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On State Territory in General

Henrich, *Theorie des Staatsgebietes* (1922), pp 1–54 Donati, *Stato e territorio* (1924) Giese, ZV, 11 (1918–20), pp 461–95 Lindley, *The Acquisition and Government of Backward Territory in International Law* (1926) Heinrich, ZI, 13 (1926), pp 28–63, 184–232, 325–52 Paul de Lapradelle, *La Frontière: étude de droit international* (1928) Schoenborn, Hag R, 30 (1929), v, pp 91–134 Hostie, *ibid*, 40 (1932), ii, pp 440–49 Tachi, RG, 38 (1931), pp 406–19 Kelsen, Hag R, 42 (1932), iv, pp 204–20 Hamel, *Das Wesen des Staatsgebietes* (1933) (in particular pp 284 *et seq*) Schade, *Wesen und Umfang des Staatsgebietes* (1934) Sereni, *La rappresentanza nel diritto internazionale* (1936), pp 256 *et seq* Verdross, pp 177–9, 183–6; and ZI, 37 (1927), pp 293–305 Strupp, ZI, 47 (1934), i, pp 540–48 Prager, ZöR, 14 (1934), pp 611–33 Monaco, *Rivista*, 26 (1934), pp 289–320, 461–502 Lauterpacht, Hag R, 62 (1937), iv, pp 318–26 Andrassy, Hag R, 79 (1951), ii, pp 73–182 van Kleffens, *Sovereignty in International Law*, Hag R, 82 (1953), i, pp 5–130 Guiliano in *Comunicazioni e studi*, 6 (1954), pp 21–54; and *I diritto e gli oblighi degli Stati* (vol I, 1956) and *L'Ambiente della Attività degli Stati* (1956) McNair, *Opinions*, i, pp 285–306 Scelle in *Symbolae Verzijl* (1958), pp 347–61 Korowicz, Hag R, 102 (1961), i, 5–120 Bastid, Hag R, 107 (1962), iii, pp 361–495 Mughraby, *Permanent Sovereignty over Oil Resource* (1966) Gottman, *The Significance of Territory* (1973) H Lauterpacht, *Collected Papers* (vol I, 1970), pp 367–82 Verzijl, *International Law in Historical Perspective* (vol 3, 1970) Dembinski, *Ann Suisse* (1975), 31, pp 121–52 Bowett, *The Legal Regime of Islands in International Law* (1978) Symmons, *The Maritime Zones of Islands in International Law* (1979) Crawford, *The Creation of States in International Law* (1979), ch 2 Shaw, Neth YBIL, 13 (1982), pp 69–91 Shaw, *Title to Territory in Africa* (1986).

§ 168 Concept of state territory

State territory is that defined portion of the globe which is subjected to the sovereignty of a state. A state without a territory is not possible, although the necessary territory may be very small, as with the Vatican City, the Principality of Monaco, the Republic of San Marino, the Principality of Liechtenstein or Nauru.[1] A wandering tribe, although it has a (p. 564) government and is otherwise organised, is not a state until it has settled down in a territory of its own.[2]

§ 169 Importance of state territory

The importance of state territory is that it is the space within which the state exercises its supreme, and normally exclusive, authority. State territory is an object of international law, because that law recognises the supreme authority of every state within its territory;[1] which authority must of course be exercised in accordance with international law.[2] Whatever person or thing, is on, or enters into, that territory, is *ipso facto* subjected to the supreme authority of the state: *Quidquid est in territorio, est etiam de territorio and Qui in territorio meo est, etiam meus subditus est*. No other state may exercise its power within the boundaries of the home territory; however, international law does, and international treaties may, restrict the territorial sovereign in the exercise of its sovereignty, and, for example, foreign sovereigns and diplomatic envoys enjoy certain privileges and immunities. The exclusive dominion of a state within its territory is basic to the international system and Article 2.4 of the United Nations Charter accordingly requires all members to 'refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State'.[3]

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(p. 565) § 170 Divisibility of territorial sovereignty

It might seem that on one and the same territory there could exist only one full sovereign state; and that for there to be two or more sovereign states on one and the same territory is not possible. But in practice sovereignty is sometimes divided, so that there are exceptions — some real and some apparent — to the rule of the exclusiveness of a single sovereignty over the same territory:[1]

(1) The first and perhaps only true exception is the so-called *condominium*, [2] which exists when two or more states exercise sovereignty conjointly over a territory. Thus Schleswig-Holstein and Lauenburg from 1864 till 1866 were under the condominium of Austria and Prussia, [3] the Sudan from 1898 to 1955 was under the condominium of Great Britain and Egypt, [4] (p. 566) and between 1914 and 1980 the New Hebrides, now the independent State of Vanuatu, were under a condominium of Great Britain and France; [5] and after 1939 the Islands of Canton and Endenbury, which were of importance for the maintenance of aviation routes over the Pacific, were under the 'joint control' of Great Britain and the United States. [6] The idea of a condominium is also sometimes used in respect of the waters of rivers or bays and gulfs. [7]

Not infrequently a condominium has been adopted as a provisional measure for territories whose disposal is to be decided later on. Until a final settlement, the interested states do not each exercise an individual sovereignty over these territories, but they agree upon a joint administration under their conjoint sovereignty. Thus, for instance, in the Peace Treaties of 1919 the Central Powers ceded certain territories to the Allied (p. 567) and Associated Powers which until the final disposition of these territories held them under their joint sovereignty. [8]

An important example of a temporary solution which lasted some time, is the Kuwait-Saudi Arabia Neutral Zone of some 2,000 square miles, established by the Uqair Convention of 2 December 1922. It provided that, pending a further agreement on definitive frontiers, the two governments 'will share equal rights'. By an Agreement of 7 July 1965, the two countries put an end to this temporary state of affairs, by partitioning the Neutral Zone with two sections, the one to be annexed to Kuwait and the other to Saudi Arabia, provided the equal rights of the two parties in the whole zone be preserved in full. To this end permanent arrangements are established for joint administration of the whole zone. Thus the annexations are qualified by the preservation of rights over the whole and by the joint exercise of sovereignty over the whole. [9]

When on 5 June 1945, Great Britain, the United States, Russia and France, in a 'Declaration regarding the defeat of Germany', assumed supreme authority over that country, they provided an example of joint exercise of 'supreme governmental authority'; it was not, however, properly a condominium because there was no annexation of the territory. [10]

(2) In other cases one state exercises sovereignty which is, in law, vested elsewhere: as where territory is administered by a foreign power, with the consent of the owner-state. Thus, from 1878 to 1914 the then Turkish island of Cyprus was under British administration, [11] and the Turkish provinces of Bosnia and Herzegovina were from 1878 to 1908 under the administration of Austria-Hungary. [12] In these cases a cession of territory had for all practical purposes taken place although in law they still belonged to the former owner-state. But a nominal sovereignty is not necessarily devoid of practical consequences. Thus in the case concerning the *Lighthouses in Crete and Samos* the Permanent Court of International Justice held, in 1937, that notwithstanding the very wide autonomy conceded (p. 568) by Turkey to the islands of Crete and Samos, these territories must be regarded as having been under Turkish

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sovereignty in 1913, with the result that Turkey could properly grant or renew concessions with regard to these islands. [13]

(3) The third kind of exception is that of territory leased or pledged by the owner-state to a foreign power. There have been many examples and their terms vary considerably. [14] Perhaps the best-known historical examples were the 'Chinese' leases. In 1898 China leased the district of Kiaochow to Germany, [15] Wei-Hai-Wei and the land opposite the island of Hong Kong to Great Britain, [16] Kuang-chou Wan to France, [17] and Port Arthur to Russia. [18] In Article 4 of the Peace Treaty of 1947 Finland granted to Soviet (p. 569) Russia on the basis of a 50 years' lease at an annual rent of five million Finnish marks the use and administration of territory and waters for the establishment of a Soviet naval base in the area of Porkkala-Udd. Some of these transactions may have comprised, for most practical purposes, cessions of territory; nevertheless, in strict law these remained the territory of the leasing state. Such rights are not always a mere fiction, as some writers [19] have maintained, for it is possible for a lease to come to an end by expiration of time or by rescission. Thus the lease granted in 1894 by Great Britain to the former Congo Free State, of the so-called Lado Enclave, was rescinded [20] in 1906, [21] and the British lease of Wei-Hai-Wei was rescinded in 1930, [22] and Russia restored the Porkkala base to Finland in 1955. [23]

These so-called leases must, however, be distinguished [24] from other (p. 570) transactions, properly called leases, in which there is no transfer of the exercise of sovereignty but there is a lease of land. Of these genuine international leases, the following instances may be mentioned: Great Britain to Italy of land at Kismayu in Kenya for the purpose of erecting a bonded warehouse and other buildings; [25] Germany to Czechoslovakia by Article 363 of the Treaty of Versailles 1919; the Government of India to France regarding the French Loge at Balasore on 26 April 1920; [26] and Italy to Czechoslovakia of an area in the port of Trieste on 23 March 1921. [27] The leases of small pieces of territory granted in 1941 by Great Britain to the United States for the use and operation of naval and air bases in Newfoundland, Bermuda, Jamaica, St Lucia, Antigua, Trinidad and British Guyana for a term of 99 years [28] did not involve, apart from a rigidly limited concession of certain jurisdictional rights, [29] any surrender either of sovereignty or of the exercise thereof. In 1950 a new treaty modified and regulated in considerable detail the conditions under which jurisdiction might be exercised by the United States. [30] The situation was overtaken by the attainment of independence by the West Indies, and a Treaty of 10 February 1961, between the United States and the Government of the Federation of the West Indies, expressly superseded the treaties of 1941 (p. 571) and 1950, but provided for the maintenance by the United States of certain defence facilities. [31]

(4) The fourth case is where the use, occupation and control of territory are in perpetuity granted by the owner-state to another state, to the exclusion of the exercise of any sovereign rights over that territory by the grantor. In this way the Republic of Panama, in 1903, transferred to the United States of America a ten-mile-wide strip of territory, [32] for constructing, administering, and defending the Panama Canal. In this case also the grantor retained in law the property in the territory, even whilst only the grantee exercised sovereignty there; as appears from the Panama Canal Treaties 1977, and the Declaration of Washington of that year, in which the parties, the Republic of Panama and the United States, recognised 'the sovereignty of the Republic of Panama over the totality of its national territory'. [33]

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(5) A further example is that of the territory of a federal state. As a federal state is itself a state side-by-side with its single member-states, [34] it is apparent that the different territories of the single member-states are at the same time collectively the territory of the federal state, since sovereignty is divided between a federal state and its member-states.

(6) The case of mandated and trusteeship territory has already been considered. [35] Here, also, the mandatory state, or the trustee state, exercised most of the attributes of sovereignty over territory which was not its own. [36] Moreover, the United Nations Charter provided for the possibility (p. 572) of joint trusteeship by several states — a case of joint exercise of divided sovereignty. [37]

Footnotes:

1 See also § 34. For the relationship of statehood and territory, see Crawford, BY, 47 (1976–77), pp 93ff, and especially at p 111; also Crawford, *The Creation of States in International Law* (1979), ch 2; and see Shaw, *Title to Territory in Africa* (1986), ch 1. For statement that 'sovereignty speaks to the very identity and character of a people', see 'Canadian statement concerning Arctic sovereignty', ILM, 24 (1985), p 1723.

It does not follow that frontiers need be definite and undisputed: see the *Monastery of Saint-Naoum Case* (1924), PCIJ, Series B, No 9; ICJ Rep (1969), p 32, para 46.

See also *Schtraks v Govt of Israel* [1962] WLR 1013 for a distinction of territory of *de jure* sovereignty and territory as an area of *de facto* jurisdiction.

2 As to desert tribes, see Flory, 'La Notion de territoire Arabe et son application au problème du Sahara', AFDI, 3 (1957), pp 73–91.

Nevertheless, the presence in a territory of nomadic tribes having a social and political organisation, may mean that the territory is not *terra nullius*, and subject to 'occupation': see the *Western Sahara Case*, ICJ Rep (1975), p 3, especially paras 80ff.

On the problems of diminutive states, see de Smith, 'Microstates and Micronesia: problems of America's Pacific Islands and other minute territories' (1970); also Mendelson, ICLQ, 21 (1972), pp 609–30. See also § 33.

In some countries, territory cannot be disposed of without parliamentary approval: see McNair, BY, 7 (1928), pp 59–68, and *Treaties*, pp 24ff.

1 See *The SS Lotus*, PCIJ, Series A, No 10 (1927), at p 18: 'Now the first and foremost restriction imposed by international law upon a State is that — failing the existence of a permissive rule to the contrary — it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention.'

It seems that even where sovereignty is in fact attenuated in its exercise, it may still entail legal consequences: *Crete and Samos Lighthouses Case* (1937), PCIJ, Series A/B, No 71.

See also the *Rainbow Warrior* incident (1985), ILR, 74, p 241, especially at p 271 and RG, 84 (1980), p 902 where both France and New Zealand, and the Secretary-General of the UN, condemned a violation of New Zealand's territorial sovereignty, done contrary to international law.

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2 See the Judgment of the ICJ in the *Corfu Channel Case*, ICJ Rep (1949), at p 22 where it referred to 'every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States'.

3 For documents concerning the Israeli military attack from the air on an Iraqi nuclear research centre, on 7 June 1981, see ILM, 20 (1981), pp 963–97; especially SC Res 487 (S/PV 2288, 19 June 1981, pp 58–73) condemning the attack. See also SC Res 573, 4 October 1985, 'vigorously' condemning an Israeli attack on Tunisian territory by an air raid on an area in the southern suburbs of Tunis on 1 October 1985 (ILM, 24 (1985), p 1740). See also, generally, §§ 127 and 128, on self-defence and intervention.

1 For 'international rights *in territorio alieno*' and other exceptional territorial situations, see Verzijl, *International Law in Historical Perspective* (vol 3, 1970), pp 387–512. For the question of federal states, see § 75.

2 Verzijl prefers to call it *co-imperium* or *co-sovereignty* : see *loc cit*, pp 429–43, for a history of the institution and an analysis of many examples. On the question whether joint tenancy, or tenancy in common, is the right analogy in describing condominium, see Parry, BY, 30 (1953), p 262.

See also the Judgment of the Central American Court of Justice in 1917 in the *Gulf of Fonseca* case between El Salvador and Nicaragua, where the Court took the view that the waters of the Gulf, apart from a three-mile belt of coastal 'territorial' waters, were subject to a regime of condominium, in AJ, 11 (1917), p 674. See also Berile, *Comunicazioni e studi*, 5 (1953), pp 198–202.

3 Moresnet (Kelmis), was held to have been subjected to a condominium by the Treaty of 26 June 1816, between the Netherlands and Prussia; but by Art 32 of the Treaty of Peace 1919 with Germany, Germany recognised the full sovereignty of Belgium over this territory. See Schröder, *Das grenzstreitige Gebiet von Moresnet* (1902).

The Convention of Gastein 1865 provided for the joint sovereignty of Austria and Prussia over Lauenborg and Schleswig-Holstein, and specifically named it condominium.

According to one possible view only an agreement can be the legal source of a condominium; see Cavaglieri, Hag R, 26 (1929), i, p 389. Other examples of creations by agreement are: the Bucharest Treaty of Peace 1918 between Austria-Hungary, Germany, Bulgaria and Turkey and Roumania created a condominium over the northern part of the Dobroudja for the first four of those states; ch II, s IX of the Treaty of Versailles 1918 created a temporary condominium over Danzig, pending its creation as an independent territory; by Art 99 of the same treaty, Germany ceded Memel as a condominium; by Art 91 of the Treaty of Saint-Germain 1919, a condominium was established over Eastern Galicia, formerly German territory; by Art 48 of the Treaty of Neuilly 1919, a similar regime was established for Western Thrace, formerly Bulgarian.

Another possible instance is in the Canas-Jeres Treaty 1858 between Costa Rica and Nicaragua, by which the Bay of Salinas was to be 'common to both Republics'.

4 See the Cromer-Ghali Agreement between Great Britain and Egypt of 19 January 1899, signed at Cairo: Martens, NRG, 3rd series, 4, p 791; BFSP, 91 (1898–99), p 19. See Brownlie, *African Boundaries* (1979), p 111ff, for another possible view. And see Chard, *Situation internationale du Soudan Egyptien* (1979); O'Rourke, *The Juristic Status of Egypt and the Sudan* (1935); and Roth, 'Das Kondominium im Sudan', *Friedenswarte*, 52 (1951). See Treaty of Alliance between Great Britain and Egypt 1936, TS No 6 (1937), Cmd 5360, in which the question of sovereignty over the Sudan was expressly reserved. According to the Annex to Art 11 of the 1936 Treaty the participation of the Sudan in international conventions was effected by joint action of Great Britain and Egypt. In the Agreement of 12 February 1953 concerning self-government and self-determination for the Sudan the UK and Egypt agreed that the status of the Sudan be determined by a freely elected constituent

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assembly which might decide whether to link the Sudan with Egypt or to choose independence: TS No 47 (1953), Cmd 8904. On 19 December 1955, the Sudanese Parliament voted a Declaration establishing the Sudan as a fully sovereign republic. Egypt and the UK formally agreed to the Declaration on 31 December. For a documented account of Sudanese emergence into independence see Al-Rahim, *Imperialism and Nationalisation in the Sudan* (1969).

5 By a treaty of 6 August 1914 (Martens, NRG, 3rd series, 12, pp 198–240; BFSP, 99 (1905–6), p 229). While the authority exercised over the islands was a joint sovereignty, each of the two states exercises separate jurisdiction over its own subjects. See Brunet, *Le Régime international des Nouvelles-Hébrides* (1928); Politis, RG, 14 (1907), pp 689–759. The existing arrangements are contained in the following documents in the Treaty Series: No 3 (1908), No 7 (1922), No 2 (1923), Nos 8 and 28 (1927). See also the exchange of Notes of 31 January 1935: TS No 7 (1935), Cmd 4852; and Exchange of Notes of 15 February 1967, TS No 33 (1937), Cmd 3276. See AFDI, 1 (1955), p 600 for difficulties over inability of the two governments to agree upon designation of the President of the Mixed Tribunal provided for by the 1906 Treaty. In *Syndicat Indépendant des Fonctionnaires du Condominium des Nouvelles Hébrides* (1970), ILR, 57, p 116, the French Conseil d'Etat reviewed a joint regulation of the British and French Commissioners. For a full study of the regime of the New Hebrides, see O'Connell, BY, 43 (1968–69), pp 71–145. The New Hebrides (Nouvelles-Hébrides) became independent, under the name Vanuatu, on 30 July 1980; see AFDI (1980), pp 942é5; and for a list of instruments concerning independence, see AFDI (1986), p 1016.

See also § 96 for Tangier, which formerly constituted a curious combination of a protectorate and a condominium. For an example of joint use as distinguished from a condominium proper, see the Convention for the Trans-Isthmian Highway of 2 March 1936 (ratified in 1939) between the USA and Panama. Article 7 of the Convention provided that, subject to the laws relating to vehicular traffic in force in their respective jurisdictions, the two countries should equally enjoy the use of the Trans-Isthmian Highway: AJ, 34 (1940), Suppl, p 161. See now, however, Panama Canal Treaty 1977 and related instruments; and see the Agreement of August 1945 between China and the USSR providing that the 'Chinese Chungchun Railway' shall become the common property of the two states and shall be operated by them jointly. After 30 years the complete ownership of the railway was to pass to China. For the text of the Agreement, see *Bulletin of the State Department*, 14 (1946), p 207.

6 See the Agreement between the US and Great Britain of 6 April 1939: LNTS, 196, p 344. The agreement provided for a joint administration of the islands, for a period of 50 years, by a US and a British official. See Reeves, AJ, 33 (1939), pp 521–6; Whiteman, *Digest*, 2, p 1327. See also §276, n 7 for how these islands became part of the new State of Kiribati.

Besides the work of Verzijl cited in the bibliography on p 563 of this section, see for discussion of existing and former examples of condominium: Kunz, *Staatenverbindungen* (1929), pp 278–82; Baker Fox, AJ, 39 (1945), pp 486–503; Tullio, *Il condominium nel diritto pubblico internazionale* (1910); Pilotti, RI (Geneva), 19 (1941), pp 284–306. See Hunter Miller, *San Juan Archipelago: Study of the Joint Occupation of San Juan Island* (1943); Erian, *Condominium and Related Situations in International Law* (1952); Bastid, Hag R, 107 (1962), iii, pp 365–494.

7 See Treaty of 1973 between Brazil and Paraguay concerning the hydroelectric use of the Parana River, which refers in Art 1 to 'the water resources of the Parana River owned in condominium by the two countries'; UNTS, 923 (1974), p 92. For the 1917 Judgment of the

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Central American Court of Justice over part of the waters of the Gulf of Fonseca, see § 209, n 4.

8 See eg Art 99 of the Treaty of Versailles with regard to Memel; Arts 53 and 74 of the Treaty of Trianon with regard to Fiume.

9 For text of the 1922 Convention, see Aichison, *A Collection of Treaties, Engagements and Sanads Relating to India and Neighbouring Countries* (1933), p 213. For translation of the text of the 1965 Agreement, see ILM, 4 (1965), pp 1134–7. For a full account of the Neutral Zone, see Albaharna, *The Arabian Gulf States* (2nd revised ed, 1975 (reprinted 1978)), pp 264–77.

10 See Jennings, BY, 23 (1946), pp 112–41; also Mann, ICLQ, 1 (1947), pp 314–35; and cf Kelsen, AJ, 39 (1945), pp 518–26. See also for Berlin, § 40; also § 38 for the relevance of 'Recognition'.

11 Cyprus was annexed by Great Britain on 5 November 1914 (see RG, 21 (1914), pp 510–12), and the annexation was recognised by Turkey in Art 20 of the Treaty of Lausanne 1923. See Headlam-Morley, *Studies in Diplomatic History* (1929), pp 193–211; Toynbee, *Survey* (1931), pp 354–94; Dendias, RI (Paris), 12 (1933), pp 130–59 and the same, *La Question cypriote* (1934); see also the decision of the Anglo-Turkish Mixed Arbitral Tribunal of 16 December 1929, in *Parounak v Turkish Government*, AD, 5 (1929–30), No 11. Cyprus became independent on 16 August 1960. The documents comprising the settlement, signed at Nicosia at midnight on 15 August 1960, by the Governments of the United Kingdom, Greece, Turkey and the representatives of the Greek and Turkish Cypriots, are printed in Cmnd 1093. See also § 40, n 4 for restrictions on sovereignty of Cyprus and the question of guarantee.

12 The Turkish island of Ada-Kalé, in the River Danube, was under the administration of Austria-Hungary from 1878 to 1913. See Blociszewski, RG, 21 (1914), pp 379–90.

13 (1937), PCIJ, Series A/B, No 71. In a Dissenting Opinion Judge Hudson said: 'A juristic conception must not be stretched to the breaking point, and a ghost of hollow sovereignty cannot be permitted to obscure the realities of this situation' (at p 127). But see H Lauterpacht, Hag R, 62 (1937), iv, pp 325–6, for an analysis of the position on the lines suggested in the Judgment of the Court; also in *Collected Papers* (vol 1, 1970), pp 372–3.

14 For a full and important analysis of a large number of leases, see Verzijl, *International Law in Historical Perspective* (vol 3, 1970), pp 397–408, which also has references to other sources.

Early examples of pledges were that in 1768 the Republic of Genoa pledged the island Corsica to France, and in 1803 Sweden pledged the town of Wismar to the Grand Duchy of Mecklenburg-Schwerin. This transaction secured a loan of 1,250,000 thaler, on condition that Sweden, after 100 years, should be entided to take back the town of Wismar on repaymeht, with 5 per cent interest per annum. Sweden in 1903 — see Martens, NRG, 2nd series, 31, pp 572 and 574 — formally waived its right to retake the town; see Schmidt, *Der schwedisch-mecklenburgische Pfandvertrag über Stadt und Herrschaft Wismar* (1901).

15 Martens, NRG, 2nd series, 30, p 326. By Art 156 of the Treaty of Peace 1919 with Germany, Germany renounced all her rights under this lease in favour of Japan. For the history and termination in 1922, of the Kiaochow lease, see Godshall, *Tsingtao under Three Flags* (1929).

16 See BFSP, 90 (1897–98), p 17; and see *Re Wong Hon* (1959), ILR, 27, p 49 (Hong Kong High Court); Wesley-Smith, *Hong Kong Law Journal*, 3 (1973), pp 67–96; and also Wesley-Smith, *Unequal Treaty 1898–1997* (1980), especially pp 164–8 and pp 177–84.

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As to Hong Kong, see now the Agreement of 26 September 1984 between the People's Republic of China, and the United Kingdom (ILM, 23 (1984), p 1366), by which it was agreed that the entire Hong Kong area (Hong Kong Island, Kowloon and the New Territories) would be 'restored' to China with effect from 1 July 1997. It should be noted that this Agreement for 'restoration' is not limited to areas which had been 'leased'. The history of the original transfers of territory is thus described in the Introduction of the Agreement:

> '**3**. During the nineteenth century Britain concluded three treaties with the then Chinese Government relating to Hong Kong: the Treaty of Nanking, signed in 1842 and ratified in 1843 under which Hong Kong Island was ceded in perpetuity; the Convention of Peking in 1860 under which the southern part of the Kowloon peninsula and Stonecutters Island were ceded in perpetuity; the Convention of 1898 under which the New Territories (comprising 92 per cent of the total land area of the territory) were leased to Britain for 99 years from 1 July 1898. It was the fact that the New Territories are subject to a lease with a fixed expiry date which lay behind the decision by Her Majesty's Government to seek to enter negotiations with the Government of the People's Republic of China (referred to hereafter as 'the Chinese Government') on Hong Kong's future.'

See Slinn, AFDI, 31 (1985), p 167. For effects on nationality, see White, *Hong Kong Law Journal*, 19 (1989), pp 10–42; and see Ress in *Hong Kong* (eds Domes and Shaw, 1991).

17 The French lease is in Hertslet, *China Treaties*, I (1908), p 327; the British lease in Martens, NRG, 2nd series, 32 (1905), pp 89–90. At the Washington Conference of 1921–22 Japan, Great Britain, and France agreed on certain conditions to restore Kiaochow, Wei-Hai-Wei, and Kuang-chou Wan to China: see Cmd 1627 of 1922 and Fauchille, para 557 (15).

18 Albin, *Les Grands Traités politiques*, p 476. Russia in 1905, by the Peace Treaty of Portsmouth, transferred her lease to Japan. By an Agreement of 14 August 1945, between China and Soviet Russia the two parties agreed, for a period of 30 years, to a joint use of the port. See *Bulletin of the State Department*, 14 (1946), p 206. In the Treaty of Moscow of 14 February 1950, provision was made for handing over the naval base of Port Arthur to China not later than the end of 1952: AJ, 44 (1950), Suppl, p 87.

19 See, for instance, Perrinjaquet in RG, 16 (1909), pp 349–67. For the view that what has been described as a 'base' should not lightly be interpreted as a cession, see H Lauterpacht, *Analogies*, pp 181–90. See also Yang, *Les Territoires à bail en Chine* (1929); Young, *The International Legal Status of the Kwangung Leased Territory* (1931). See also *US v Ushi Shiroma* decided by the District Court of Hawaii to the effect that although the Peace Treaty with Japan of 1951 granted the US 'all and any powers of administration, legislation and jurisdiction' over the Ryukyu Islands, that did not effect a cession of territory, and the 'residual sovereignty' remained with Japan: (1951) 123 F Supp 145; ILR, 21 (1954), p 82. See also § 92, n 13.

20 By Art 1 of the Treaty of London of 9 May 1906; see Martens, NRG, 2nd series, 35 (1908), p 454.

21 Similarly, the leases of the German concessions at Hangkow and Tientsin, and the Austro-Hungarian concession at Tientsin, were abrogated by Art 132 of the Treaty of Peace with Germany and Art 116 of the Treaty of Peace with Austria, and the areas were restored to the full sovereignty of China.

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22 See Convention of 18 April 1930, providing for the return of Wei-Hai-Wei and the abrogation of the Convention of 1898: TS No 50 (1930), Cmd 3741. Wei-Hai-Wei was formally restored to China on 1 October 1930. See Toynbee, *Survey* (1930), pp 351–4.

23 See Castren in *Festschrift Spiropoulos* (1957), pp 71–81.

24 Distinguish also the peculiar leases granted in perpetuity by China to Great Britain between 1851 and 1861 in seven British concessions to enable merchants in these concessions to own land and houses for trade and residence. For one concession, these leases were at once transferred to the lot-holders; in the other cases the British Government became the ground landlord, and in 1927 it proposed to surrender its reversionary rights to the lot-holders (see Treasury Minute of 7 December 1927, Cmd 2994). See the Exchange of Notes of October 1929 between Great Britain and China providing for the return of the British concession at Chinkiang, the dissolution of the British Municipal Administration there, and the substitution of Chinese deeds of perpetual lease for the lease in perpetuity under the Sino-British Agreement of 1861: TS No 3 (1930), Cmd 3469.

As to foreign concessions in China generally, and in particular that of Shanghai, see Toynbee, *Survey* (1927), pp 369–81, 394–9, and (1929), pp 322–44; Escarra, *La Chine et le droit international* (1931), pp 80–147, *Répertoire*, iii, pp 420–7, and Hag R, 27 (1929), ii, pp 1–134; *Report of the Hon Mr Justice Richard Feetham to the Shanghai Municipal Council* (2 vols, 1931); Des Courais, *La Concession Française de Chang-hai* (1934); Dennis, *AS Proceedings* (1930), pp 194–200; Pratt, BY, 19 (1938), pp 1–18. As to the use of the international settlement as a base of Japanese operations against China in 1932, see Toynbee, *Survey* (1932), pp 495–502. For the Agreement with China of 17 February 1930, relating to Chinese courts and providing for the establishment in the International Settlement at Shanghai of a Chinese District Court and a Branch High Court to try Chinese offenders in accordance with Chinese law see TS No 20 (1930), Cmd 3563. It was held in *Re Ning Yi-Ching and Others*, that, as the British concession at Tientsin, in which Great Britain exercised certain jurisdictional rights, was part of Chinese territory, the writ of *habeas corpus* was not available to prevent certain Chinese prisoners from being handed over to the Japanese authorities: (1939) 56 TLR 3. As to the Shanghai Settlement, see Fraser, JCL, 3rd series, 21 (1939), pp 38–53. In Art 4 of the Treaty with China of 11 January 1941, for the relinquishmnent of extra-territorial rights in China, Great Britain agreed to the cessation of the special rights accorded to it in the Settlements at Shanghai and Amoy, as well as with regard to the concessions of Tientsin and Canton, and to the return of these areas to Chinese administration: Cmd 6456 (1943).

25 Hertslet's *Commercial Treaties*, XXIV, pp 687–90.

26 *Ibid*, XXX, p 227.

27 LNTS, 32, p 251. See also Schöborn, ZV, 7 (1913), pp 438–45 and Vali, *Servitudes in International Law* (1933), pp 128–36. And see Villamovitch, *Zone libre Serbe à Salonique* (1926).

28 See Exchange of Notes of 2 September 1940, in connection with the transfer of 50 destroyers to Great Britain: TS No 21 (1940) and AJ, 34 (1940), Suppl, p 184. For the Agreement of 27 March 1941, embodying the terms of the leases see AJ, 35 (1941), Suppl, pp 134–59, and TS No 2 (1941).

29 These include jurisdiction of US courts in treason, sabotage, espionage and similar offences committed within the leased area (Art 4), and the provision that no arrest be made and no process served within the leased area without the permission of the US authorities (Art 6); but in case of refusal of permission they must, except with regard to the offences

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referred to in Art 4 above, surrender the person whose arrest was sought to the authorities of the territory.

30 See Exchange of Notes of 1 August 1950: AJ, 45 (1951), Suppl, p 97; TS No 65 (1950), Cmd 8076. See also the Agreement of 15 January 1952, concerning the extension of the Bahamas Long Range Practice Ground by Additional Sites: TS No 10 (1952), Cmd 8485, and the previous Agreement of 21 July 1950: TS No 74 (1950), Cmd 8109. See Wilson, AJ, 34 (1940), p 703. In *Spelar v United States* the Supreme Court finally held that the US did not possess sovereignty over the air base in Newfoundland and that it was therefore a 'foreign country' within the meaning of a US statute: (1949) US 217; AD, 15 (1948), No 24. See also *Connell v Vermilya Brown Co* (1947) 164 F (2d) 924; AD, 14 (1947), No 18. For a similar decision over the grant 'in perpetuity' made in the US-Philippines Agreement on Military Bases 1947, see *Pederson v US et al* (1961), ILR, 32, p 77; see also decision of the Philippines Supreme Court in *Liwanag v Hamill*, ILR, 23 (1956), v 124 that US Provost Marshals had authority to file complaints for violation of Philippine laws. As to US leases in Japan, see *United States v Wilmot* (1960), ILR, 31, p 121. See also *State of Madras v Cochin Coal Co*, ILR, 26 (1958-II), p 116, holding that 'cession' of jurisdiction is not cession of territory.

31 UNTS, 409, p 67. For details of the Leased Bases Agreement of 1941 and its subsequent history, see Whiteman, *Digest*, 2, pp 1218–24.

On the Military Bases Agreement of 1947 between the Philippines and the US, and an emphatic statement of the residuary jurisdictional rights of the Philippines, see *The People of the Philippines v Segundo M Acierto* decided by the Supreme Court of the Philippines in 1953; ILR, 20 (1953), p 148.

32 See § 186, and Boyd, RG, 17 (1910), pp 614–24.

33 See ILM, 16 (1977), p 1021; and § 186. For the earlier regime, see Parry, BDIL, 2b, Phase I pt III, p 281; also Woolsey, AJ, 20 (1926), pp 117–24, ibid, 37 (1943), pp 482–9. See also the judgment of the Supreme Court of Panama in *Republic of Panama v Schwartzfiger*, AD, 4 (1927–28), No 114. In *Luckenbach Steamship Co v United States* the Supreme Court held, in January 1930, that the ports of the Panama Canal Zone were foreign ports within the meaning of a US statute: (1930) 280 US 173; AD, 5 (1929–30), No 50. See AD, 5 (1929–30), No 51, for a decision of the Panamanian Supreme Court of 17 February 1930, that the Canal Zone was not foreign territory in relation to Panama (*Re Bartlett*); see *Re Burriel*, AD, 6 (1931–32), No 53, for decision by the same court.

As to leases granted to the US in Cuba for the lease of the Guantanamo naval facility, see the Agreements of 1903 (BFSP, 96 (1902–3), pp 546–7 (agreement for lease), and pp 551–3 (the lease); and see AJ, 4 (1910), Suppl, p 177); also Lazar, AJ, 63 (1969), p 116. The Treaty of 1934, while abrogating other provisions of the Treaty of 1903, left intact the stipulations as to leases: AJ, 28 (1934), Suppl, p 97. See also Whiteman, *Digest*, 2, p 1216.

34 See § 75.

35 See § 86 and § 89.

36 The territory of the Saar constituted for a time another example of the exercise of sovereignty in foreign territory. By Art 45 of the Treaty of Versailles, Germany 'renounced in favour of the League of Nations, in the capacity of trustee, the government of the territory'. The League exercised this trust through a Governing Commission of five persons appointed by the Council of the League. The inhabitants retained their German nationality. In 1934, as the result of a plebiscite held in conformity with the provisions of the Treaty of Versailles, the government of the territory was restored to Germany. See Franck, *Archiv des öffentliches Rechts*, 43 (1922), pp 1–49; Redslob, RI (Geneva), 3 (1925), pp 283–302; Coursier, *Le Statut international de la Sarre* (1925); Russell, *The International Government of the Saar* (1926); Lüttger, ZV, 14 (1927), pp 215–36; Hannum, *Autonomy, Sovereignty and*

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Self-Determination (1990), pp 389–94 (from 1920–35) and pp 394–400 (from 1945–55). After the Second World War the Saar was constituted a separate territory with a government, legislature and nationality of its own. As such it became in its own name a party to various treaties such as the European Convention on Human Rights. It entered into a financial, economic and customs union with France. A treaty concluded with France in 1948 regulated the judicial organisation of the Saar. The Saar finally became part of the Federal Republic of Germany by Franco-German Treaties of 1956. For a history and analysis of the later period of the Saar question, see Freymond, *The Saar Conflict 1945–55* (1960). As to the plebiscite in 1934, see § 248, n 5.

37 See §§ 89–95.

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