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Territory, Acquisition

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A. A Note on Terminology

1. Property, Ownership, and Acquisition of Territory: Clarification of Concepts

1 The expression ‘acquisition of territory’ is usually employed as meaning the establishment of → *sovereignty* over a given piece of land. Well-known UN Security Council resolutions refer to ‘acquisition of territory’ in this manner, notably Resolution 242 (1967). The expression, however, requires some precision. First, strictly speaking, ‘territory’ as a term of art comprises not only emerged land, but also → *airspace*, the → *territorial sea*, and → *internal waters* (see *Military and Paramilitary Activities in and against Nicaragua [Nicaragua v United States of America] [Merits]* [1986] ICJ Rep 14 at para. 212; → *Military and Paramilitary Activities in and against Nicaragua Case [Nicaragua v United States of America]*). However, what is essentially at issue in the ‘acquisition of territory’ is the acquisition of (emerged) land, with the rest of the above-mentioned components of the legal notion of ‘territory’ being land appurtenances. Secondly, States acquire, or establish through certain acts and conduct, a particular territorial status or particular rights rather than ‘territory’ *per se*. As will be examined below, different legal statuses apply to territory including sovereignty, which is undoubtedly the most important and common, albeit not the only possible legal status.

2 In *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*, the → *International Court of Justice (ICJ)* noted that the term ‘ownership’ is sometimes used to refer to sovereignty (at para. 222; → *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge Case [Malaysia/Singapore]*). Indeed in → *State practice*, expressions such as ‘acquisition of ownership over a territory’, ‘to possess the property of a territory’, or ‘to have *dominium* over a territory’ are often considered synonymous to ‘acquisition of territorial sovereignty’. Despite this confusing practice, a clear distinction must be maintained between the acquisition of private rights over a given territory and the acquisition of sovereignty over that territory. A decision concerning sovereignty over a given territory does not prejudice the ownership rights that individuals or even States may possess in the same territory. The ICJ chamber in *Frontier Dispute (Benin/Niger)* observed ‘that the question of the course of the boundary on the bridges is totally independent of that of the ownership of those structures, which belong to the Parties jointly’ (at para. 124; → *Frontier Dispute Case [Benin/Niger]*). There are other examples of pieces of land that are under the sovereignty of one State and the property of another (the → *Mundat Forest*, under German sovereignty and French ownership; the region of Tiwinza, under Peruvian sovereignty and Ecuadorian ownership). Besides, it is generally accepted that there can be a transfer of property without a transfer of sovereignty and vice-versa. Moreover, a transfer of sovereignty over a territory does not affect private property rights therein (see *German Settlers in Poland [Advisory Opinion]* 36 and 38; *Certain German Interests in Polish Upper Silesia [Germany v Poland] [Merits]* 22 and 42 [→ *German Interests in Polish Upper Silesia Cases*]; *Land, Island and Maritime Frontier Dispute [El Salvador/Honduras: Nicaragua Intervening] [Merits]* para. 66 [→ *Land, Island and Maritime Frontier Dispute Case (El Salvador/Honduras: Nicaragua Intervening)*]; *Frontier Dispute [Benin/Niger]* para. 118).

2. Modes of Acquisition of Territory and Titles to Territory

3 Traditionally, doctrine referred to the different means of acquiring territorial sovereignty as ‘modes of acquisition of territory’, by drawing an analogy with domestic law for the acquisition of ownership over land. This doctrinal construction was criticized for not being able to embrace all the various ways through which territorial sovereignty is established. At present, the notion of ‘title’ is preferred. It refers generally to the acts or facts that constitute the legal foundation for the establishment of a right over territory. The notion of

title is often employed to refer either to the source of a right or to the proof of it (*Frontier Dispute [Burkina Faso/Republic of Mali] [Judgment]* para. 18; → *Frontier Dispute Case [Burkina Faso/Republic of Mali]*). → *Maps* provide a good example to illustrate this distinction. When annexed to a treaty of cession of sovereignty, maps have the same value as the treaty. They are an integral element of the relevant 'title-source', which is the treaty of cession. However, when maps are not annexed to such a treaty, they merely constitute evidence that a State may invoke in order to prove its title over the territory in dispute. Their probative value will depend, in these circumstances, on factors such as their accuracy, their official character, or the authority establishing them (ibid paras 54–55). Unless stated otherwise, this entry uses the term 'title' to mean the source of a right or competence over territory.

B. The Categorization of Territorial Titles

4 From the perspective of the rights and competencies bestowed, titles can confer sovereignty, administration, or private ownership over land. In so far as the existence of a title can be linked to the existence of a previous title, titles can be classified as original and derivative titles.

1. Title of Sovereignty and Title of Administration

5 Not all relations between a State and a territory can be explained by reference to the notion of sovereignty. Territorial sovereignty refers to the plenitude of a State's competences over a territory. To possess sovereignty over a territory implies, according to Arbitrator Max Huber in the *Island of Palmas Case (or Miangas)* (→ *Palmas Island Arbitration*), that a State is legally entitled to exercise therein the plenitude and exclusivity of State competences. This includes its capacity to make decisions concerning the fate of the territory, ie to alienate it. In other circumstances, a State may administer a territory without being its sovereign. Consequently, assessing the nature of the relations between a State and a territory requires, first and foremost, to distinguish titles of sovereignty from titles of administration. States that exercised a mandate (→ *Mandates*) under Art. 22 League of Nations Covenant or a trusteeship under Chapter XII UN Charter (→ *United Nations Charter*; → *United Nations Trusteeship System*) had a title to administer the territories on the basis of the agreements concluded with the → *League of Nations* and the → *United Nations (UN)* respectively, without having acquired sovereignty over the territories in question. A State may confer the exercise of authority over a given territory to another State, whilst retaining its sovereignty. This can also be the result of a decision of an international organization or a peace conference.

6 The difference between a title of sovereignty and a title of administration lies in the ability of its holder to dispose of the territory concerned. On the one hand, States enjoying a title of sovereignty can exercise the plenitude and exclusivity of rights related to a territory. On the other hand, States that simply administer a territory only possess the specific powers that are conferred on them by the title they hold, ie the mandate or trusteeship agreement, or by the treaty-based and customary rules governing the factual situation in which a State finds itself in control of a territory, such as the case of military occupation (→ *Occupation, Belligerent*).

2. Original and Derivative Titles of Sovereignty

7 The distinction between original and derivative titles is based on a traditional view about the modes of acquisition of territorial sovereignty. Traditionally, five modes are identified in legal literature as establishing territorial sovereignty, namely → *cession*, effective occupation (→ *Effectiveness*), → *accretion*, → *conquest*, and → *prescription*. The distinction between the original and derivative acquisition of sovereignty over territory served as a

criterion to classify these modes. In territories characterized legally as *terrae nullius*, the acquisition of sovereignty is termed ‘original’, whereas for territories already under the sovereignty of another State, it will be referred to as ‘derivative’. On these lines, effective occupation of a *terra nullius* is considered as an original mode of acquisition of sovereignty, whereas cession is a derivative title of sovereignty. The ICJ endorsed this distinction when dealing with the agreements concluded between local chiefs and colonial powers in the *Western Sahara Advisory Opinion*. According to the Court, these agreements could not be considered as creating an original title, but were derivative titles of sovereignty (see *Western Sahara [Advisory Opinion]* paras 79–80; → *Western Sahara [Advisory Opinion]*).

8 The distinction between original and derivative titles of territorial sovereignty has important legal consequences. On the one hand, the legal impact of possession by a State is not the same in the case of a *terra nullius* as it is in the case of a territory under a State’s sovereignty (see below the relations between titles and *effectivités*). On the other hand, concerning derivative titles of sovereignty, the validity of the transfer will depend on whether the previous sovereign possessed a lawful title over the territory purportedly ceded. Max Huber emphasized this aspect in *Island of Palmas* when he noted that

> [t]he title alleged by the United States of America as constituting the immediate foundation of its claim is that of cession, brought about by the Treaty of Paris, which cession transferred all rights of sovereignty which Spain may have possessed in the region indicated in Article III of the said Treaty and therefore also those concerning the Island of Palmas (or Miangas). It is evident that Spain could not transfer more rights than she herself possessed (at 842).

3. A Brief Overview of Titles of Sovereignty

9 One of the five modes of acquisition of territorial sovereignty identified in the legal literature is no longer a valid title (conquest, including → *debellatio*). Another mode is essentially related to past periods of history (effective occupation, since it can generally be affirmed that there are no longer *terrae nullius*). The existence of another mode under international law is controversial (acquisitive prescription). Moreover, State practice and case law evince that there are other titles by which territorial sovereignty is established.

10 A title of sovereignty can be established or determined by treaty. This may be a peace treaty, a treaty of cession, or a treaty of delimitation. In addition, special mention should be made of the treaties concluded between colonial powers and local chiefs. The history of colonization reveals that there was a consistent practice of colonial powers entering into treaties with local chiefs for various purposes, including in order to transfer the latter’s territories to colonial powers. In this regard, the ICJ considered in the *Western Sahara Advisory Opinion* that ‘such agreements with local rulers, whether or not considered as an actual “cession” of the territory, were regarded as derivative roots of title, and not original titles obtained by occupation of *terrae nullius*’ (at para. 80). The exact scope of those treaties with regard to territorial sovereignty depends on their content (*Maritime Delimitation and Territorial Questions between Qatar and Bahrain [Qatar v Bahrain]* [Merits] paras 38–44, 95 [→ *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v Bahrain)*]; *Land and Maritime Boundary between Cameroon and Nigeria [Cameroon v Nigeria: Equatorial Guinea Intervening]* paras 200–9 [→ *Land and Maritime Boundary between Cameroon and Nigeria Case (Cameroon v Nigeria)*]; *Sovereignty over Pedra Branca/Pulau Batu Puteh* paras 135–36).

11 Attribution by an organ having the capacity to dispose of a given territory is also constitutive of title, either a title of sovereignty or of administration. It may be the decision of an international conference (see → *Memel Territory Statute, Interpretation of, Case*), or of an international organization (see → *Treaty of Lausanne, Interpretation of [Advisory Opinion]*) and UNGA Resolution 390 (V) concerning the federation between Ethiopia and → *Eritrea*, or, in earlier times, a decision of the Pope through papal bulls (see → *Territory, Discovery*). Decisions by tribunals having the capacity to settle → *ex aequo et bono* a territorial dispute can also be constitutive of a title of sovereignty. As a matter of course, other decisions by adjudication (the ICJ or arbitral tribunals) have a declaratory character of what the legal existing situation is and, as such, they do not create territorial sovereignty (*Frontier Dispute [Burkina Faso/Mali]* para. 17).

12 The creation of a new State entails the establishment of a new sovereignty over the territory. Rules relating to the succession of States imply respect for existing boundaries, established by treaty or otherwise. The → *uti possidetis doctrine* involves the transformation of former administrative limits into the boundaries of the new States (*Frontier Dispute [Burkina Faso/Mali]* paras 20–26; *Land, Island and Maritime Frontier Dispute [El Salvador/ Honduras]* paras 40–43; *Frontier Dispute [Benin/Niger]* paras 23–25; *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea [Nicaragua v Honduras]* paras 146–67 and 229–36 [→ *Maritime Delimitation between Nicaragua and Honduras in the Caribbean Sea Case (Nicaragua v Honduras)*]). As a 'general principle, which is logically connected with the phenomenon of the obtaining of independence, wherever it occurs' (*Frontier Dispute [Burkina Faso/Mali]* para. 20), *uti possidetis* was first applied in the context of accession of Latin American States to independence in the 19th century, then in the context of the → *decolonization* of Africa, and, more recently, in the context of the creation of States in the territory of the Union of Soviet Socialist Republics and that of the Socialist Federal Republic of Yugoslavia (see, for instance, *In the Matter of an Arbitration under the Arbitration Agreement between the Government of the Republic of Croatia and the Government of the Republic of Slovenia, Signed on 4 November 2009 [Final Award]* [29 June 2017] PCA Case No 2012-04, para. 256 ['*Croatia v Slovenia*']). In *Frontier Dispute (Burkina Faso/Niger)*, the Court confirmed its view, already expressed in *Burkina Faso v Mali*, that the principle of *uti possidetis iuris* and the 'principle of the intangibility of boundaries inherited from colonization', which is enshrined in the text of resolution AHG/ Res 16(I) adopted in 1964 by the Organization of African Unity ('OAU'), had the same legal significance (para. 63; → *Frontier Dispute Case [Burkina Faso/Niger]*).

13 Unilateral acts can also constitute a title of sovereignty. Despite the controversy on whether the → *Permanent Court of International Justice (PCIJ)* considered the Ihlen Declaration in *Legal Status of Eastern Greenland (Denmark v Norway)* (→ *Eastern Greenland Case*) as being a unilateral act or a tacit agreement, it is certain that unilateral acts can create obligations for States (→ *Unilateral Acts of States in International Law*; see also → *Tacit Agreements*). As such, they can have the effect of transferring the sovereignty of a territory from one State to another. Unilateral acts can adopt the form of an explicit renunciation of territorial sovereignty and/or → *recognition* that sovereignty belongs to another State. → *Acquiescence* is a tacit expression of will manifested by unilateral conduct that can lead to the abandonment of sovereignty and its transfer to another State (*Sovereignty over Pedra Branca/Pulau Batu Puteh* paras 120–21).

14 The issue remains whether in a specific case a State can be considered to have acquiesced to the claim of an opposing party. The State that is alleged to have acquiesced should have direct or constructive knowledge of the acts accomplished by the State claiming to have acquired sovereignty through acquiescence. In addition, the acquiescing State must be under a duty to react to these acts. This will be the case when there is a clear

claim of sovereignty over a territory by another State. In *Temple of Preah Vihear (Cambodia v Thailand)*, the Court stressed both elements when it said:

> Looking at the incident as a whole, it appears to have amounted to a tacit recognition by Siam of the sovereignty of Cambodia (under French Protectorate) over Preah Vihear, through a failure to react in any way, on an occasion that called for a reaction in order to affirm or preserve title in the face of an obvious rival claim. What seems clear is that either Siam did not in fact believe she had any title —and this would be wholly consistent with her attitude all along, and thereafter, to the Annex 1 map and line—or else she decided not to assert it, which again means that she accepted the French claim, or accepted the frontier at Preah Vihear as it was drawn on the map *([Merits]* at 30–31; → *Temple of Preah Vihear Case*).

15 As stated by the Court in *Sovereignty over Pedra Branca/Pulau Batu Puteh*, acquiescence should not be presumed lightly. In each case the clear consent to opposing claims needs to be established. Such consent can be tacit, implicit, or even construed. Nonetheless, it should be established beyond doubt. Admittedly,

> silence may also speak, but only if the conduct of the other State calls for a response. Critical for the Court's assessment of the conduct of the Parties is the central importance in international law and relations of State sovereignty over territory and of the stability and certainty of that sovereignty. Because of that, any passing of sovereignty over territory on the basis of the conduct of the Parties, as set out above, must be manifested clearly and without any doubt by that conduct and the relevant facts. That is especially so if what may be involved, in the case of one of the Parties, is in effect the abandonment of sovereignty over part of its territory (at paras 121–22).

In order to establish that a State has acquiesced to another State's claims, judges will take into account the consistent conduct of the State regarding the opposing claims. Isolated acts will not be deemed as sufficient to create a title of territorial sovereignty based on acquiescence. In addition, State conduct, such as a → *protest* or the way in which a State continues to treat in its domestic legal system the territory in dispute, may defeat any claim based on acquiescence.

4. Contested Approaches to Acquisition of Territorial Sovereignty

16 As mentioned above, the existence of acquisitive prescription in international law has been a matter of controversy since early times. In the second half of the 20th century, some scholars attempted to overcome this debate by putting forward the notion of historical consolidation of title. However, both the doctrine of acquisitive prescription and that of historical consolidation of title still remain controversial.

(a) Acquisitive Prescription

17 For its proponents, the doctrine of acquisitive prescription would be a title leading to the acquisition of territorial sovereignty where the territory in question had a previous holder of sovereignty, and where such acquisition occurs through the possession of a territory *à titre de souverain* over a prolonged lapse of time. However, neither the lapse of time nor prolonged possession, for this matter, which are the two characteristic elements of the concept of acquisitive prescription, are per se the legal bases justifying the transfer of sovereignty in a situation in which the territory at issue belongs to another State.

18 The role of the possession *à titre de souverain* will be discussed below. Regarding the time factor, it is worth recalling that there is no precise time limit prescribed by international law the lapse of which would be considered as conferring on a State in possession of a territory the right to acquire sovereignty thereof. In the *Chamizal Case (Mexico/United States of America)* (see → *American-Mexican Boundary Disputes and Cooperation*), the arbitral award stressed the absence of a fixed deadline for this purpose (at 328). This view is undoubtedly correct as the proponents of the doctrine of acquisitive prescription tend to transpose into international law a domestic legal institution which needs for its implementation not only a fixed deadline, but also the authority of a judge to declare the transfer of title from its legitimate owner to the possessor, or its registration by a competent administrative body. However, nothing prevents States from establishing by treaty a deadline to prescribe, as was the case of the special agreement concluded between Great Britain and Venezuela on the Guyana Boundary Arbitration (→ *Guyana-Venezuela Border Dispute*). This constituted a unique case, leading to a decision based on a treaty, rather than on general international law.

19 It has been argued in academic literature that the role of acquisitive prescription, as a means of transferring title in international law, is fulfilled by other existing legal mechanisms at the international level. Indeed, the critical issue regarding transfer of territorial sovereignty in cases other than formal cession is not only the fact of possession *à titre de souverain*, but essentially the conduct of the dispossessed holder of title. As long as the title of the latter is not extinguished by abandonment (→ *Territory, Abandonment*), the possessor State cannot establish its sovereignty over the territory (*Sovereignty over Pedra Branca/Pulau Batu Puteh* paras 121–22). Therefore, aside from the unambiguous situation in which a State holder of the title formally renounces its sovereignty over a territory, acquiescence may play a decisive role for the transfer of sovereignty if all its conditions are met.

20 Acquisitive prescription has been discussed by the ICJ in territorial disputes, either because it was invoked by one of the parties as a principal or subsidiary title, or because one of the parties accused the other of claiming a prescriptive title (*Minquiers and Ecrehos [France/United Kingdom]*; → *Minquiers and Ecrehos Case*; *Temple of Preah Vihear; Sovereignty over Pedra Branca/Pulau Batu Puteh*). In *Kasikili/Sedudu Island (Botswana/Namibia*), the Court stressed that the parties had agreed, in the → *compromis* seizing the Court of the dispute, that acquisitive prescription is recognized in international law, as well as on the conditions under which a title of territorial sovereignty may be acquired by prescription. However, the judgment then stated that ‘the Court need not concern itself with the status of acquisitive prescription in international law or with the conditions for acquiring title to territory by prescription. It considers … that the conditions cited by Namibia itself are not satisfied in this case and that Namibia’s argument on acquisitive prescription therefore cannot be accepted’ (para. 97; → *Kasikili/Sedudu Island Case [Botswana/Namibia]*). In *Land and Maritime Boundary between Cameroon and Nigeria*, the Court responded to Nigeria’s allegation that, even if Cameroon’s sovereignty was to be upheld, Nigeria still possessed a title of sovereignty arising from the long and peaceful exercise of the sovereignty over Bakassi. The Court emphasized the fact that Nigeria had never had a lawful title of sovereignty over this territory. Accordingly, the Court held that the *effectivités* relied upon by Nigeria were contradictory to law and could not, therefore, create a valid title of sovereignty for this country (at para. 64). In *Sovereignty over Pedra Branca/Pulau Batu Puteh*, the Court found that the transfer of sovereignty, ie the loss of sovereignty by Johor/Malaysia and its acquisition by the United Kingdom/Singapore, was

due to the conduct *à titre de souverain* of the latter, and the conduct of the former which included the failure of Johor/Malaysia to respond to the British/Singaporean conduct.

21 A survey of State practice reveals that States are careful not to rely on acquisitive prescription as the main basis of their claims to territorial sovereignty. In fact, claims based on acquisitive prescription have the undermining effect of asserting that the original title belonged to the other State. Finally, case law shows that tribunals, rather than examining whether title was acquired through the 'doctrine of prescription' (as it was called by the Court in *Kasikili/Sedudu Island* para. 90), focus on State conduct by both sides to the dispute in order to determine whether there has been an abandonment of title and recognition of the other State's sovereignty through acquiescence.

(b) Historical Consolidation of Title

22 In order to circumvent the theoretical and practical objections against acquisitive prescription some scholars proposed, in the second half of the 20th century, the notion of 'historical consolidation of title' as a title of territorial sovereignty (De Visscher; Schwarzenberger; Blum). Whereas acquisitive prescription is primarily based on the prolonged lapse of time during which a State held possession of a territory, the notion of historical consolidation of title focuses rather on the special interest a State may have in a given territory, and the general tolerance or recognition by other States of this claim. This notion was grounded on the dictum of the Court in *Fisheries (United Kingdom v Norway)* ([1951] ICJ Rep 116 [→ *Fisheries Case (United Kingdom v Norway)*]) where the Court dealt with the claim of Norway to extend its fisheries zone beyond the limits recognized by international law (→ *Fishery Zones and Limits*).

23 In this case, the Court laid great emphasis on the attitude of other States vis-à-vis the Norwegian delimitation system and the benefit of general toleration. In *Land and Maritime Boundary between Cameroon and Nigeria*, the latter invoked historical consolidation of title in order to claim sovereignty over the Bakassi Peninsula. The Court stressed that 'the notion of historical consolidation has never been used as a basis of title in other territorial disputes, whether in its own or in other case law'. For the Court, 'the theory of historical consolidation is highly controversial and cannot replace the established modes of acquisition of title under international law, which take into account many other important variables of fact and law' (at para 65). Crucially, the Court stressed that where a title of sovereignty exists, *effectivités contra legem* cannot prevail over it.

C. Role of Effectivités

24 In all territorial disputes, the parties advance arguments that relate both to the existence of title and to *effectivités*. The role the latter plays in the settlement of the dispute varies on the basis of different considerations.

1. Notion of Effectivités

25 Doctrine and case law use the French term *effectivités* to refer to acts undertaken in the exercise of State authority through which a State manifests its intention to act as the sovereign over a territory. Conditions for valid *effectivités* relate both to the entity performing them and to the specific nature of the acts performed.

(a) Entities Allowed to Display State Sovereignty

26 There are no specific rules applicable to territorial disputes that determine when an *effectivité* is attributable to a State. Thus, rules of general international law must be used to establish whether an act can be attributed to a State or not (→ *State Responsibility*). Only persons whose acts are attributable to a State can perform an act reflecting the intent of that State to claim sovereignty over a territory. Still, some particularities appear in the field of territorial disputes.

(i) Acts Performed by State Organs

27 Both acts performed by a central government's organs and those accomplished by other State agents in their official capacity are attributable to a State, and constitute—if other conditions are respected—valid manifestations of sovereignty (Arts 4 and 7 ILC Articles on Responsibility of States for Internationally Wrongful Acts ['ARSIWA']). This does not mean that conduct of different State organs have the same evidentiary weight. The conduct of the central government has greater evidentiary weight than the conduct of local authorities. The conduct of the former is considered to reflect with greater accuracy the intent of the State. Thus, in *Temple of Preah Vihear*, the Court considered that acts performed by local agents could neither override nor nullify the consistent conduct of Siamese central authorities (at 30).

(ii) Acts Performed by Private Entities

28 The acts of private entities are in principle not attributable to a State. Thus, they cannot create a title of sovereignty for a State. Confronted with acts of private individuals in a territorial dispute, a judge will consider whether these persons have been authorized to exercise elements of governmental authority on behalf of a State. According to the tribunal in the *Dubai/Sharjah Border Arbitration*, 'the effective control of a territory does not depend on the actions of private individuals *per se* but only on the actions of public authorities or individuals acting on their behalf' (at 606).

29 Furthermore, the presence of a population of a given State on a disputed territory is not in itself decisive for determining which State is the holder of the territorial title of sovereignty. In *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)* the tribunal defined its task as consisting in the definition of the boundaries in accordance with international law. The fact that thousands of Hondurans or Salvadorians were on the 'wrong side' of the boundary as established by the tribunal was considered irrelevant to its delimitation (at para. 97). The Court followed the same approach in *Land and Maritime Boundary between Cameroon and Nigeria* (at para. 67). Conversely, the acts of State organs, regulating the presence of individuals on a territory, may be considered as *effectivités* depending on the nature of such acts.

30 In *Croatia v Slovenia*, the arbitral tribunal observed that the Parties had agreed that the boundary should be determined in accordance with international law. Accordingly, the tribunal concluded that it

> has neither the right nor the legal power to decide upon the course of the boundary except by applying the rules and principles of international law. Factors that are legally irrelevant, or which the Parties have expressly decided should be excluded from consideration, must not be taken into account by the Tribunal in reaching its decision. The Tribunal is required to decide the matter from the legal, and not from

> the historical or political or sociological perspective. That is what the two Governments have chosen and mandated (*[Final Award]* at 108, para. 335).

31 When a State authorizes an individual or a chartered company to perform sovereign acts on their behalf, these acts are attributable to that State. Such acts can be considered as *effectivités*. In *Island of Palmas* the sole arbitrator Max Huber stressed that

> [t]he acts of the East India Company (Generale Geoctroyeerde Nederlandsch Oost-Indische Compagnie), in view of occupying or colonizing the regions at issue in the present affair must, in international law, be entirely assimilated to acts of the Netherlands State itself. From the end of the 16th till the 19th century, companies formed by individuals and engaged in economic pursuits (Chartered Companies), were invested by the State to whom they were subject with public powers for the acquisition and administration of colonies (at 858). (See also *Sovereignty over Pedra Branca/Pulau Batu Puteh* para. 21).

Nowadays, the acts of such charter companies would be attributable to a State pursuant to Art. 5 ARSIWA.

(b) Material Acts (Corpus) Displaying Sovereignty in International Case Law

32 There is a wide range of acts that may constitute manifestations of the exercise of State sovereignty. These can be classified according to the three traditional powers of a State, namely legislative power, executive power, and judicial power. According to the PCIJ in the *Eastern Greenland case*, '[l]egislation is one of the most obvious forms of the exercise of sovereign power' (at 48). In the case concerning the *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, the Court declared that Malaysia had sovereignty over the disputed territory based on its legislation regulating turtle egg fishing. The Court was of the opinion that 'both the measures taken to regulate and control the collecting of turtle eggs and the establishment of a bird reserve must be seen as regulatory and administrative assertions of authority over territory which is specified by name' ([*Judgment of 17 December 2002*] para. 145; → *Sovereignty over Pulau Ligitan and Pulau Sipadan Case [Indonesia/Malaysia]*). Administrative and judicial acts have also been taken into account in *Minquiers and Ecrehos (France/United Kingdom)*. In this case, the Court gave weight to the fact that the tribunal of Jersey had exercised jurisdiction over the Ecrehos for more than 100 years. As far as the construction of lighthouses and other aids to navigation is concerned, although they do not constitute *per se* an act manifesting the exercise of sovereignty (at 70–71), they have been considered as acts *à titre de souverain* in the case of very small islands in *Maritime Delimitation and Territorial Questions between Qatar and Bahrain* (at para. 197). Military activities, police surveillance (*The Indo-Pakistan Western Boundary [Rann of Kutch] between India and Pakistan [India v Pakistan]* at 558; → *Rann of Kutch Arbitration [Indo-Pakistan Western Boundary]*), and naval patrols (*Sovereignty over Pedra Branca/Pulau Batu Puteh* paras 240–43) were considered to be *effectivités*. Official publications, depending on their context, may or may not constitute evidence of *effectivités*.

(c) Subjective Element: The Intent to Act as a Sovereign

33 As discussed above, there exist different statuses for the exercise of State activity in relation to territory. Acts accomplished by a State acting as the administering power of a territory are not *effectivités*, in light of the fact that such acts are not carried out with the intent to act as a sovereign. For instance, acts performed by a trustee in accordance with the system enshrined in Chapter XII UN Charter, or acts performed by a belligerent

occupant, are not performed *à titre de souverain*. As such, they cannot be given probative value in territorial disputes for the establishment of a title of sovereignty.

2. Role of Effectivités and Title in Territorial Disputes

34 Although *effectivités* play a significant role in territorial disputes, they cannot per se and automatically be assigned the legal effect of creating a title of territorial sovereignty in all circumstances. The impact of *effectivités* in disputes will depend on a number of different factors. In some cases, effectivités may themselves constitute a title; in other cases, they may evidence the existence of a title; or they may be unable to displace a title.

(a) Relationship Between Effectivités and a Title to Territory

35 The *Frontier Dispute (Burkina Faso/Mali)* is the *locus classicus* on the relationship between titles and *effectivités*. According to the Court,

> [w]here the act corresponds exactly to law, where effective administration is additional to the *uti possidetis juris*, the only role of *effectivité* is to confirm the exercise of the right derived from a legal title. Where the act does not correspond to the law, where the territory which is the subject of the dispute is effectively administered by a State other than the one possessing the legal title, preference should be given to the holder of the title. In the event that the *effectivité* does not co-exist with any legal title, it must invariably be taken into consideration. Finally, there are cases where the legal title is not capable of showing exactly the territorial expanse to which it relates. The *effectivités* can then play an essential role in showing how the title is interpreted in practice (at para. 63).

36 Although the Chamber of the Court was dealing in that case with *uti possidetis*, its statement concerning the relationship between *effectivités* and title is authoritative on the legal framework to apply in order to examine the relationship between *effectivités* and a legal title in general. The Court has applied this framework in other cases, irrespective of whether *uti possidetis* was at issue (*Land, Island and Maritime Frontier Dispute [El Salvador/Honduras]* paras 61–62; *Sovereignty over Pulau Ligitan and Pulau Sipadan* para. 126; *Land and Maritime Boundary between Cameroon and Nigeria* para. 68; *Frontier Dispute [Benin/Niger]* para. 47; and *Territorial and Maritime Delimitation between Nicaragua and Honduras in the Caribbean Sea [Nicaragua v Honduras]* paras 151–58).

37 To summarize, in a territorial dispute, the legal value of *effectivités* is to be assessed according to the existence or not of a legal title. When there is no title of sovereignty over a territory, or that title cannot be determined by other means, *effectivités* can create a territorial title. Whenever a title of sovereignty exists, it has primacy over contradictory *effectivités* performed by another State. Thus, in the joined cases *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v Costa Rica)*, the Court held that '[t]he *effectivités* invoked by the Parties, which the Court considers are in any event of limited significance, cannot affect the title to sovereignty resulting from the 1858 Treaty and the Cleveland and Alexander Awards' (*[Merits]* para. 89; → *Certain Activities Carried Out by Nicaragua in the Border Area [Costa Rica v Nicaragua] and Construction of a Road in Costa Rica Along the San Juan River [Nicaragua v Costa Rica]*). When performed in contradiction to an existing title, *effectivités* cannot in themselves create a title of sovereignty. In *Land and Maritime Boundary between Cameroon and Nigeria*, 'the Court concludes that the situation was essentially one where the *effectivités* adduced by Nigeria did not correspond to the law, and that accordingly "preference should be given to the holder of the title"' (at para. 70). In other cases, *effectivités* can have probative value or serve to interpret an existing title. They can also play a residual function in the absence of any other title, in

which situations they are considered as being ‘as good as a title’, to use the words of Max Huber in *Island of Palmas* (at 839).

38 The *Sovereignty over Pedra Branca/Pulau Batu Puteh case* is the only territorial dispute settled by the Court after the 1986 *Burkina Faso/Mali* judgment in which the Court did not explicitly refer to the established legal framework concerning the relations between titles and *effectivités*. Having recognized that Malaysia held an original title of sovereignty over Pedra Branca/Pulau Batu Puteh, the Court considered that there was a later transfer of sovereignty in favour of Singapore. However, in this case the Court did not depart from the traditional approach it had followed earlier on the relationship between titles and *effectivités*. Indeed, in this case the Court stressed the importance of consent in the field of territorial change and laid emphasis on abandonment and acquiescence as the legal foundations of the transfer of sovereignty from Johor/Malaysia to Great Britain/Singapore. It mentioned that in the 1953 letter of the Sultanate of Johor the latter indicated that it did not claim ‘ownership’ over Pedra Branca, and that this constituted the beginning of a ‘convergent evolution of the positions of the Parties regarding title to Pedra Branca/Pulau Batu Puteh’ (at para. 276).

39 The approach taken by the Court here is also consistent with what the Court had stated earlier in *Land and Maritime Boundary between Cameroon and Nigeria*. According to the Court,

> [s]ome of [Nigeria’s] activities—the organization of public health and education facilities, policing, the administration of justice—could [as argued by it] normally be considered to be acts *à titre de souverain*. The Court notes, however, that, as there was a pre-existing title held by Cameroon in this area of the lake, the pertinent legal test is whether there was thus evidenced acquiescence by Cameroon in the passing of title from itself to Nigeria (at para. 67).

(b) Effectivités and State Conduct

40 State conduct is a very important part of any analysis of a territorial dispute. State conduct comprises both *effectivités* performed by a State over a territory and the reactions of other States to these *effectivités*. State conduct may have a declarative effect when it restates the rights of the parties to a dispute. State conduct can also create an → *estoppel*. In relation to a territorial dispute, State conduct may also entail a renunciation of a right. This may occur when a State decides not to claim its sovereign rights. Conversely, State conduct can also serve to maintain a State’s rights over a territory. This will be the case when a State, which has lost the control of its territory, continues to claim it by issuing protests, enacting legislation, or any other relevant conduct regarding this territory by which it manifests its intention to remain the sovereign. State conduct may also serve to transfer a title of sovereignty. This may occur either through formal consent or through acquiescence.

D. Role of Fundamental Principles of International Law

41 A title to territory or a claim to such a title does not exist in isolation from the international legal system. As such, both can be influenced by other rules and principles of international law which are relevant to this field. This is the case in particular for fundamental principles of international law. Contemporary principles such as the right to self-determination and the prohibition of the use of force have produced significant changes in the law relating to the establishment of territorial sovereignty.

1. Principle of Territorial Integrity

42 Respect for territorial integrity is a cornerstone principle of the contemporary international legal system. As the Court held it in the *Corfu Channel* case, '[b]etween independent States, respect for territorial sovereignty is an essential foundation of international relations' (*[Merits]* 35; → *Corfu Channel Case*). More recently, the Court recalled that 'the principle of territorial integrity is an important part of the international legal order' (*Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo [Advisory Opinion]* para. 80; → *Kosovo [Advisory Opinion]*).

43 The international law regime governing the acquisition of territorial sovereignty attaches far-reaching consequences to the illegal character of acts performed in violation of a State's territorial integrity (→ *Territorial Integrity and Political Independence*): a territory possessed as a result of a violation of the principle of territorial integrity cannot be considered as belonging to the possessor. Indeed, such a possession will be tainted with illegality. Consequently, the principle of territorial integrity strengthens the view that, for territories under State sovereignty, only consent—either expressed implicitly through acquiescence, or explicitly by a formal act like the conclusion of a treaty—can transfer the territorial title.

44 In the *Chagos Advisory Opinion*, the ICJ considered that Administering Powers should respect the territorial integrity of → *non-self-governing territories*. Consequently, it considered that the separation of the Chagos Archipelago from Mauritius in 1965 was illegal (→ *Chagos [Advisory Opinion]*).

2. Principle of Self-determination

45 → *Self-determination* is the most revolutionary of the principles enshrined in the UN Charter, since for the first time in human history it grants to a specific community, a 'people' (as this term is understood in international law), the right to modify territorial sovereignty through the change of the status of the territory upon which self-determination is exercised. This occurs through the creation of a newly independent State, or its integration or free association with a new or an existing one. In the *Chagos Advisory Opinion*, the ICJ clarified that the right of self-determination had already acquired a customary international law character in 1960. For the Court, Resolution 1514 (XV) of the General Assembly had a 'declaratory character with regard to the right to self-determination as a customary norm' (para. 152).

46 The principle of self-determination produces two major effects as far as territorial sovereignty is concerned.

47 First, the principle has an impact on territorial titles formerly held by colonial powers. By virtue of the application of the rules of → *intertemporal law*, colonial titles can no longer be maintained as they are at variance with the right of self-determination. With the consecration of the right of self-determination as a principle of international law, the titles of sovereignty held by former colonial powers were transformed into titles of administration. The → *Friendly Relations Declaration (1970)* appended to UNGA Resolution 2625 (XXV) consecrated this transformation of colonial titles by asserting that '[t]he territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it'.

48 Second, the right to self-determination provides the basis for the sovereignty of 'peoples' over their territory (→ *Peoples*). Resolution 2625 even provides that 'peoples' have a right to territorial integrity when it declares that '[e]very State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State *or country*'. In the *Chagos Advisory Opinion*, the Court linked the right to self-determination to the obligation of respect for territorial integrity. Accordingly, the Court held that

> the peoples of non-self-governing territories are entitled to exercise their right to self-determination in relation to their territory as a whole, the integrity of which must be respected by the administering Power. It follows that any detachment by the administering Power of part of a non-self-governing territory, unless based on the freely expressed and genuine will of the people of the territory concerned, is contrary to the right to self-determination (para. 160).

49 It is crucial to define the notion of 'people' in order to determine what are the human groups that can claim a right to exercise self-determination under international law. As the Court observed in the *Western Sahara Advisory Opinion*, not every population inhabiting a territory constitutes a 'people' entitled to self-determination (at para. 59). This was reiterated in the *Chagos Advisory Opinion* (at para. 158). In the *Kosovo Advisory Opinion*, the Court explained that '[d]uring the second half of the twentieth century, the international law of self-determination developed in such a way as to create a right to independence for the peoples of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation' (para. 79). The Court distinguished declarations of independence made in the context of the exercise of the right of self-determination from declarations of independence made 'outside this context' (ibid).

50 The practice of the UN shows that within the Organization this right was applied only to peoples living under colonial or alien domination. Existing States are considered to be constituted by a single people, unless the State itself recognizes that it comprises a plurality of peoples entitled to exercise self-determination. If understood in this manner, it is possible to reconcile the right to exercise self-determination with the principle of territorial integrity. However, there is debate concerning the scope of the seventh paragraph dealing with self-determination in the Friendly Relations Declaration, which contains the 'saving clause' of territorial integrity of States (see → *Secession*).

3. Principle of the Prohibition on the Use of Force

51 The inclusion of a general prohibition on the use of force in international relations by the UN Charter has had a considerable impact on the international law regime governing territorial change (→ *Use of Force, Prohibition of*). In the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)*, the Court stressed the connection between these two rules. It held that the international rule prohibiting the use of force in international relations and 'its corollary', the international law rule prohibiting the acquisition of territorial sovereignty resulting from the threat or use of force, were customary rules of international law (para. 87; → *Israeli Wall Advisory Opinion [Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory]*). Drawing upon a large international practice dating from the First Pan-American Conference of 1890 and the Stimson Declaration, Resolution 2625 consecrated the duty bearing upon all States not to recognize territorial situations established in violation of the prohibition on the use or threat of use of force. It declared that '[n]o territorial acquisition resulting from the threat or use of force shall be recognized as legal' (Friendly Relations Declaration; see also the definition of → *aggression* embodied in UNGA Resolution 3314 [XXIX]). Consequently, conquest and *debellatio*, which used to be, under certain conditions,

lawful means of acquisition of territorial sovereignty, are no longer valid titles of territorial sovereignty in contemporary international law.

E. Technical Rules in Territorial Disputes

52 Technical rules such as the critical date and the intertemporal law rule do not exclusively operate in the field of acquisition of territorial sovereignty, although they play a significant role in this area.

1. Critical Date

53 Territorial claims imply a succession of events occurring over a considerable span of time. A tribunal is therefore obliged to determine the moment in time when the claims submitted by the parties to a dispute must be legally assessed. This moment in time is the critical date. The determination of the critical date may have a significant impact on both the applicable law and the facts considered to be relevant to the dispute. In *Sovereignty over Pedra Branca/Pulau Batu Puteh*, the Court considered that the critical date serves to 'distinguish … between those acts which should be taken into consideration for the purpose of establishing or ascertaining sovereignty and those acts occurring after such date' (at para. 32).

54 In practice, facts occurring after the critical date will not be taken into account to determine the existence of a title of sovereignty. A State party to a territorial dispute may attempt to improve its legal position by performing self-serving acts. Exceptionally, international tribunals have taken into account some facts that occurred after the critical date. These facts have the peculiar feature of being the continuation of activities previously undertaken by the States concerned before the dispute, and do not improve their legal position (ibid para. 32). Indeed, what is essential is the probative value of such acts, especially in light of their coherence with positions held before the critical date. In particular, acts performed after the critical date cannot be invoked as an independent source of title. This is of particular relevance with regard to acquiescence.

55 In general, the critical date is the date when the dispute crystallizes, ie when the parties formally opposed each other's claim. This generally occurs when one side asserts its sovereignty and the other side protests for the first time, or when the first protest by one State is rejected by the other (ibid para. 33). However, there can be particular critical dates depending on the titles claimed by the parties to a dispute. For disputes relating to *uti possidetis*, the critical date will be the date of accession to independence, in order to determine the existing situation that was inherited by the successor States concerned.

2. Intertemporal Law

56 The intertemporal law rule plays an important role in addressing the effect of the evolution of the international legal system on territorial titles. According to Max Huber,

> [a]s regards the question which of different legal systems prevailing at successive periods is to be applied in a particular case (the so-called intertemporal law), a distinction must be made between the creation of rights and the existence of rights. The same principle which subjects the act creative of a right to the law in force at the time the right arises, demands that the existence of the right, in other words its continued manifestation, shall follow the conditions required by the evolution of law (*Island of Palmas* 845).

Thus, to determine whether a State acquired sovereignty over a territory in the 19th century, the relevant rules of international law that existed at that period must be applied. However, determining whether sovereignty is still maintained nowadays requires examining whether it still complies with the rules of international law that have since evolved. In this manner, the first part of the rule of intertemporal law applies only to acts and facts that give rise to a title of sovereignty, whereas the second part of intertemporal law applies to the legal situation established by this title.

57 Sovereignty acquired by conquest in the 18th or 19th centuries, for example, must be analysed on the basis of the conditions set down by international law for such an acquisition at that time, and not by applying the rules on the prohibition of the use of force existing in contemporary international law. However, the maintenance of sovereignty must conform to the present legal situation. Consequently, sovereignty acquired over a territory in conformity with the international legal system existing at the time of the acquisition can be superseded by the evolution of international law. For instance, the recognition of the existence of a people entitled to exercise the right of self-determination over a territory would render any title of sovereignty formerly held on that territory obsolete (*caduc*).

F. Conclusion

58 General international law has established particular rules that govern the acquisition and loss of territorial sovereignty and administration. There is a plurality of ways by which States become the sovereign or administrator of a given territory. These means are known as titles of sovereignty or administration. With some exceptions, there is no major controversy in State practice as to the existence of these titles. *Effectivités* alone are generally not decisive for the purpose of establishing territorial sovereignty. However, coupled with acquiescence, they can lead to territorial change. The new fundamental principles of international law that emerged from the UN Charter have deeply impacted upon the establishment of sovereignty over territory. The acquisition of territorial sovereignty entails a combination of analysis of the titles invoked by the State concerned as well as its conduct, in order to determine whether the title may be retained or transferred. The importance of what is at stake—territorial sovereignty—requires clear proof of both its acquisition and loss.

Select Bibliography

G Jèze *Etude théorique et pratique sur l'occupation comme mode d'acquérir les territoires en droit international* (Girard & Brière Paris 1896).

E Nys 'L'acquisition du territoire et le droit international' (1904) 36 Revue de droit international et de législation comparée 365–406 and 604–32 and (1905) 37 Revue de droit international et de législation comparée 53–79.

MF Lindley *The Acquisition and Government of Backward Territory in International Law: Being a Treatise on the Law and Practice Relating to Colonial Expansion* (Longmans London 1926).

A Cavaglieri 'Trapassi di territorio senza trattato' (1927) 19 RivDirInt 317–53.

P de Lapradelle *La frontière: Etude de droit international* (Editions internationales Paris 1928).

G Smedal *Acquisition of Sovereignty over Polar Areas* (Dybwad Oslo 1931).

R Ago *Il requisito dell'effettività dell'occupazione in diritto internazionale* (Anonima Romana Roma 1934).

R Genet 'Notes sur l'acquisition par occupation et le droit des gens traditionnels' (1934) 15 Revue de droit international et de législation comparée 285–324 and 416–50.

N Hill *Claims to Territory in International Law and Relations* (OUP London 1945).

R Langer *Seizure of Territory: The Stimson Doctrine and Related Principles in Legal Theory and Diplomatic Practice* (Princeton University Press Princeton 1947).

DHN Johnson 'Acquisitive Prescription in International Law' (1950) 27 BYIL 332–54.

DHN Johnson 'Consolidation as a Root of Title in International Law' (1955) 13 CLJ 215–25.

S Bastid 'Les problèmes territoriaux dans la jurisprudence de la Cour internationale de Justice' (1962) 107 RdC 366–494.

YZ Blum *Historic Titles in International Law* (Nijhoff The Hague 1965).

AO Cukwurah *The Settlement of Boundary Disputes in International Law* (Manchester University Press Manchester 1967).

G Schwarzenberger 'Title to Territory: Response to a Challenge' in L Gross (ed) *International Law in the Twentieth Century* (Appleton-Century-Crofts New York 1969) 287–303.

C de Visscher *Problèmes de confins en droit international public* (Pedone Paris 1969).

G Zimmer *Gewaltsame territoriale Veränderungen und ihre völkerrechtliche Legitimation* (Duncker&Humblot Berlin 1971).

E van Bogaert 'The Lease of Territory in International Law' in *Miscellanea WJ Ganshof van der Meersch: studia ab discipulis amicisque in honorem egregii professoris edita* vol 1 (Bruylant Bruxelles 1972) 315–27.

B Boutros Ghali *Les conflits de frontières en Afrique (etudes et docuaments)* (Editions techniques et économiques Paris 1972).

ALW Munkman 'Adjudication and Adjustment: International Judicial Decision and the Settlement of Territorial and Boundary Disputes' (1972–73) 46 BYIL 1–116.

D Bardonnet 'Les frontières terrestres et la relativité de leur tracé (problèmes juridiques choisis)' (1976) 153 RdC 9–166.

C Rousseau *Droit international public* vol 3 *Les compétences* (Sirey Paris 1977).

D Schenk *Kontiguität als Erwerbstitel im Völkerrecht* (Gremer Ebelsbach 1978).

TO Elias 'The Doctrine of Intertemporal Law' (1980) 74 AJIL 285–307.

MN Shaw *Title to Territory in Africa: International Legal Issues* (Clarendon Press Oxford 1986).

D Bardonnet ‘Les faits postérieurs à la date critique dans les différends territoriaux et frontaliers’ in D Bardonnet and others (eds) *Le droit international au service de la paix, de la justice et du développement: Mélanges Michel Virally* (Pedone Paris 1991) 53–78.

G Nesi *L’uti possidetis iuris nel diritto internazionale* (CEDAM Padova 1996).

S Korman *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (Clarendon Press Oxford 1996).

MG Kohen *Possession contestée et souveraineté territoriale* (Presses Universitaires de France Paris 1997).

LI Sánchez Rodríguez ‘L’uti possidetis et les effectivités dans les contentieux territoriaux et frontaliers’ (1997) 263 RdC 151–381.

SP Sharma *Territorial Acquisition, Disputes, and International Law* (Kluwer The Hague 1997).

P Weckel (ed) *Le juge international et l’aménagement de l’espace: La spécificité du contentieux territorial* (Pedone Paris 1998).

JA Barberis ‘Les liens juridiques entre l’Etat et son territoire: Perspectives théoriques et évolution du droit international’ (1999) 55 AFDI 132–47.

O Corten B Delcourt and P Klein *Démembrements d’Etats et délimitations territoriales: L’uti possidetis en question(s)* (Bruylant Bruxelles 1999).

M Kamto ‘Le matériau cartographique dans les contentieux frontaliers et territoriaux’ in E Yakpo and T Boumedra (eds) *Liber amicorum Judge Mohammed Bedjaoui* (Kluwer The Hague 1999) 371–98.

AG López Martín *El territorio estatal en discusión: La prueba del título* (McGraw-Hill Madrid 1999).

C Simmler *Das Uti-possidetis-Prinzip: Zur Grenzziehung zwischen neu entstandenen Staaten* (Duncker&Humblot Berlin 1999).

P Tavernier ‘Observations sur le droit intertemporel dans l’affaire de l’Île de Kasikili/Sedudu (Botswana/Namibie): Cour internationale de Justice’ (2000) 104 RGDIP 429–44.

MG Kohen ‘El individuo y los conflictos territoriales’ (2001) 28 Curso de derecho internacional 425–60.

MG Kohen ‘La contribución de América Latina al desarrollo progresivo del derecho internacional en materia territorial’ (2001) 17 Anuario de Derecho Internacional 57–76.

MG Kohen ‘L’influence du temps sur les règlements territoriaux’ in Société Française pour le Droit International *Le droit international et le temps* (Pedone Paris 2001) 129–57.

G Distefano *L’ordre international entre légalité et effectivité: Le titre dans le contentieux territorial* (Pedone Paris 2002).

JA Barberis *El territorio del Estado y la soberanía territorial* (Abaco Buenos Aires 2003).

J Castellino and S Allen *Title to Territory in International Law: A Temporal Analysis* (Ashgate Aldershot 2003).

MG Kohen ‘La relation titres/effectivités dans le contentieux territorial à la lumière de la jurisprudence récente’ (2004) 108 RGDIP 561–95.

G Labrecque *Les différends territoriaux en Afrique: Règlement juridictionnel* (L’Harmattan Paris 2005).

MN Shaw (ed) *Title to Territory* (Ashgate Aldershot 2005).

E Milano *Unlawful Territorial Situations in International Law: Reconciling Effectiveness, Legality and Legitimacy* (Nijhoff Leiden 2006).

M Kamto ‘Le statut juridique des traités signés entre les représentants des puissances coloniales et les monarques et indigènes africains en droit international’ in N Angelet and others (eds) *Droit du pouvoir, pouvoir du droit: Mélanges offerts à Jean Salmon* (Bruylant Bruxelles 2007) 455–80.

L Henry *Mutations territoriales en Asie centrale et orientale* (Documentation Française Paris 2008).

R Kolb ‘La prescription acquisitive en droit international public’ in P Zen-Ruffinen (ed) *Le temps et le droit* (Helbing Lichtenhahn Bâle 2008) 149–75.

PB Casella *Direito internacional dos espaços* (Atlas São Paulo 2009).

G Labrecque *Les différends territoriaux en Europe: Jurisprudence de la Cour internationale de Justice* (L’Harmattan Paris 2009).

R O’Keefe ‘Legal Title versus *Effectivités*: Prescription and the Promise and Problems of Private Law Analogies’ (2011) 13 ICLR 147–88.

A Alvarez-Jimenez ‘Boundary Agreements in the International Court of Justice’s Case Law, 2000–2010’ (2012) 23 EJIL 495–515.

G Giraudeau *Les différends territoriaux devant le juge international: Entre droit et transaction* (Nijhoff Leiden 2013).

MG Kohen ‘Original Title in the Light of the ICJ Judgment on Sovereignty over Pedra Branca / Pulau Batu Puteh, Middle Rocks and South Ledge’ (2013) 15 JHIL 151–71.

L Brilmayer and A Faure ‘Initiating Territorial Adjudication: The Who, How, When, and Why of Litigating Contested Sovereignty’ in N Klein (ed) *Litigating International Law Disputes: Weighing the Options* (CUP Cambridge 2014) 193–229.

MG Kohen ‘La relation titres/effectivités dans la jurisprudence récente de la Cour internationale de Justice (2004–2012)’ in D Alland V Chetail O de Frouville and JE Viñuales (eds) *Unité et diversité du droit international: écrits en l’honneur du professeur Pierre-Marie Dupuy* (Nijhoff Leiden/Boston 2014) 599–614.

M Hébié *Souveraineté territoriale par traité: une étude des accords entre puissances coloniales et entités politiques locales* (PUF Paris 2015).

G Oduntan *International Law and Boundary Disputes in Africa* (Routledge London 2015).

MG Kohen (ed) *Territoriality and International Law* (Elgar Cheltenham 2016).

RY Jennings *The Acquisition of Territory in International Law* (Manchester University Press Manchester 2017).

MG Kohen and M Hébié (eds) *Research Handbook on Territorial Disputes in International Law* (Elgar Cheltenham 2018).

J Trinidad *Self-Determination in Disputed Colonial Territories* (CUP Cambridge 2018).

X Ma 'International Jurisprudence concerning the Group or Unity Principle in Territorial Allocation' (2019) 18 Chinese Journal of International Law 165–78.

Select Documents

Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Advisory Opinion) (22 July 2010) [2010] ICJ Rep 403.

Affaire de l'Île de Clipperton (Mexique/France) (1931) 2 RIAA 1105.

Arbitral Award relating to the Issue of Control and Sovereignty over Aves Island (Venezuela/ Netherlands) (1865) 28 RIAA 115.

Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda) [2005] ICJ Rep 168.

Award of Her Majesty Queen Elizabeth II, Pursuant to the Agreement for Arbitration (Compromiso) Determined by the Government of the United Kingdom of Great Britain and Northern Ireland on 1 April 1965 for the Arbitration of a Controversy between the Argentine Republic and the Republic of Chile concerning Certain Parts of the Boundary between their Territories (9 December 1966) (1969) 38 ILR 16.

Award on the Claims of Great Britain and Portugal to Certain Territories Formerly Belonging to the Kings of Tembe and Mapoota, on the Eastern Coast of Africa, Including the Islands of Inyack and Elephant (Delagoa Bay or Lorenzo Marques) (1875) 28 RIAA 157.

Award regarding the Boundary between the Colony of British Guiana and the United States of Venezuela (1899) 92 BFSP 160.

Beagle Channel (Argentina/Chile)(1977) 21 RIAA 53.

Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v Costa Rica) [2015] ICJ Rep 665.

Certain German Interests in Polish Upper Silesia (Germany v Poland) (Merits) PCIJ Series A No 7.

Chamizal Case (United States of America/Mexico) (1911) 11 RIAA 316.

The Cordillera of the Andes Boundary (Award) (Argentina v Chile) (1902) 9 RIAA 37.

Corfu Channel (United Kingdom of Great Britain and Northern Ireland v Albania) (Merits) [1949] ICJ Rep 4.

Décision arbitrale du Président de la République Française entre la Grande-Bretagne et le Portugal relative à la baie de Delagoa (24 July 1875) in C Samwer and J Hopf (eds) *Martens Nouveau recueil général de traités et autres actes relatifs aux rapports de droit international* (reprinted by Kraus Reprint Nendeln 1967) series II vol 3, 517.

Decision regarding Delimitation of the Border between Eritrea and Ethiopia (2002) 25 RIAA 83.

Dubai/Sharjah Border Arbitration (Dubai/Sharjah) (19 October 1981) (1993) 91 ILR 543.

East Timor (Portugal v Australia) [1995] ICJ Rep 90.

Frontier Dispute (Benin/Niger) [2005] ICJ Rep 90.

Frontier Dispute (Burkina Faso/Niger) [2013] ICJ Rep 44.

Frontier Dispute (Burkina Faso/Republic of Mali) [1986] ICJ Rep 554.

German Settlers in Poland (Advisory Opinion) PCIJ Series B No 6.

Government of the State of Eritrea and the Government of the Republic of Yemen (First Stage: Territorial Sovereignty and Scope of the Dispute) (Award) Permanent Court of Arbitration (9 October 1998) (2001) 40 ILM 900.

In the Matter of an Arbitration under the Arbitration Agreement between the Government of the Republic of Croatia and the Government of the Republic of Slovenia, signed on 4 November 2009 (Final Award) (29 June 2017) PCA Case No 2012-04.

The Indo-Pakistan Western Boundary (Rann of Kutch) between India and Pakistan (India v Pakistan) (1968) 17 RIAA 1.

Interpretation of Article 3, Paragraph 2, of the Treaty of Lausanne (Frontier between Turkey and Iraq) (Advisory Opinion) PCIJ Series B No 12.

Interpretation of the Statute of the Memel Territory (Government of His Britannic Majesty v Lithuania) (Merits) PCIJ Series A/B No 49.

Island of Palmas (Netherlands/United States of America) (1928) 2 RIAA 829.

Kasikili/Sedudu Island (Botswana/Namibia) [1999] ICJ Rep 1045.

Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria: Equatorial Guinea Intervening) [2002] ICJ Rep 303.

Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua Intervening) (Judgment) [1992] ICJ Rep 351.

Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion) [1971] ICJ Rep 16.

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136.

Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (Advisory Opinion) [2019] ICJ Rep 95.

Legal Status of Eastern Greenland (Denmark v Norway) PCIJ Series A/B No 53.

Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v Bahrain) (Merits) [2001] ICJ Rep 40.

Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v Nicaragua) and Land Boundary in the Northern Part of Isla Portillo (Costa Rica v Nicaragua) (Judgment) [2018] ICJ Rep 139.

Minquiers and Ecrehos (France/United Kingdom) [1953] ICJ Rep 47.

OAU Res 16(I) 'Border Disputes among African States' (21 July 1964) AHG/Res 16(I).

Sovereignty over Certain Frontier Land (Belgium/ The Netherlands) (Judgment) [1959] ICJ Rep 209.

Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore) [2008] ICJ Rep 12.

Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia) [2002] ICJ Rep 625.

Temple of Preah Vihear (Cambodia v Thailand) (Merits) [1962] ICJ Rep 6.

Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v Honduras) [2007] ICJ Rep 659.

Territorial and Maritime Dispute (Nicaragua v Colombia) [2012] ICJ Rep 624.

UN ILC 'Articles on Responsibility of States for Internationally Wrongful Acts' (2001) GAOR 56th Session Supp 10, 43.

UNGA Res 390 (V) 'Eritrea: Report of the United Nations Commission for Eritrea; Report of the Interim Committee of the General Assembly on the Report of the United Nations Commission for Eritrea' (2 December 1950) GAOR 5th Session Supp 20, 20.

UNGA Res 1514 (XV) 'Declaration on the Granting of Independence to Colonial Countries and Peoples' (14 December 1960) GAOR 15th Session Supp 16 vol 1, 66.

UNGA Res 2625 (XXV) 'Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations' (24 October 1970) GAOR 25th Session Supp 28, 121.

UNGA Res 3314 (XXIX) 'Definition of Aggression' (14 December 1974) GAOR 29th Session Supp 31 vol 1, 142.

UNSC Res 242 (1967) (22 November 1967) SCOR 22nd Year 8.

Western Sahara (Advisory Opinion) [1975] ICJ Rep 12.