THE MINQUIERS AND ECREHOS CASE (FRANCE–UNITED KINGDOM) :

LEGAL ANALYSES OF THE DECISION OF THE INTERNATIONAL COURT OF JUSTICE

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摘 要

英倫海峽介於英法兩國之間，其中有明奎耶及愛克豪兩群小島嶼，究竟誰屬發生疑問，英法兩國同意將此案提交國際法院裁判。國際法院以是否曾經實際行使主權爲判定之基準，因此國際法院之法官全體在一致贊成下，於一九五三年十一月十七日，判決明奎耶及愛克瑞阿兩組島嶼歸屬於英國。於是英法兩國數百年之懸案遂告解決。

I. Territorial Claims between France and the United Kingdom

This dispute between England and France related to the sovereignty over the Minquiers and Ecrehos, which are two groups of islets and rocks situated between the English Channel Island of Jersey and coast of France (1). The dispute was referred to the ICJ by a special agreement of 1951. The question to be determined by the Court was formulated in Article 1 of the *compromis* :

> The Court is requested to determine whether the sovereignty over the islets and rocks (in so far as they are capable of appropriation) of the Minquiers and Ecrehos groups respectively belongs to the United Kingdom or the French Republic. (2)

It could be argued that not all the rocks and islets of the groups could be appropriated. The Article was interpreted by France as meaning that all the islets of a group did not have the same status just because reference was made to them under a single cartographic denomination, but the Court interpreted this provision as requiring it

> to determine which of the Parties had produced the more convincing proof of title to one or the other of these groups, or to both of them, By the formulation of Article 1 the Parties have excluded the status of *res nullius* as well as that of *condominium*. (3)

What did the above paraphrase of the Parties' intention really mean ? In answering this question, the Court observed that it could only mean two things:

(a) in case the Court should be inclined on legal considerations to admit the existence of a *condominium*, the Parties would be deemed to have authorised the court in advance to award the islets to whichever of them had adduced the strongest claims, i. e. the *condominus* with the weaker right must be deemed to have ceded these in advance to its partner; (b) in case the Court should tend to see the islets as still being *terra nullius* (4), the Parties must be held to have consented in advance to a solution which would award them to whichever of them had established at least the strongest inchoate title.

Under Article 1, the Court thus considered that it was authorised to make an award founded simply on the relative strength of titles invoked by each Party – as Max Huber did in the *Island of Palmas* Arbitration (5). The implications of such a decision are that it may be based on a variety of competing claims and interests, both legal and equitable. The principal difficulty would then be to determine the degree and kind of possession effective to create a title and to define the area of territory to which such a possession might be said to apply. (6)

Both Parties contended, *inter alia*, that they had acquired an ancient and original title dating from the Middle Ages and that their title had always been maintained and had never been lost. (7) In respect of title to territory and historical considerations, the United Kingdom claimed its title from the time the conquest of England by William Duke of Normandy, in 1066, on the ground that the islands formed part of the Union between England and Normandy which lasted until 1204, when Philip Augustus of France conquered Normandy

but failed to occupy the islands – which continued under British administration. (B) The United Kingdom stressed that this title was supported throughout by effective possession evidenced by acts which manifest a continuous display of sovereignty over the groups.

Alternatively, if founded its claim on long continues effective possession alone. (9) The United Kingdom proved that this position was confirmed by subsequent treaties between her and France. Therefore the United Kingdom submitted that the islands remained united with England and that this situation was placed on a legal basis by subsequent treaties between the two countries. On her part, France claimed that Minquiers and Ecrehos came under her control after 1204 and relied on the same treaties as those invoked by the United Kingdom. The matter became one of the fact and of treaty interpretation, and the Court was of the opinion that, as the treaties did not specify which of the two parties to the dispute had sovereignty over the two groups of islets, direct evidence of possession and the actual exercise of sovereignty must prevail over the presumptions on which French claims had been based.

In view of the fact that there was little conspicuous activity by the United Kingdom until the nineteenth century, the foundation of the United Kingdom case was to establish a more or less continuous connection between the islands and Jersey over period of a thousand years, maintained to 1953. Since the islands were virtually uninhabited for the whole of this period – most, indeed, were uninhabitable, this connection was shown, by a number of considerations which were perhaps not very significant individually but which cumulatively were considered by the United Kingdom to be convincing. These considerations included the following : the geographical facts – in particular, the geographical unity of the Channel Islands as a whole, which, since they were mostly under British sovereignty, might also create a presumption in favour of British sovereignty over disputed islands; and the geographical dependency of these particular islands on the islands of Jersey. Another consideration was the connection with the islands of Jersey fishermen, who had always fished off these islands and also erected shelters on them. By a British Treasury Warrant of 1875, Jersey was constituted as a port of the Channel islands and the Ecrehos Rocks were included within the limits of that port. The Jersey authorities had paid official periodical visits to the Ecrehos since 1985, and

they had carried out various works and buildings. (10) Arising from these contacts were administrative acts of the Jersey authorities, such as the holding of inquests corpses washed ashore, the exercise of criminal jurisdiction, the rating of property, the imposition of the taxes on huts, the maintenance of a register of fishing boats, the setting-up of customs posts, the building of slipways and various mooring buoys and beacons. (11)

The French case was based mainly on historical documents. However, France did not dispute that the islands of Jersey, Guernsey, Alderney, Sark, Herm and Jethou should continue to be held by the English; France contended, however, that the Minquiers and Ecrehos groups were held by France after 1204 and that the United Kingdom had been unable to establish that it had effective possession of these islets and rocks at the time of the conclusion of the Treaty of Paris 1259. In the early nineteenth century the French were disposed to treat Ecrehos as *res nullius*; in 1886 France claimed for the first time 'sovereignty over the islets and rocks of the Minquiers and Ecrehos groups' insofar as these islets and rocks were both physically and legally capable of appropriation. French activity was most notable in the nineteenth and twentieth centuries in relation to the Minquiers in particular ; hydrographic surveys and the placing of buoys outside the reefs of the Channel.(12) Having regard to the special character of these semi-habitable islets, France argued that she had performed effective acts of sovereignty. In 1929 a French National, Monsieur Leroux, had been building a hut on Maitresse Ile of the Minquiers by virtue of a lease issued by three French departmental officials.(13) This leasing which was assumed to be the result of French administrative action, was regarded by the Court as of greater significance than subsequent verbal pretensions to sovereignty put forward by France. In a Note of 26 July 1929, the United Kingdom protested and said that they have no doubt that the French Government would restrain Monsieur Leroux from proceeding further with his building operations. No reply appeared to have been given by France; but the construction of hut was stopped.(14) In a Note of 5 October 1937, from the French Ambassador to the Foreign Office, it was expressly stated that the French Government did not hesitate to prevent the acquisition of land on the Minquiers by French nationals.(15)

The French attitude to sovereignty over the islands had also been in the

past somewhat ambivalent; it had at times been suggested that the islands were *res nullius* and sovereignty had not been explicitly claimed until the mid – nineteenth century. Geographical considerations were referred to the closeness of the islands to the "French Chausey group; the need to restrict the historical anomaly of British sovereignty over the Channel islands described as geogaphically French islands in a French bay; and the former geological unity of the islands with the mainland. The possibility of utilising the islands for a hydro – electric scheme for the installation of tide power in the region was also referred to.(16) It is perhaps worth mentioning that what would appear to be the only important French interests at that date – the fishing off the islands – had already been regulated by a fishing treaty of 1950. During the oral proceeding a declaration was made on behalf of the British Government regarding the possibility of future British cooperation with the French Government in a project for the production of electricity by the use of tidal power in the Minquiers region.

II. Decision of the Court

Both parties claimed an ancient or original title to both groups, which had always been maintained and never lost. Examining the title invoked by both parties, the ICJ looked at such evidence as medieval grants, domestic legal proceedings, sanitary edicts, regulation of fishing and criminal inquests. The Court, moreover, analysed the contentions of both parties that they possessed an ancient or original title to the islands but concluded : What is of decisive importance, in the opinion of the Court, in not indirect presumptions deduced from events in the Middle Ages, but the evidence which relates directly to the possession of the Ecrehos and Minquiers groups. The Court quoted medieval documents and the Charter of 1203 to show that the grant in frankalmoin to an ecclesiastical institution did not have the effect of severing feudal ties. It held that the grantor continued to hold the Ecrehos as a part of his fief of the Channel Islands, with the Abbot of Val – Richer as his vassal and the King of England as his overlord, and that the King continued to exercise his justice and levy his rights in the land 'so put in alms'. The relevant medieval documents also showed, the Court held, that there was at that time a close relationship between the Ecrehos and Jersey. From the beginning of the nineteenth century the connexion became closer again because of the growing

importance of oyster fishery. The Court attached probative value to various acts relating to the exercise by Jersey of jurisdiction and local administration and to legislation. It instanced criminal proceeding concerning the Ecrehos, the levying of taxes on habitable houses or huts built on the islets since 1889 and the registration in Jersey of contracts dealing with real estate on the Ecrehos. The Court, further stressed the importance of actual exercise of State functions, e. g., local administration, local jurisdiction and acts of legislative authority, as proving the continuous display of sovereignty necessary to confirm title.(17)

The Court found that none of those treaties (Treaty of Paris of 1295, Treaty of Calais of 1360 and Treaty of Troyes of 1420) specified which islands were held by the King of England or by the King of France. There were other documents, however, which, the Court stated, provided some indications as to the possession of the islets in dispute. The Court then referred to the Charter of 14 January 1200, by which King John of England granted to one of his Barons, Piers des Pr'eaux, the Islands of Jersey, Guernsey and Alderney 'to have and hold of us by service of three knights' fees'. The Court also referred to the Charter of 1203 by which Piers des Pr'eaux granted to the Abbey of Val-Richer 'the island of Ecrehos in entirety', stating that the King of Englands 'gave me the islands' (*insulas mibi dedit*). That, the Court held, showed that he treated the Ecrehos as an integral part of the fief of the Islands which he had received from the King. The Court further stated that, in an Order from the English King of 5 July 1258, the Sub-Warden of the Islands was ordered 'to guard the islands of Gernere and Geresey, and the king's other islands in his keeping'. In Letter Patent of the English Patent of the English King, dated 28 June 1360, it was provided that the 'keeper of the islands of Gerneseye, Jereseye, Serk and Aurneye, and other islands adjacent thereto' might have the keeping for a further period. The Court also referred to the Truce of London of 1471, which provided, in Article 3, that the King of France would not make any hostile act against the Kingdom of England and other islands specially mentioned, including the Islands of Guernsey, Jersey, Alderrey and other territories, islands and lordships, which were, or would be, held and possessed by the said lord King of England or by his subjects. Reference was also made to a Papal Bull of 20 January 1500, transferring the Channel Islands from the Diocese of Coutances to the Diocese of Winchester,

which mentioned the islands of Jersey and Guernsey, Chausey, Alderrey, Herm and Sark. Two commercial Treaties of 1606 and 1655 mentioned only Jersey and Guernsey, the Court stated.

III. Assessment of the Decision

The Court inferred from the above arguments that the case did not present the characteristics of a dispute concerning the acquisition of sovereignty over *terra nullius*. In its judgment, the Court laid little emphasis on the historical documents.(18) It took the view that none of these treaties stated specifically which islands were held by the King of England or by the King of France. The Court examined and compared the ancient titles claimed by both the United Kingdom and France under feudal law. While considering it unnecessary for the purpose of deciding the case to solve historical controversies, the Court pointed out that:

> if the Kings of France did have an original.....title.....in respect of the channel islands, such a title must have lapsed as a consequence of the events of the years 1204 and the following years. Such an ..... original feudal title of the Kings of France in respect of the Channel Islands could to day produce no legal effect, unless it had been replaced by another title valid according to the law of the time of replacement.(19)

It provided an interesting example of the application of the inter – temporal doctrine which means that, to quote the words of Judge Huber in the *Island of Palmas Arbitration*:

> a juridical fact must be appreciated in the light of the law contemporary with it, and not of the law in force at the time when a dispute in regard to it arises or falls to be settled.(20)

It is, however, clear that the doctrine of inter – temporal law is more fully stated in the words of Judge Huber later in the same case, thus:

> As regards the question which of different legal systems prevailing at successive periods is to be applied in a particular case (the so – called inter – temporal 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.(21)

Unless otherwise indicated, the temporal sphere of application of any norm of public international law shall be determined in accordance with the general principle of law by which any fact, action or situation must be assessed in the light of the rules of law that are contemporaneous with it.(22) The mere acquisition of right at the time of their creation is not enough, but that it must be maintained according to the evolution of international law.

Thus there are two parts to the inter-temporal law, first the principle that acts must be judged in the light of the law contemporaneous with their creation; and secondly that rights validly acquired by the law contemporaneous with their creation may lose their validity if not maintained in accordance with the changes brought about by the development of international law. It has been submitted that the first branch of the inter-temporal law is partly a rule of substantive law and a rule of interpretation, whilst the second branch is essentially a rule of substantive law limiting the validity of rights which have been validly acquired.(23) Indeed, in the present case, the Court alleged feudal relationship of *suzerainty* (24) on title of territory (25) unless it was supported by subsequent 'effective possession of the island in dispute'. It appeared that what was of decisive importance was not indirect presumptions based on matters in the Middle Ages, but direct evidence of possession and the actual exercise of sovereignty. (26) As Judge Huber, in the *Island of Palmas* Arbitration, said: 'a *jus in re*, once lawfully acquired shall prevail over *de facto*, possession however well established'. (27) In sum, the rules governing acquisition of territory have changed over the centuries. This produces a problem of 'intertemporal law'; which century's law is to be applied to determine the validity of title to territory ? The generally accepted view is that the validity of an acquisition of territory depends on the law in force at the moment of the alleged acquisition; this solution is really nothing more than an example of the general principle that laws should not be applied retroactively. (28)

The Court attached importance to the exercise of legislative authority, jurisdiction and administration by Jersey from the seventeenth to the twentieth centuries.(29) What the Court emphasised was the 'connection' between the islets in dispute and the Channel Islands, especially Jersey, and

the manifestation of this 'connection' in the nineteenth and twentieth centuries in the form of administrative activities. Consequently, the Court found that British authorities during the greater part of the nineteenth century and in the twentieth century had exercised state functions in respect of the Ecrehos group; and that France had not produced sufficient evidence to prove that it had a valid title to the group. In such circumstances, it was held unanimously that the sovereignty over the Minquiers and Ecrehos adjudged to the United Kingdom. (30)

Judge Alvarez, adding a short *post scriptum* to the majority judgment, objected to the reliance on historical statutes in the written proceedings and the oral arguments, and was of the view that the Parties had attributed excessive importance to mediaval evidence and had not sufficiently taken into account the state of international law or its present tendencies with regard to territorial sovereignty. He further proposed that the Court should apply, not the traditional or classical international law, but the modern international law. (31) Judges Basdevant and Carneiro, while concurring in the decision of the Court for different reasons, appended to the Judgment statements of their individual opinions.

Ⅳ. Individual opinions

A. Individual Opinion of Judge Basdevant

In the statement of his individual opinion, Judge Basdevant said that the Judgment of Court of France of 1202 on which the French Government had relied could not be validly invoked because the forfeiture which resulted from it affected the King of England only in his capacity as Duke of Normandy and not in his capacity as King of England. As King of England, he gained possession of the Channel Islands and acquired title *jure belli* (32) over them on his own behalf – a title which was later confirmed by certain treaties. As regards the question whether that title extended specifically to the Ecrehos and the Minquiers, Judge Basdevant expressed the view that the closeness of the islets to Jersey confirmed the probability of the English King exercising sovereignty over them by virtue of his naval power.

In regard to the letter of the French Minister of Marine of 1819 indicating that the Minquiers were in British possession, Judge Basdevant considered that the words of the Minister of Marine did not amount to an

admission and that he was not entitled to make such an admission. Judge Basdevant also expressed hesitation in accepting the contention that the jurisdiction assumed by Jersey aurhorities in Ecrehos and Minquiers amounted by itself to an assumption of "territorial jurisdiction". However, because of the absence of similar competing action on the part of the French authorities, he considered, the hypothesis seemed reasonable that the King of England has "held" the disputed islets within the meaning of the Treaty of Calais of 1360, by which there was agreement between France and England that the King of England should have the islands which he "now holds".

In the light of these facts, Judge Basdevant considered that the decision of the Court was justified.

B. Individual Opinion of Judge Carneiro

Judge Levi Carneiro stated that his observations related to circumstances of a general character which, in his view, explained, confirmed, coordinated and lent value to the acts of occupation which occurred at irregular intervals throughout the centuries and were not all sufficiently significant if taken individually. In his opinion, he declared, he had taken as the criterion for the decision the following rules which were laid down by the Permanent Court of International Justice in the *Case concerning the Legal Status of Eastern Greenland*:(33)

(a) the elements necessary to establish a valid title to sovereignty are 'the intention and will to exercise such sovereignty and the manifestation of State activity';

(b) in many cases international jurisprudence 'has been satisfied with very little in the way of the actual exercise of sovereign rights, provided that the other State could not make out a superior claim. This is particularly true in the case of claims to sovereignty over areas in thinly populated or unsettled countries;

(c) it is the criterion of the Court in each individual case which decides whether sovereign rights have been displayed and exercised 'to an extent sufficient to constitute a valid title to sovereignty'.

Applying these criteria, Judge Carneiro examined, first, the fief of the Channel Islands. He was unable to accept the view that the Duke of Normandy, having become the King of England, and having retained the

Channel Islands when the King of France drove him out of continental Normandy, 'humbly remained' subject to the suzerainty of his adversary'. The same consideration, he said, made it impossible for him to suppose that the suzerainty of the King of France extended to the Channel Islands, all the more so since he did not conquer them at the beginning of the thirteenth century when he conquered continental Normandy.

Another factor in the present case, Judge Carneiro stated, was the continuous and keen interest shown by England in the Channel Islands, in contrast to a certain indifference or a much less lively and assiduous interest shown by France.

Judge Carneiro also referred to a secret agreement signed by King John the Good of France when the latter was taken prisoner by England after the battle of Poitiers in 1356. The agreement, he said, provided for the restoration to the English Crown of all the Duchy of Normandy 'with all the cities, castles, dioceses, lands, regions and places lying within the Duchy itself'. In his Individual Opinion, Judge Carneiro held that the absence of any express reference to the islands confirmed, in general terms, that the islands were already in the possession of England. If this had not been so, England would not have lost the opportunity to have them included in the secret agreement.

The Individual Opinion also took account of the natural unity of the archipelago known as the 'Anglo – Norman Islands' or the Channel islands and concluded that 'this archipelago which still bears this name today, with its natural unity, is indisputably English'.

In connection with historical facts, Judge Carneiro concluded that the military victories of the English and their naval power allowed them to secure the domination of the Channel Islands generally. It seems 'inconceivable' to him that England, having an important interest in the Channel Islands and full domination over the sea, and possessing all the principal islands, should not without some special reason, have conquered and retained the Ecrehos and Minquiers or, rather, that it would have left them to France.

The Individual Opinion then referred to acts of occupation and other circumstances leading to the decision by the court with which Judge Carneiro concurred.

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1. *ICJ Reports* 1953, p.47. For discussion, see J. H. W. Verzijl, *The Jurisprudence of the World Court* (Leyden: A. W. Sijthoff, 1966), Vol. II, p. 169; D. H. N. Johnson, "The Minquiers and Ecrehos Case," *International and Comparative Law Quarterly*, Vol. 3 (1954), p. 189; E. C. Wade, "The Minquiers and Ecrehos Case," *Transactions of the Grotius Society*, Vol. 40(1954), p. 97.
2. Article 1. *ICJ Reports*, 1953, p. 49.
3. *ICJ Reports*, 1953, p. 52. Condominium, joint ownership; joint exercise of sovereignty over the same territory by two or more States, e. g., the condominium of Great Britain and Egypt over the Sudan, and the Great Britain and France over the New Hebrides. For details, see D. P. O'Connell, "The Condominium of the New Hebrides", *British Year Book of International Law*, Vol. 43 (1968–69), pp. 71–145.
4. *Territorium Nullius*, territory of no one, i. e., territory which is the land of no State. No-state's land is capable of being acquired by any State through effective occupation. Territories are unowned either because they have never been actually appropriated by any state, or because having once been owned are owned no longer as when their former owner has abandoned them with the intention of no longer owning them. For details, see Malcolm Shaw, *Title to Territory in Africa* (Oxford: Clarendon Press, 1986), pp. 17, 19,31–39.
5. *RIAA*, Vol. II, p. 829; *American Journal of International Law*, Vol. 22 (1928), p. 735.
6. R. Y. Jennings, *Acquisition of Territory in International Law* (Manchester Univ. Press, 1963), p. 27; T. O. Elias, *New Horizons in International Law* (Netherlands : Alphen ran den Rijn, 1980), p. 121.
7. The dispute was not concerned with the acquisition of sovereignty over *terra nullius*. Neither party put forward this basis of claim.
8. *ICJ Reports*, 1953, p. 55. Cf. David Douglas, *The Norman Conquest and British Historians* (University of Glasgow, 1946).
9. *ICJ Reports*, 1953, p. 7. Cf. *Island of Palmas* Arbitration (1928), II RIAA,p. 829; and the *Leqal Status of Eastern Greenland* Case (1933), PCIJ,

seriesA/B, No. 53. For details, see J. K. T. Chao, "The Legal Status of Eastern Greenland Case: A Note on its Legal Aspects", *National Chenqchi Law Review*, Vol. 27 (1982), pp. 195 – 214.

10. *ICJ Reports*, 1953, p. 66. The French protest against the British Treasury Warrant of 1875 on the ground that this Act derogated from the Fishery Convention of 1839. The court held that the protest was ineffective to deprive the Act of its character as a manifestation of sovereignty. I. C. MacGibbon, "Some Observations on the Part of Protest in International Law", *British Year Book of International Law*, Vol. 30 (1953), p. 293, 296 – 298.
11. *ICJ Reports*, 1953, pp. 65 – 69.
12. The Court held that the French bouy – laying outside the reefs cannot be considered as a manifestation of State authority over the islets. *Ibid.*, pp. 70 – 71.
13. On this incident it may be observed that there was apparently no evidence that any administrative action had been taken against M. Lerouz by France. Ibid., pp. 71 – 72. Cf. Sir Gerald Fitzmaurice, "The Law and Procedure of the International Court of Justice, 1951 – 54: General Principles and Sources of Law", *British Year Book of International Law*, Vol. 30 (1953), p. 46; Clive Parry, "The Practiçe of States", *Transactions of the Grotius Society*, Vol. 44 (1958 – 1959), p. 168; A. L. W. Munkman, "Adjudication and Adjustment – International Judicial Decision and the Settlement of Territorial and Boundary Disputes", *British Year Book of International Law*, Vol. 46(1972 – 1973), pp. 99 – 100.
14. British Foreign Office Registry File, No. W 6967/6799/17. Annexes to the United Kingdom. Memorial (No. A. 78). *ICJ Pleadings*, 1953, Vol. 1, pp. 291 – 292.
15. British F.O. Registry File, No. C. 6370/166/17. Annexes to United *Kingdom Memorial* (No. A. 78). *ICJ Pleadings*, 1953, pp. 295 – 296. Judge Levi Carneiro observed that France should have kept the islets under surveillance.....which had permitted the (United Kingdom).....to cause the construction of a house to be stopped immediately. Failure to exercise such surveillance and ignorance of what was going on on the islets indicate that France was not exercising sovereignty in that area. Individual opinion of Judge Carneiro, *ICJ Reports*, 1953, p. 106; In the *Frontier Lands Case*, *ICJ*

Reports, 1959, p. 209, the Court was held that mere routine and administrative acts performed by local Netherlands officials in certain area could not displace the legal title of Belgium to that area under a duly concluded convention.

16. Cf. *U. K.–French Continental Shelf* Case (First Decision). *International Law Reports*, Vol. 54 (1979), p. 78, para. 129.
17. *ICJ Reports*, 1953, pp. 53–67, 68–70. An actual manifestation of sovereignty on the locus of the territory may serve to create a stronger title than a historic claim of right, unsupported by such a concrete act. the *Clipperton Island* Arbitration (1931), *American Journal of International Law*, Vol. 26(1932) , p. 390. This principle of the exercise of State activity on an adequate scale, as distinct from routine or inconclusive acts not necessarily evidencing a firm intention to establish territorial sovereignty, was applied also by the Court in its Advisory Opinion on the *Western Sahara Case*, *ICJ Reports*, 1975, p. 12.
18. The historical documents are most fully discused in the Separate Opinion of Judge Basdevant. His *ratio decidendi* is based on the finding of a conventional title, i. e. the Treaty of Calais of 1360 which is favour of the United Kingdom. *ICJ Reports*, 1953, pp. 74–78.
19. *Ibid.*, pp. 56, 60–62.
20. *RIAA*, Vol. II, p. 845.
21. Ibid. In the case of the *Veloz–Mariana and Other Ships* (1852) between France and Spain. France had, in 1823, sized certain Spanish ships during peace time. France later intervened in Spain during a war between the two countries and claimed that the seizure was justified retrospectively either on the grounds of an anticipatory embargo in contemplation of war or to exercise the right of prize against any merchant ships in belligerent ports immediately on the outbreak of the war. The contention of France was that international law at the time of the seizure justified such a position. But a contrary rule was asserted in this doctrine of inter–temporal law at the time when the award was made, though it was not generally accepted until the Crimean War. As it happened, the Arbitrator, King William III of the Netherlands, in that case applied a new rule to facts which he ought to have considered in the light of the law as it stood at the time when the alleged international tort was committed. Georg Schwarzenberger, *Interna-*

tional Law (London: Stevenst Sons, 1957), Vol. I, pp. 21 – 24.

22. The inter – temporal problem in public international law, Resolution adopted by the Institute de Droit International at its Wiesbaden Session. 56 *Ann. de Institute de Droit Int'l*, Vol. 56 (1975), p. 537. For further discussion, Jennings, *supra.* note 6, pp. 28 – 31; Taslim D. Elias, *The International Court of Justice and Some Contemporary Problems* (The Hague: Martinus Nijhoff, 1983), ch. 6, pp. 119 – 147.
23. Alexander George Roche, *The Minquiers and Ecrehos Case* (Geneve: Librairie Droz, 1959), p. 79; cf. *Rights of United States National in Morocco Case*, *ICJ Reports*, 1952, p. 189.
24. Suzerainty is the relation between a suzerain or paramount State and a dependent or vassal State, which is distinct from protectorate. In theory a dependent State under suzerainty possesses only those rights and privileges which have been expressly granted to it; in contrast, a protected State in a protectorate retains all rights and privileges which it has not specifically yielded. Foreign affairs are controlled completely or mainly by the suzerain State. Where the control of the vassal State's foreign relations by the suzerain State is absolute, the former cannot be considered as possessing international personality. If the vassal State is allowed a certain degree of control over the management of its foreign relations, to that extent it is regarded as an International Person. Examples of suzerainty in the past were the relations between the Ottoman Empire and such tributary States as Rumania, Servia, and Bulgaria; Egypt also was for a time a vassal State of Turkey. At present there are no more vassal States in the true sense of the term.
25. France asserted that contemporary suzerainty was sufficient to found a title in the French King which had not been subsequently displayed. However, Judge basdevant considered that in the twelfth century the King of France was suzerain over the whole of Normandy, including the disputed islets which were not merely a nominal title . But suzerainty is not sovereignty and French title had not been maintained. *ICJ Reports*, 1953, p. 75.
26. *Ibid.*, p. 57.
27. *RIAA*, Vol. II, p. 840. There is a similar statement in the *Walfisch Bay* Arbitration, *RIAA*, Vol. II, p. 267.

28. See the *Western Sahara* Case, *ICJ Reports*, 1975, pp. 12, 37－40. For details, see J. K. T. Chao, "The Western Sahara (Advisory Opinion) Case"，人文社會科學論文集（台北：台灣商務印書館，民國七十二年出版），頁一五九至一七四。
29. *ICJ Reports*, 1953, pp. 64－70.
30. *Ibid.*, p. 72. On 29 October 1888, Richard E. Webster and Edward Clarke replied to the Marquiers of Salisbury that "Mr. Secretary Matthews entirely concurred in the conclusions...supported as they were by the opinion of the Law Officers of Jersey, and considered that the right to the sovereignty of the (Minquiers) rocks in question was clearly vested in the British Crown...in our opinion, the facts stated in the documents before us, and especially in the Memoranda of Sir E. Hertslet and the Report of the Jersey Law Officers, support the claim of the British Crown to the sovereignty of the Minquiers Rocks..." See Lord McNair, *International Law Opinions* (Cambridge U. P., 1956), Vol. 1, pp. 313－14. Another question of status discussed during 1980 was that of the Channel Islands. The precise issue was whether the Royal Court of Jersey was a 'British court' within s. 122 of the Bankruptcy Act 1914. *In re a Debtor, ex parte Viscount of the Royal Court of Jersey* (1980) 3 W. L. 758 at p. 764, Judge Goulding pointed out that this was not inconsistent with the Royal Court being a' British court: in any event, the judgement of the International Court in the *Minquiers & Ecrehos* Case' clearly recognises, or assumes, that sovereignty over the Channel Islands belongs to the United Kingdom.
31. *ICJ Reports*, 1953, p. 73. The importance of his view had been expressed in his individual opinion in the *Corfu Channel* Case, *ICJ Reports*, 1949, p. 39, paras. 2 and 3.
32. By right of war.
33. P. C. I. J. Series A/B No. 53, pp. 46, 63－64.