

INDIVIDUAL OPINION OF JUDGE LEVI CARNEIRO

[*Translation*]

Having voted in favour of the operative clause of the Judgment and accepted all the reasons in support thereof, I venture to add a few observations which have decisively influenced my personal vote. These observations relate to circumstances of a general character which, in my view, explain, confirm, co-ordinate and lend value to the acts of occupation which occurred at irregular intervals throughout the centuries and are not all sufficiently significant if taken individually.

2. *Criterion for the decision.*—In this Opinion I have confined myself to the following rules which were laid down by the Permanent Court of International Justice in the case concerning the Legal Status of Eastern Greenland :

(a) the elements necessary to establish a valid title to sovereignty are “the intention and will to exercise such sovereignty and the manifestation of State activity” (pp. 46 and 63) ;

(b) in many cases international jurisprudence “has been satisfied with very little in the way of the actual exercise of sovereign rights, provided that the other State could not make out a superior claim. This is particularly true in the case of claims to sovereignty over areas in thinly populated or unsettled countries” (p. 46) ;

(c) it is the criterion of the Court in each individual case which decides whether sovereign rights have been displayed and exercised “to an extent sufficient to constitute a valid title to sovereignty” (pp. 63-64).

3. *Fief of the Channel Islands.*—Whilst not disputing the occupation of the Channel Islands as a whole in the eleventh century by the Duke of Normandy, King of England, the French Government contends that this occupation was a consequence of the grant made in 933 by King Raoul to William Longsword ; that the fief of the Islands was thus constituted and that the Duke of Normandy, King of England, became a vassal of the King of France ; and that the Duke and King on several occasions rendered the homage owed by him in this capacity. The United Kingdom Government rejects these contentions on the ground that the Islands were conquered in 916 by the Normans ; that the fief was limited to the continental portion of Normandy ; that the homage due in respect of this fief was merely nominal and was rendered solely having regard to the convenience or political interest of the vassal.

We do not possess the instrument of the alleged grant in fee to William Longsword; it is not known whether this instrument included the Channel Islands; it has not been possible to define the exact scope of the homage allegedly rendered by the King of England to the King of France. The French Government has relied on a passage in Flodoard to the effect that the King gave to the Duke "*terram Brittonam in ora maritima sitam*", but it would appear that the only correct translation of this expression is "Breton territory sited along the coast", that is mainland territory bordering on the sea, but not islands. The French Government has challenged the assertion that the Islands were conquered by the Normans, on the ground that they "were added to the other fiefs". But it has not shown how this alleged addition was made. I consider it more plausible that the Islands were conquered by the powerful Norman warriors.

It must be recognized, furthermore, that the vassalage of a king was necessarily exceptional and limited: Philip Augustus himself proclaimed in 1185 that "the King must do fealty to no-one" (Henri Regnault, *Manuel d'Histoire du Droit français*, p. 102). The suggestion that the King of England was obliged to do fealty to the King of France seems even less probable having regard to the fact that the power of the King of France at that time was considerably reduced (Pierre Gaxotte, *Histoire des Français*, Vol. 1, pp. 126, 324-325), whereas the authority of the Princes, Dukes and Counts in some forty feudal States was increasing. In the great fiefs, the authority of the King of France was at that time "purely nominal" (Glasson, *Histoire du Droit et des Institutions de la France*, tome IV, p. 487). Several domains kept to the very end "their right of sovereignty" (italics supplied) (Glasson, *op. cit.*). The Duke of Normandy in particular was a "real sovereign" (*idem*). Even on the continental territory of France, the powers of the Duke were not limited: he declared war and made peace, minted money, and was "the sole great judge in his Duchy" (*op. cit.*, pp. 504-507, 508). Rollo had already founded "a State which was practically independent", "under suzerainty that was completely nominal" (*idem*, p. 497); "the Duke of Normandy was one of the most absolute sovereigns of the Middle Ages" (*idem*, pp. 497-498).

In these circumstances I am unable to accept the view that the Duke of Normandy, having become King of England, and having retained the Channel Islands when the King of France drove him out of Continental Normandy, humbly remained subject to the suzerainty of his adversary. The same considerations make it impossible for me to suppose that the suzerainty of the King of France extended to the Channel Islands, all the more so since he did not conquer them as a whole at the beginning of the thirteenth century when he conquered Continental Normandy. Sound authority may be found for my opinion. For example, Selden, cited by Calvo, has written as follows:

“When Kings John and Henry III lost Normandy, the Islands of Jersey, Guernsey and *the other adjacent islands continued to remain under English sovereignty.*” (Italics supplied.) (Calvo, *Le Droit international*, 1870, Vol. I, p. 325.)

It is true that some authors state that the King of England retained the Islands “*par foi et hommage du roi de France*”; the Reply itself has cited such authors (para. 121 and note 68). But in 1200 King John of England (Annexes A 8 and 9 to British Memorial) granted the Islands to Piers des Préaux without alluding in any way to the alleged suzerainty of the King of France. There is a further valid indication disproving the existence of this suzerainty in respect of the Islands; the King of England is said to have refused to recognize the vassalage alleged by the King of France; he is said to have refused to render the homage demanded. For this reason the Court of France confiscated his lands in 1202. The feudal link—in so far as it existed and without extending, in my opinion, to the Islands—was then severed; this is common ground between the Parties. (Oral Arguments.)

4. *The period of the Treaties.*—The strife between France and England which broke out after this decision of the Court of France extended beyond the thirteenth century and into the second half of the fifteenth century. The interruptions became longer and longer and peace treaties were ultimately concluded. In respect of this period, authentic documents are available. The Parties have submitted these texts and have debated the matter of their interpretation, but the literal interpretation is very doubtful. It is a well-known fact that cases brought before tribunals are always more or less doubtful and it is clearly because of these doubts that the Parties ask for a judicial interpretation. When a text is not clear, the circumstances in which a treaty was signed and the subsequent facts relating to its application must provide a sound basis for the interpretation. In the present case, the interpretation may also be based on other circumstances.

5. *Bases of interpretation.*—The treaties and other ancient documents with regard to which there has been lengthy argument have given rise to different interpretations. It is my view that the interpretation must be based on the adequate criterion in each particular case; I nevertheless consider that some bases may be found for this interpretation.

The first is the historical moment; a peace treaty which is the result of a war and a decisive military victory probably favours the victor.

A further factor in the present case is the continuous and keen interest shown by England in the Channel Islands, in contrast to a certain indifference or a much less lively and assiduous interest shown by France, at least after a certain period. A French geographer, Élisée Reclus, has written: “Jersey, Guernsey and the

neighbouring lands are therefore a *very precious possession* for Great Britain". (Italics supplied.) (*Nouvelle Géographie universelle*, ed. 1881, Vol. II, p. 640.) And it may be readily understood why England's interest has always been more vigilant and why she has been more uncompromising in respect of France. The conflict of interests which gave rise to the fierce strife between 1202 and 1360, and even thereafter, became less acute when England ceased to dominate Continental Normandy in the fifteenth century and France renounced her attempt to conquer the Channel Islands.

In the diplomatic correspondence which was exchanged in the nineteenth century concerning the present dispute, a number of unequivocal expressions may be found to suggest a certain indifference on the part of France. In a Note dated December 15th, 1886 (Annex A 41 to British Memorial), the French Ambassador submitted to the Foreign Office the titles which, to use his words, "would permit France to establish her authority over the Ecrehos"; he added that the French authorities "have in mind no purpose of a kind to cause concern to Her Majesty's Government". The French Government made a number of significant proposals: it rejected a decision on sovereignty (A 64); it proposed the neutralization of the islets (A 64); it suggested compensations in other parts of the world (A 71-72). It is to be noted that during the present proceedings the French Government stated in its Counter-Memorial that "the disputed areas cannot be declared to be capable of appropriation by one Party to the exclusion of the other and consequently the *status quo* must be maintained". In 1819 the French Minister of Marine went so far as to acknowledge that the Minquiers were a British possession. That Government appears to have merely desired the continuation of the joint position which it considered had been established by the Convention of 1839.

Several references have been made to the Minquiers and the Ecrehos by the French Government which suggest that they are practically of no value. Victor Hugo's definition of the Minquiers: "a desolation in a barren waste" has been repeated more than once (Oral Arguments). Reference has once been made to his words: "There is nothing to be found there except shipwreck." The Counter-Memorial has stated that "three above-water islets in the Ecrehos group and one islet in the Minquiers group are habitable during the summer, although there are no springs". With reference to the small dimensions of the rocks, it was said that on the Minquiers "not a single blade of grass is to be found", and, as regards the Ecrehos, "nothing can be grown there and habitation is difficult" (Oral Arguments). The region of the islets has been described by the French Government as "an arm of the sea sown with reefs", and the Counsel for the United Kingdom Government expressed his surprise at this (Oral Argu-

ments). It is true that the French Agent nevertheless referred, in addition to the interests of fishermen, to the "fundamental" importance of a project in connection with the Minquiers, which "would double France's present electrical output" (Oral Arguments). This is a recent project and this magnificent undertaking may not be immediately realized. In any case, I am of opinion that these interests may be taken into consideration (see Conclusion No. 23).

On the other hand, the attitude of the British Government has always been to assert full and exclusive sovereignty, without restriction or concession of any kind.

Accordingly, it is my view that England has not left the Channel Islands as a whole in the hands of France, particularly when England had just conquered France by force of arms. This could not even have followed from an inconceivable oversight.

Despite the uncertainties of the more ancient facts, some bases may also be found for an exact interpretation of the instruments. The French Government has sought to rely on the argument that whenever some of the Channel Islands are mentioned, all the others are excluded: in such cases the enumerations are asserted to be exhaustive. In my opinion such references are almost invariably given "as examples", a view which is warranted by earlier historical facts and confirmed by subsequent facts. It is admitted in the Counter-Memorial that none of the ancient diplomatic instruments relating to the Channel Islands gives a complete enumeration. This is the case for the Treaty of Picquigny of 1475 (Rejoinder). Why? Obviously because, having regard to the "natural unity" of the archipelago which they constitute, it was not necessary to enumerate the islands, for it would have been almost impossible to do so. In other words, whenever some of the islands were mentioned, particularly the main islands—or those which were then regarded as the main islands—it was to be assumed that the provision also covered the other islands which were not listed but which were included in the same archipelago.

6. *The Treaty of Lambeth* or the "Draft Agreement" of 1217 which terminated the strife which followed the Judgment of 1202 confirmed the English naval victories of Damme and Sandwich, as well as the failure of French attempts to take the Channel Islands. The terms of this Treaty and the historical moment at which it was concluded justify the view that all the Channel Islands were occupied by the English at that time. Following the naval victories, certain significant facts which are contemporaneous with the Treaty confirm English domination (Oral Arguments). I shall merely refer to the proclamation of the autonomy of the islands (Reports of 1199-1216, Annex A 154 to British Memorial) in which even the protection of the ports is recommended, having particular regard to the proximity of the King of France and other

enemies. The French Government has admitted that this Treaty provides for the "restoration" of several islands to the King of England, but it has merely inferred therefrom that the islands were not in his possession at that time (Oral Arguments). This inference is acceptable: there were islands which were not in the possession of the King of England; but these islands were "restored" to him. The English obtained complete domination over the islands.

Reference has been made to the instruments providing for the implementation of the restoration, which had been agreed upon in the Treaty by the same English admiral who had commanded the English fleet at the Battle of Sandwich. He was appointed Warden of the islands and subsequently replaced in this office by one of his nephews. (Memorial, Nos. 23-24.)

Counsel for the United Kingdom Government has quoted two French historians who defined the scope of this Treaty: a Professor from Caen has stated that the islands "were detached from Normandy in fact in 1204, in law by the Treaty of 1217". (Oral Arguments.)

The only impressive argument that has been raised against this Treaty is the contention that the Dauphin Louis acted "in his own name, not having been delegated to do so by his father, King Philip Augustus" (Oral Arguments). I find it difficult to consider as no more than a mere personal adventure the Dauphin's expedition, which went as far as London in an effort, to use the words of the French Government, "to repeat the exploit of William the Conqueror". Having been unsuccessful in this enterprise, the Dauphin signed the Treaty of Lambeth with King Henry III of England; he subsequently became King of France as Louis VIII. He was bound to abide by his undertaking. For his part, King Henry III of England retook the main or "the majority of the Norman islands" in the admission of the French Government (Counter-Memorial and Rejoinder). Why should he not have retaken all the islands? Why should he have left some of them under French domination?

It should also be noted that the United Kingdom does not even contend that the Treaty of Lambeth re-established the feudal link which had been severed more than fifty years before: the United Kingdom Government attributes this effect to the Treaty of Paris. It may therefore be said that after the Treaty of Lambeth all the Channel Islands were under English domination, without vassalage of any kind.

7. *The Treaty of Abbeville-Paris.*—It is common ground between the Parties that the Treaty of Paris of 1259 is very important (Oral Arguments). The French Government actually purports to find its original title in that Treaty; it has asserted (Oral Arguments) that its original title was "renewed and strengthened" by the Treaty of 1259. It then goes on to say that its tenth century

title was incorporated in the Treaty of 1259, "a treaty of frontiers, a treaty of boundaries" (Oral Arguments). Some of its remarks would appear to justify a claim to full ownership, not merely to suzerainty, of certain of the Channel Islands, but not of the Channel Islands as a whole. France has, however, preferred to rely throughout on her alleged suzerainty.

I do not regard the Treaty of Paris as a treaty of frontiers. To do so would be to fall into the very error which we have been warned against: an instrument must not be appraised in the light of concepts which are not contemporaneous with it. The Treaty of Paris is a treaty of peace; it contains no provisions on frontiers and establishes no boundaries. In the opinion of the French Government, it re-established the homage due by the King of England to the King of France by virtue of the feudal link which the Judgment of 1202 had severed. How can it be argued that as a result of this fact the territories of the fief were incorporated in the Kingdom of France when these territories formerly belonged to England? No territorial alteration of any kind can have resulted from this mere fact: the personal link of vassalage alone was re-established.

The Treaty of Paris contains no express reference to the Ecrehos or the Minquiers, or even to the Channel Islands in general. The only provisions which might be relevant to the present dispute are Articles 4, 6 and 7, which are reproduced in Annex A 1 to the Memorial.

Doubts as to the interpretation of this Treaty arose immediately after its signature and were revived during the proceedings before this Court. The United Kingdom Government has asserted that by this Treaty King Henry III of England renounced all his claims to Continental Normandy; that after the Treaty, France having delayed or refused to implement the restoration of certain territories, a meeting was held at Périgueux in 1311 to resolve these differences; that France then asserted claims to the islands adjoining Normandy and to other lands; that England rejected these claims and continued to possess the Channel Islands (Memorial, para. 18).

According to the Counter-Memorial, the King of England renounced Normandy and other lands in favour of the King of France, thus impliedly recognizing the validity of the Judgment of 1202; on the other hand, it is said to follow from Article 4 that the Duchy of Guyenne and various neighbouring regions were left, or returned as fiefs, to the King of England, who had to pay homage in respect of them to the King of France. Homage, it is asserted, was rendered in respect of all the islands subject to the King of France which were in the hands of the King of England, including the Channel Islands, which were situated "on this side of the English sea" and which previously were a part of the Duchy of Normandy (p. 197).

In paragraph 129 of its Reply, the United Kingdom Government contends that the King of England acknowledged the suzerainty of the King of France over his possessions in France and over the islands which he held off Aunis and Saintonge, but that it "appears improbable" that the Channel Islands were included among the islands to which the Treaty refers; in any case, this homage is said to have been merely nominal and for a very short time. In the Rejoinder, the French Government asserts that in this, as in the subsequent treaties, "there is never any question of any islands but those in the possession of the King of England". The discussion on this point continued throughout the oral proceedings and could go on indefinitely as long as it is directed to the obscure wording of the Treaty.

It is clear from the debate that France claims that the suzerainty of the King of France was re-established in respect of the Channel Islands (Oral Arguments); on the other hand, the United Kingdom considers that the fealty was re-established only in respect of Aquitaine and its islands, not in respect of the Channel Islands (Oral Arguments).

Neither Party has succeeded in fully proving its own interpretation of the Treaty: it may well be that both interpretations are justified by the text of the Treaty. From the terms of the Treaty themselves, it is not possible to ascertain with certainty which were the islands "possessed" by England. In order to determine which islands were under French suzerainty, it is necessary to consider the situation which existed before the Treaty was signed, as well as the manner in which the Treaty was carried out. An authoritative and impartial historian, David Jayne Hill, has pointed out that by this Treaty the King of England received the islands of Normandy in fee (*A History of Diplomacy*, Vol. I, p. 388). In the present proceedings the United Kingdom has cited another well-known author, Besnier, who wrote as follows:

"The King of France definitively acquired the sovereignty of Continental Normandy, but the King of England continued to hold the islands by faith and homage of the King of France" (Reply, para. 121).

Which islands? Those of the Channel? In the same sense, J. Havet (Reply). David J. Hill relates the Treaty of Paris to the defeat of King Henry III of England in 1242 and to a desire for peace on the part of King Louis IX of France. Louis is accordingly said to have given Henry, in addition to his heritage in Aquitaine, "the Norman islands in fee to the Crown of France". The King of France is alleged to have said thereafter: "Henry was not my vassal but he has voluntarily become one." The peoples of the two nations continued to be discontented: the English complained of "the new vassalage" and the French complained of the fact that the English continued

to have a foothold on the Continent (*op. cit.*, I, pp. 388-389). The scope of this suzerainty was questioned after the Treaty of Paris and even after the Treaty of 1303 (*idem*, Vol. II, pp. 7-8).

When the Treaty of Paris was signed, in contrast to the position at the time of the Treaty of Lambeth, France was victorious and strong, stronger than England, which had been vanquished and divided. Nevertheless, France did not take the Channel Islands back from England; Louis IX, Saint Louis, "*l'homme juste*", went even further by returning to him the lands of Aquitaine, being content to subject the King of England to his vassalage, even in respect of the Channel Islands, which the latter "continued" to occupy.

The Treaty of Paris thus confirmed the Treaty of Lambeth, although it may well have established (or re-established, if it existed at the beginning of the thirteenth century) French suzerainty over the Channel Islands.

It is conceivable that thenceforth the islands, as a fief, were subject to the King of France but in such a way that they continued to be occupied by England without England having acknowledged this vassalage. There is no evidence to show, nor any indication to suggest, that England acknowledged this vassalage in express terms. And if such vassalage had actually existed, England might have been expected to seek to rid herself of it as soon as possible.

8. *The Treaty of Brétigny-Calais*.—It is proper to recall, as an element in the interpretation of the Treaty of Calais, that it was signed at the beginning of the Hundred Years War and after the great English naval victory at Sluys in 1340 and a land victory at Poitiers in 1356, when King John the Good of France was taken prisoner by the English. Before the Treaty of Calais, a secret agreement was signed by the Royal prisoner in 1359, which provided for the restoration to the English Crown of all the Duchy of Normandy (Memorial, para. 19) "with all the cities, castles, dioceses, lands, regions and places lying within the Duchy itself". The French Government is quite right when it points out (Counter-Memorial, Part III, I, III) that this secret agreement was never ratified. But in my view it is not right in adding that the same agreement "produced no effects", for one of the effects was the Treaty of Calais, although the latter restricted the scope of the agreement, having regard to new developments. Although the Treaty of Calais did not restore to England, as the secret agreement had done, "all the Duchy of Normandy"—i.e. Continental Normandy—it did nevertheless confirm in general terms the English possession of the islands, as had been done in the Treaties of 1217 and 1259. A very significant indication of this fact may be found in the absence of any express reference to the islands when the secret agreement refers to "cities, castles, dioceses, lands, regions and places". The purpose of the French attacks at the beginning of the

Hundred Years War was to retake the Channel Islands; this is a fact which should not be forgotten.

The absence of the reference is clear evidence that the islands were already English. If this were not so, England would certainly not have lost this opportunity—at least, in the secret agreement with its prisoner—to obtain the domain of the Channel Islands. With very significant emphasis, the Treaty stipulates that the King of England shall have and shall hold all the other islands which he already holds. It must be recognized that England dominated, and continued to dominate, the islands as a whole, and that she continued to possess them. “In any event the islands had remained faithful to John Lackland in 1204, and the Treaty of Brétigny (1360) was to confirm their loss by France in express terms. Henceforth the French sought to re-conquer them solely by force of arms.” (Perrot, *Deux expéditions insulaires françaises*, p. 5.)

The Treaty of Calais even ceded to the King of England—as is acknowledged by France (Oral Arguments)—“in full sovereignty”, several provinces and towns—Calais, Ponthieu, Poitou, Saintonge, Guyenne. How could it possibly have reserved the suzerainty of France over the islands which England already possessed? The process of the disintegration of feudalism was already quite advanced. I do not believe that reference was ever made again to homage by the King of England to the King of France. The French Government (Oral Arguments) has indicated only that such homage existed until the year 1200.

I incline to the view that if, against the will of England, the Treaty of Paris had re-established the suzerainty of the King of France over the Channel Islands, the Treaty of Calais would have extinguished that suzerainty. This view is supported by all the circumstances attendant upon the historical moment when the Treaty was concluded—already referred to above—as well as by the text of the Treaty of Calais itself.

9. *Other treaties.*—Subsequent treaties—the Treaty of Troyes of 1420, the “Truce of London” of 1471, the Treaties of Picquigny-Amiens of 1475, and of Étapes of 1492, as well as the commercial agreements of 1606 and 1665—have been analyzed by the Parties, who did not consider that any modification of the pre-existing situation resulted from the provisions of these treaties (Oral Arguments).

It seems to me that further circumstantial evidence may be found in the Treaty of Troyes of 1420 in support of the construction placed on the older treaties. Article 22 of the Treaty of Troyes provided that when King Henry VI should become King of France, “the Duchy of Normandy and also the other places and each of them” conquered by him in the Kingdom of France, should be under the jurisdiction of the Crown of France. This could not

apply to the Channel Islands, because these had not been conquered by King Henry. Furthermore, it is a fact that shortly before that date France had been defeated by England, which then conquered Continental Normandy.

It is nevertheless stated in the Counter-Memorial that: "It may be said that the Treaty of Troyes annulled the Treaty of Calais and re-established the unity of the Kingdom of France" (Part III, I, III). This would be a strong argument. But France has not relied upon it; she continued to invoke the Treaty of Calais (Rejoinder, Section I, I, C; Oral Arguments); she admitted that the argument was unsound. The Treaty of Troyes did not have this effect; the Channel Islands did not pass under the jurisdiction of the Crown of France. Why did they not do so? Because, as I have already pointed out, the Channel Islands had not been conquered by King Henry VI: they were already under English domination and remained thereunder.

Accordingly, the occupation of the Channel Islands by England, which had been acknowledged and legalized, became definitive and incontestable. Attempts to retake them were renewed until the sixteenth century. But no effort was made to re-establish the suzerainty which had lapsed at the latest in 1360.

10. *Suzerainty alone.*—If the contentions of the French Government were admitted, what would have been the situation? At most the King of France would have had suzerainty over the islands occupied by England. Even if it were agreed that the homage due in respect of such suzerainty was not purely nominal but had been regularly rendered, could it be concluded that this suzerainty was transformed into sovereignty? The answer to this question is related to the demise of the feudal system.

11. *The transformation of suzerainty.*—The feudal system disappeared slowly but by a continuous process. It disappeared gradually in certain countries and in certain regions without leaving any important traces in modern public law.

In private law, when relations are involved between individuals or between a State and one of its nationals, it may be admitted that the fief did not disappear completely without leaving any trace, but rather became an emphyteusis, suzerainty having become eminent or direct domain, or sovereignty. We are here concerned with ascertaining the consequences of the disappearance of feudalism, of the fief, of suzerainty and vassalage, when the vassal, as in our particular case, was a king and the suzerain was another king.

With particular reference to the Minquiers, the French Government has asserted that "the feudal suzerainty of the King of France was *ipso facto* transformed into modern sovereignty". (Oral Arguments.) Was the suzerainty of a king over another king transformed into sovereignty over the territory of the extinguished fief? Even when the fief was situated on the territory

of the State of the vassal king? Even when the vassal king was a powerful enemy of the suzerain king? My reply is in the negative. In such a case the concept of national sovereignty destroys all the effects and traces of the former suzerainty. In such a case, when sovereignty is established, "political feudalism" disappears.

How can it be argued that once any personal link which may have existed between the King of England and the King of France was severed, the latter should have obtained sovereignty over the soil of England? How is it conceivable that, by the sole fact that suzerainty was abolished, the so-called vassal, the King of England, freed of all personal duties in respect of the King of France, should have lost to his former suzerain the attributes of the exercise of sovereignty over the Channel Islands, the competence to carry out administrative acts, collect dues and taxes, etc.? How is it conceivable that all these attributes should be vested in the King of France? Here again, my answer is in the negative. Even mere nominal homage which may have been owed by the Duke of Normandy to the King of France, and which I believe was never rendered in respect of the islands, could no longer be required, even if it had ever been due. Even admitting that French suzerainty existed in respect of the Channel Islands belonging to the Dukes of Normandy, such suzerainty would have been completely abolished without leaving a trace.

Even within the Kingdom, it was only by force of arms that the Kings of France, from Philip Augustus onwards, began to dominate the feudal lords and ultimately made them subject to their sovereign authority. Louis XI reduced a number of feudal lords to complete obedience. This was the reaction against the feudal lords. Military victory, and not the former suzerainty, became the title to domination.

As regards Normandy, Philip Augustus conquered Continental Normandy and drove the English therefrom, by force of arms rather than by the execution of a judicial decision. But it has not been proved that Philip Augustus also conquered the Channel Islands: on the contrary, the treaties prove that these islands as a whole remained under English domination. In these islands, for more than a century, neither forfeiture nor the disappearance of feudalism, nor military victory, disturbed English domination, the union of the islands with England and the establishment of English sovereignty. The disappearance of feudalism removed the restriction which might hypothetically have attached to this domination.

Furthermore, it must not be forgotten that "vassals exercised all the rights of sovereignty" (Laurent, *La féodalité et l'Église*, p. 617).

Accordingly, it is my view that while the French original title—which rested at most on an unproved and doubtful suzerainty said to have been accepted against the will of the vassal and not to

have been respected by him—while this title was disappearing and becoming extinct, the English original title—resting on what was probably unconditional conquest by the Normans—was growing stronger, becoming consolidated, and finding a legal basis as a result of the successive treaties and the almost uninterrupted occupation of the Channel Islands as a whole, and, finally, of the assertion of national sovereignty when political feudalism disappeared.

12. *Geographical data.*—I accept the following observation of the French Government :

“The juridical analysis which a court has to undertake always involves a previous examination of the geographical data, in cases which raise the question of territorial competence. International law attached very great importance to these factors in the Court’s Judgment on the Norwegian Fisheries in 1951....” (Oral Arguments.)

In its Rejoinder the French Government had already indicated the importance of this aspect of the present question :

“... these islands, lying in a French bay, *which have become English* [italics supplied] because a French baron, a Duke of Normandy, conquered England in 1066. For in the ultimate analysis this is the somewhat piquant first cause of this trick of fate, which is completely at odds with the geographical data.”

From this point of view, the source of the first observation is to be found in the very remote separation of certain of the islands from the Continent : Jersey is said to have been separated from the Continent perhaps in the year 709 (Oral Arguments). This consideration, which is based on a hypothesis, can obviously have no bearing on the present situation, whose origins are to be found in a period at least two centuries later. If the argument that “the archipelago, taken as a whole, represents a dismemberment of the mainland” (Oral Arguments) were to be taken into consideration, it might be contended that this whole now belongs to France. Likewise, another observation of the French Government, to the effect that the islands are situated in a bay bordered by French soil, does not appear in my view to contribute to a solution of the present dispute, because obviously most of the islands in that bay, or the more important of them, are under English sovereignty.

There is, however, another observation which I regard as an interesting one : whilst stressing the fact that “the archipelago, taken as a whole, represents a dismemberment of the mainland” (Oral Arguments), the French Government asserts that “the natural unity” of the archipelago “did exist before the thirteenth century” and that “at that period the chance of arms and the will of kings rent asunder what nature had joined together” (Oral Arguments).

Shortly before asserting this proposition, the French Government stated that the Channel Islands constitute a group of islands which seems to present a certain natural unity, so that it might be said that the State to which the principal islands belong should also possess sovereignty over the islands whose territorial status is uncertain (Oral Arguments).

13. *Natural unity*.—But the French Government does not agree that reference should be made to this “natural unity” after the thirteenth century. It claims to have acquired the Channel Islands through their incorporation “as a whole” in the Duchy of Normandy (Oral Arguments). At that period the islands formed a single complete whole with Normandy (Oral Arguments); later, in 1259, they are said to have been divided “into two groups” (Oral Arguments). “A part of the archipelago” was assigned to the King of France, “another part” to the King of England (Oral Arguments). We know one of these groups: it is still the Anglo-Norman archipelago. The other group is made up of the Chausey Islands, to which France claims that the Minquiers and the Ecrehos must be attached. The dismemberment of the Chausey from the archipelago has been admitted. I do not consider that this dismemberment involved the disappearance of the “natural unity” of the archipelago. The archipelago formed by all the other islands continued to exist. What it was necessary to prove was that the Minquiers and the Ecrehos were also detached at the same time as the Chausey or later, and once more attached to the Continent. It was necessary to invalidate the very reasonable presumption that they continued to be attached to the archipelago. In my opinion, the burden of proving this was on France, and France has not discharged this burden. The French Government claims that there has been a “dismemberment of a great number of islands”—the Chausey group, Mont-Saint-Michel, Tombelaine, the island of Bréhat, “to mention only a few of them” (Oral Arguments), which became and remained French. No other islands, except Cezambre, are cited. They are certainly a part of the “cluster of islands, islets and rocks” to which reference has been made (Oral Arguments). All this does not, in my view, constitute “a very large number of islands”, or even “the greater part of the islands” (Oral Arguments). These small islands may not even have been a part of the archipelago; or else they had already been detached from it, and continued to be so detached.

History is said to have been at odds with geography. But if the dismemberment only involved the Chausey and even if it extended to other lesser islands, the archipelago would nevertheless have included and would still include almost all the islands, all the more important islands which are described in all maps and geography books as “Anglo-Norman archipelago” or “Anglo-Norman islands”,

or "Channel Islands". This archipelago, which still bears this name to-day, with its natural unity almost intact, is indisputably English.

Any exceptions which historical facts may have made to this rule should be accepted restrictively. The United Kingdom acknowledges one exception: the Chausey. As regards the disputed islets in the present case, it was necessary to prove that they also constituted an exception. The evidence adduced points the other way.

In my opinion, the French argument is based on an inversion of the "geographical data" when these are set out in the following terms: "... their [the Ecrehos and the Minquiers] membership of an archipelago which the accidents of history alone have separated in part from France...." (Oral Arguments).

In my opinion this constitutes a recognition that these islets were then a part of the archipelago, even though they may no longer be a part thereof to-day. But since the archipelago is detached from France, not partially but almost entirely (on the view that it was formerly attached to France), it has kept "its natural unity" and the Ecrehos and the Minquiers remain incorporated therein. The burden of proving that the Ecrehos and the Minquiers are no longer a part of the archipelago and that historical facts have detached them from the "natural unity" of the islands was on France. France has not discharged this burden; she considers that it was for the United Kingdom to provide direct evidence of its sovereignty over these two groups. It seems to me that it is for the Party interested in restricting the application of an established rule or of a recognized fact to prove that such a restriction is valid. In my opinion, the facts proved justify the presumption which I have stated above.

The union of the islands with the Continent is a geological hypothesis having no further consequences. The union of the islands with Continental Normandy is a political fact, having no further consequences. But the unity of the archipelago continues to be recognized as an undisputed fact to-day.

Just as a State which has occupied the coast or an important part of an island is deemed to have occupied the island as a whole, the occupation of the principal islands of an archipelago must also be deemed to include the occupation of islets and rocks in the same archipelago, which have not been actually occupied by another State.

As has been noted in the Reply (para. 118), the "natural unity" of the archipelago also explains the terms of a number of treaties and other instruments which mention a few of the principal islands in order to designate the archipelago as a whole. This method of referring to a whole by merely mentioning one of its parts is common procedure. The "natural unity" of the archipelago could not be broken and has not been broken; nor has it been disregarded.

The mention of the principal islands was sufficient to designate the archipelago as a whole. But there have also been very frequent references to islands "adjacent" to other islands or lands indicated. An example of this may be found in respect of Jersey in the Treaty of Calais of 1360 (Annex A 2 to British Memorial). Likewise, in the fourteenth century, in an instrument confirming a Warden of the principal islands (Oral Arguments), in a Petition of the fifteenth century to Pope Sixtus IV (Memorial, para. 34), as well as in such modern documents as the Regulations of July 22nd, 1843 (Article XVIII), the Convention of January 2nd, 1859 (Article XVIII), the Convention of November 11th, 1867 (Article 38) and the Report of the French Experts of 1886.

Reference was made to the "islands of Jersey" in a Grant of 1216 (Memorial, para. 5). Reference is made to "Acrehowe de Iereseye" in a Letter of Protection of 1337 (Annex A 17 to British Memorial). In respect of this document the French Agent has argued that the Latin word "*de*" must not be translated by the preposition "of" (*de*), but rather by the expression "on behalf of" ("*pour le compte de*"), "concerning" ("*au sujet de*") (Oral Arguments), and he referred to the use of dictionaries. One of the best dictionaries, the one by Benoist and Goetzer, gives a considerable number of meanings for the word, including the meaning: "*sur*", "*touchant*", "*quant à*", "*relativement*". But the first meaning given, and the principal one, the most common one, is "*de, hors de, venant de, issu de*". And an explanation is given to the effect that the word "expresses the fact that an object is separated from another to which it was attached" ("*exprime qu'un objet est séparé d'un autre auquel il était rattaché*"). It is precisely in this sense that the expression was used in the words "Acrehowe de Iereseye". If any other meaning were attributed to the word, the phrase would be incomprehensible; it has moreover been shown that it was used at the same time with this meaning in other instances.

The references to "dependencies" or "adjacent islands" are evidence that other islets or rocks were included in the designation of Jersey. It has not been proved that the Ecrehos and the Minquiers were so included, nor that they were excluded therefrom. But it is clear that it could only have been these islets and rocks to which allusion was made. This consideration corroborates the evidence which has been assembled and justifies the acts of occupation and administration which the Jersey authorities have exercised and still exercise on the Ecrehos and the Minquiers.

The argument based on "dependency" has also been invoked by the French Government, which relies on the fact that the Minquiers are approximately equidistant from Jersey and the Chausey; the Minquiers are said to be a "dependency" of the Chausey. But this does not appear to be a valid argument, for in a Judgment of July 28th, 1772, the Council of the King of France designated

by name the fifty-three islets included in the Chausey group; the Minquiers are not mentioned therein; nor are any of the Minquiers islets. (Gibon, pp. 294 *et seq.*) Other documents and considerations support the conclusion deduced from this observation. The Ecrehos and the Minquiers were regarded as attached to Jersey and not to the Chausey. And this is an important consideration, because the Ecrehos and the Minquiers have rarely been designated individually; they are either included in the archipelago as a whole, or treated as a dependency of another principal island, i.e. Jersey.

14. *Proximity of the Continent.*—Apart from events of secondary importance, successive wars and the temporary military occupation of one or a number of islands, it may be said that history has not in fact been at odds with geography. My view is rather that historical facts have been influenced by the “geographical data”; these facts have even confirmed a geographical criterion for the discrimination of the Channel Islands.

This criterion was that of territorial proximity. The islands that were close to the Continent, the islands that were closest to the French coast, became French, not by reason of the very ancient geological fact that they were separated from the mainland (Oral Arguments), but as a necessary consequence of historical facts. The islands which were furthest removed from the coast remained English. This has been acknowledged by the French Government, when it said that in the thirteenth century the King of England did not retain other islands “closer to the Continent” (Counter-Memorial, Part III, I, I) and that after the Treaty of Calais, the King of France “continues to remain the master of the islands *close to the coast*, which depend on it” (Annex A 2 to British Memorial; Counter-Memorial, Part III, I, III). The King is said to have kept “a group of islands which are generally small close to the French coast” (Oral Arguments). The French Government has not indicated what characterized the islands “close to the coast” or “to the mainland”. It has not stated what distance from the coast constituted “proximity”. It referred also to “dependency” “dependency on the coast”—which is rather vague. That Government has also stated, and rightly so, that “the claim that the archipelago constituted a natural unity can only be given its full meaning by taking into consideration the proximity of the coast of the mainland”. (Oral Arguments.) But it has referred to no instrument or document in which the Minquiers of the Ecrehos were regarded as dependencies of the coast or of the Chausey. Of course, the proximity of the coast of the mainland must be taken into consideration, but the natural unity of the archipelago must also be considered at the same time. What we have here are two “geographical data” which complement each other. As is stated by the French Government

itself (Oral Arguments), the Minquiers and the Ecrehos are closer to Jersey than to the mainland. They must be regarded as attached to Jersey rather than to the mainland. They must be included in the archipelago. These islets were, and continue to be, a part of its "natural unity". It is for this reason that they remained English, as did the archipelago itself.

15. *Historical facts*.—Moreover, the criterion of continental proximity is perfectly rational. I can readily understand why it has been adopted, or rather, why it has prevailed up to a certain point. It has not been the result of any abstract doctrinal trend, or of any preferred theory; it has resulted from historical events and from force of arms. After they had lost Continental Normandy and the islands of the Atlantic Ocean, the English were obliged to keep the Channel Islands in the interests of their own territorial defence. The conquest by Normandy in 1066 was a warning. England went even further, by keeping Aquitaine until the fifteenth century, seeking to re-conquer Continental Normandy and occupying it, at least in part, in the same period, for more than thirty years. It is clear that England has always shown the greatest interest in the Channel Islands. Counsel for the United Kingdom has stated—a fact which has not been challenged—that since 1204 these islands were not given in fee (save in two exceptional cases) but were governed by a Warden, who was an administrative official of the Crown. One of these exceptions is significant because, in 1254, a fief was granted to the King's son, who later became Edward I (Oral Arguments for September 21st, 1953; List of Wardens from 1204-1373, Annex A 158 to British Memorial). In 1226 the King proclaimed the autonomy of the Channel Islands, which is still in force at the present day, and granted them a charter of liberties (Memorial, para. 26). The autonomy of the islands is the political expression of the natural unity of the archipelago. And this unity had already been recognized by the declaration of the neutrality of the islands made by Louis XI and Pope Sixtus IV.

The military victories of the English and their naval power allowed them to secure the domination of these islands generally. It seems inconceivable to me that England, having an important interest in the Channel Islands and full domination over the sea, and possessing all the principal islands, should not, without some special reason, have conquered and retained the Ecrehos and the Minquiers or, rather, that she should have left them to France. A principle of British policy was at stake: Great Britain claimed ownership of the sea which separated that country from France (Calvo, *Droit international public*, ed. 1896, I, pp. 473-476). This principle was rejected (Oral Arguments), and France objected "to the Channel being called the 'British Channel' ". This is quite true, and yet even the French continued to call the Channel Islands "Anglo-Norman islands" and even "English islands".

16. *The definitive situation.*—The principle of the limitation of territorial waters may have been questionable at that time, but the development of history has led to a situation which confirms that principle, perhaps by anticipation. The same consideration which prevented English domination of some of the islands which were definitively subject to the French domain might have prevented English domination over the Ecrehos and the Minquiers.

But the determining cause which in my opinion explains the fact that England did not have domination over all the Channel Islands is the proximity of the French coast.

The only islands which might be regarded as included in the Anglo-Norman archipelago and which were "dismembered" from the archipelago and placed under French domination, are the Chausey which are situated outside the strict belt of French territorial waters. But the Chausey are closer to the French mainland than all the other islands, even Alderney, which is indisputably English, and even the Ecrehos and the Minquiers. There was considerable alternation in the domination of the Chausey: one writer is alleged to have said that they ought to have remained English and the date of their definitive possession by France has been debated.

The French Agent has cited other islands. The Mont-Saint-Michel is linked to the mainland; Tombelaine, according to French chart No. 1, is situated in the "sands and rocks uncovering at low water"; Bréhat and Cezambre (cited in the Oral Arguments) are indisputably situated in French territorial waters. They could only be French. Like the Chausey they remained French. All the other islands are British, including therefore the Ecrehos and the Minquiers.

17. *The grant of Piers des Préaux.*—There has been very learned argument upon the question whether the grant by Piers des Préaux was really in frankalmoin and whether, therefore, it extinguished the rights of the grantor. I do not consider it necessary to decide these questions. Whatever view one may have, the principal question is not whether Piers des Préaux retained his rights on the island, but simply whether or not the Duke of Normandy retained his. In its Rejoinder (Part I, Section I, II, A, 1°), the French Government has accepted the irrefutable rule that none may grant more than he possesses and that Government has acknowledged that the Duke retained his rights.

It is true that the French Government goes on to say that the King of France succeeded the Duke, by the conquest of Normandy in 1204, and became the overlord of the island of Ecrehos. This brings us back to another question which has already been dealt with and settled: the King of France was not the lord of the islands, the Judgment of 1202 did not relate to the

islands. The conquest of Continental Normandy did not affect the situation in any way. There is no evidence to show that the conquest extended to the islands, or, in particular, to the Ecrehos and the Minquiers.

There are certain other considerations to the same effect which I regard as relevant :

(a) Piers des Préaux could not, without the consent of the lord, effect the dismemberment of a part of the islands which King John had granted him in fee. It matters little that the island of Ecrehos was of no value, as stated by the French Government. And it is easy to discern the importance of the grant if, as is alleged by the French Government, it had the effect of transferring to the King of France the ownership of the island which belonged to the King of England. In such circumstances the grant would have been a nullity.

(b) In the "acknowledgment of his fiefs" made by Piers des Préaux to King Philip of France after the surrender of Rouen in 1204, there is no reference to the Ecrehos (Oral Arguments).

(c) Two years later, in 1206, the King of England restored to Piers des Préaux the lands which he held in England and he stated with regard to the islands that the King would "do his pleasure" (Annex A 11 to British Memorial). There is no restriction resulting from the grant to the Abbey of Val-Richer.

18. *Acts of occupation.*—The origin of the occupation of the islands by the English being clearly defined and the circumstances confirming that occupation being acknowledged, the acts carried out during this occupation, although they are scattered in time, bear witness to the continuity of that occupation and reflect the "slow evolution" of the process whereby sovereignty is established.

I need only add a few complementary observations to the analysis given in the Judgment.

19. *Visits of fishermen.*—The most assiduous and most numerous visitors were fishermen. The French Government has said that after 1839 "it allowed British fishermen to go peacefully to the Ecrehos and the Minquiers" (Oral Arguments). The English Government has never permitted Frenchmen to frequent the islets.

I quite agree that in certain cases, and in certain circumstances, the presence of private persons who are nationals of a given State may signify or entail occupation by that State. Sovereignty is exercised over persons who recognize that sovereignty. I have in mind the fact that the limits of the Portuguese and Spanish possessions in South America, which had been strictly laid down in the Treaty of Tordesilhas, were exceeded by persons from Brazil in search of gold and emeralds, and that, although these persons were frequently disappointed in their expectations and their ranks

decimated by fever, they achieved the *uti possidetis* for Brazil and greatly increased her territory.

Such individual actions are particularly important in respect of territories situated at the border of two countries which both claim sovereignty in that region.

On the Ecrehos and the Minquiers, English fishermen have always been more numerous, much more numerous, than French fishermen. References to English houses on the islets are quite frequent and go back to ancient dates (Annexes A 51, A 54, A 61, A 64 to British Memorial). These persons came from Jersey and certainly from other islands close by. A further and more significant fact is that the French were pushed back by the English. And "on several occasions" the French Ministry of Marine stated it had "requested our fishermen not to create incidents with the English fishermen" (Oral Arguments).

But the most important consideration is not the mere going into the territorial waters of the Minquiers and the Ecrehos. The most important matter is the actual settling on the islets. But I consider that the French never remained there. The French Government has sought to explain this fact by referring to prevailing winds and currents (Oral Arguments). Whatever may have been the cause, the fact gives rise to certain consequences.

An attempt has been made, without success, to show that the 1839 Convention gave the French "not only a right to fish around the Minquiers and the Ecrehos, but also a right to go ashore on the islets and to settle there" (Oral Arguments). But it has not been said that they landed there frequently, or even less, that they actually settled there in any numbers.

20. *Maps*.—It is necessary to say something on the evidence supplied by maps. I know that such evidence is not always decisive in the settlement of legal questions relating to territorial sovereignty. It may however constitute proof of the fact that the occupation or exercise of sovereignty was well known. The Parties have admitted this and have based certain contentions on documents of this kind. The United Kingdom Government has cited the map by Stieler, editions of 1905 and 1932, which show the disputed islets as British. The French Agent has submitted several other maps (Oral Arguments); some of these regard the Ecrehos as British but make no reference to the Minquiers. Still other maps omit both groups, or in some cases show the Ecrehos as falling outside the British zone. A searching and specialized study would be required in order to decide which of the contending views in respect of maps should prevail. At any rate, maps do not constitute a sufficiently important contribution to enable a decision to be based on them. I shall not take the evidence of maps into consideration.

21. *French protests.*—By fixing the “critical date” in the year 1839, and by stating that very few documents have come down from the Middle Ages by reason of the destruction of a substantial portion of the Norman archives (Oral Arguments) and that the more ancient documents have disappeared, that they were frequently very badly drafted, or may even never have existed at all, the French Government has sought to reduce considerably the volume of evidence upon which the Court may base its decision. Nevertheless, that same Government did not fail to consider acts subsequent to 1839, as the proceedings progressed, or to invoke them in support of its case. Such acts are much more numerous and more significant on the English side than on the French side. The French Government has invoked the protests which it made against several such acts. And since these protests were not made against the most important of these acts, the French Government has sought to explain this on the ground that the protests were solely directed against acts which did not signify an exercise of sovereignty because, according to its interpretation, both States were authorized to carry out such acts by the Convention of 1839. This interpretation has been rejected by the Court in its Judgment. There can consequently no longer be any excuse for the failure of the French Government to protest against the acts by which the British Government exercised sovereignty over the disputed islets. The French protests were even inadequate and ineffective in respect of British acts of another order. The words of the Permanent Court of International Justice in the Eastern Greenland case (p. 62) may be repeated here: the character of the acts of the British Government is not altered by the protests which, from time to time, were made by the French Government.

In no case did the French protest produce as effective a result as that of the British Government in the case, mentioned in the Judgment, of the construction of a house on the Minquiers by a French national. As regards the Ecrehos, no protests were made after 1888 for sixty years. The French Government has sought to explain the absence of protests by relying on two grounds which must now be considered. According to the first, it was “impossible” for France to “keep the United Kingdom Government continually under surveillance” (Rejoinder, Part I, Section II, Sub-Section I). Such an impossibility is quite understandable, but that was not the question. All that was required of the French Government was that it should have kept the islets under surveillance, just as the British Government had done, a surveillance which had permitted the latter Government, as I have already pointed out, to cause the construction of a house to be stopped immediately. Failure to exercise such surveillance and ignorance of what was going on on the islets indicate that France was not exercising sovereignty in that area.

The second ground on which the French Government seeks to rely relates to the very important matter of the rating of houses on the Ecrehos by the Jersey authorities. The French Government has not chosen to apply to this matter the justification referred to above, and it has stated (Rejoinder, Part I, Section II, Sub-Section I): "that these measures were carried out in Jersey and did not give rise to any important or overt act in the territory under dispute". It might be said, according to the foregoing justification, that even if the payment of taxes had been carried out on the islets, the French Government would have been unaware of this fact because it was "impossible for it to keep the United Kingdom Government continually under surveillance". Indeed, the levying of taxes must necessarily have given rise to acts of authority on the islets themselves. But what is more important is the contrast between the attitude of the Jersey tax authorities and that of the French Government, or of some of its administrative departments, which never attempted to obtain any fiscal contribution from the disputed islets. They did not do so, nor—so far as I am aware—did they ever attempt to do so.

The action of the British Government on the islets became more continuous and more intensive. The French Government then asks the Court: "Should we, on our side, have resorted to force and war? For this is not a negligible point in the period which runs from approximately 1875 to 1904.... The relations between our two countries were not what they are to-day.... Should we therefore have made a greater demand; should we have defied the British Government, and provoked a breaking off of relations because of the Minquiers and the Ecrehos? It was sufficient to protest on paper...."

It is impossible to say too much in praise of the French Government for not having resorted to force and war, but if there were other more important disputes between the two countries, the same considerations which restrained the French Government should also have restrained the British Government, yet while the latter acted and continued to exercise its sovereignty, the French Government was satisfied to make a "paper" protest. Could it not have done anything else? It could have, and it ought to have, unless I am mistaken, proposed arbitration; all the more so since the two States were bound by the Treaty of October 14th, 1903, which provided for the settlement by the Permanent Court of Arbitration of all legal disputes or disputes involving the interpretation of a treaty.

The French Government has referred to the arbitral award in the Chamizal case and has cited the following passage: "In private law, the interruption of prescription is effected by a suit but in dealings between nations this is, of course, impossible, unless and until an international tribunal is established for such purposes." (Oral Arguments.) This award was made in 1911 and relates to facts in the period 1848-1895. At that time there was no inter-

national court. The award makes such a course contingent upon the existence of such a tribunal: “*until* an international tribunal is established...”. But such a tribunal has now been created and has existed for many years. Why did France not at least propose that the dispute should be referred to this tribunal, as England has done, after more than half a century of intermittent and fruitless discussion? The failure to make such a proposal deprives the claim of much of its force; it may even render it obsolete.

Without dwelling on this matter, which in my opinion is obviously an important one, I consider that the action of the Court might easily be restricted or even nullified if disputes were allowed to be prolonged indefinitely without good reason and if an attempt were not made to obtain the Court’s decisive intervention but preference were given to mere periodical and ineffectual “paper” protests. This state of affairs would be incompatible with the régime under which the rights of each State would be specified and guaranteed.

22. *Two further pieces of evidence.*—The position which was achieved in the second half of the nineteenth century became definitive. It has been very well described by two famous Frenchmen.

The first of these is Victor Hugo. The French Government has cited his novel *Les Travailleurs de la Mer*, written around 1866, when Victor Hugo lived at Guernsey. In the introduction to this book the following words also deserve to be quoted, and I have myself italicized some of them: “The Channel Islands are pieces of France that have fallen into the sea and *have been gathered up by England*” (p. XXI). “The *archipelago* is made up of four islands ... *without mentioning the islets*” (p. XXI). “Facing France, the indentation of the Jersey coast at St. Aubin seems like the *opening of a hive towards which* these two scattered but separate groups, the Grelets and the *Minquiers, appear to swarm*” (p. XXV). Hugo noted that the local population were Normans and that they had not forgotten that it was Normandy that had conquered England. He might have said that there was no English domination but rather union with England. He also pointed out that the English called the archipelago the “Norman islands” and that the French called them “English islands” and Hugo himself called them “*îles de la Manche*” or, in English, “Channel Islands”.

The other piece of evidence is supplied by the famous geographer, Élisée Reclus. I shall take the liberty of changing the order of the words in his proposition (*Nouvelle Géographie universelle*, ed. 1881, Vol. II, p. 639), without altering their meaning, using the same words as he did, some of which I have italicized: “Jersey, Guernsey, Alderney and *neighbouring archipelagos*”, those lands which “the English call the *Channel Islands*”, belong “politically to Great

Britain" although they are "a natural dependency of French Normandy".

23. *Conclusion.*—I should like to add two clarifications to the operative clause of the Judgment.

The first relates to the possibility of appropriating the islets: I would refer to "present or future appropriation". The extent to which the rocks are "capable" of appropriation is unspecified and the Court cannot determine this point. It is a matter which cannot be fixed in advance. Who could have foreseen in the not too distant past that France would some day plan to utilize tidal power at the Minquiers for the production of electrical energy?

The purpose of the second clarification is to safeguard:

(a) The exercise of fishery rights in the waters of the Ecrehos and the Minquiers, in accordance with the Agreement of January 30th, 1951 (Annex A 23 to British Memorial), signed by the representatives of France and the United Kingdom and negotiated by them at the same time as the Special Agreement of January 29th, 1950. The present Judgment in no way affects that Agreement.

(b) The possibility of English co-operation in carrying out the French Government's project for the production of electrical energy by means of works in the Minquiers region, in accordance with the declaration made by the British representative with the authorization of his Government (Oral Arguments). I am willing to believe that no judge nowadays can blindly follow the obsolete rule *fiat justitia, pereat mundus* (Ripert, *La règle morale dans les Obligations civiles, passim*). Still less can we be bound by such a rule in the field of international law whose principles, as it has been said, may represent the consecration of the former natural law. And I would have been pleased to place on record the generous declarations of the representative of the British Government.

(Signed) LEVI CARNEIRO.