which was transmitted to the British Government by the French Ambassador in London in 1819. This included a statement that the Minquiers group were "*possédés par l'Angleterre.*" Although

this statement was made in abortive negotiations, it was a statement of fact, not a proposal or concession. There was also an occasion in 1869 in which France referred to the Minquiers as a dependency of the Channel Islands.

Comment

This case shows how effective possession, with the intention and will to act as sovereign, will defeat any subsequent claim, provided it is maintained. The French claims would seem only to have been raised after Britain had already established good title, and maintained it by effective possession. The conduct of the parties in the more recent past can be seen as the crucial factor in the Court's mind, making it unnecessary to dwell on events in the Middle Ages.

In the case of Ecrehos, the French case would have been further weakened by France's protests at alleged breaches of the 1839 Convention, which contained no claim of sovereignty in circumstances where one would have been expected, and this amounted to a damaging admission. In the case of Minquiers, the French case would also have been weakened by 19th century admissions that the group belonged to Britain. The judgment mentions no evidence to suggest that Britain subsequently abandoned the Minquiers. On the contrary, British possession and the preponderance of British acts of sovereignty continued after France raised her claims.

5. Conclusion

The international law of title to territory has been developed through arbitral and judicial decisions, and is likely to continue to evolve in this way. Scholars may debate how the rules for the acquisition of title to territory should be formulated, but this writer believes that at the present time the substance of these rules as set out in this monograph will by and large remain good law for the resolution of disputes between member states of the United Nations. It is hard to see how any judge or arbitrator can fail to look at the conduct of states, and to find in favour of the party which has the preponderance of evidence on its side.

This writer therefore does not believe that radical changes are likely to be made to the substantive law of title to territory in the foreseeable future. As mentioned above, international law is concerned first with stability and order. It is disinclined to allow new concepts which have no basis in law and which might give rise to new disputes, or resurrect old ones. It is therefore very unlikely that political arguments based, say, on the greater proximity or contiguity of one party to the territory concerned, or on the territory's alleged greater strategic importance to one party than the other, will find a significant place in international law.

Claims based on the self-determination of peoples present a more complex problem. Yet. although we talk loosely of the 'nation state' it must be remembered that a sovereign state is a different concept from a 'nation', a 'community' or a 'people'. Two sovereign states can come together and in so doing their territory is merged. Alternatively, states can split apart (consider the fragmentation of the former Yugoslavia, or the breaking away of Eritrea from Ethiopia). History will provide further examples of both processes.

If future adjustments are made to the boundaries between sovereign states in order to unite a people who straddle an existing boundary, this writer believes that the process is more likely to occur through the application of the substantive content of the existing rules of international law, rather than through the creation of new norms. In other words, such adjustments will arise through agreement between the sovereign states concerned, even if this takes the form of a treaty concluded at the end of some form of undeclared hostilities.

Even if the structures of neighbouring states decay to the point at which the states in question have no meaningful existence, the advantages in international law of being a sovereign state and a member of the United Nations are so great that any new power structures which evolve in such territories are likely to try to express themselves in terms of the pre-existing framework, and claim legitimacy as successors to states which existed before. Any revision to frontiers will then be made by treaty.