RELEVANCE OF THE "CONTIGUITY" DOCTRINE TO INTERNATIONAL TERRITORIAL DISPUTES, INCLUDING THE SPRATLY ISLANDS DISPUTE*

I. INTRODUCTION

In the nineteenth century, unappropriated territories were sometimes claimed on the basis of geographical proximity, i.e. contiguity, or territorial propinquity, the idea being that a state which is closest to the territory in question should have title. In Africa the colonial powers employed the hinterland doctrine to explain this basis of claim during the late nineteenth century. Their argument was that a state occupying a coastal strip was entitled to an unspecified portion of the hinterland. Claims based on geographical proximity are common in modern times as well.[1] Sometimes islands close to the land territory of a state, but outside its territorial sea, are claimed on the basis of the contiguity doctrine. Cases, of course, are not lacking in which states lay claim to islands lying within their territorial waters on the grounds of "state sovereignty" and "natural boundaries". In another situation, there may be a cluster of islands, and the effective possession of the main island is alleged as a basis of claim to the entire group of islands invoking the notion of contiguity or geographical (organic) unity.

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*This article is a part of a work in progress by the author on international law governing territorial disputes.

[1] In the past few decades the doctrine of contiguity or propinquity has been invoked as a basis of claim to territories in the Arctic and Antarctic regions which have been treated as *terra nullius* and which could not be effectively occupied due to extreme cold. This article does not cover Arctic and Antarctic claims. For general discussion, however, see N Hill, *Claims to Territory in International Law and Relations* (1945) at 152; Marjorie M Whiteman, *Digest of International Law* (1963) at 1232; Waldock, "Disputed Sovereignty in the Falkland Islands Dependencies", (1948) 29 *Brit Y B Int'l L* 342.

Contiguity has been regarded as a basis of the law concerning territorial waters, the contiguous zone and the continental shelf. See DW Greig, *International Law* 2d ed (1976) at 169.

The contemporary trend of claiming extended maritime jurisdiction has added a new dimension to claims based on contiguity. As it is well known, the modern law of the sea allows a coastal state to expand its maritime domain to 12 nautical miles in the territorial sea and 200 nautical miles in the name of the exclusive economic zone or the continental shelf. Some states have started claiming their sovereignty over any island that lies within the 200 mile limit.[2]

This article purports at first to examine the current status of the law and policy governing territorial claims — especially relating to contiguous islands — based, fully or partially, on the contiguity doctrine. Thereafter, an attempt will be made to analyse claims and counterclaims rooted in the notion of geographical unity or contiguity in some of the contemporary important territorial disputes. Finally, a general appraisal will be offered.

II. LEGAL STATUS OF THE CONTIGUITY DOCTRINE

As observed before, during the last century, the grounds of contiguity and territorial propinquity were invoked to assert claims to *terra nullius*. Such claims were advanced because the colonizing states found it inconvenient — due to long distances, vast size of the territory involved and the scarcity of resources — to establish effective physical control over the territory. This difficulty was felt even when their initial basis of claim was conjoined with inchoate title. The application of the notion of contiguity was extended to Africa by colonial powers in the name of the hinterland doctrine since, as Greig has explained, this "doctrine (or sector principle) was based upon a quasi-geometrical construct that land "behind" a coastline already legitimately under the sovereignty of the claimant could also be claimed."[3] Beyond the acquisition of title, the aim of the contiguity doctrine was, as a leading authority on the subject, Shaw, has observed, to secure "recognition by all the European powers in a way which would

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[2]See Articles 3, 57 and 76 of the Law of the Sea Convention (1982). Text of the Convention is found in (1982) 21 ILM 1261. These provisions can now be regarded as part of customary international law.

[3]Greig, "Sovereignty, Territory and International Lawyer's Dilemma", (1988) 26 *Osgoode Hall LJ* 127 at 160-161.

obviate the need to establish effective occupation."[4] But, according to him, the doctrine "was never really accepted",[5] and notions of the hinterland doctrine and spheres of influence were political expressions of the colonizing spirit rather than legal concepts.[6] In any case, by the end of the nineteenth century, "hinterland as a doctrine was of decreasing practical relevance as the colonizing powers divided up the interior of the African continent between them by agreement."[7] For substantiation, reference may be made to Article 35 of the 1885 General Act of the Berlin conference which, rejecting the hinterland doctrine, mandated the occupying state to exercise authority in the occupied territories. Publicists almost unanimously regard Article 35 as declaratory of a general rule of international law.[8] The observation of Waldock is also noteworthy; he stated that "by the end of the nineteenth century, international law had decisively rejected geographical doctrines (such as hinterland and contiguity) . . . and had made effective occupation the sole test of the establishment of title to new lands."[9]

The legal status of the principle of propinquity was considered by the arbitral court in the *Island of Palmas* case which involved conflicting claims respecting sovereignty between the United States and the Netherlands over the island.[10] While the case of the Netherlands was rooted in historic possession and exercise of sovereignty ((since 1648) or even prior to it), one of the contentions of the United States in respect of sovereignty over the island was based on its proximity to the Philippines. Rejecting this argument, the tribunal remarked that title based on contiguity has no foundation in international law and the precedents cited by the claimant were not sufficiently frequent or precise to formulate such a rule.[11]

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[4]MN Shaw, *Title to Territory in Africa* (1986) at 49. The author also provides cases where the doctrine was actually applied in Africa.
[5]*Ibid* at 49.
[6]*Ibid* at 50. Waldock calls hinterland claims, not reinforced by effective occupation, as political acts. *Supra* note 1 at 342.
[7]Greig, *supra* note 3 at 160.
[8]Waldock, *supra* note 1 at 342.
[9]*Ibid.*
[10]*Island of Palmas (or Miangas) (Netherlands/USA).* The case was decided in favour of the Netherlands. (1927) II UNRIAA 829.
[11]*Ibid* at 854-55 and 869.

To quote the opinion of the Court:

> Although States have in certain circumstances maintained that islands close to their shores belonged to them in virtue of their geographical situation, it is impossible to show the existence of a rule of positive international law to the effect that islands situated outside territorial waters should belong to a State from the mere fact that its territory forms the *terra firma* (nearest continent or islands of considerable size).[12]

Judge Huber, speaking for the tribunal, advanced several reasons to support his ruling, which can be called "negative policies" bearing upon contiguity:

1. There are no "sufficiently frequent and sufficiently precise precedents" to establish a rule of international law to support the claims based on contiguity.[13]
2. It is all right if the principle of contiguity is incorporated in an agreement or a decision "not necessarily based on law" for allotting islands to one state rather than another. However, "as a rule establishing *ipso jure* the presumption of sovereignty in favour of a particular State, this principle would be in conflict with ... territorial sovereignty and as to the necessary relation between the right to exclude other States from a region and the duty to display therein the activities of a State."[14]
3. The principle of contiguity is not a legal mode of deciding issues of territorial sovereignty since "it is wholly lacking in precision and would in its application lead to arbitrary results."[15]

Indeed, Judge Huber went to the extent of laying down that even isolated acts of display of sovereignty carried more weight than continuity of territory, even if such continuity was combined with the existence of natural boundaries. According to him, this observation had the support of international arbitral

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[12] *Ibid* at 854.
[13] *Ibid*.
[14] *Ibid* at 854-55.
[15] *Ibid* at 855.

jurisprudence.[16] In the later part of the judgement he stated that even an inchoate title arising from a first display of activity would "prevail over any claim which, in equity, might be deducted from the notion of contiguity."[17]

In short, according to the decision in the *Island of Palmas* case, contiguity, unaccompanied by effective occupation, cannot serve as an independent basis for territorial claims. Effective, peaceful and continuous display of state authority is the sole test for acquiring sovereignty over *terra nullius*.

Although claims based solely on contiguity have no support in international law, nevertheless, as Greig has noted, "contiguity is a fact which is not ignored by international law."[18]

Even in the *Island of Palmas* decision Judge Huber recognized that geographical continuity or contiguity may be a relevant fact in assessing the extent of the territory affected by the display as long as it is possible to prove effective display of sovereignty over part of the territory.[19] It may be recalled that in this case the United States pleaded that the Island of Palmas (or Miangas) formed a geopraphical part of the Philippine group and in virtue of the principle of contiguity belonged to the "Power having the sovereignty over the Philippines".[20] Since Spain exercised sovereignty over the Philippines, the island was covered by its sovereignty. Although the tribunal rejected the argument of the United States on the facts, nonetheless, it admitted that a group of islands under certain circumstances may be regarded as in law a unit, and that "the fate of the principal part may involve the rest."[21] But the tribunal added a rider to this by stating that

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[16]*Ibid.* As an example, he cited the award in the arbitration between Italy and Switzerland concerning the Alpe Craivarola; (Lafontaine, Pasicrisie Internationale, pp 201-209).
[17]*Ibid* at 870.
[18]*Supra* note 1 at 168.
[19]*Supra* note 10 at 855. See also at 840.
[20]*Ibid* at 837.
[21]*Ibid* at 855. In a recent case, *Land, Island and Maritime Frontier Dispute (El Salvador/ Honduras: Nicaragua intervening)*, involving, among others, conflicting claims of sovereignty over certain islands, a Chamber of the ICJ treated the island of Meanguerita as a "dependency" of the island of Meanguera because of the smallness of the former and its contiguity to the larger island, as well as due to the fact that it was unhabited and the claimants themselves treated it as a single insular unity. ICJ Rep 1992 at 351, especially para 356 at 570.

this situation may be all right in the initial stages of an occupation (i.e. as the act of first taking of possession) but ultimately "the display of sovereignty as a continuous and prolonged manifestation ...must make itself felt through the whole territory."[22]

Thus, while a claim to title on the basis of contiguity or hinterland doctrine alone has practically no chance to succeed, world jurisprudence has prescribed flexible standards of actual control and possession to justify claims to islands and contiguous areas.

In the *Island of Palmas* case the traditional concept of "effective occupation" was defined in terms of "continuous and peaceful display of territorial sovereignty."[23] Referring specially to the colonial territories partly unihabited or as yet partly unsubdued, the tribunal admitted the possibility of "necessarily gaps, intermittence in time and discontinuity in space"[24] in the exercise of territorial sovereignty. But the mere fact that a state cannot prove display of sovereignty as regards such a portion of territory cannot forthwith be interpreted as showing that sovereignty is inexistent. According to the tribunal, each case must be apppreciated in accordance with the particular circumstances.[25]

A reference to the *Eastern Greenland case*[26] decided by the Permanent Court of International Justice may also be in order. This case involved conflicting claims of sovereignty between Denmark and Norway over Eastern Greenland. Norway's case was based on its proclamation of 10 July 1931 to occupy Eastern Greenland which it regarded as *terra nullius*. Denmark pleaded long, continuous and peaceful exercise of sovereignty since the end of the 10th century. Deciding the case in favour of Denmark, the Court laid down the flexible formula for effective occupation: the intention and will to act as a sovereign and some actual exercise or display of such authority.[27] In regard to

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[22]*Supra* note 10 at 855.
[23]*Ibid* at 839.
[24]*Ibid* at 855.
[25]*Ibid.*
[26]Legal Status of Eastern Greenland, PCIJ ser A/B No 53, at 45 (1933).
[27]*Ibid* at 45-46.

sovereignty claims over areas in thinly populated or unsettled countries, the Court observed that past cases revealed that "the tribunal 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."[28] Nevertheless, the Court in this case evaluated the Danish claim of sovereignty over Greenland through five historical periods in accordance with the formula i.e. the intention and will to act as a sovereign and some actual exercise or display of state authority and arrived at the conclusion that Denmark possessed a valid title to the sovereignty over all Greenland.[29] Thus, as Waldock has observed:

> The Court did not hold Denmark to have sovereignty over Eastern Greenland merely by reason of it being a continuation of other territory possessed by Denmark, nor did it do so merely because Greenland, being an island, is a geographical unity. The Court held Denmark to have actually displayed state authority in regard to the whole of Greenland, slight though the impact of that authority might have been in the contested part of the island.[30]

However, the geographical unity of Greenland was not without significance. It did play a role as an "important fact in assessing the limits of Denmark's state activity". What Waldock has emphasized is that Denmark would not have won the case on the basis of "geographic continuity" alone, "if she had not established some

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[28]*Ibid* at 46.

[29]*Ibid* at 64.

[30]*Supra* note 1, at 343-44. The *Clipperton Island* Award II UNRAA 1105 (1931) by the King of Italy, resolving the sovereignty dispute between France and Mexico, probably represents an instance in which the least exacting standards of effectiveness were laid down. The symbolic act of the French Naval Officer in 1858 in the form of a proclamation followed by its notification to the Government of Hawaii and its publication in a local journal in Hawaii were treated by the Arbitrator as equivalent of effecuve occupation. The test laid down was: "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 established." According to Lauterpacht this case "is an instance of a situation in which international law dispenses altogether with the requirement of effectiveness": "Sovereignty Over Submarine Areas", XXVII *Brit Yr Bk Int'l L* 417 (1950). But Waldock disagrees and states that "France did, in fact, exercise sovereignty again before Mexico attempted for the first time to assert a title." *Supra* note 1, at 325. In 1897 France sent a warship to the Islands and a month later Mexico did the same to assert its sovereignty over the Island.

state activity displayed in regard to the whole island."[31] Greig has also noted that contiguity was probably a latent consideration in the *Eastern Greenland* case. His explanation for this is: "The actual areas of the disputed territory settled by Denmark were few, but, in view of the inhospitable nature of the region, the Court was prepared to accept the intention to occupy the more remote areas coupled with the actual possession and settlement of areas of coastline as establishing Danish sovereignty in a territory to which until a year before the case was heard there had been rival claims."[32]

While Waldock has advocated a somewhat limited recognition of the authority of the contiguity doctrine, Lauterpacht in an article published in 1950[33] has expressed wider acceptance of the said doctrine. He disagrees with those who assert that in terms of the *Island of Palmas* case ruling international law does not recognize title based on contiguity. In his view, "it is doubtful whether this is the intended effect of the award."[34] Inasmuch as the claim of the United States was not mainly rooted in contiguity, he observed that the award was, in a sense, *obiter*.[35] Having said this, Lauterpacht highlighted those parts of the award where the arbitrator admitted that a group of islands may form "in law a unit, and that the fate of the principal part may involve the rest", and where the arbitrator, in Lauterpacht's view, held in effect, with regard to occupation of territories which form a geographical unit, that the occupation must be presumed, in the initial stages, to extend to the whole unit and that the only consideration to which contiguity must concede is that of actual adverse display of sovereignty by the competing state.[36]

Lauterpacht also cited the arbitral award given in 1904 by the King of Italy in the controversy concerning the boundary between British Guiana and Brazil to illustrate the relevance of the geographical unity of the main and contiguous territory.[37]

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[31] *Ibid* at 344.
[32] *Supra* note 1 at 168-69.
[33] *Supra* note 30 at 428.
[34] *Ibid.*
[35] *Ibid.*
[36] *Ibid.*
[37] *Ibid.*

The tribunal held that "the effective possession of a part of a region, although it may be held to confer a right to the acquisition of the sovereignty of the whole of the region which constitutes a single organic whole, cannot confer a right to the acquisition of the whole of a region which, either owing to its size or its physical configuration, cannot be deemed to be a single organic whole *de facto*."[38] This may be interpreted to mean that if a territory constitutes a single organic whole, the legal consequences of the effective possession of a part of it may cover sovereignty over the whole of the territory. Similarly, in the opinion of Lauterpacht, it is difficult to understand fully the Judgment of the Permanent Court of International Justice, in the case of the *Legal Status of Eastern Greenland,* unless due weight is given to that part of the pronouncement of the Court which extended the legal consequences of display of sovereignty over an integral part of the territories which the Court considered to have been occupied by means of the display of some state activity to uninhabited and uncolonized parts of Greenland.[39]

From the decided cases, Lauterpacht arrived at the conclusion that "effectiveness need not be as complete as appears at first sight and that contiguity is not as theoretical and arbitrary as may appear at first sight."[40]

There may be a difference of emphasis between the views of Lauterpacht and Waldock, but they both seem to agree that the importance of contiguity to title is relative and in certain circumstances the legal consequences can prove to be determinative, at the initial stages, of the title if it is conjoined with "effectiveness of occupation" of the territory as a whole (or even mere proclamation in certain contexts) and if there is no competing superior state authority of another state. Again, both are at one in stating that if there is a conflict of claims based on contiguity and effective occupation, the latter shall prevail. However, Lauterpacht is willing to support the view that "the claim of contiguity is *pro-tanto* much stronger when there is

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[38]*Ibid* (The award is found in British Foreign and State papers, Vol 99 (1905-1906), at 930).
[39]*Supra* note 30 at 428.
[40]*Ibid* at 429.

only a remote prospect of occupation by rival states to oppose it - as is the case in the matter of submarine areas."[41] However, in the ultimate analysis, as Lauterpacht sums up his position, "the conceptions of effective occupation and contiguity, being relative, are but a starting point. It is within the legitimate province of the judicial function - and of statesmanship - to use them with such discretion as the equities of the case and consideration of stability require."[42]

O'Connell has also taken a flexible view in respect of the importance of the conception of contiguity. He has noted that when it is said that contiguity is not a conception of international law, "no more is meant than the obvious rule that a reasonable relation must exist between two areas of land before they can be legally assimilated."[43] But this is far from saying that international law permits no assimilation. Much depends upon the facts of each case, according to him.[44]

In the light of the above discussion, it can be concluded that contiguity or continuity of territory could be valid considerations under international law only within the general framework of the process of affective occupation.[45] At best, in suitable contexts, contiguity or proximity may raise a presumption of fact or create *animus occupandi* that a particular state is exercising or displaying state authority over the adjoining or proximate territory "in which there is no noticeable impact of its state activity."[46] But this presumption can be rebutted if the *status quo* goes on indefinitely without any evidence of some manifestation of sovereignty over the entire territory claimed, or if some display of state authority during the period of time when it is ordinarily expected is inexistent, or when another state comes up with superior evidence of a continuous and peaceful display

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[41]*Ibid.*

[42]*Ibid.*

[43]I DP O'Connell, *International Law* 2nd ed (1970) at 420.

[44]*Ibid.*

[45]See Waldock, *supra* note 1 at 344. Lauterpacht has emphasised that *"all other things being equal*, effective occupation constitutes ... a title superior to any competing title". *Supra* note 30, at 416. To that extent only, in his view, international law has discarded discovery, purely symbolic occupation, and contiguity as a valid source of title. *Ibid.*

[46]Waldock, *supra* note 1 at 344.

of sovereignty over the same territory. The temporary advantage of proximity claim, inasmuch as it raises the presumption of *animus occupandi* and ability to control the claimed outlying areas, is that, as Waldock has stated, it "operates to give the claimant the benefit of the rule that an effective occupation need not make an impact in every nook and cranny of the territory."[47] But the advantage is definitely temporary and the claim based on proximity must be perfected ultimately by display of sovereignty throughout the territory claimed.

The legal status of islands located within the territorial waters of states has been the subject of specific discussion by legal scholars. There are, of course, authorities such as Lindley who has stated: "An uninhabited island within territorial waters is under the dominion of the sovereign of the adjoining mainland."[48] Nevertheless, as Bowett has observed, this "can be no more than a presumption, for not infrequently islands under the sovereignty of one state lie within a distance from the shore of another state which is less than the limit of territorial waters."[49] "Hence", he adds, "the presumption is displaced where proof of sovereignty in another State is adduced."[50] This is an acceptable statement of law regarding lands lying within the territorial sea of a state. This is also consistent with not only the tendency to regard such islands as part of the mainland, but also the practice of measuring territorial waters of the coastal state from the seaward side of such islands. However, there is no rational reason for any presumption based on contiguity with respect to islands lying within the limits of the continental shelves or the exclusive economic zones which are essentially resource zones and wherein coastal states are not entitled to claim proprietary rights unlike in the case of the territorial sea. It may also bear importance that until recently these zones were part of the high seas, and even now the traditional freedoms of the high seas (except that of the fishing in the exclusive economic zone) continue to operate.

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[47]*Ibid* at 345.
[48]MF Lindley, *The Acquisition and Government of Backward Territory in International Law* (1926) at 7. For discussion on effects of islands on inter-state maritime boundary delimitation, see Hiron W Jayewardene, *The Regime of Islands in International Law* (1990) at 487.
[49]DW Bowett, *The Legal Regime of Islands in International Law* (1978) at 49.
[50]*Ibid.*

Here the law applicable to islands lying in the high seas will operate, namely, the title will be governed by the same norms that are applied to resolve any territorial dispute on land, which means that the claimant state must fulfil the conditions underlying a continuous and peaceful display of sovereignty over the island territory.[51]

III. CURRENT TERRITORIAL DISPUTES

We may now briefly analyse claims and counterclaims rooted in the contiguity doctrine in some of the current international territorial disputes.

The ownership of the *Spratly islands*[52] in the South China Sea is under dispute. As many as six countries — the Peoples Republic of China, the Republic of China (Taiwan), Vietnam, the Philippines, Brunei and Malaysia — lay claim to all or part of the Spratly islands. The disputed islands are a group of tiny, mostly barren atolls and reefs surrounded by the above named coastal states. The Spratlys straddle sea lanes from the Indian Ocean and the area is believed to contain undersea oil and natural gas resources attracting competing claims to sovereignty.[53]

Both Chinas and Vietnam invoke historic possession of islands from the ancient to the present times.[54] Chinese sources claim that "China discovered, and has exploited the islands in the South China Sea for over two thousand years."[55] Following a private Philippine expedition and occupation of a number of islands by Tomas Cloma in May 1956, the Philippine govern-

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[51]Cf *ibid* at 50.

[52]These tiny islands and reefs (400 in number) covering an area of 240,000 sq km are called Nansha Quando by the Chinese and Quan Dao Truong Sa by the Vietnamese.

[53]By themselves these islands may have very little economic value but, as Dzurek has pointed out, "such islands may serve as bases from which to claim exclusive economic zones and continental shelves": "Boundary and Resource Disputes in the South China Sea", (1988) *5 Ocean Year Book* 271. For an account of the potential resources of the disputed area (hydrocarbons and fisheries), see *ibid* at 261-270. See also Mark J Valencia, *Malaysia and the Law of the Sea* (1991) at 54 ff.

[54]For general discussion on sovereignty disputes, see Dzurek, *supra* note 53, at 272-74; Chang, "China's Claim of Sovereignty over Spratly and Paracel Islands - A Historical and Legal Perspective", (1991) 23 *Case W Res J Int'l L* 399; Alan J Day (ed.), *Border and Territorial Disputes* (A Keesing's Reference Publication) (1987) at 374.

[55]Chang, *ibid* at 400.

ment came out for the first time to stake its claim over the Spratly islands, calling them *Kalayaan* or Freedomland, which was challenged by the two Chinas and Vietnam. The Kalayaan claim was defined in terms of all islands, within a specific geographic area, and was subsequently endorsed as an official claim of the Philippines in 1974, formalized by a Presidential decree in 1978.[56] The Philippine sources also refer to the San Francisco Peace Treaty, 1951, which left the status of the islands undetermined, following Japanese renouncement of its sovereignty over them. It is asserted that at that point the islands became a new territory or *res nullius*, inasmuch as they were unoccupied and unpossessed islands.[57] The Philippines had, therefore, occupied them as a new territory. In addition to effective occupation and control, the Philippines claim is based on contiguity or geographical proximity.

Malaysia published a map in 1978 depicting its continental shelf.[58] It claims the southern part of the Spratly archipelago, including Amboyna, Cay, and Commodore and Swallow Reefs, as falling within the Malaysian continental shelf. Other than contiguity, Malaysia invokes the principle of effective occupation.[59] Brunei is the latest addition to the list of claimants in respect of the Spratlys.

In the *Falkland Islands* dispute,[60] Argentina's claim to the islands is partially based on their contiguity to its coast. Denying this, the United Kingdom asserts that the Falkland islands being some 300 miles away from the Argentine mainland could not be contiguous to its territory. The British assert their sovereignty over the disputed islands on the basis of continuous, effective and peaceful occupation since 1833.

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[56]Dzurek, *supra* note 53 at 273, states that the Chinese, Vietnamese and the Philippines claims to the Spratly islands are not predicated on the ownership of individual islands, but on all islands within a specific area of the sea.

[57]The Statement of President Marcos at the Press Conference on 14 September 1979, quoted in Day, *supra* note 54 at 375.

[58]See Dzurek, *supra* note 53 at 274 and 282.

[59]See New Straits Times (Malaysia) dated 4 September 1992, p 1 quoting Prime Minister Datuk Seri Dr Mahathir Mohamad stating that Spratly Islands, like Amboyna Cay and Commorodores (Pulau Laksmana) had once belonged to Malaysia but had been taken over by other countries.

[60]See Coll, "Philosophical and Legal Dimensions of the Use of Force in the Falklands War", in Alberto R Coll and Anthony C Erend (ed.) *The Falklands War - Lessons for Strategy, Diplomacy and International Law* (1985) at 39-40.

France and Madagascar have a dispute concerning sovereignty over a number of small islands off the coast of Madagascar, namely the Glorioso Islands, Juan de Nova, and Bassas da India and Europa.[61] France claims sovereignty over the islands since 1896, but the government of Madagascar has also claimed them. In 1973 the latter extended the limit of its territorial waters to 56 miles and its continental shelf to 112 miles from its coasts so as to encompass those islands. On the other hand, the French government proclaimed, under a decree of 3 February, 1978 a 200 mile exclusive economic zone, covering these islands. Madagascar claims that under international law, a state has "a natural right of sovereignty" over nearby islands and that until 1960 France had consistently confirmed the "organic unity" of Madagascar and the islands. Rejecting the argument of contiguity, France has maintained that it is not recognized in international law and at any rate it cannot apply to territories located as far as 90 to 240 miles. It has also rejected the argument of Madagascar that the islands were part of its continental shelf inasmuch as they were delinked from Madagascar by ocean depths of more than 3,000 meters. It added: "If any coastal state were to be able to claim all the islands situated at less than 200 miles off its coasts the world's political map would be overturned and world peace would be threatened."[62]

In the *Morocco-Spain* dispute,[63] existing Spanish sovereignty over four small enclaves, namely, the towns of Ceuta and Melilla, and the Penones (Rocks) of Alhucemas and Velez de la Gomera and over the Chafarinas Islands has been challenged by Morocco, among others, on the ground that the disputed territories lie within the natural boundaries of its kingdom. Spain's counter-claim is based on historic possession.

The *Namibia-South Africa* controversy,[64] relates to the status of the port of Walvis Bay, an enclave within the territory of Namibia, and the Penguin islands (a cluster of small islands)

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[61]For facts of the dispute, see Day, *supra* note 54 at 132.
[62]Statement of French Representative before the United Nations General Assembly on 11 December 1980, quoted in *ibid* at 135.
[63]For details see, Day, *supra* note 54 at 161.
[64]The dispute has been discussed in detail in Note: "Namibia, South Africa, and the Walvis Bay Dispute", (1980) 89 *Yale LJ* 903.
[65]See Day, *supra* note 54 at 229.

situated off the coast of Namibia. South Africa claims the disputed territories as an integral part of its territory. Namibia, on the other hand, asserts that its integrity, unity and economic viability requires that Walvis Bay and the Penguin Islands be part of its territory. South Africa's case is based on historical argument, which is not denied by Namibia, but its relevance is challenged.

The *Bahrain-Qatar* dispute concerns the ownership of Hawar (Huwar) Islands, situated close to the east coast of Qatar. At present it is under the control of Bahrain. Qatar has claimed that Hawar Islands are situated within the geographical boundaries of Qatar, being an extension of Qatar's territory within its territorial waters.[65] Moreover, according to Qatar, it is only during the tidal period that the narrow channel between the disputed islands and Qatar is covered by water. Indeed, when the tide is low one can even walk from the shores to the islands. In contrast, the territory of Bahrain is detached from the disputed islands by a waterway as wide as 18 miles which, according to Qatar, is used for international navigation.

The ongoing territorial dispute over "Northern Territories" between the *Soviet Union (Russia) and Japan* involves, in the main, conflicting claims of historic possession and interpretation of certain agreements. However, it got complicated with both sides announcing expanded maritime jurisdictions so as to include the disputed territories in their respective sovereign domains. The Soviet Union at first, on 10 December 1976, declared a 200 mile fishing zone around its coasts,[66] and subsequently on 1 March 1977, the date when the fishing zone was to come into force, it declared that the said zone would encompass the waters around the northern islands. In the meantime, Japan on 26 January 1977 extended its territorial waters limit also from 3 to 12 nautical miles so as to include the disputed islands. Subsequently, on 1 July 1977 it put into force a 200 mile fishing zone. The two sides, however, made two interim agreements granting reciprocal rights to their fishermen within their respective zones. In one of them the two states reserved their respective positions on any outstanding bilateral or multilateral problem. But no-

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[66]See *ibid* at 352.

long term fishing agreement could be concluded. In 1991 the two sides signed a fisheries agreement.[67]

In the *Colombia-Nicaragua* dispute[68] over the Caribbean archipelago of San Andres and Providencia and certain cays, Nicaragua claims that inasmuch as the islands and cays are located within 200 miles of its coast, they are part of its continental shelf jurisdiction. It is further asserted that the delimitation of its territory was based on the "natural boundaries" principle. For substantiation, it refers to the 1826 Declaration of Independence of the United Provinces of Central America and the 19th century Nicaraguan constitution wherein this principle is alleged to have been incorporated.

IV. APPRAISAL

In none of the aforesaid disputes has the argument based on contiguity *per se* a chance to succeed. Its relevance would depend upon how much evidence the claimant state (closer to the island) is able to adduce relating to its continuous and peaceful display of sovereignty in the disputed territory. If the essential conditions of effective display of sovereignty are fulfilled, the claim of title based on contiguity has a fair chance to succeed. In short, the argument of contiguity will bear relevance only within the general framework of effective occupation, for which the courts and tribunals have laid down flexible criteria. In respect of territories which are uninhabited or sparsely populated, or whose economic importance is negligible, the standards of effective occupation are not stringent. In suitable contexts, geographical proximity may produce a presumption of fact that the particular country is exercising or displaying state authority in the outlying territory, but this presumption is subject to rebuttal if some other state can adduce superior evidence of display of state functions over the same territory, or if some other circumstances, as discussed before, prevail. Certainly, the proximity doctrine allows certain temporary advantages to the state which invokes it.

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[67]*New Sunday Times* (Malaysia), 21 June 1991, p 8.
[68]For detailed facts, consult Day, *supra* note 54 at 412.

In regard to an island, if it happens to be accepted as falling in the territorial waters of a particular state, only an initial presumption of sovereignty in its favour is permissible which remains vulnerable in the face of proof of sovereignty that some other state might adduce. If the island happens to fall within the limits of the exclusive economic zone or the continental shelf of a state, title to it will depend on which state can adduce stronger evidence of effective display of state authority and the initial presumption of sovereignty based on the contiguity doctrine may not meet the requirements of the contemporary international law of territorial acquisition.

Surya P Sharma*

*Professor of International Law,
Faculty of Law,
University of Malaya.