which conferred upon the suzerain such powers as would justify his considering the vassal state as part of his territory.

3 Acts characteristic of state authority exercised either by the vassal state or by the suzerain Power in regard precisely to the Island of Palmas (or Miangas) have been established as occurring at different epochs between 1700 and 1898, as well as in the period between 1898 and 1906.

The acts of indirect or direct display of Netherlands sovereignty at Palmas (or Miangas), especially in the 18th and early 19th centuries are not numerous, and there are considerable gaps in the evidence of continuous display. But apart from the consideration that the manifestations of sovereignty over a small and distant island, inhabited only by natives, cannot be expected to be frequent, it is not necessary that the display of sovereignty should go back to a very far distant period. It may suffice that such display existed in 1898, and had already existed as continuous and peaceful before that date long enough to enable any Power who might have considered herself as possessing sovereignty over the island, or having a claim to sovereignty, to have, according to local conditions, a reasonable possibility for ascertaining the existence of a state of things contrary to her real or alleged rights.

The decisions of the international tribunals indicate that for a claim to territory based on occupation to succeed two elements must be satisfied: the claiming state must have the intention to act as sovereign (the *animus occupandi*) and also must be able to point to some actual, physical manifestation of this sovereignty. The intention is a matter of inference from all the facts – merely raising a flag is not enough. The second element is satisfied by some concrete evidence of possession or control or some symbolic act of sovereignty – it depends on the nature of the territory involved.

Clipperton Island Arbitration[12]

Award of the arbitrator

In fact, we find, in the first place, that on 17 November 1858 Lieutenant Victor Le Coat de Kerweguen, of the French Navy, commissioner of the French Government, whilst cruising about one-half mile off Clipperton, drew up, on board the commercial vessel L'Amiral, an act by which, conformably to the orders which had been given to him by the Minister of Marine, he proclaimed and declared that the sovereignty over the said island beginning from that date belonged in perpetuity to His Majesty the Emperor Napoleon III and to his heirs and successors. During the cruise, careful and minute geographical notes were made; a boat succeeded, after numerous difficulties, in landing some members of the crew; and on the evening of 20 November, after a second unsuccessful attempt to reach the shore, the vessel put off without leaving in the island any sign of sovereignty. Lt de Kerweguen officially notified the accomplishment of his mission to the Consulate of France at Honolulu, which made a like communication to the Government of Hawaii. Moreover, the same consulate had published in English in the journal The Polynesian, of Honolulu, on 8 December, the declaration by which French sovereignty over Clipperton had already been proclaimed.

12 *France v Mexico* (1932) 26 AJIL 390 – arbitrator: King Victor Emmanuel III of Italy. Clipperton is a coral reef less than three miles in diameter situated in the Pacific Island 670 miles south-west of Mexico.

Thereafter, until the end of 1887, no positive and apparent act of sovereignty can be recalled either on the part of France or on the part of any other Powers. The island remained without population, at least stable, and no administration was organised there. A concession for the exploitation of guano beds existing there, which had been approved by the Emperor on 8 April 1858, in favour of a certain Mr Lockhart, and which had given rise to the expedition of Lt de Kerweguen, had not been followed up, nor had its exploitation been undertaken on the part of any other French subjects.

Towards the end of 1897 ... France stated ... that three persons were found in the island collecting guano ... and that they had, on the appearance of the French vessel, raised the American flag. Explanations were demanded on this subject from the United States, which responded that it had not granted any concession to the said company and did not intend to claim any right of sovereignty over Clipperton ...

About a month after this act of surveillance had been accomplished by the French Navy ... Mexico, ignoring the occupation claimed by France and considering that Clipperton was territory belonging to her for a long time, sent to the place a gun boat, La Democrata, which action was caused by the report, afterwards acknowledged to be inaccurate, that England had designs on the island. A detachment of officers and marines landed from the said ship on 13 December 1897, and again found the three persons who resided on the island at the time of the preceding arrival of the French ship. it made them lower the American flag and hoist the Mexican flag in its place ... After that the Democrata left on 15 December

On 8 January, France, having learned of the Mexican expedition, reminded that power of its rights over Clipperton ...

According to Mexico, Clipperton Island ... had been discovered by the Spanish Navy and, by virtue of the law then in force, fixed by the Bull of Alexander VII, had belonged to Spain, and afterwards, from 1836, to Mexico as the successor to the Spanish state.

But according to the actual state of our knowledge, it has not been proven that this island ... had been actually discovered by the Spanish navigators ... However, even admitting that the discovery had been made by Spanish subjects, it would be necessary, to establish the contention of Mexico, to prove that Spain not only had the right, as a state, to incorporate the island in her possessions, but also had effectively exercised the right. But that has not been demonstrated at all. The proof of an historic right of Mexico's is not supported by any manifestation of her sovereignty over the island, a sovereignty never exercised until the expedition of 1897, and the mere conviction that this was territory belonging to Mexico, although general and of long standing, cannot be retained.

Consequently, there is ground to admit that, when in November 1858, France proclaimed her sovereignty over Clipperton, that island was in the legal situation of *territorium nullius*, and therefore, susceptible of occupation.

The question remains whether France proceeded to an effective occupation, satisfying the conditions required by international law for validity of this kind of territorial acquisition. In effect, Mexico maintains, secondarily to her principal contention which has just been examined, that the French occupation was not valid, and consequently her own right to occupy the island which must still be considered as *nullius* in 1897.

In whatever concerns this question, there is, first of all, ground to hold as incontestable, the regularity of the act by which France in 1858 made known in a clear and precise manner, her intention to consider the island as her territory.

> On the other hand, it is disputed that France took effective possession of the island, and it is maintained that without such a taking of possession of an effective character, the occupation must be considered as null and void.
>
> It is beyond doubt that by immemorial usage having the force of law, besides the *animus occupandi*, the actual, not the nominal, taking of possession is a necessary condition of occupation. This taking of possession consists in the act, or series of acts, by which the occupying states reduces to its possession the territory in question and takes steps to exercise exclusive authority there. Strictly speaking, and in ordinary cases, that only takes place when the state establishes in the territory itself an organisation capable of making its laws respected. But this step is, properly speaking, but a means of procedure to the taking of possession, and, therefore, is not identical with the latter. There may also be cases where it is unnecessary to have recourse to this method. Thus, if a territory, by virtue of the fact that it was completely uninhabited, is, from the first moment when the occupying state makes its appearance there, at the absolute and undisputed disposition of that state, from that moment the taking of possession must be considered as accomplished, and the occupation is thereby completed ...
>
> It follows from these premises that Clipperton Island was legitimately acquired by France on 17 November 1858. There is no reason to suppose that France has subsequently lost her right by *derelicto*, since she never had the *animus* of abandoning the island, and the fact that she has not exercised her authority there in a positive manner does not imply the forfeiture of an acquisition already definitively perfected.
>
> For these reasons, we decide, as arbiter, that the sovereignty over Clipperton Island belongs to France, dating from 17 November 1858.

Legal Status of Greenland case *(Norway v Denmark)*[13]

The case concerned the competing claims of Norway and Denmark. On 10 July 1931 Norway officially claimed sovereignty over the territory on the basis of occupation of *terra nullius*. Denmark objected on the basis that Danish sovereignty had existed over the area since the early part of the 18th century. The Permanent Court upheld the Danish claim.

> ... a claim to sovereignty based not upon some particular act or title such as a treaty of cession but merely upon continued display of authority, involves two elements each of which must be shown to exist: the intention and will to act as sovereign, and some actual exercise or display of such authority.
>
> Another circumstance which must be taken into account by any tribunal which has to adjudicate upon a claim to sovereignty over a particular territory, is the extent to which the sovereignty is also claimed by some other Power. In most of the cases involving claims to territorial sovereignty which have come before an international tribunal, there have been two competing claims to the sovereignty, and the tribunal has had to decide which of the two is the stronger. One of the peculiar features of the present case is that up to 1931 there was no claim by any Power other than Denmark to the sovereignty over Greenland. Indeed, up till 1921, no Power disputed the Danish claim to sovereignty.
>
> It is impossible to read the records of the decisions in cases as to territorial sovereignty without observing that in many cases the tribunal has been satisfied with very little in the way of the actual exercise of sovereign rights, provided that

13 *Norway v Denmark PCIJ* Ser A/B, No 53 (1933).

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 ...

The conclusion to which the Court is led is that, bearing in mind the absence of any claim to territorial sovereignty by another Power, and the Arctic and inaccessible character of the uncolonised parts of the country, the King of Denmark and Norway displayed during the period from the founding of the colonies by Hans Egede in 1721 up to 1814 his authority to an extent sufficient to give his country a valid claim to sovereignty and that his rights were not limited to the colonised areas ... the result of all the documents connected with the grant of the [trading, hunting, and mining] concession is to show that, on the one side, it was granted upon the footing that the King of Denmark was in a position to grant a valid monopoly on the east coast and that his sovereign rights entitled him to do so, and, on the other, that the concessionaires in England regarded the grant of a monopoly as essential to the success of their projects and had no doubt as to the validity of the rights conferred ...

The concessions granted for the erection of telegraph lines and the legislation fixing the limits of territorial waters in 1905 are also manifestations of the exercise of sovereign authority.

In view of the above facts, when taken in conjunction with the legislation she had enacted applicable to Greenland generally, the numerous treaties in which Denmark, with the concurrence of the other contracting Party, provided for the non-application of the treaty to Greenland in general, and the absence of all claim to sovereignty over Greenland by any other Power, Denmark must be regarded as having displayed during this period of 1814 to 1915 her authority over the uncolonised part of the country to the degree sufficient to confer a valid title to the sovereignty.

Minquiers and Ecrehos case[14]

The Minquiers and the Ecrehos are two groups of rocks and islets which lie between Jersey and the French coast. The islets were claimed by both France and the UK, each state tracing its title back to the Middle Ages. On 6 December 1951 the UK filed a special agreement at the ICJ between France and itself asking the court to determine the question of which state had the better title.

Judgment of the Court

Both parties contend that they have respectively an ancient or original title to the Ecrehos and the Minquiers, and that their title has always been maintained and was never lost. The present case does not therefore present the characteristics of a dispute concerning the acquisition of *terra nullius.*

The United Kingdom government derives the ancient title invoked by it from the conquest of England in 1066 by William, Duke of Normandy. By this conquest England became united with the Duchy of Normandy, including the Channel Islands, and this union lasted until 1204 when King Philip Augustus of France drove the Anglo-Norman forces out of Continental Normandy. But his attempts to occupy also the Islands were not successful, except for brief periods when some of them were taken by French forces. On this ground the United Kingdom Government submits the view that all of the Channel islands, including the Ecrehos and the Minquiers, remained, as before, united with England, and that

14 *France v United Kingdom* [1953] *ICJ Rep* at p 47.

this situation of fact was placed on a legal basis by subsequent Treaties concluded between the English and French Kings ...

The French Government derives the original title invoked by it from the fact that the Dukes of Normandy were the vassals of the Kings of France, and that the Kings of England after 1066, in their capacity as Dukes of Normandy, held the Duchy in the fee of the French Kings ...

The Court considers it sufficient to state as its view that even if the Kings of France did have an original feudal title also in respect of the Channel Islands, such a title must have lapsed as a consequence of the events of the year 1204 and the following years. Such an alleged original feudal title of the Kings of France in respect of the Channel Islands could today produce no legal effect, unless it had been replaced by another title valid according to the law of the time of replacement. What is of decisive importance, in the opinion of the Court, is 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 Parties have further discussed the question of the selection of a 'critical date' for allowing evidence in the present case. The United Kingdom submits that, although the Parties have for a long time disagreed as to the sovereignty over the two groups, the dispute did not become 'crystallised' before the conclusion of the Special Agreement of 29 December 1950, and that therefore this date should be considered as the critical date, with the result that all acts before that date must be taken into consideration by the Court. The French government, on the other hand, contends that the date of the Convention of 1839 should be selected as the critical date, and that all subsequent acts must be excluded from consideration.

At the date of the Convention of 1839, no dispute as to the sovereignty over the Ecrehos and Minquiers groups had yet arisen. The Parties had for a considerable time been in disagreement with regard to the exclusive right to fish oysters, but they did not link that question to the question of sovereignty over the Ecrehos and the Minquiers. In such circumstances there is no reason why the conclusion of that Convention should have any effect on the question of allowing or ruling out evidence relating to sovereignty. A dispute as to sovereignty over the groups did not arise before the years 1886 and 1888, when France for the first time claimed sovereignty over the Ecrehos and the Minquiers respectively. But in view of the special circumstances of the present case, subsequent acts should also be considered by the Court, unless the measure in question was taken with a view to improving the legal position of the Party concerned. In many respects activity in regard to these groups had developed gradually long before the dispute as to sovereignty arose, and it has since continued without interruption and in a similar manner. In such circumstances there would be no justification for ruling out all events which during this continued development occurred after the years 1886 and 1888 respectively ...

In 1826 criminal proceedings were instituted before the Royal Court of Jersey against a Jerseyman for having shot at a person on the Ecrehos. Similar judicial proceedings in Jersey in respect of criminal offences committed on the Ecrehos took place in 1881, 1891, 1913 and 1921. On the evidence produced the Court is satisfied that the ... Jersey authorities took action in these cases because the Ecrehos were considered to be within the Bailiwick. These facts show therefore that Jersey courts have exercised criminal jurisdiction in respect of the Ecrehos during nearly a hundred years.

Evidence produced shows that the law of Jersey has for centuries required the holding of an inquest on corpses found within the Bailiwick where it was not clear that death was due to natural causes. Such inquests on corpses found at the

Ecrehos were held in 1859, 1917 and 1948 and are additional evidence of the exercise of jurisdiction in respect of these islets ...

The Court, being now called upon to appraise the relative strength of the opposing claims to sovereignty over the Ecrehos in the light of the facts considered above, finds that the Ecrehos group in the beginning of the 13th century was considered and treated as an integral part of the fief of the Channel Islands which were held by the English King, and that the group continued to be under the dominion of that King, who in the beginning of the 14th century exercised jurisdiction in respect thereof. The Court further finds that the British authorities during the greater part of the 19th century and in the 20th century have exercised state functions in respect of the group. The French government, on the other hand, has not produced evidence showing that it has any valid title to the group. In such circumstances it must be concluded that the sovereignty over the Ecrehos belongs to the United Kingdom ...

It is established that contracts of sale relating to real property in the Minquiers have, as is the case of the Ecrehos, been passed before the competent authorities of Jersey and registered in the public registry of deeds of the island. Examples of such registration of contracts are given for 1896, 1909 and some later years.

In 1909 Jersey customs authorities established in the Minquiers a custom-house with the arms of Jersey. The islets have been included by Jersey authorities within the scope of their census enumerations, and in 1921 an official enumerator visited the islets for the purpose of taking the census.

These various facts show that Jersey authorities have in several ways exercised ordinary local administration in respect of the Minquiers during a long period of time ...

The evidence thus produced by the United Kingdom government shows in the opinion of the Court that the Minquiers in the beginning of the 17th century were treated as a part of the fief of Noirmont in Jersey, and that British authorities during a considerable part of the 19th century and in the 20th century have exercised state functions in respect of this group ...

In such circumstances, and having regard to the view expressed above with regard to the evidence produced by the United Kingdom government, the Court is of the opinion that the sovereignty over the Minquiers belongs to the United Kingdom.

7.3.2 Prescription and acquiescence

... the submission is that (if one excludes adverse holding or negative prescription) the situations described under the rubric of prescription by the writers, on analysis, fall into three categories: cases of immemorial possession; competing acts of sovereignty (*Island of Palmas* case); and cases of acquiescence. The first two categories are not really cases of prescription, but, as to the third, it may be said that acquiescence is a form of prescription and that the question ends as a matter of terminology. However, the doctrine is so tangled that it would be a help if the more candid and unambiguous label were used. And, of course, this would make clear the position of adverse holding in the law. However, it is important to notice that, whilst it is intended as an aid to understanding, the threefold analysis offered is not necessarily reflected neatly by life. In some cases it is not entirely clear whether there has been an occupation by one claimant of a *res nullius* followed later on by competing acts by another state, or whether there have been contemporaneously competing acts from the outset. Again, in either case, a court will take acquiescence into account; in other words the second and third categories may overlap in practice. In conclusion,

> one may doubt whether there is any role in the law for a doctrine of prescription as such.[15]

Brownlie's warning should be taken seriously and it can be read in conjunction with his comments referred to earlier regarding the dangers of too zealously looking for a single dominant mode of acquisition.[16] Nevertheless, reference is made, by states, by writers and by international tribunals[17] to prescription and it is necessary to have some understanding as to what is meant by it.

> Acquisitive prescription is the means by which, under international law, legal recognition is given to the right of a state to exercise sovereignty over land or sea territory in cases where that state has, in fact, exercised its authority in a continuous, uninterrupted, and peaceful manner over the area concerned for a sufficient period of time, provided that all other interested and affected states (in the case of land territory, the previous possessor, in the case of sea territory neighbouring state and other states whose maritime interests are affected) have acquiesced in this exercise of authority. Such acquiescence is implied in cases where the interested and affected state have failed within a reasonable time to refer the matter to the appropriate international organisation or international tribunal or – exceptionally in cases where no such action was possible – have failed to manifest their opposition in a sufficiently positive manner through the instrumentality of diplomatic protests. The length of time required for the establishment of a prescriptive title on the one hand, and the extent of the action required to prevent the establishment of a prescriptive title on the other hand, are invariable matters of fact to be decided by the international tribunal before which the matter is eventually brought for adjudication.[18]

Prescription can validate an otherwise doubtful title. It depends on public control and the implication that other states see the effective control and acquiesce to the assumption of sovereignty. Protests by other states can defeat a claim based on prescription. Traditionally it was thought that in order to be effective, protests had to involve the threat or use of armed force. As the use of armed force gradually became restricted by international law, so diplomatic protest came to suffice. There remains some discussion as to the precise requirements of effective protest. Some writers have argued that diplomatic protest must, within a reasonable time, be followed by reference of the matter to the UN or the ICJ.

The issue of protest was raised in relation to the dispute between Argentina and the UK over sovereignty over the Falklands Islands (Malvinas). In 1982 the British Foreign Secretary stated that Britain's claim to the Falkland Islands rested partly on principles of prescription.[19] According to Argentinean

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15 Brownlie, *Principles of Public International Law*, 4th edn, 1990, Oxford: Oxford University Press at p 159.

16 *Ibid* at p 132.

17 See the Chamizal Arbitration (*US v Mexico*) (1911) 5 *AJIL* 782 where the International Boundary Commission considered a US argument based on prescription. The Commission made no decision as to whether prescription was a principle recognised by international law finding on the facts that there was no basis on which the US could found a claim on prescription.

18 Johnson (1950) 27 *BYIL* 332 at pp 353.

19 (1983) 54 *BYIL* 461.

accounts, the Falkland Islands were first discovered by Spain in 1520. Britain claims they were first discovered by Britain in 1592. The islands remained unoccupied until 1764 when a French settlement was established on East Falkland. This settlement was sold to Spain two years later and was maintained by Spain until 1811. Meanwhile a British settlement had been established in West Falkland in 1766. The British settlers were expelled by Spain in 1770 but returned in 1771 only to withdraw completely in 1774, leaving behind the Union flag and a plaque affirming British ownership of the island. Argentina became independent in 1816 and the Falkland Islands remained unoccupied until 1820 when the Argentinean government took possession of them claiming sovereignty as successor to Spain. The occupation of the islands was advertised in *The Times*, London. Between 1820 and 1829 Argentina performed a number of sovereign acts in relation to the Falklands, and it was only in 1829, when a political and military commander was appointed, that Britain protested to the Argentinean government. In 1831 the Argentinean commander of the Falklands seized three American ships for unlawful sealing in Argentinean waters. In retaliation the US destroyed the settlement on East Falkland and declared the islands to be free of all government. In 1833 the British purported to exercise rights of sovereignty over the islands by expelling the remainder of the Argentinean garrison, and the islands remained in continuous British possession until 2 April 1982 when an Argentinean force invaded the islands. The Argentinean government formally protested against Britain's occupation of the islands in 1833, 1834, 1841, and 1842. In 1849 Argentina sent a note to the British government indicating that it intended to make no further protest in respect of Britain's occupation since to do so seemed to be pointless. Nevertheless, Argentina pointed out that in no way should their lack of protest be taken to indicate acquiescence. Argentina resumed its protest in 1884 and they have continued on a regular basis ever since. The Foreign Affairs Committee of the House of Commons was unable to reach a categorical conclusion on the legal validity of either Britain's or Argentina's claim to the Falklands.[20] Clearly, it was the view of the British Foreign Secretary in 1982 that Argentina's failure to protest between 1849 and 1884 amounted to acquiescence to Britain's claims to the Falklands.

The main issue regarding prescription therefore seems to be the question of whether a claim based on it will only succeed with evidence of positive acquiescence, or whether such a claim can only be defeated by evidence of positive protest. Traditionally, claims based on prescription were substantiated by evidence of open, continuous, effective and peaceful occupation, which would seem to suggest that only active and effective protest will defeat such a claim. However, this view would seem to legitimise the claims of powerful states against the weak and may be incompatible with modern views of international law. The preferred view seems to be that of Brownlie, who points out that claims based on prescription rely on the acquiescence of other states:

20 See Fifth Report of the Foreign Affairs Committee of the House of Commons, Session, 1983–84, *HC Papers* 268–I, Vol I, pp xiv–xvii; Misc 1 (1985) Cmnd 9447.

> If acquiescence is the crux of the matter (and it is believed that it is) one cannot dictate what its content is to be, with the consequences that the rule that jurisdiction rests on consent may be ignored, and failure to resort to certain organs is penalised by loss of territorial rights.[21]

Such a view would cast doubts on Britain's claims to the Falklands if they are based solely on prescription. However, the UK government has relied heavily on principles of self-determination to strengthen its case further. The extent and implementation of a right to self-determination will be discussed in Chapter 15. It has also been suggested that Britain would have been better basing its claim on conquest and subsequent annexation in 1833. As will be discussed in 7.3.3 (below), such a claim would have been valid under principles of intertemporal law. However, for largely political reasons Britain has not seen fit to found its claim on such a basis.

There is no prescribed time period necessary for a claim based on prescription to succeed; much will depend on the circumstances of the case, although in the *British Guiana v Venezuela Boundary Arbitration* (1899)[22] the arbitrators were instructed by treaty that adverse holding or prescription during a period of 50 years would establish a good title.

7.3.3 Conquest/annexation

The third traditional mode of acquisition is of historic interest only. Under the Kellogg-Briand Pact 1928[23] war was outlawed as an instrument of national policy. In 1932 the US declared that it would not recognise 'any situation, treaty, or agreement which may be brought about contrary to the covenants and obligations of the Pact of Paris of 27 August 1928'[24] and specifically would not recognise the state of Manchukuo as it resulted from the conquest of Manchuria by the Japanese. Article 2(4) of the UN Charter prohibits states from using or threatening force against the territorial integrity or political independence of any state, and the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations[25] states that 'No territorial acquisition resulting from the threat or use of force shall be recognised as legal'. Prior to the First World War, however, the use of armed force was not illegal and it was possible for territory to change hands following its use. Conquest itself was not sufficient to give title to territory and gave rise only to rights of belligerent occupation. In order to give effective title, physical occupation had to be combined with an intention to occupy as sovereign. This intention was usually evidenced by a formal declaration of annexation by the conquering state. Such a declaration of annexation would only be effective when hostilities had ceased. In practice, examples of title created by conquest are rare, because the annexation of

21 Brownlie, *Principles of Public International Law*, 4th edn, 1990, Oxford: Oxford University Press at p 157.

22 92 British and Foreign State Papers 160 (1899–1900).

23 See Chapter 13.

24 I Hackworth, *Digest of International Law*, 1940, Washington: US Govt Print Off at p 334.

25 Resolution 2625 (XXV) 24 October 1970.

territory after a war was usually confirmed by an express ceding of the territory from conquered to conqueror in the subsequent peace treaty.

Since 1945 there have been a number of cases in which territory has been occupied as a result of the use of force. The most notable recent example is, of course, Iraq's invasion and annexation of Kuwait in August 1990. Although Iraq sought to justify its action on the basis of historic claims to the territory, such claims were rejected by the international community and in Resolution 662 the UN Security Council declared that: '... annexation of Kuwait by Iraq under any form and whatever pretext has no legal validity, and is considered null and void.'[26]

The situation with regard to the territory taken by Israel during the course of the 1967 Six Day War remains more complicated. Until 1947, Palestine had been the subject of a League of Nations mandate which was administered by Britain. In 1947 the UN recommended partition of Palestine into a Jewish and an Arab state. The partition plan proved to be unworkable, and in May 1948 Israel declared itself an independent state. There followed a period of war which was ended by a number of armistice agreements concluded between Israel and each of its neighbours. Under these agreements Israel retained more territory than would have been allocated to the Jewish state under the partition plan. There were a number of violations of the armistice agreements, the most major one being in 1956, when Israel invaded the Egyptian Sinai peninsula but later withdrew to the 1949 borders. In 1967 Israel again invaded the Sinai peninsula together with East Jerusalem, the West Bank and the Golan Heights. This time the territory was not returned despite UN Security Council Resolution 242 which called for the withdrawal of Israeli armed forces from territories occupied in the conflict. The territory taken from Egypt in the Sinai Peninsula was returned following the peace treaty between the two states in 1979. Israeli civilian law was extended to east Jerusalem in 1967 and to the Golan Heights (which had previously been part of Syria) in 1981. The extension of Israeli law has been declared invalid by the UN, and the prevailing opinion is that Israel continues to be in belligerent occupation of the territory taken in 1967. Apart from its claims on East Jerusalem, Israel has not made any express claim to title to the territory occupied in 1967 but argues that the traditional rules relating to belligerent occupation do not apply. Those rules will be discussed in Chapter 14. Final clarification of the territorial status of much of the area awaits implementation of the PLO-Israel Accords of 1991 and conclusion of peace treaties between Israel and its neighbours.

Some doubts about the clarity of the law relating to conquest are created by the Indian invasion of Goa in 1961. Goa was a Portuguese colony at the time, although India maintained that it was an integral part of India and, as such, the invasion amounted to an act of self-determination. The invasion was criticised by a number of states, but the Security Council was unable to agree on a clear policy. Following the Portuguese revolution in 1974, the new government recognised the Indian title to Goa. It is clear that today Goa forms part of the territory of India. There remains some doubt, however, as to who had title to

26 SC Resolution 662 (1990) adopted on 9 August 1990.

the territory between 1961 and 1974 and the precise effect of Portuguese recognition of Indian claims. The suggestion is that it is the recognition itself which makes good India's title to Goa and not the initial use of force. What is prohibited under international law is the unlawful use of force, and force used to obtain self-determination may be regarded as lawful. The whole question of the use of force will be discussed in Chapter 13.

7.3.4 Cession

The possibility of cession of territory under the provision of a peace treaty has already been mentioned in 7.3.2 (above). Cession involves a complete transfer of sovereignty by the owner state to some other state, and may involve a part or all of the owner state's territory. Traditionally there was no bar on the extent to which one state could cede territory to another, although today, a treaty which purported to provide for the cession of territory in conflict with principles of self-determination would violate *jus cogens* and therefore be invalid. It should be noted that the principle *nemo dat quod non habet* applies in international law just as in municipal law: it is not possible for a state to cede what it does not possess.

Cession need not only arise in cases of transfer of territory from losing to victorious state following a war. In the past, land has been ceded in an exchange agreement, for example Britain and Germany exchanged Heligoland and Zanzibar by a treaty made in 1890, and in 1867 Russia ceded Alaska to the United States in exchange for payment.

7.3.5 Accretion

It is possible for states to gain or lose territory as a result of physical change. Such changes are referred to as 'accretion' and 'avulsion'. Accretion involves the gradual increase in territory through the operation of nature, for example, the creation of islands in a river delta. Avulsion refers to sudden or violent changes, such as those caused by the eruption of a volcano. The distinction between avulsion and accretion can be significant in boundary disputes which will be discussed at 7.4 (below).

7.3.6 Other possible modes of acquisition

As has already been stated, issues of title to territory are complex and will usually involve the application of a number of principles. In practice, cases rarely fall neatly into one of the five categories mentioned, and claims to territory will be based on a combination of factors. In addition to the five modes of acquisition that have been discussed, a number of others have been suggested from time to time. Among those that can be clearly identified are 'adjudication', 'disposition by joint decision' and 'continuity and contiguity'.

7.3.6.1 Adjudication

In certain situations, territory may accrue to one state by virtue of a decision of an international tribunal. This is most likely to occur in the context of boundary disputes. Thus in the *Frontier Dispute* case (1985), Burkina Faso and Mali agreed to submit their boundary dispute to a chamber of the ICJ and agreed to accept that tribunal's finding.