

(c) it appears from the treaty or is otherwise established that the application of the treaty in respect of the predecessor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

Article 36

*Participation in treaties not in force at the date of the succession
of States in cases of separation of parts of a State*

1. Subject to paragraphs 3 and 4, a successor State falling under article 34, paragraph 1, may, by making a notification, establish its status as a contracting State to a multilateral treaty which is not in force if, at the date of the succession of States, the predecessor State was a contracting State to the treaty in respect of the territory to which the succession of States relates.

2. Subject to paragraphs 3 and 4, a successor State falling under article 34, paragraph 1, may, by making a notification, establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if at that date the predecessor State was a contracting State to the treaty in respect of the territory to which the succession of States relates.

3. Paragraphs 1 and 2 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

4. If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may establish its status as a party or as a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

Article 37

*Participation in cases of separation of parts of a State
in treaties signed by the predecessor State subject to
ratification, acceptance or approval*

1. Subject to paragraphs 2 and 3, if before the date of the succession of States the predecessor State had signed a multilateral treaty subject to ratification, acceptance or approval and the treaty, if it had been in force at that date, would have applied in respect of the territory to which the succession of States relates, a successor State falling under article 34, paragraph 1, may ratify, accept or approve the treaty as if it had signed that treaty and may thereby become a party or a contracting State to it.

2. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

3. If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may become a party or a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

Article 38
Notifications

1. Any notification under articles 31, 32 or 36 shall be made in writing.

2. If the notification is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

3. Unless the treaty otherwise provides, the notification shall:

(a) be transmitted by the successor State to the depositary, or, if there is no depositary, to the parties or the contracting States;

(b) be considered to be made by the successor State on the date on which it is received by the depositary or, if there is no depositary, on the date on which it is received by all the parties or, as the case may be, by all the contracting States.

4. Paragraph 3 does not affect any duty that the depositary may have, in accordance with the treaty or otherwise, to inform the parties or the contracting States of the notification or any communication made in connection therewith by the successor State.

5. Subject to the provisions of the treaty, such notification or communication shall be considered as received by the State for which it is intended only when the latter State has been informed by the depositary.

PART V.
MISCELLANEOUS PROVISIONS

Article 39
Cases of State responsibility and outbreak of hostilities

The provisions of the present Convention shall not prejudice any question that may arise in regard to the effects of a succession of States in respect of a treaty from the international responsibility of a State or from the outbreak of hostilities between States.

Article 40
Cases of military occupation

The provisions of the present Convention shall not prejudice any question that may arise in regard to a treaty from the military occupation of a territory.

PART VI.
SETTLEMENT OF DISPUTES

Article 41
Consultation and negotiation

If a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention, they shall, upon the request of any of them, seek to resolve it by a process of consultation and negotiation.

Article 42
Conciliation

If the dispute is not resolved within six months of the date on which the request referred to in article 41 has been made, any party to the dispute may submit it to the conciliation procedure specified in the Annex to the present Convention by submitting a request to that effect to the Secretary-General of the United Nations and informing the other party or parties to the dispute of the request.

Article 43
Judicial settlement and arbitration

Any State at the time of signature or ratification of the present Convention or accession thereto or at any time thereafter, may, by notification to the depositary, declare that, where a dispute has not been resolved by the application of the procedures referred to in articles 41 and 42, that dispute may be submitted for a decision to the International Court of Justice by a written application of any party to the dispute, or in the alternative to arbitration, provided that the other party to the dispute has made a like declaration.

Article 44
Settlement by common consent

Notwithstanding articles 41, 42 and 43, if a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention, they may by common consent agree to submit it to the International Court of Justice, or to arbitration, or to any other appropriate procedure for the settlement of disputes.

Article 45
Other provisions in force for the settlement of disputes

Nothing in articles 41 to 44 shall affect the rights or obligations of the Parties to the present Convention under any provisions in force binding them with regard to the settlement of disputes.

PART VII.
FINAL PROVISIONS

Article 46
Signature

The present Convention shall be open for signature by all States until 28 February 1979 at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 31 August 1979, at United Nations Headquarters in New York.

Article 47
Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48
Accession

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49
Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the fifteenth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the fifteenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 50
Authentic texts

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at Vienna this twenty-third day of August, one thousand nine hundred and seventy-eight.

ANNEX

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a Party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article 42, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

- (a) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and
- (b) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the appointment of the last of them, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

3. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any Party to the present Convention to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

7. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

ANNEX 9



HOME OVERVIEW DATABASES PUBLICATIONS TRAINING TREATY EVENTS CONTACT

DATABASES

Monday, 29 September 2014 11:50:09 AM

Introduction UN LON Historical Information INDEX Full-text Search

PRINT SEND MAIL VIEW PDF FULL DETAILS VIEW CTC VIEW XML BOOKMARK

SEARCH

Full text Search

Advanced Search

Basic Search

MTDSG

Status of Treaties

Depository
Notifications

Certified True Copies

Opening for
Signature

UN Journal

Photographs

Reference-Links

Titles and Recent
Texts

UNTS

UNTS Database

Cumulative Indexes

LNTS Database

MS

MS Database

Automated Subscription Services

CHAPTER XXIII 2.

STATUS AS AT : 28-09-2014 08:01:11 EDT

CHAPTER XXIII LAW OF TREATIES

2 . Vienna Convention on succession of States in respect of treaties

Vienna, 23 August 1978

Entry into force : 6 November 1996, in accordance with article 49(1).

Registration : 6 November 1996, No. 33356

Status : Signatories : 19. Parties : 22

Text : United Nations, *Treaty Series* , vol. 1946, p. 3. [C.N.354.2008.TREATIES-1](#) of 6 May 2008 (Proposal of corrections to the original text of the Convention (Arabic version) and to the Certified True Copies) and [C.N.1046.2008.TREATIES-2](#) of 13 January 2009 (Corrections).

Note : The Convention was adopted on 22 August 1978 by the United Nations Conference on the Succession of States in respect of Treaties and was opened for signature at Vienna from 23 August 1978 to 28 February 1979, then at the Headquarters of the United Nations, in New York until 31 August 1979. The Conference was convened pursuant to General Assembly resolution 3496 (XXX)¹ of 15 December 1975. The Conference held two sessions, both at the Neue Hofburg in Vienna, the first session from 4 April to 6 May 1977 and the second session from 31 July to 23 August 1978. In addition to the Convention, the Conference adopted the Final Act and certain resolutions, which are annexed to that Act. By unanimous decisions of the Conference, the original of the Final Act was deposited in the archives of the Federal Ministry for Foreign Affairs of Austria.

Participant ²	Signature, Succession to signature(d)	Ratification, Accession(a), Succession(d)
Angola	23 Aug 1978	
Bosnia and Herzegovina ³		22 Jul 1993 d
Brazil	23 Aug 1978	
Chile	23 Aug 1978	
Côte d'Ivoire	23 Aug 1978	
Croatia ³		22 Oct 1992 d
Cyprus		12 Mar 2004 a
Czech Republic ⁴	22 Feb 1993 d	26 Jul 1999
Democratic Republic of the Congo	23 Aug 1978	
Dominica		24 Jun 1988 a

Ecuador		25 Jul 2006 a
Egypt		17 Jul 1986 a
Estonia		21 Oct 1991 a
Ethiopia	23 Aug 1978	28 May 1980
Holy See	23 Aug 1978	
<u>Iraq</u>	23 May 1979	5 Dec 1979
Liberia		16 Sep 2005 a
Madagascar	23 Aug 1978	
Montenegro ⁵		23 Oct 2006 d
<u>Morocco</u>		31 Mar 1983 a
Niger	23 Aug 1978	
Pakistan	10 Jan 1979	
Paraguay	31 Aug 1979	
Peru	30 Aug 1978	
Poland	16 Aug 1979	
Republic of Moldova		9 Feb 2009 a
Senegal	23 Aug 1978	
Serbia ³		12 Mar 2001 d
Seychelles		22 Feb 1980 a
<u>Slovakia</u> ⁴	28 May 1993 d	24 Apr 1995
Slovenia ³		6 Jul 1992 d
St. Vincent and the Grenadines		27 Apr 1999 a
Sudan	23 Aug 1978	
The former Yugoslav Republic of Macedonia ³		7 Oct 1996 d
Tunisia		16 Sep 1981 a
Ukraine		26 Oct 1992 a
Uruguay	23 Aug 1978	

Declarations and Reservations

(Unless otherwise indicated, the declarations and reservations were made upon ratification, accession or succession.)

Czech Republic

Pursuant to Article 7, paragraph 2 and 3, of the Vienna Convention on Succession of States in respect of Treaties, adopted in Vienna on August 23, 1978, the Czech Republic declares that it will apply the provisions of the Convention in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other Contracting State of State Party to the Convention accepting the declaration.

The Czech Republic simultaneously declares its acceptance or the declaration made by the Slovak Republic at the time of its ratification of the Convention pursuant to Article 7, paragraph 2 and 3 thereof.

Iraq⁶

"Entry into the above Convention by the Republic of Iraq shall, however, in no way signify recognition of Israel or entry into any agreement therewith."

Morocco⁶

Reservation:

The accession of Morocco to this Convention does not mean in any way recognition of Israel by the Government of the Kingdom of Morocco and that furthermore, no treaty relations will arise between the State of

Morocco and Israel.

Slovakia

Declaration:

The Slovak Republic declares, under article 7, paragraphs 2 and 3 of [the said] Convention, that it will apply the provisions of the Convention in respect of its own succession which has occurred before the entry into force of the Convention in relation to any signatory State (paragraph 3), contracting State or State Party (paragraphs 2 and 3) which makes a declaration accepting the declaration of the successor State.

End Note

1. *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10 (A/9610/Rev.1).*

2. The German Democratic Republic had signed the Convention on 22 August 1979. See also note 2 under "Germany" in the "Historical Information" section in the front matter of this volume.

3. The former Yugoslavia had signed and ratified the Convention on 6 February 1979 and 28 April 1980, respectively. See also note 1 under "Bosnia and Herzegovina", "Croatia", "former Yugoslavia", "Slovenia", "The Former Yugoslav Republic of Macedonia" and "Yugoslavia" in the "Historical Information" section in the front matter of this volume.

4. Czechoslovakia had signed the Convention on 30 August 1979. See also note 1 under "Czech Republic" and note 1 under "Slovakia" in the "Historical Information" section in the front matter of this volume.

5. See note 1 under "Montenegro" in the "Historical Information" section in the front matter of this volume.

6. The Secretary-General received on 23 June 1980 from the Government of Israel the following communication concerning this declaration:

"The Government of Israel has noted the political character of the statement made by the Government of Iraq. In the view of the Government of Israel, this Convention is not the proper place for making such political pronouncements. Moreover, the said declaration cannot in any way affect whatever obligations are binding upon Iraq under general international law or under particular conventions. Insofar as concerns the substance of the matter, the Government of Israel will adopt towards the Government of Iraq an attitude of complete reciprocity."

Subsequently, on 23 May 1983, the Secretary-General received from the Government of Israel a declaration concerning the declaration made by Morocco, identical in essence, *mutatis mutandis*, as the one made regarding the declaration made by Iraq.



[Home](#) | [Overview](#) | [Databases](#) | [Publications](#) | [Training](#) | [Treaty Events](#) | [Contacts](#)

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ANNEX 10

THE CRITICAL DATE

By

L. F. E. GOLDIE *

I

IN international law the point of time falling at the end of a period within which the material facts of a dispute are said to have occurred is usually called the "critical date." It is also the date after which the actions of the parties to a dispute can no longer affect the issue.¹ It is exclusionary, and it is terminal. Hence it is most frequently resorted to in territorial disputes to indicate the period within which a party should be able to show the consolidation of its title or its fulfilment of the requirement of the doctrine of occupation. The traditional use of the term "critical date" may appear to import little more than the point of time in the course of an international dispute when the parties reject other possible means of resolving their differences and, defining them in terms of legal dialectic, reduce these differences to "objects of litigation."² In this paper the doctrine will be examined for additional meanings, and the utility of giving it extended and additional operations. It will be submitted that the critical date doctrine can be used with advantage in the resolution of many conflicting claims in both public and private international law which are dependent on temporal criteria. The distinct contexts in which the critical date doctrine could profitably be given extended uses will be distinguished and separated out from one another. Before turning, however, to possible extended or additional employments the traditional function of the critical date doctrine as a component in the consolidation of historic title, and as aiding in the establishment of a good root of title to territory, will first be examined. Secondly, recourse to the words "critical date" in

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¹ D. H. N. Johnson, "Acquisitive Prescription in International Law" (1950) 27 *British Year Book of International Law* 332, 342 note 4. See also Sir Lionel Heald's submission to a similar effect before the International Court of Justice in the *Minquiers and Ecrehos Case: Judgment of November 17, 1953*, 2 *I.C.J. Pleadings, Oral Arguments, Documents* 48-61 (18.IX.1953).

² For a discussion of the terms "legal dialectic" and "object of litigation" see de Visscher, *Theory and Reality in Public International Law* (trans. by P. E. Corbett, Princeton, 1957—hereinafter referred to as "*de Visscher*"), p. 79.

arguments as to whether a given dispute falls, *ratione temporis*, within the obligatory jurisdiction of the International Court of Justice³ will be distinguished from certain other uses of the phrase. Thirdly, an extension of the critical date doctrine from territorial disputes to many types of disputes in which the operative facts emerge over a continuing period of time will be proposed—for example, in cases involving the acquisition or loss of national status by an individual or those involving title to espouse a claim. Finally, its utility in complex cases of recognition will be investigated.

II

Among the most thorough studies of the critical date doctrine in relation to territorial disputes are those by Sir Gerald Fitzmaurice. Both as the author of "The Law and Procedure of the International Court of Justice 1951-54: Points of Substantive Law. Part II,"⁴ and as counsel for the United Kingdom in the *Minquiers and Ecrehos Case*, Sir Gerald conducted an exhaustive analysis of possible criteria for establishing the point of time designated as the critical date, especially for cases in which the "date of focusing the dispute is uncertain."⁵ In his argument in the *Minquiers and Ecrehos Case* Sir Gerald pointed out that:

"This moment, however—which is the critical one—is clearly not that at which the dispute was born—even when the dispute can be said to have had its birth at any definite moment, which is seldom the case: the critical moment is, normally, not the date when the dispute was born, but that on which it crystallised into a concrete issue.

"Taking the theory of the critical date a stage further, in the ordinary course of events and assuming that once a concrete issue has arisen between two countries, they decide to settle by international adjudication, the critical date would be in principle the date on which they agreed to submit the dispute to a tribunal. However, there may be cases where the critical

³ See Rosenne, *The Time Factor in the Jurisdiction of the International Court of Justice* (Leyden, 1960) (hereinafter referred to as *Rosenne*), at pp. 13-16, 31-33, 45-50. See also *Nottebohm Case (Preliminary Objection)*, Judgment of November 18, 1953: (1953) *I.C.J. Reports* 111, 122. Procedurally, the critical date was that upon which the International Court of Justice is seized of the dispute. And at p. 123 the Court said: "An extrinsic fact such as the subsequent lapse of the Declaration, by reason of the expiry of the period or by denunciation, cannot deprive the Court of the jurisdiction already established."

⁴ Sir Gerald Fitzmaurice, "The Law and Procedure of the International Court of Justice 1951-54: Points of Substantive Law. Part II," (1955-56) 32 *British Year Book of International Law*, 20 (hereinafter referred to as Fitzmaurice, "Substantive Law. Part II").

⁵ *Ibid.* 22-30.

date should nevertheless be some other date . . . one object of the critical date is to prevent one of the parties from unilaterally improving its position by means of some step taken after the issue has been definitely joined."⁶

A little further on in the same argument he proposed:

"So much for not putting the critical date too late. But equally, if not more important, is not to put the critical date too *early*, thereby shutting out acts of the parties that were carried out at the time when each of them was perfectly entitled to take any legitimate steps in the assertion or prosecution of its claim. Just as putting the critical date too late may favour the party which has rejected an earlier proposal for adjudication, by enabling it in the meantime unilaterally to improve its position; so putting the critical date too early favours the party which has put forward a claim in a general way, but has not pursued it."⁷

Sir Gerald developed this point later in his pioneering study in the *British Year Book of International Law* in terms of the theme "neither too early nor too late."⁸ This provides States with the greatest opportunity, on the one hand of positively demonstrating sovereignty or establishing title, and, on the other, of taking decisive steps to counter the assertions of other States. At the same time it removes the temptations and opportunities of window dressing.⁹ The following statement emphasises this latter point:

"Thus if one of the parties pleads that it has protested against the exercise of sovereignty by the other party, protests made before the critical date are relevant to the issue. Protests made after the critical date are irrelevant to the issue. The exact date of the critical date is a matter of fact which the tribunal has to determine."¹⁰

On such a view the critical date may, provisionally, be said to occur when the dispute is brought into focus and the issues arising between the parties become defined in concrete terms and hence capable of legal settlement. For when the parties' differences are not capable of being formulated in terms of precise issues, as "objects of litigation"¹¹ a critical date cannot be deemed to

⁶ *Ibid.* 24-25; and see the *Minquiers and Ecrehos Case: Judgment of November 17, 1953*, 2 *I.C.J. Pleadings, Oral Arguments, Documents* 69 (18.IX.1953).

⁷ *The Minquiers and Ecrehos Case (United Kingdom v. France): Judgment of November 17, 1953*, 2 *Pleadings, Oral Arguments, Documents* 69 (18.IX.1953).

⁸ Fitzmaurice, "Substantive Law. Part II," 24-26.

⁹ *Ibid.* 24-26.

¹⁰ D. H. Johnson, "Acquisitive Prescription in International Law," (1950) 27 *British Year Book of International Law* 342, note 4.

¹¹ See *de Visscher*, p. 79, and note 2 *supra* and the text to which it relates.

occur. The critical date can only be determined after the parties have taken up their final positions in terms of international law and " [stand] on their respective rights." ¹² After they have taken these stands State activities with regard to a disputed territory, for example, would be regarded as having been performed, not for the purpose of developing or administering the disputed areas, but of " window-dressing "—with an eye to influencing possible litigation. Hence the doctrine demands that time should, by a necessary and abstracting fiction, be deemed to stop at a date designated as " critical." In this way the factual position between the parties becomes " frozen " or " crystallised " ¹³ as of that date—rather like the finances of a business are frozen in the balance sheet as of the accounting date. Once the critical date has been designated facts occurring thereafter are excluded from having any operative effect. The rights of the parties are decided on the basis of the facts occurring before the critical date.

Events occurring before the critical date have substantive value. They are right-creating facts. ^{13a} Events occurring after the critical date have only an evidentiary and probative value, and that of a narrow and dependent category. Their admissibility is dependent on whether they are in continuation of, or may effectively throw light on, the substantive events anterior to the critical date. Hence subsequent facts are admissible—but only in a subordinate capacity. They do not create or perfect title; nor may they be adduced directly in proof of title, but only indirectly and to corroborate and explain the probative events occurring before the critical date. For example in the *Island of Palmas Case* ¹⁴ Judge Huber said:

" The events falling between the Treaty of Paris, December 10, 1898, and the rise of the present dispute in 1906, cannot in themselves serve to indicate the legal situation of the island at the critical moment when the cession of the Philippines by Spain took place. They are however indirectly of a certain interest, owing to the light they might throw on the period immediately preceding." ¹⁵

Again, in his separate opinion in the *Minquiers and Ecrehos*

¹² The *Minquiers and Ecrehos Case*, 2 *I.C.J. Pleadings, Oral Arguments, Documents* (Fitzmaurice) 68 (18.IX.1953).

¹³ For use of metaphors such as "freezing" and "crystallisation," see Fitzmaurice, "Substantive Law. Part II."

^{13a} Examples of this view of the relevant facts may be found in Judge Huber's formulation of the "inter-temporal law" in the *Island of Palmas Case*, 2 *R.I.A.A.* 829, 845 (1932). See *infra* note 24a. See also Sir Percy Spender's dissenting opinion in the *Right of Passage Case* (1960) *I.C.J. Reports* 4, 100. See *infra* notes 34 and 35 and the text to which they relate.

¹⁴ Scott, *Hague Court Reports* (Second Series) (New York, 1932), p. 83.

¹⁵ *Ibid.* pp. 83, 125.

Case, Judge Basdevant considered the critical date of that case to be October 24, 1360, the date of the Treaty of Brétigny or Calais.¹⁶ He considered that as a result of the Treaty's separation of English from Continental or French Normandy, dealings by each country in connection with the Minquiers and Ecrehos islets and reefs should be regarded as detailed applications of the division made in 1360. It was on this basis that facts after 1360 right up to the date of the *Compromis* were admitted.¹⁷ These should not be regarded as having independent probative value, their function was merely to resolve issues of detail and to throw further light upon the relations of England and France which had become set and crystallised by the Treaty.

Such a generosity with the subsequent facts seems to indicate defects in the concept of the critical date as discussed up to this point. Is it so vague as to be little more than a mere metaphor masking tribunals' discretion? It is submitted that the metaphor of "window-dressing" adds nothing to the notion of the critical date and is indeed tautologous with it. Neither phrase can tell us at what point of time, or by the operation of what criteria, the exclusionary rule comes into play. This however may be due, not so much to an inherent vice in the concept, as to the fact that in many of the disputes in which it has been invoked the critical date doctrine has been regarded as self-evident,¹⁸ or at least not calling for a general definition.

The central argument of this paper is that the critical date may be generally defined as the temporal element in the point of convergence of distinct sets of facts or concatenations of events each of which are put forward in the same dispute. This convergence occurs when both parties to a legal dispute submit distinct sets of facts and series of events, and distinct theories of the case for the characterisation or definition of the issues.¹⁹ (Disputes of this type are not the commonest as, most usually, both in international disputes and in contests in municipal courts, the plaintiff's claim may provide the basis for the definition of the issues.) When each of the parties adduces its own facts and arguments for the

¹⁶ The *Minquiers and Ecrehos Case*, Order of January 29, 1953: (1953) *I.C.J. Reports* 4, separate opinion by Judge Basdevant, p. 76 *et seq.*, and *Judgment of November 17, 1953*: (1953) *I.C.J. Reports* 47.

¹⁷ (1953) *I.C.J. Reports* 4, 83-84.

¹⁸ See, e.g., Sir Gerald Fitzmaurice's discussion of the *Island of Palmas Case*, the *Legal Status of Eastern Greenland Case*, and the *Clipperton Island Case* in "Substantive Law. Part II," 22.

¹⁹ See, for a presentation of the difference between political and legal disputes as depending upon the amenability of the latter to definition as "objects of litigation" and hence appropriate for casting into "terms of legal dialectic," *supra* note 2 and the discussion to which it relates and, further, *de Visscher*, pp. 79, 331-333, 351-355.

characterisation of the issues, neither party can unilaterally conclude the matter. On the other hand, a legal dispute can only exist if a common juristic definition can be offered. For before a dispute can be the subject of adjudication the separately characterised right-creating facts in the dispute must be brought to a common ground: their convergence must necessarily be effectuated. The critical date arises when questions of time form a necessary element in the point of convergence. This concept of a critical date may be illustrated by disputes over territory. In such cases a series of acts creating no more than an inchoate title²⁰ (each of which in itself not being sufficient to establish the claimant's title) may be seen to converge with, for example, acts of recognition by other States. The establishment of Norway's sovereignty over Spitzbergen illustrates this point. After several centuries, during which her sovereignty remained inchoate and disputed, Norway gained a perfected title by virtue of its recognition by the Powers in the Treaty of 1920 signed at Paris.²¹ Norway's acts, never sufficient in themselves to perfect her title, but capable of keeping her claim alive, converged with the general recognition in 1920 to create a complete sovereignty which came to be recognised by third States. On the other hand in 1923 the Soviet Union protested against the perfection of Norway's title by the general recognition at a conference in which she did not participate. But in 1928 she recognised Norway's sovereignty in a separate agreement.²² A situation may be brought into focus, and a critical date result, from the convergence of a Peace Treaty, the demarcation of a frontier, a general agreement of recognition, a guarantee of frontiers, with the unilateral acts of the claimant State which had, previously, been sufficient only to establish an inchoate title, or to assert a provisional or tentative

²⁰ For a discussion of the concept of "inchoate title" see Hall, *International Law* (8th ed., Pierce Higgins, 1924) pp. 127-128; and Oppenheim, *International Law* (Lauterpacht, 8th ed., 1955) pp. 558-559.

²¹ (1924) U.K. Treaty Series No. 18, Cmd. 2092. See also (1924) 18 *American Journal of International Law (Supplement)* 199. This Treaty was signed by Denmark, France, Great Britain, Holland, Italy, Japan, Norway and Sweden. Norway's sovereignty was recognised over Bear Island as well as Spitzbergen. For a description of the legal status of Spitzbergen and of the resort to this archipelago by the nationals of many European countries from the late middle of the seventeenth century to the 1920 Agreement, see Scott, "Arctic Exploration and International Law," (1909) 3 *American Journal of International Law* 921, 930, 937; Lansing, "A Unique International Problem," (1917) 11 *American Journal of International Law* 763; Fulton, *The Sovereignty of the Sea* (1911) pp. 112, 164, 181, 182-185, 193, 194, 198-200, 527. For a brief outline of the 1920 Treaty see Nielsen, "The Solution of the Spitzbergen Question," (1920) 14 *American Journal of International Law* 232.

²² Russia protested against the 1920 Treaty in 1923, see (1923) 8 *Bulletin de l'Institut Intermediaire International* 341.

claim. This example illustrates the convergence of facts and their crystallisation into a legal relation. The converging facts form the elements of the legal relation, and their convergence firmly establishes that legal relation in the place of a situation which would otherwise have remained inchoate and unripe for settlement.

III

In the foregoing paragraphs the phenomenon of convergence was discussed in general terms as indicating the presence of a critical date—when questions of time are necessary elements of that convergence. This may now be reinforced in concrete and detailed illustrations drawn from a number of territorial disputes in which the critical date was necessary to the decision of the international tribunal concerned. The first of these was the *Island of Palmas Case*.²³ That arbitration settled a dispute between the United States and the Netherlands. It was argued before the famous Swiss jurist Max Huber who acted for the Permanent Court of Arbitration. Both the United States and the Netherlands claimed the small island of Palmas (or Miangas), which lies only some forty-eight miles south-east of Mindanao in the Philippine Islands. The United States argued that Palmas Island was a part of the Philippine Archipelago, on grounds of its geographical contiguity and of its alleged former subjection to Spanish sovereignty—to which the United States had succeeded under the Treaty of Paris, 1898.²⁴ This sovereignty, so the United States argued, had continued from the discoveries made, and the title acquired, by the Spanish navigators in the first half of the sixteenth century—discovery being sufficient to establish sovereignty under the international law of that time. The United States further contended that once it has been acquired that sovereignty had never been subsequently lost. The Netherlands asserted, by contrast, that by the date of the Peace Treaty of 1898 Spain had lost any sovereignty she may have once had over the island, and that she could grant no better title to the United States than she had on the date of the transfer of sovereignty. The Netherlands also contended that by 1898 the island had been effectively occupied as Netherlands territory. Huber decided in favour of the Netherlands on the ground that Spain had not consolidated her sovereignty by occupation as the rules of developing international law

²³ See, *supra*, note 18.

²⁴ The date of the Treaty of Paris under Article III of which the Philippine Archipelago was surrendered by Spain to the United States and was delineated, as far as the claims of the parties *inter se* were concerned.

required.^{24a} The Spanish discovery, without more, was insufficient to support a continuing title once discovery ceased to provide a basis for the acquisition of territory. By contrast the Netherlands had, by her occupation of the island, established her sovereignty over it. Finally, any possibility that the United States might have consolidated Spain's original and inchoate title by means of General Wood's visit to the island in 1906, and by acts subsequent thereto, was excluded by the Arbitrator's setting the critical date at 1898.²⁵ Since the United States could only claim as the successor of Spain, the date of the Treaty transferring sovereignty was the last point of time up to which Spain could have manifested her sovereignty and established her title. The events which converged to indicate and identify the critical date were, on the one hand, the definitive and conclusive acts of sovereignty by the Netherlands operating in competition with Spain's inchoate title and inconclusive acts, and, on the other hand, the transfer of sovereignty over the Philippine Archipelago in the 1898 Treaty.

In the *Legal Status of Eastern Greenland Case*²⁶ the Permanent Court of International Justice determined upon July 10, 1931, as the critical date—this being the date Norway proclaimed her sovereignty over the disputed area.^{26a} This point of time was indicated as the critical date by the convergence of each of the parties' acts of apprehension of the territory. It marked the turning point of the two claims. For if Denmark had already established a definitive title over the territories in dispute, then Norway's proclamation was invalid in international law. But, since Norway's formal act of apprehension was constituted by the proclamation, Denmark had up to the date of the proclamation to establish her sovereignty, and, if necessary, to convert it from an inchoate to a definitive title. If, on the other hand, Denmark had failed to establish her exclusive sovereignty by that date then Norway would have been entitled to establish *her* sovereignty thereafter by all appropriate means.

^{24a} Thereby illustrating the operation of the "inter-temporal law" which Huber formulated as follows (at 2 R.I.A.A. 829, 845 (1926)):

"As regards the question which of different legal systems prevailing at successive periods is to be applied in a particular case (the so-called inter-temporal law), a distinction must be made between the creation of rights and the existence of rights. The same principle which subjects the act creative of a right to the law in force at the time the right arises, demands that the existence of the right, in other words its continued manifestation, shall follow the conditions required by the evolution of law."

²⁵ Scott, *Hague Court Reports* (Second Series) (Washington, 1932) pp. 83, 108, 125.

²⁶ (1933) P.C.I.J. Series A/B No. 53.

^{26a} Royal Resolution of July 10, 1931, *Norsk Lovtidende* Nr. 23, July 11, 1931. The territory claimed was Eastern Greenland between 71° 30' and 75° 40' north latitude.

The critical date was also an essential element in the French argument and in Judge Basdevant's separate opinion in the *Minquiers and Ecrehos Case*.²⁷ Great Britain and France referred their dispute over the title to the Ecrehos and Minquiers islets and reefs to the International Court of Justice by a Special Agreement concluded on December 29, 1950. This *Compromis* was ratified on September 24, 1951, and notified to the Court's Registry by the United Kingdom's Ambassador to the Netherlands on December 5, 1951, pursuant to Article 40 (1) of the Court's Statute. The disputed reefs and islets are situated in the Bay of Granville; they are adjacent to the Channel Islands and to the Cotentin Peninsula. Like the Channel Islands themselves, they once formed part of the undivided Duchy of Normandy. The question was whether at the time of the dispute they formed part of Continental or French Normandy, or English Normandy. The United Kingdom argued that her sovereignty was based on ancient title supported by effective possession and the continuous display of sovereignty from the Middle Ages to the present. Secondly she argued that she had established her title by effective possession alone.²⁸ France argued that the original title over the group lay with her and that she had maintained this title up till the critical date, namely August 2, 1839²⁹—the date of the Fisheries Convention demarcating certain

²⁷ *Judgment of November 17, 1953: (1953) I.C.J. Reports, 47.*

²⁸ Thus the final submission by Great Britain was as follows:

"The Court is asked to declare:

That the United Kingdom is entitled under international law to full and undivided sovereignty over all the islets and rocks of the Minquiers and Ecrehos groups:

(1) by reason of having established the existence of an ancient title supported throughout by effective possession evidenced by acts which manifest a continuous display of sovereignty over the groups; alternatively,

(2) by reason of having established title by long continued effective possession alone, such possession being evidenced by similar acts."

(1953) *I.C.J. Reports, 47, 50.*)

²⁹ The relevant paragraphs of the Final Submission by the French Republic was as follows:

"May it please the Court,

To adjudge and declare:

(1) that France possesses an original title to the islets and rocks of the Minquiers group on the one hand and the Ecrehos group on the other;

(2) that France has at all times confirmed this original title by an effective exercise of her sovereignty to the extent that the character of these islets and rocks lent itself to such exercise;

(3) . . .

(4) . . .

(5) that the islets and rocks of the Minquiers and Ecrehos groups, being within the common fishery zone as so defined were, in 1839, subjected by the Parties to a régime of common user for fishery purposes, without the territorial sovereignty over these islets and rocks being otherwise affected by the said Convention;

(6) that the acts performed by each Party on the islets and rocks

exclusive fishery zones, and certain other zones as common, both classes being in the Bay of Granville.³⁰

The International Court of Justice decided in favour of Great Britain. The majority, however, did not make any formal determination with respect to a critical date, but relied on acts of sovereignty and administration occurring as late as 1950.³¹

Both parties discussed the critical date doctrine at considerable length in their arguments, and Judge Basdevant relied on it as a central theme in his judgment. Thus counsel for the United Kingdom accepted one view, namely the conventional view as to the timing of the critical date—that it comes into being when the dispute becomes cast into concrete terms³² and the parties stand on their rights. By contrast counsel for France took up a more novel position. In arguing that the critical date in the case should be 1839, the date of the Fisheries Convention between the two countries, he was not presenting it as contingent upon and defined by the crystallisation of a dispute in legal terms. In 1839 there was no dispute between Britain and France over the groups. Rather counsel for France presented the critical date for the case as connected with the consolidation or perfection of legal titles. In his hands it thus tended to resemble the terminal point of a period of limitations or set a term to the prescriptive acquisition of title to land in municipal private law. In his separate opinion Judge Basdevant employed it in a similar way. It was, for him,

subsequently to August 2, 1839, are consequently not capable of being set up against the other Party as manifestations of territorial sovereignty, with the result that such sovereignty belongs today to that one of the Parties to whom it belonged before August 2, 1839;

- (7) that this 'critical date' would still apply even if the construction put upon the Convention of August 2, 1839, by the French Government should be incorrect, since the Government of the United Kingdom was not unaware of this interpretation or of the possibility it afforded to the Government of the United Kingdom and to British subjects to benefit from the institution of a common user of the islets and rocks of the two groups for fishery purposes, as this resulted, in the mind of the French Government, from Article 3 of the Convention of August 2, 1839."

³⁰ The paragraphs in the final submission by the French Republic with regard to this argument, in addition to para. (5) already reproduced in note 29 *supra* were as follows:

"(3) that the United Kingdom has been unable to establish that it had effective possession of these islets and rocks at the time of the conclusion of the Treaty of Paris of 1259, which made effective possession the necessary condition for English sovereignty over the various Channel Islands, or at any subsequent period;

- (4) that by the Convention of August 2, 1839, the United Kingdom and France brought into being, between a line three miles from the low water mark on the island of Jersey and an *ad hoc* line defined in Article 1 of the Convention, a zone in which fishery of every type should be common to the subjects of the two countries."

³¹ (1953) *I.C.J. Reports* 47, 59-60 and 69.

³² See citations in notes 1, 6, 7, 12 and 13 *supra*. See also the discussion in the text to which they relate.

the point of time upon which the respective rights of the parties had become vested. The only utility subsequent events had for him was the possibility that they might clarify, and set out distributively and in detail, the rights which had become vested and settled in general terms in the Treaty of Brétigny.³³

The most recent case in which the critical date doctrine has played an important role was the *Rights of Passage Case*.³⁴ More perhaps than any other single case this illustrates a number of distinct uses of the critical date. The first use of the doctrine related to the Indian assertion that the court's jurisdiction should be excluded *ratione temporis*. Secondly, Sir Percy Spender viewed it as setting a term to the period in which a good root of title has been perfected.³⁵

This case came before the International Court of Justice as a result of Portugal's invocation of the Court's obligatory jurisdiction under Article 36 (2) of its Statute (more frequently but less accurately called the Court's "compulsory" jurisdiction). Portugal complained that, contrary to her international obligations, India prevented the passage, in July and August 1954, of Portuguese police and troops across Indian territory from the Portuguese coastal territory to her inland enclaves of Dadra and Naga-Aveli to quell violence which had broken out there. Portugal contended that she possessed a right of passage across Indian territory which had become firmly consolidated by long usage in conformity with customary international law. She also claimed that these rights had been embodied in Article XVIII of the Anglo-Portuguese Treaty of Commerce and Extradition of December 26, 1878. India, in her Sixth Preliminary Objection to the Court's jurisdiction, argued that since the dispute arose before February 5, 1930, it was excluded from the Court's jurisdiction by reason of India's reservation limiting her adherence to the Optional Clause to "disputes arising after February 5, 1930, with regard to situations or facts subsequent to that date." This was a contention involving the critical date from the jurisdictional point of view. Portugal argued, against India's Preliminary Objection, that the critical date for determining when the dispute crystallised was when the parties took up their legal positions over the facts in issue. This was, so Portugal argued, in July 1954. For it was then that the Indian Government refused passage to Portuguese munitions, police and troops to maintain

³³ See citations in notes 16 and 17 *supra*, and see the discussion in the text to which they relate.

³⁴ *Case concerning the Right of Passage over Indian Territory (Merits)*, Judgment of April 12, 1960: (1960) *I.C.J. Reports* 6.

³⁵ (1960) *I.C.J. Reports* 6, 97, and note especially his statements at 100. and 108-110.

Portuguese rights in the enclaves. India's denial of passage crystallised the dispute and indicated the critical date as being the point of time when their rights of passage were asserted and denied. The Court upheld the Portuguese argument and rejected India's Sixth Preliminary Objection. Applying the formula of the *Electricity Company of Sofia and Bulgaria Case*³⁶ the Court held that the issue of fixing the critical date, for the purpose of excluding jurisdiction, should be made dependent upon the "real cause of the dispute" and those facts "which must be considered as being the source of the dispute."³⁷

The majority's reason for determining that the critical date, for jurisdictional purposes, should be July 1954, was:

"Up to 1954 the situation of those territories may have given rise to a few minor incidents, but passage had been effected without any controversy as to the title under which it was effected. It was only in 1954 that such a controversy arose and the dispute relates both to the existence of a right of passage to go into the enclaved territories and to India's failure to comply with obligations which according to Portugal, were binding upon it in this connection. It was from all this that the dispute referred to the Court arose; it is with regard to all of this that the dispute exists. This whole, whatever may have been the earlier origin of one of its parts, came into existence only after February 5, 1930. The time condition to which acceptance of the jurisdiction of the Court was made subject by the Declaration of India is therefore complied with."³⁸

The jurisdictional issue was not the only matter in dispute between the parties raising a question of time.³⁹ India also disputed that a right of passage over her territory ever accrued to Portugal. In this regard the majority found that whilst Portugal did enjoy "a right of passage over the intervening Indian territory between coastal Daman and the enclaves and between the enclaves in respect of private persons, civil officials and goods in general," she had no right of passage as regards armed forces, armed police and arms and ammunition.⁴⁰ In so deciding the Court viewed the 1878 Treaty as

³⁶ (1939) P.C.I.J. Series A/B No. 77 at 82-83; see also (1960) *I.C.J. Reports* 6, 35. In the *Electricity Company Case* the Court made an important distinction (at 82) between "... the source of the rights claimed by the Belgian company . . . and . . . the acts complained of." And the Court continued:

"It is not enough to say, as it is contended by the Bulgarian Government, that had it not been for these awards, the dispute would not have arisen . . . A situation or fact in regard to which a dispute is said to have arisen must be the real cause of that dispute."

³⁷ (1960) *I.C.J. Reports* 6, 35.

³⁸ *Ibid.*, at 35.

³⁹ *Ibid.*, at 40, 44.

⁴⁰ *Ibid.*, at 43.

the watershed of Portugal's claims. As a result of Article XVIII the difference in rights with regard to civilians and military personnel and goods became settled and Portugal's limited rights depended upon distinction between the civilian and military categories. As far as the crystallisation of Portugal's rights of passage are concerned the 1878 Treaty provided the critical date—namely the date of its coming into force in 1879.

Whilst agreeing with the majority that by 1954 Portugal had acquired "by local custom a right of passage to the extent necessary for the exercise of . . . sovereignty over the enclaves," Sir Percy Spender dissenting from the majority's limited categories of personnel and goods which could benefit from Portugal's right of passage.⁴¹ In connection with the critical date in this case he regarded the 1878 Treaty as the crystallising agent of Portugal's rights. In reaching this decision Sir Percy made a thorough examination of the history of Portugal's claim from the Treaty of Punem, in 1779, and the implementing *Sanads* of 1783 and 1785 to the events of 1954, and for this purpose divided the period into four major epochs or stages: (i) 1779–1818, the time of the Maratha Empire during which the Portuguese legal position was perhaps precarious. However, within this epoch he saw a turning point, from the Portuguese point of view, in 1814, after which the rights in question appeared to be "reasonably entrenched"⁴²; (ii) 1818–79: prior to the Treaty between Portugal and Great Britain, which came into force in 1879, with respect to the rights of passage Sir Percy found, as a fact, that:

" . . . it was not the practice to seek prior permission of the British before any passage of armed forces or armed police or arms and ammunition, nor was it necessary to do so."⁴³

(iii) 1879–1947: after 1879 the situation was governed by Article XVIII of the Treaty which required a request for permission "in consonance with past practices."⁴⁴ Sir Percy took the view that these words, together with the reference to "reciprocity" in the Treaty, incorporated the situation and rights anterior to 1879, the total effect of which:

"naturally made it unnecessary for a formal request to be made and permission to be granted on each occasion of entry."⁴⁵

This formulation, in Sir Percy's view, crystallised Portugal's

⁴¹ *Ibid.*, at 97.

⁴² *Ibid.*, at 98.

⁴³ *Ibid.*, at 104.

⁴⁴ *Ibid.*, at 105.

⁴⁵ *Ibid.*, at 106. Italics in the Report.

rights and furnished her with the root of title upon which the rest of her claims could properly be based.

(iv) 1947 to July 1954: India's conduct remained unchanged during this period. This constituted, in Sir Percy's view, a recognition by the successor's conduct of the consolidation of the rights claimed during the periods anterior to independence. These rights, clearly having become crystallised prior to the events of July-August 1954, could not be dislodged in customary law, by such subsequent activities. He said:

"In my opinion the record establishes a practice during the British and post-British periods, accepted as law by the Parties, to allow the passage of armed forces, armed police, and arms and ammunition . . . to the extent necessary in the exercise of Portuguese sovereignty over the enclave."⁴⁶

IV

The discussion of the foregoing cases shows one development of the critical date doctrine. It is more than a rule excluding evidence in a dispute before an international tribunal, and more than a rule whereby the jurisdiction of the tribunal itself may be successfully objected to. It is a rule which sets a term to the span of time during which, in a given case, right-creating facts can be availed of in order to perfect a title. This aspect of the doctrine is connected with Professor de Visscher's concept of "consolidation by historic title."⁴⁷ This was brought out in the *Fisheries Case*,⁴⁸ especially where the International Court of Justice said:

"From the standpoint of international law, it is now necessary to consider whether the application of the Norwegian system encountered any opposition from foreign States.

"Norway has been in a position to argue without any contradiction that neither the promulgation of her delimitation Decrees in 1869 and in 1889 nor their application gave rise to any opposition on the part of foreign States. Since moreover, these Decrees constitute, as has been shown above, the application of a well-defined and uniform system, it is indeed this system itself which would reap the benefit of general toleration, the basis of an historical consolidation which would make it enforceable as against all States. . . . The notoriety of the facts, the general toleration of the international community, Great Britain's position in the North Sea, her own interest in the

⁴⁶ *Ibid.*, at 110.

⁴⁷ De Visscher, pp. 200-201, 215, 217.

⁴⁸ (1951) *I.C.J. Reports* 116.

question, and her prolonged abstention would in any case warrant Norway's enforcement of her system against the United Kingdom."⁴⁹

As Professor D. H. N. Johnson has pointed out, this concept of consolidation may be used to show a good root of title to territory.⁵⁰ It is submitted, however, that before it can become an effective means of showing a good root of title it requires further development and specificity in application. So far it seems capable, as for example in the *Fisheries Case*, of doing no more than providing an apparent *post hoc* justification to a decision which might otherwise be exceptionable.⁵¹ How may a State utilise the doctrine to justify a claim, or to defend an exercise of jurisdiction? Unless there is some means, either qualitatively or quantitatively, of setting a term to the period of consolidation, it remains a broken reed to those who would put their trust in it, for it must lack certainty and specificity of application. This weakness arises from the fact that neither the International Court of Justice, nor Professors de Visscher and Johnson, have proposed any means of indicating when a given historic title may be said to have become consolidated.

On the other hand, the uses to which Judge Basdevant and Sir Percy Spender put the critical date doctrine in the *Minquiers and Ecrehos* and *Rights of Passage Cases* respectively demonstrate the utility of that doctrine in giving a hard cutting edge to the consolidation of historic titles. The convergence of separate activities, which is inherent in the notion of the critical date as discussed in the preceding paragraphs, provides the means of determining the period over which the claimant may be said to have consolidated its sovereignty, or failed in the enterprise. The argument here is that since general international law sets no fixed period for the consolidation or perfection of titles, the relevant aspect of the critical date doctrine provides a functional terminating point to a period over which a State may consolidate or perfect its title to a disputed territory or to a right similar to an easement or servitude. It does not follow from this, however, that the decision of whether a good root of title has come into being lies in the Court's discretion. The critical date doctrine comes into operation when a catalytic event which, converging as it were with a series of acts constituting a State's inchoate relation to a territory, crystallises that relation and

⁴⁹ *Ibid.*, at 130.

⁵⁰ D. H. N. Johnson, "Consolidation as a Root of Title in International Law" (1955) *Cambridge Law Journal* 214 (hereinafter referred to as Johnson, "Consolidation").

⁵¹ See, e.g., C. M. H. Waldock, "The Anglo-Norwegian Fisheries Case" (1951) 28 *British Year Book of International Law* 114, 117-124, 159-166.

presents it for a decision as to whether the acts in question have consolidated the title claimed, or have failed.

Examples of this convergence, operating with a catalytic effect to terminate a period of indeterminate activity either in favour of the claimant, or against it, may be found in each of the cases discussed in the foregoing paragraphs. Thus the Treaty of Paris, 1898, operated to terminate any possible inchoate claims that Spain, or her successor in title, may have had in the *Palmas Island Case* and derivable from the discoveries in the sixteenth century. Similarly, because the Norwegian Proclamation of sovereignty over Eastern Greenland^{51a} was effective to give a fixed and certain definition to the issues of the dispute between Denmark and Norway, and crystallise the formulae of each of the parties' claims in the *Status of Eastern Greenland Case*, that Proclamation's date, July 10, 1931, provided the critical date of the dispute. Again Judge Basdevant's Opinion in the *Minquiers and Ecrehos Case* illustrates this point. There the Treaty of Brétigny, it is submitted, had the effect of settling the partition of Normandy between England and France and so provided the critical date. Finally the Treaty of 1878 crystallised the relations of the sovereigns of India and Goa respectively in the *Rights of Passage Case*. In reconciliation, on the level of legal principles, of the majority's decision and Sir Percy Spender's dissent, it is submitted that once the view of the critical date proposed in this paper is accepted, the difference between the majority and Sir Percy Spender becomes limited to the factual issue of whether the Treaty merely reflected no more than a practice of accommodation on the part of the sovereign of the neighbouring territories or whether it granted vested rights.

To summarise the position so far three separate uses of the critical date have been identified. The first is the traditional and evidentiary notion of the critical date. The critical date is seen, in this context, as preventing window dressing. It comes about when the parties define their positions in the dispute so as to make it an object of litigation. The second use of the term is relevant in cases where a State seeks to exclude the International Court of Justice's jurisdiction on the ground that the dispute in question arose before the time agreed or allowed in its adhesion to the Optional Clause. An example of this is provided by India's Fifth Preliminary Objection, and the Court's views thereon, in the *Rights of Passage Case*. In this context too the touchstone for determining the critical date is "the crystallisation of the dispute." The third use is independent of procedural considerations. It is unnecessary, furthermore,

^{51a} See note 24a *supra*.

to apply such vague criteria as "the crystallisation of the dispute," or "the point of time when the parties rested on their legal rights." This use of the critical date refers to its function in closing the period of a State's consolidation of an historic title, or its failure to effectuate a consolidation.

V

The critical date doctrine is met with most frequently in connection with territorial disputes, with claims based on occupation, acquisitive prescription, and consolidation of historic title. It will now be submitted, however, that this doctrine is not necessarily restricted to territorial issues. It is a legal doctrine used to designate that point of time after which no acts of the parties can validly affect the legal situation in an international dispute. It may be invoked to exclude "colourable" and "window-dressing" acts on the one hand, and on the other, to indicate and condemn laches. For the critical date doctrine is applicable, without doing violence to its traditional connotations, to all issues in public international law which arise from changes in legal relations which exhibit the following qualities: (1) when they may be regarded as arising from claims and rights which exhibit close analogies with claims or rights *in rem* in municipal law; (2) when they relate to changes which occur over, or arise from, the lapse of time when the lapse of time itself is a determining factor in the case; and (3) when their outcome is dependent upon the decisions of an appropriate court as to the selection of one, or perhaps several,⁵² points of time as operative in the case.

A number of cases will now be examined in terms of the critical date doctrine outlined in these pages. The critical date was not applied by the courts which decided the cases in question. Therefore the reassessment which follows will constitute an attempt to evaluate the utility of the doctrine as an additional concept in the elucidation of legal problems. The cases to be studied are the *Nottebohm Case*,⁵³ decided by the International Court of Justice, and the *Flegenheimer Case*⁵⁴ decided by the United States-Italy

⁵² On the possibility of several critical dates occurring in the same case, where complexity calls for different points of time being selected for different aspects of the case, see Fitzmaurice, "Substantive Law, Part II," 30, 38-39 and 43.

⁵³ *Nottebohm Case (Second Phase) Judgment of April 6, 1955: (1955) I.C.J. Reports 4.*

⁵⁴ *U.S.A., ex rel. Flegenheimer v. The Italian Republic, Italian-United States Conciliation Commission*, September 20, 1958, Case No. 20, 1958 (hereinafter referred to as *Flegenheimer*). In the citations to this case which follow, the numbers appearing in the margin of the Report will first be given and then the page numbers of the copy of the report of this case held at the Library of Harvard Law School (call number 76g/15422.3). This case has been summarised → 959) 53 *American Journal of International Law* 944.

Conciliation Commission. It is submitted, further, that the critical date is helpful in understanding complex problems of recognition. Accordingly *Gdynia Ameryka Linie v. Boguslawski*,⁵⁵ *Civil Air Transport Incorporated v. Central Air Transport*,⁵⁶ and *In the Estate of Pikelny*⁵⁷ will also be examined.

(i) *The Nottebohm Case*

The *Nottebohm Case* provides an example of the critical nature of the time element in determining the relationships of the parties to the litigation. What was determinative in this case was the selection of the time period during which F. Nottebohm was regarded as having been required to have established the real and substantial link (the social fact underlying the formal legal fact of his Liechtensteinian naturalisation) as a selected and therefore requisite point of time. Upon this issue Liechtenstein's title to espouse Nottebohm's claim depended. Indeed, it is the submission here that despite the silence of the judgment the case exhibits two points: (1) in cases such as this the individual is as much an object of international law as territory, and the outcome of disputes between States as to the status of individuals is as dependent on the choice of the critical date as the outcome of territorial disputes may be dependent on that choice; and (2) what is the crucial fact in all such cases is the act of characterisation either made or accepted by the international tribunal and as creating a title to espouse the individual's claim as at a given point of time. The facts of this case may now be outlined.

F. Nottebohm was born in Hamburg on September 16, 1881. In 1905, he left Germany for Guatemala, making that country the place of his domicile, and the headquarters of his business affairs, which included control of Nottebohm Hermanos. This firm was, in part, an agent for Nottebohm Brothers of Hamburg. In addition, he carried on banking, importing and exporting, planting and farming activities. Between 1905 and 1939, he made brief visits to Germany on business and to other countries for holidays. These included, since 1931, Liechtenstein, where one of his brothers lived. His "fixed abode"⁵⁸ remained Guatemalan, while his nationality equally remained German. In March 1939 he left Guatemala for Hamburg after granting a power of attorney over his interests there to the firm of Nottebohm Hermanos. During 1939, it appears that

⁵⁵ [1953] A.C. 11. And see also *Guaranty Trust Co. v. United States*, 304 U.S. 126 (1938).

⁵⁶ [1953] A.C. 70.

⁵⁷ *The Times*, June 30, July 1, 1955. Case note by A. B. Lyons. "The Case of Fieval Pikelny," (1955-56) 32 *British Year Book of International Law* 288.

⁵⁸ (1955) *I.C.J. Reports* 4, 13.

he paid a few brief visits to Liechtenstein. Approximately a month after the outbreak of the Second World War he was briefly in Vaduz where, on October 9, 1939, he applied for Liechtensteinian naturalisation. After paying considerable sums of money⁵⁹ he quickly became a naturalised subject of Liechtenstein's Reigning Prince. On October 20, 1939, Mr. Nottebohm swore allegiance and was issued with a certificate vouching his new nationality. This stated that he had been naturalised by Supreme Resolution of the Reigning Prince dated October 13, 1939. Having obtained a Liechtenstein passport he had it visaed by the Guatemalan Consul General in Zurich on December 1, 1939. At the beginning of 1940 he returned to Guatemala as a Liechtenstein subject rather than as a German national, for, by operation of the German Nationality Law of 1913, his Liechtenstein naturalisation divested him of his German nationality.

After returning to Guatemala Mr. Nottebohm consistently held himself out to be a subject of Liechtenstein's Reigning Prince. But on October 19, 1943, in spite of Liechtenstein's neutrality in the Second World War, he was arrested by the Guatemalan authorities who handed him over to the United States forces, with the result that he was interned in North Dakota for some two years and two months. During this period numerous proceedings⁶⁰ were launched against him in Guatemala on the basis of his enemy character. The purpose of this complex litigation was to divest him of his properties there. On his return from internment he applied for a visa to return to Guatemala to protect his properties; but the authorities of that country refused him this privilege. Thereafter he went to Liechtenstein where he established his permanent home. Liechtenstein⁶¹ acting as his sovereign protector in international law thereupon espoused his claims against Guatemala. On December 17, 1951, the Government of the Principality filed an application under Article 36 (2) (the Optional Clause) of the Court's Statute alleging

⁵⁹ 25,000 Swiss francs to the Commune of Mauren which had accepted him for citizenship, 12,500 Swiss francs to the State, together with an undertaking to pay 1,000 Swiss francs per annum as a "naturalisation tax." Finally he undertook to deposit, as security for the payment of the tax, the sum of 30,000 Swiss francs, see (1955) *I.C.J. Reports* 4, 15.

⁶⁰ In 1944 the Government of Guatemala launched some 57 legal proceedings against his properties within its jurisdiction. They were designed to expropriate him of all his holdings in Guatemala, whether moveable or immoveable. This litigation involved, altogether, "more than 171 appeals of various kinds": *per* Justice Read. (1955) *I.C.J. Reports* 4, 34.

⁶¹ It is interesting to speculate on the *locus standi* of Liechtenstein apart from the question of whether in this case Liechtenstein had a valid interest sufficient to form the subject matter of the claim. Is Liechtenstein really a State in the sense of being a member of the Family of Nations?

that the Government of Guatemala, by refusing to permit F. Nottebohm to enter the country and defend his interests there, was in breach of her international obligations.

In her submissions of March 7, 1955, Guatemala invited the Court to declare Liechtenstein's claim to be inadmissible on the ground that Mr. Nottebohm's naturalisation was invalid. Finding that the "bond of attachment" between Nottebohm and the country of his adoption was insufficient to support Liechtenstein's standing to espouse his claim, the Court upheld Guatemala's plea in bar. It said:

"According to the practice of States, to arbitral and judicial decisions and to the opinions of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties."⁶²

Although the question of time was not expressly mentioned by the majority, it is submitted that the relation of the time of Mr. Nottebohm's naturalisation, and of his making his permanent home in Vaduz, to the time of Liechtenstein's espousal of his claim is of the utmost importance. Indeed the whole question of whether "a genuine connection of existence" had come into being can be made dependent upon the question of time. Taking the view that a sufficient "bond . . . of attachment," a "genuine connection of existence," or a "real and substantial link"⁶³ between Liechtenstein and Nottebohm had not been established by the time F. Nottebohm received his certificate of nationality, the International Court of Justice held that Liechtenstein had no power to espouse his claim.

Judges Klaestad, Read and Guggenheim registered powerful dissents. Among the reasons for Klaestad's and Read's dissents from the majority's view were arguments to the effect that even if the requirement of a bond of attachment between national and nation could validly be demanded, the *Nottebohm Case* was still wrongly decided on the facts. These arguments may be paraphrased as follows: F. Nottebohm did indeed establish the facts of attachment and assimilation required by the real link theory. By the time Liechtenstein espoused his claim before the Court he had been a citizen of that country for over ten years, and by then Vaduz had become his permanent home and the centre of his fortune for over five years. His continuous and lengthy period

⁶² (1955) *I.C.J. Reports* 4, 23.

⁶³ For the use of the phrase "real and substantial link" see (1955) *I.C.J. Reports* 4, 24.

of residence in Vaduz after his arrival there on May 6, 1946, and before the commencement of the present proceedings satisfied whatever requirements of a bond of attachment there may be.⁶⁴ One objection to this argument may be raised to the effect that an individual usually complies with the requirements of residence and assimilation before, not after, his naturalisation. But as the majority said,⁶⁵ this case was not so much concerned with naturalisation as diplomatic protection. Indeed it was only concerned with the former in so far as it gave title to exercise the latter.⁶⁶ If this is so then perhaps an argument can be made out to the effect that the Court should not have been so concerned with the relations between Nottebohm and Liechtenstein at the time of the naturalisation in October 1939, as with those relations after the commencement of the divesting proceedings in Guatemala against Nottebohm. By that time a "genuine connection of existence" between the individual and the country of his adoption had come into being. But is that point of time significant to an analysis of the *Nottebohm Case*? This question invites the extension of the critical date doctrine to this case.

October 7, 1938, was the date retrospectively set by Guatemala's Decree Law No. 689 of October 31, 1949, Article 3 (a), for determining enemy status. By its terms the national status of an individual of Axis nationality remained with him for the duration of the Second World War. No subsequent naturalisation, even though it occurred before Guatemala's entry into that war, was effective to shed the status of an alien enemy. It is submitted, however, that, notwithstanding the domestic validity of this law, it was ineffective to determine status in international law. Enemy status is dependent on facts which can only be determined after the outbreak of war. It was the outbreak of the Second World War as a fact in international relations, and not as defined in Guatemalan law, which

⁶⁴ See (1955) *I.C.J. Reports* 4, Judge Klaestad at 31, Judge Read at 44-45. In particular note Judge Read's statement "out of the fifteen and a half years which have elapsed since naturalisation Mr. Nottebohm has spent less than four years in Guatemala, more than two in the United States and nine in Vaduz." Professor Kunz makes this point perhaps even more strongly in his article "The Nottebohm Judgment," (1960) 54 *American Journal of International Law* 536, 566, where he writes:

"Under its novel doctrine the *Nottebohm* judgment declared the application of Liechtenstein inadmissible at a time when Nottebohm had been a Liechtenstein national for sixteen years and had had his permanent domicile in Liechtenstein for nine years. As there is no other State in the world that could exercise diplomatic protection on behalf of Nottebohm, the latter, for all practical purposes, has been rendered stateless. . . . That cannot be a proper administration of justice."

⁶⁵ (1955) *I.C.J. Reports* 4, 21. See also Judge Klaestad, dissenting, 30; Judge Read, dissenting, 46; and Judge *ad hoc* Guggenheim, 53, 59 and 60.

⁶⁶ (1955) *I.C.J. Reports* 4, 17 and 20.

determined Nottebohm's status. Although by decree the Guatemalan Government made October 7, 1938, the critical date for the operation of Guatemalan enemy property legislation, it could not thereby be created the critical date of the dispute between Liechtenstein and Guatemala. The issue between these two States crystallised around two facts: Nottebohm's enemy status under the laws of Guatemala, the expropriations launched against him, and Guatemala's refusal to permit his return. These events may be given the formal commencing date of February 1946, the date when Mr. Nottebohm was refused permission to return to Guatemala and defend his properties there.⁶⁷ This was the date, furthermore, upon which the operative facts in the dispute—namely the treatment of Nottebohm as an enemy, his expropriation, and the refusal to permit him to return and “exhaust local remedies”—all converge. It is therefore the date upon which the issues of the dispute crystallise. On the other hand, Mr. Nottebohm's relationship with the country of his adoption had not sufficiently developed to establish a real and substantial link evidencing the “social fact” of his nationality by this time. And surely it would be absurd to contend that the real and substantial link, upon which Liechtenstein's standing to espouse the claim depended, could be permitted to come into existence after the cause of action crystallised. To permit this would be to stultify the Court's policy of preventing opportunities of window-dressing.

One further point remains. Critics may well argue that Mr. Nottebohm's continuous residence in Liechtenstein after early 1946 should be treated as a “subsequent fact” throwing light on and elucidating his naturalisation in 1939. It might even be argued that he would have earlier filled out the skeleton of his bare naturalisation with the flesh of residence and the blood of loyalty had he not been prevented from doing so by the exigencies of war. It might then be argued that his residence in Liechtenstein after 1945 was significant of an earlier intention, and that already in 1941, far from his new nationality being one of convenience, it was already sustained by an incipient real and substantial link.⁶⁸

No matter how attractive an argument based on subsequent facts establishing the existence of a real and substantial link may be, it is, in fact, unacceptable. Since it was only after the Guatemalan authorities had rejected Nottebohm's application that he journeyed to Liechtenstein, the subsequent facts in this case would not reflect a continuing and developing state of affairs from his naturalisation to the full development of a national status

⁶⁷ See note 64 *supra*.

⁶⁸ (1955) *I.C.J. Reports*, 4, 25, 31, 34-35 and 45

complete with a real and substantial link. They would, if regarded as significant, clearly show that a great change and a new departure occurred in Mr. Nottebohm's life in the first half of 1946. This had been induced by Guatemala's refusal to receive him back. Thus the point of convergence in this case came about when Mr. Nottebohm's characterisation by Liechtenstein as a national and by Guatemala as an enemy first became operative on the facts in dispute (*i.e.*, Guatemala's sequestrations of Nottebohm's properties, and its refusal to grant him permission to return and vindicate his claims). This refusal crystallised and defined the relations of the parties. As it occurred in February 1946 it presents that date as the critical date of the *Nottebohm Case*.

The extension of the critical date doctrine does not give an affirmative answer to the question posed earlier as to whether Nottebohm's nationality, as it stood at the time of the sequestrations, should provide the basis of Liechtenstein's standing to espouse his claim rather than his naturalisation in October 1939. By extending the doctrine to the *Nottebohm Case* Liechtenstein's claim to espouse F. Nottebohm may be seen as containing a flaw which was fatal. At the point of time when the possibility of a claim could have been said to have crystallised, the real and substantial link, if it existed at all as a social fact, was of such an extremely tenuous order that it failed to satisfy the requirements of international law.⁶⁵ The fact that F. Nottebohm subsequently lived in Vaduz was no more meaningful than the fact that he had nowhere else to go. Anything further which may be sought to be made of the fact soon may take on the colour of a window-dressing manoeuvre.

(ii) *The Flegenheimer Case*

Albert Flegenheimer's father, Samuel Flegenheimer, had become a naturalised United States citizen in 1873, that is, before Albert's birth in Germany in 1890. But Samuel had returned to Germany from America in 1874. In 1894 he became naturalised in Wurttemberg. This German naturalisation specifically included Albert, along with his mother and brothers. Samuel did not at any

⁶⁵ The views of the Second Committee of the United Nations Conference on the Law of the Sea at Geneva as to the relations of time to the formation of a genuine link—its critical date as it were—are instructive, for example: "Mr. Brauer (Federal Republic of Germany) agreed that the need for a genuine link between the ship and the State whose flag it was flying was an accepted principle of the law of nations. A further important point, however, was that the existence of the link must *not* be a *fiction created after registration* but something to be established *before the ship was ever registrable . . .*" (italics supplied). 4 U.N. Conference on the Law of Sea, 1958, *Official Records* 2d Committee 61 (A/Conf. 13/40) (1958).

time after his return to Germany seek to establish any of the rights and privileges of an American citizen. Nor did Albert seek before 1933 to establish American citizenship for himself. However, he did so after that date, and in 1952 he finally received a certificate of nationality.⁷⁰

After the Italian Peace Treaty had been ratified by the United States,⁷¹ Albert Flegenheimer, purporting to exercise rights granted by Article 78 (3), brought a suit before the Conciliation Commission established under the Treaty. He claimed compensation for the losses he had sustained as a result of the 1938 Italian anti-Semitic legislation. His action failed on the preliminary issue of the United States standing to espouse his claim. The Commission declared that "if it is correct that a body established by States cannot freely interpret municipal law" it would "follow the jurisprudence of the International Court of Justice."⁷² However, it did not carry out this laudable intention. Instead it reviewed American domestic nationality law, not as if it were measuring this body of rules against international standards, but as if it were reviewing the grant of Flegenheimer's certificate in the light of domestic standards. For example the Commission said:

"The Commission is of the opinion that, even if only by way of hypothesis the jurisprudence developed by the Supreme Court in the *Perkins v. Elg* case were it to apply, he lost his American nationality before the repeal of the [Wurtemberg Bancroft] Treaty."⁷³

In conceiving its function in this way the Commission was contradicting its earlier proposition with respect to the fact that it could not "freely interpret municipal law." Secondly, the Commission maintained that if it had a power to investigate Flegenheimer's certificate of his nationality by birth because "no American judgment of naturalisation has been introduced during

⁷⁰ On February 24, 1942, the United States Immigration and Naturalisation Service ordered that Flegenheimer be given the status of an American national, *Flegenheimer* 17, p. 13. In May 1946 the State Department refused to grant him a passport to travel to Europe, but this was granted in October 1946: *Flegenheimer* 18, p. 13. "Despite a negative finding by the examining officer, the Acting Assistant Commissioner, Inspection and Examination Division, found him to be an American citizen, and caused the certificate of nationality to be issued to him July 10, 1952" (→ 959) 53 *American Journal of International Law* 944, 945. See *Flegenheimer* 19-20, pp. 13-15.

⁷¹ *Treaty of Peace with Italy*, 1947, United States Department of State, *Treaties and other International Acts Series* 1631-1650, No. 1648. This Treaty came into force September 15, 1947.

⁷² *Flegenheimer* 33, pp. 35-36.

⁷³ *Flegenheimer* 57, p. 86.

these proceedings but a mere administrative statement."⁷⁴ Presumably it would not have looked behind a judgment in the same way it looked behind Flegenheimer's certificate. Such a position is in error since a certificate such as that granted to Flegenheimer has the same probative value as a judgment of naturalisation.⁷⁵

Hans Goldschmidt has convincingly argued that the Commission erred in its evaluation of the domestic law which it did apply. He said, with respect to its scepticism of Flegenheimer's professed ignorance of his citizenship rights:

"In retrospect the Commission's ill-fated 'expedition' into American domestic law failed to measure up to the exacting standards applied by American courts in matters affecting nationality. The Commission generally overlooked the crucial fact that the burden of proof upon who alleges expropriation and loss of citizenship is indeed a 'heavy one.'⁷⁶

Goldschmidt, upon reviewing the Flegenheimer case in detail concluded that the Commission did not discharge this "heavy burden."⁷⁷

⁷⁴ (1959) 53 *American Journal of International Law* 944, 947; *Flegenheimer* 35 p. 38.

⁷⁵ *Johannessen v. United States*, 225 U.S. 227, 236 (1912); *Mutual Benefit Life Inc. Co. v. Staten Island Shipbuilding Co.*, 272 N.Y. 140 (1936). And see, for the law on this point since 1952, Immigration and Nationality Act of 1952, Ch. 2, s. 332 (e), 66 Stat. 253, 8 U.S.C. s. 1443 (1958) which is as follows: "A certificate of naturalisation or of citizenship issued by the Attorney-General under the authority of this sub-chapter shall have the same effect in all courts, tribunals and public offices in the United States, at home and abroad, of the District of Columbia, and of each State, Territory and outlying possession of the United States, as a certificate of naturalisation or of citizenship issued by the court having naturalisation jurisdiction."

Finally, it should be noted that the Commission's distinction between a "judgment of naturalisation" and an "administrative statement" does not exist in American law. See Opinion of the Attorney-General of January 19, 1960, on the *Flegenheimer Case*, 41 App. Atty. Gen. No. 70 (1960). See also Goldschmidt (*infra* note 76) at 721.

⁷⁶ In "Recent Applications of Domestic Nationality Laws by International Tribunals" (hereinafter referred to as "Goldschmidt") (1959-60) 28 *Fordham Law Review* 689, 735. The quotation of the words "heavy one" within the above extract is from *Lehman v. Acheson*, 206 F. 2d, 592, 598 (1953).

⁷⁷ Goldschmidt 735. Generally for a most persuasive argument regarding the Commission's misapplication of the doctrine that municipal laws only provide a question of fact before an international tribunal, see Goldschmidt 714-715 and 735. It is interesting to note that the Commission approached and examined the *Bancroft Treaties* from the standpoint of its evaluation of Flegenheimer's domestic American rights, rather than from the standpoint of studying the relevance of those treaties to the international issue of the United States' standing to espouse Flegenheimer's claim before it: see *Flegenheimer* 48-57, pp. 67-86. See, furthermore, Goldschmidt at 720-735 when he criticises both the Commission's interpretation of the *Bancroft Treaties* as part of the internal law of the United States, and their views of *Perkins v. Elg*. In particular, at 732-33, he points out that the Commission's view of *Perkins v. Elg* "is particularly objectionable" in the light of *Perri v. Dulles*, 206 F. 2d 586 (3d Cir., 1953), in which the Court of Appeals for the Third Circuit took the view that since

Be these criticisms as they may, the Commission found that Flegenheimer's nationality was "non-effective." Since his citizenship was non-effective in international law, he could not be classified under the Treaty as a "United Nations national."⁷⁸ Accordingly, the United States had no standing to espouse his claim against Italy. In addition, the Commission decided that the United States agent failed to establish standing to make a claim on Flegenheimer's behalf under the second paragraph of Article 78 (9), since the American agent was also unable to persuade the Commission that Italy had, at the material times, treated A. Flegenheimer "as enemy." His relationship to the administration of the laws under which he was discriminated against, so it was held, was purely a matter of domestic jurisdiction. It was indistinguishable from, in the eyes of the Commission, the relationship of the Italian Government of the day towards a section of its own nationals.

It is submitted that a decision applying the critical date doctrine to the *Flegenheimer Case*, as a case concerned with the acquisition or loss of nationality, would have provided a more thorough analysis of the problem and saved the Commission from making the questionable assertions which it did make. Furthermore, such an analysis would have established Mr. Flegenheimer's claim by clearly juxtaposing the operative facts in the case. At the outset of such an analysis reference may fruitfully be made to the domestic commission established by the Congress of the United States to disburse compensation under the Alabama Award. This tribunal was accorded jurisdiction to distribute the fund only among American citizens who were citizens at the time of their loss, at the time they made their claims, and at the time of settlement.⁷⁹ Persons who became United States citizens before the award, but subsequently to their injury, were not held to have had a receivable claim. Like so many other principles arising out of the *Alabama*

the United States Supreme Court's decision in *Mandoli v. Acheson*, 344 U.S. 133 (1952), no duty to elect or return existed before the Nationality Act of 1940 (*ibid.*, 591). Thus Flegenheimer was under no duty to disavow his foreign nationality if he desired to retain his United States citizenship. Hence, as Goldschmidt points out (at 735), the "Commission's conclusions . . . should be rejected."

⁷⁸ Article 78, para. 9 (a) reads:

"'United Nations nationals' means individuals who are nationals of any of the United Nations, or corporations or associations organised under the laws of any of the United Nations, at the coming into force of the present treaty, provided that the said individuals, corporations or associations also had this status on September 3, 1943, the date of the Armistice with Italy.

"The term 'United Nations nationals' also includes all individuals, corporations or associations which, under the laws in force in Italy during the war, have been treated as enemy. . . ."

⁷⁹ Moore, 5 *History and Digest of International Arbitrations to which the United States has been a Party* 4652 (1906).

Case, this principle now indicates what has since become customary law. The capacity of a claimant for the purposes of an espousal is determined by his status at the date of his loss as well as his status at the date of the espousal of his resulting claim, and at the time of settlement. This doctrine applies on a basis analogous to the admissibility of facts relating to territorial acquisition. The earliest of these dates is clearly a "critical date" in that the facts of the individual's nationality are "frozen" as of that date if his nationality is non-effective. Therefore, no subsequent change in his personal status can put him in a more favourable position with respect to his claim. For otherwise a person might alter his national status in order to qualify for the distribution of compensation.

Applying Sir Gerald Fitzmaurice's maxim "neither too early nor too late" to the *Flegenheimer Case* two facts stand out clearly. First the status for which Mr. Flegenheimer sought to qualify himself did not exist before the Treaty. It would not, therefore, be possible, in this case, to establish the critical date as the date of the Italian anti-Semitic laws under which the individual suffered the expropriations which formed the basis of his claim. The critical date in the case could not, indeed, exist earlier than September 3, 1943—the date of the Armistice with Italy, and the date indicated in Article 78 (9) (a) as being the date upon which claimants had the status of "United Nations nationals" (which gave them the right to make a claim for compensation against Italy under the Treaty). On the other hand, to set the critical date later would allow individuals to establish claims which they could not have established at the time indicated in the Treaty, and therefore could not be considered as falling within its intendment. As in territorial disputes, however, subsequent facts could properly be admitted as having probative force to elucidate the facts in issue or to throw new light on them. In contrast with the *Nottebohm Case* admission of facts subsequent to the critical date would have been central to the *Flegenheimer Case*. The subsequent grant of the certificate of nationality established Flegenheimer's status, not as of the date of issuance but at the critical date. This issuance then, throws the clearest light on, and compellingly elucidates Flegenheimer's nationality. Although Flegenheimer was not recognised by the United States as one of its citizens on September 3, 1943, yet, when that status was recognised as enuring in him, it was regarded as having been his from his birth. The relevant fact of the issuance of the certificate of nationality in 1952, therefore, was not its date, but that it decisively characterised a continuing state of affairs

antecedent to that, and indeed prior to the critical date of September 3, 1943.

Had the Conciliation Commission applied the critical date doctrine it would have seen the whole case in a different perspective. The doctrine would have effectively provided an answer to the question whether, under the Treaty, the United States had the title to espouse Flegenheimer's claim.

(iii) *Gdynia Ameryka Linie v. Boguslawski*

The broad rule enunciated in *Luther v. Sagor*⁸⁰ asserting the retroactivity of recognition was decisively limited in this case. Early in the Second World War, the Polish Government established itself in London, where it remained until the summer of 1945. It was recognised by the British Government and by other Allied Powers as the Government of Poland and as exercising sovereignty over Polish citizens outside enemy occupied territory. By virtue of a decree made on March 29, 1939, the Polish Government in London enjoyed certain powers over the Polish merchant marine. As a result of the conference at Yalta (in February 1945) it became clear, by the middle of 1945, that the Government of Great Britain would shortly withdraw its recognition from the Polish Government in London and recognise a rival Polish Government established in Lublin. On June 25, 1945, the Polish Government in London held a Cabinet meeting at which it was decided, *inter alia*, that all officers and seamen who were not willing to serve under the Lublin Government should be entitled to leave their ships. At that meeting it was further decided that any officers and men who did so should be entitled to a bonus payment of three months' wages to be paid by the Polish shipping companies. The present case was then brought by an officer and a seaman for the payment of sums claimed to be contractually due to them on the basis of the Polish Government in London's Cabinet decision on June 25, 1945, and upon their leaving their ships. In the alternative they claimed a like sum as damages for breach of agreement. The defendant company denied liability. It argued that the British Government's recognition of the Lublin Government on the midnight of July 5-6, 1945, was, on the authority of *Luther v. Sagor*, retroactive to the formation of the Lublin Government on June 28, 1945. Accordingly, so the argument ran, the acts of the Polish Government in London subsequent to that date were, by virtue of the rule of

⁸⁰ *Aksionairnoye Obschestvo A. M. Luther v. James Sagor & Co.* [1921] 3 K.B. 532 (C.A.).

retroactivity, to be deemed invalid when viewed from a point of time later than the midnight of July 5-6, 1945.

The Foreign Secretary's certificate setting out the facts of the British recognition, illuminates clearly its contingent nature as far as the issue of its retroactivity was concerned. It was as follows:

" 1. Up to and including midnight of July 5-6, 1945, His Majesty's Government in the United Kingdom recognised the Polish Government having its headquarters in London as being the Government of Poland, and as from midnight of July 5-6, 1945, His Majesty's Government in the United Kingdom recognised the Polish Provisional Government of National Unity as the Government of Poland, and as and from that date ceased to recognise the former Polish Government having its headquarters in London as being the Government of Poland.

" 2. On June 29, 1945, the following message to the Prime Minister from the head of the said Polish Provisional Government of National Unity was handed by the Polish Ambassador in Moscow to His Majesty's Ambassador in Moscow:

' I have the honour to notify you that as a result of the understanding reached in Moscow between representatives of the Warsaw Provisional Government and Polish Democratic Leaders invited from Poland and from abroad under the auspices of the Commission of Three set up at the Crimea Conference, the Provisional Polish Government of National Unity was formed this June 28 according to Article 45 of the constitution of the Polish Republic, 1921. The Provisional Government of National Unity has realised in their entirety decisions of the Crimea Conference on the Polish question. At the same time I have the honour, in the name of the Provisional Government of National Unity, to approach His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland with a request for the establishment of diplomatic relations between our nations and for the exchange of representatives with the rank of ambassadors.'

" 3. I am advised that the question of retroactive effect of recognition of a government is a question of law for decision by the courts."⁸¹

The question in the instant case was concerned with how the court should determine the retroactive effect of the recognition of

⁸¹ [1953] A.C. 11, 43 (H.L.(E), 1952).

the Lublin Government as a "question of law." The decision of the Court of Appeal in *Luther v. Sagor* was distinguished. In that case the retroactive effect of the recognition of the Soviet Government operated to validate titles and transactions whose validity was entirely contingent on that recognition. The application of *Luther v. Sagor* for which the defendants argued would have brought about a supervening invalidity and have permitted the repudiation of an obligation which was valid at the time of its creation. Lord Porter, quoting the decision of the United States Supreme Court in *Guaranty Trust Co. v. U.S.*,⁸² held that the retroactivity of recognition only operates to validate the acts of a recognised government. It does not invalidate acts which had previously been valid under British law and in the British courts. In Lord Reid's words it would be a "startling proposition" to assert that, "Because our recognition of the new government must be dated back to the beginning of the twilight period," the "derecognition" of the old must be similarly related back—"with the result that the acts of the Ministers of the old Polish Government . . . must now be held to be invalid and incapable of creating rights. . . ." ⁸³

It should be noted that Lords Porter and Reid ⁸⁴ refused to give *Guaranty Trust Co. v. U.S.* the restricted operation urged by counsel.⁸⁵ It was argued for the appellants that the rule in that case should properly only affect "transactions" which have been "consummated" and, in addition, only those involving "our own nationals."⁸⁶ This limited view of *Guaranty Trust Co. v. U.S.* derived from the fact that counsel saw the case as standing for no more than an exception from, or limitation upon, the rule in *Luther v. Sagor*. The House, on the other hand, saw it as providing a rule of equal standing and independent force. Like all rules concerned with recognition, that prescribing retroactivity in appropriate cases is not sacrosanct. It is merely a rule of

⁸² 308 U.S. 126 (1938). The portion of this judgment quoted by Lord Porter (from 308 U.S. 126 at 140) was as follows:

"The argument . . . ignored the distinction between the effect of our recognition of a foreign Government with respect to its acts within its own territory prior to recognition, and the effect upon previous transactions consummated here between its predecessor and our own nationals. The one operates only to validate to a limited extent acts of a *de facto* Government which, by virtue of the recognition, has become a government *de jure*. But it does not follow that recognition renders of no effect transactions here with a prior recognised Government in conformity to the declared policy of our own Government."

[1953] A.C. 11, 30 (H.L.(E.), 1952). See also Lord Reid's reliance on this case in his speech at [1953] A.C. 11, 43-46 (H.L.(E.), 1952).

⁸³ [1953] A.C. 11, 42 (H.L.(E.), 1952).

⁸⁴ See [1953] A.C. 11 (H.L.(E.), 1952), *per* Lord Porter, 29-31; and *per* Lord Reid, 43-46.

⁸⁵ [1953] A.C. 11, 20 (H.L.(E.), 1952). ⁸⁶ [1953] A.C. 11, 46 (H.L.(E.), 1952).

convenience.⁸⁷ Its function is to fulfil reasonable expectations by securing transactions⁸⁸ not contrary to public policy,⁸⁹ or international law.⁹⁰ Finally, since the validity of the Polish London Government's cabinet decision of June 25 was upheld in the British courts, claims based on the recognition of the Polish Provisional Government of National Unity in Lublin were not. On the basis of the analysis adumbrated above⁹¹ the separate facts independently offered by each of the contending parties in the *Boguslawski* case as being sufficient to characterise the dispute were: (i) by the plaintiffs—the London Polish Government's decision of June 25, 1945, to pay certain gratuities to the officers and seamen of the Polish merchant marine; (ii) by the defendant—the act of recognition by the British Government of the Polish Provisional Government in Lublin at midnight, July 5–6, 1945, (with the implication of the recognition's retroactive effect). The point of convergence was the confrontation of rights claimed as resulting from the recognition of midnight, July 5–6, 1945, and those claimed as flowing from the decision of June 25 respecting the officers' and seamen's disputed claims. This point of convergence, having a temporal element, provides the critical date. Up to that point of time all relevant changes in legal relations were validly receivable—including the cabinet decision which formed the basis of the plaintiffs' claim.

(iv) *Civil Air Transport Incorporated v. Central Air Transport Corporation*

A similar problem came before the Judicial Committee on an appeal from Hongkong in *Civil Air Transport Incorporated v. Central Air Transport Corporation*.⁹² In this case, some forty aircraft at Kai Tak airfield in Hongkong belonging to the Chinese

⁸⁷ Oppenheim's *International Law* (8th ed., Lauterpacht, 1955), p. 150.

⁸⁸ See *Certain German Interests in Polish Upper Silesia Case (Case of the Factory at Chorzow)* at 28–31; observations of Lord Finlay, *ibid.* 84 *et seq.*, see also the Court at 29–31; P.C.L.J. Series A No. 7.

⁸⁹ There are, of course, multitudinous examples of the refusal to recognise a foreign law or to apply it to a case on the ground of public policy, *Somerset's Case*, 20 St.Tr. 1, and see the cases cited in Savigny, *Private International Law* (trans. Guthrie, Edinburgh, 1869) at pp. 41–42. But see *Santos v. Illidge* (1860) 8 C.B.(n.s.) 861, but note dissents both in *Common Pleas* (Willes, Williams and Byles J.J.—6 C.B.(n.s.) 841) and in the Exchequer Chamber (Pollock C.B. and Wightman J.).

⁹⁰ See *e.g.*, *The Rose Mary (Anglo-Iranian Oil Co.) v. Jaffrate* [1953] 1 W.L.R. 246; see also note by H. Lauterpacht, "Public International Law—Foreign Legislation Enacted in Violation of International Law—Effect in England," [1954] C.L.J. 20. And see judgment of Dimock C.J. in *Banco Nacional de Cuba v. Sabbatino*, 307 F. 2d 845 (2d Cir. 1962). For further citations on this point see *infra* notes 97, 98 and 99, and Goldie, "Flags of Convenience," (1963) 12 I.C.L.Q. 989, 1000–1001, note 52 (hereinafter referred to as Goldie, "Flags of Convenience").

⁹¹ See *supra* pp. 1255–1256.

⁹² [1953] A.C. 70 (J.C.P.C. 1952).

Nationalist Government had been sold to an American partnership on December 12, 1949, and prior to Great Britain's recognition of the Central People's Government of the People's Republic of China (*i.e.*, the Communist Government in Peking) as the *de jure* Government at midnight on January 5-6, 1950. Civil Air Transport Incorporated was a successor to the American partnership, and the Central Air Transport Corporation was said to be an organ of the Communist Government in Peking. As the Central Air Transport Corporation refused to deliver the subject aircraft, the present action was brought to obtain enforcement of the sale. The Judicial Committee of the Privy Council held that the property in the aircraft had validly passed and that the sale should be upheld. The subsequent recognition, *de jure*, of the Central People's Government of the People's Republic of China as the Government of China was held not to have affected the previously valid rights.⁹³ Following *Boguslawski's* case the Board held the retroactivity of recognition may operate to render acts of the formerly unrecognised but effective Government valid, but this doctrine does not also retroactively invalidate the acts, determinations and policies of the Government subsequently "derecognised."⁹⁴ Thus in British courts the question of validity may be viewed as being determined by the law recognised on the effective date of the transaction under review.

The Judicial Committee of the Privy Council, the House of Lords, and the Supreme Court of the United States would all appear to be in agreement on the point that the law governing the facts on the critical date is not to be affected by a subsequent recognition, and that the theory of the relation back or retroactivity of recognition may be viewed as being limited by this alternative and incompatible doctrine.⁹⁵

(v) *In the Estate of Pikelny*

Karminski J.'s decision *In the Estate of Pikelny* further

⁹³ [1953] A.C. 70, 91-94 (J.C.P.C. 1952).

⁹⁴ To use a word usefully coined by MacDermott (of counsel) in [1953] A.C. 11, 23, and adopted by Lord Reid at 42 (H.L.(E), 1952).

⁹⁵ John Dickinson summed up the paradoxical situation in these problem areas of the law as: "The broad general principles of law have a significant habit of travelling in pairs of opposites; and we can see why this is and must be so. Each is a general expression of the fact that the law will protect a certain kind of human interest; but the conditions of human life and association being what they are, every such interest if carried beyond a certain point is bound to come into conflict with some other interest or interests which the law protects—and will thus come into conflict with a competing legal principle of equal validity. The question involved in the establishment of every new rule of law specific enough to serve as a rule of decision is always at what point to draw the line between two basic legal principles of opposing tenor," "The Law Behind the Law II," (1929) 29 *Columbia Law Review* 285, 298. See also Cardozo, *The Paradoxes of Legal Science* (1947), pp. 4-5.

illustrates the relevance of the critical date doctrine to cases of recognition. This case arose from an application for letters of administration over Pikelny's estate in England on behalf of the deceased's next-of-kin. The deceased, a domiciled Lithuanian, had, with some 10,000 others, been machine-gunned by the German police on October 28, 1941. In 1940, Lithuania had been invaded and annexed by Russia, and the laws of the Republic of Lithuania were replaced by those of the Soviet Union. By those laws Pikelny's property would have gone to the State. On the other hand, at the time of the deceased's death Germany had invaded Lithuania and the laws of the land were to be found in the German occupation decrees. Despite the fact that subsequently Lithuania was retaken from the Germans by Russia and incorporated into the Soviet Union, despite the fact that this was subsequently recognised by the Government of the United Kingdom, and despite the doctrine of the retroactivity of recognition, Karminski J. gave leave to swear Pikelny's presumed death as on October 28, 1941, and granted letters of administration to the next of kin as indicated by the law of the Lithuanian Republic. The rule of retroactivity of recognition was not applied. The critical date was clearly the date of the deceased's death, namely October 28, 1941. At that point of time English law recognised the law of the Lithuanian Republic as governing. The situation, crystallised as at the critical date, remained unaffected by the subsequent recognition by the United Kingdom of the incorporation of Lithuania into the Soviet Union.

The effect of these cases is to limit the retroactive effect of recognition. Retroactivity in such cases does not come into operation where its effect could be to transfer rights or titles, or to alter the legal consequences of transactions in the recognising State without the operation of its own laws. This would amount to an interposition in the forum by the newly-recognised foreign government or State. If the critical date in these cases is taken as the date of the agreement, transfer of title, or death of a *de cuius*, then the normal effects of recognising the new State or government are excluded by reason of the freezing or crystallising of the transaction in terms of the laws under which they were made. Recognition is not permitted to disturb the facts and events which had become frozen as of that point of time. The policy of securing titles, transactions, and expectations is generally to be preferred to giving effect to the retroactive operation of an act of recognition. But this may not always be the case, as, for example, when, as in *Haile Selassie v. Cable & Wireless, Ltd. (No. 2)*,⁹⁶ there is a

⁹⁶ [1939] Ch. 182, 195 (C.A.).

contest between the proprietary claims of the previously recognised government and those of the subsequently recognised one.

VI

Perhaps some aspects of the arguments in the preceding pages may reflect a superficial resemblance to those concerned with the refusal of recognition to foreign acts of State on the ground that they are contrary to international law,⁹⁷ or the law of that State,⁹⁸ or the public policy of the forum.⁹⁹ On the contrary none of these criteria are relevant in cases where the critical date is effective to dispose of the issues. Its exclusionary function is not in terms of illegality or public policy, but of temporal criteria. It comes into operation when two or more of the right-creating or perfecting facts or concatenations of events converge in a state of conflict or contradiction.¹ A dispute in which such a convergence arises cannot be made an "object of litigation"² until the conflicts or contradictions within it between possible operative or definitive facts are resolved, or one set of these facts is selected as controlling. The critical date doctrine provides a point of time as the touchstone for resolving or selecting the operative facts, and hence for characterising appropriate cases. In this way the doctrine effectively brings the whole legal relation into focus. Once determined upon or manifest, the critical date sets limits to the period within which the definitive facts can be seen as having taken place. This in turn leads to the casting of the issues of the dispute into a concrete form—for example the perfection of titles to territory, or to espouse a claim, or the characterisation of transactions affected by the recognition of new States or governments.

⁹⁷ See, e.g., *Wolff v. Ozholm* (1817) 2 M. & S. 92; *Republic of Peru v. Dreyfus Bros. and Co.* (1883) 38 Ch.D. 348; *Re Fried Krupp* [1917] 2 Ch. 188; *The Rose Mary (Anglo-Iranian Oil Co.) v. Jaffrate* [1953] 1 W.L.R. 246; but see Upjohn J. in *Re Claim by Helbert Wagg & Co., Ltd.* [1956] Ch. 323, 346; but see also *Banco Nacional de Cuba v. Sabbatino*, 307 F. 2d. 845 (2d Cir., 1962).

⁹⁸ *Duke of Brunswick v. King of Hanover* (1848) 2 H.L.Cas. 1, 21; *Re Amand* [1941] 2 K.B. 239; [1942] 1 K.B. 445; *Tallina Laevauhisus A/S v. Estonian State SS. Line* (1947) 80 Ll.L.R. 99, 114; *Shapleigh v. Mier*, 299 U.S. 468 (1937). See for a discussion on this point generally F. A. Mann, "Sacrosanctity of the Foreign Act of State," (1943) 59 L.Q.R. 42, 155.

⁹⁹ See, e.g., Cheshire, *Private International Law* (5th ed., 1957), p. 150; Wharton, *1 Conflict of Laws* (3rd ed., George Parmele, Rochester, N.Y., 1905), s. 4a; Westlake's *Private International Law* (7th ed., Bentwich, London, 1925), p. 51; Wolff, p. 179; Dicey, p. 17; Max Habicht, "The Application of Soviet Laws and the Exception of Public Order," (1927) 21 *American Journal of International Law* 238; Arthur Nussbaum, "Public Policy and the Political Crisis in the Conflict of Laws," (1940) 49 *Yale Law Journal* 1027; Kahn-Freund, "Reflections on Public Policy in the English Conflict of Laws," (1953) 39 *Grotius Society Transactions*. For further materials relevant to this note and to notes 97 and 98 *supra*, see *supra* notes 89 and 90, and see Goldie, "Flags of Convenience," (1963) 12 I.C.L.Q. 989, 1000-1001, note 52.

¹ See note 95 *supra*.

² See note 2 *supra*, and the text to which it relates.

ANNEX 11

		PRINT	SEND MAIL	BOOKMARK
Registration Number	:	31469		
Title	:	Agreement concerning the encouragement and reciprocal protection of investments		
Participant(s)	:	China* Lao People's Democratic Republic		
Submitter	:	China		
Places/dates of conclusion	:	Place	Date	
		Vientiane	31/01/1993	
EIF information	:	1 June 1993		
Authentic texts	:	Lao English Chinese		
Attachments	:			
ICJ information	:			
Depositary	:			
Registration Date	:	China 9 January 1995		
Subject terms	:	Investments		
Agreement type	:	Bilateral		
UNTS Volume Number	:	1849		
Publication format	:	Full		
Certificate Of Registration	:			
Text document (s)	:			
Volume In Pdf	:	v1849.pdf		
Map(s)	:			
Corrigendum/Addendum	:			
Close Window				

ANNEX 12

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CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

Reference: C.N.313.2014.TREATIES-XXVII.7.c (Depositary Notification)

DOHA AMENDMENT TO THE KYOTO PROTOCOL

DOHA, 8 DECEMBER 2012

CHINA: ACCEPTANCE

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

The above action was effected on 2 June 2014, with:

Declaration (Courtesy Translation) (Original: Chinese)

In accordance with the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and the Basic Law of the Macao Special Administrative Region of the People's Republic of China, the Government of the People's Republic of China decides that the above-mentioned Amendment applies to the Hong Kong Special Administrative Region and the Macao Special Administrative Region of the People's Republic of China.

2 June 2014



Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned. Depositary notifications are issued in electronic format only. Depositary notifications are made available to the Permanent Missions to the United Nations in the United Nations Treaty Collection on the Internet at <http://treaties.un.org>, under "Depositary Notifications (CNs)". In addition, the Permanent Missions, as well as other interested individuals, can subscribe to receive depositary notifications by e-mail through the Treaty Section's "Automated Subscription Services", which is also available at <http://treaties.un.org>.

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Reference: C.N.1052.2013.TREATIES-XXVII.15 (Depositary Notification)
Reissued

STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS
STOCKHOLM, 22 MAY 2001

CHINA: RATIFICATION OF AN AMENDMENT TO ANNEX A ¹

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

The above action was effected on 26 December 2013, with:

Declaration (Courtesy Translation) (Original: Chinese)

In accordance with the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and the Basic Law of the Macao Special Administrative Region of the People's Republic of China, the Government of the People's Republic of China decides that the [...] amendments apply to the Hong Kong Special Administrative Region and the Macao Special Administrative Region of the People's Republic of China.

China having made a declaration in accordance with article 25 (4) with respect to amendments to Annex A, B or C ², the amendment to Annex A to the Convention will enter into force for China on **26 March 2014** in accordance with article 22 (4) which reads as follows:

“The proposal, adoption and entry into force of amendments to Annex A, B or C shall be subject to the same procedures as for the proposal, adoption and entry into force of additional annexes to this Convention, except that an amendment to Annexes A, B or C shall not enter into force with respect to any Party that has made a declaration with respect to amendment to those Annexes in accordance with paragraph 4 of Article 25, in which case any such amendment shall enter into force for such a Party on the ninetieth day after the date of deposit with the depositary of its instrument of ratification, acceptance, approval or accession with respect to such amendment.”

14 January 2014



¹ Refer to depositary notification C.N.703.2011.TREATIES-8 of 27 October 2011 (Adoption of an Amendment to Annex A).

² Refer to depositary notification C.N.843.2004.TREATIES-35 of 13 August 2004 (China: Ratification).

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Reference: C.N.1051.2013.TREATIES-XXVII.15 (Depositary Notification)
Reissued

STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS
STOCKHOLM, 22 MAY 2001

CHINA: RATIFICATION OF AMENDMENTS TO ANNEXES A, B AND C¹

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

The above action was effected on 26 December 2013, with:

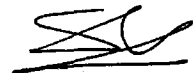
Declaration (Courtesy Translation) (Original: Chinese)

In accordance with the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and the Basic Law of the Macao Special Administrative Region of the People's Republic of China, the Government of the People's Republic of China decides that the [...] amendments apply to the Hong Kong Special Administrative Region and the Macao Special Administrative Region of the People's Republic of China.

China having made a declaration in accordance with article 25 (4) with respect to amendments to Annex A, B or C², the amendments to Annex A, B and C to the Convention will enter into force for China on **26 March 2014** in accordance with article 22 (4) which reads as follows:

“The proposal, adoption and entry into force of amendments to Annex A, B or C shall be subject to the same procedures as for the proposal, adoption and entry into force of additional annexes to this Convention, except that an amendment to Annexes A, B or C shall not enter into force with respect to any Party that has made a declaration with respect to amendment to those Annexes in accordance with paragraph 4 of Article 25, in which case any such amendment shall enter into force for such a Party on the ninetieth day after the date of deposit with the depositary of its instrument of ratification, acceptance, approval or accession with respect to such amendment.”

14 January 2014



¹ Refer to depositary notification C.N.524.2009.TREATIES-4 of 26 august 2009 (Adoption of Amendments to Annexes A, B and C).

² Refer to depositary notification C.N.843.2004.TREATIES-35 of 13 August 2004 (China: Ratification).

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned. Depositary notifications are issued in electronic format only. Depositary notifications are made available to the Permanent Missions to the United Nations in the United Nations Treaty Collection on the Internet at <http://treaties.un.org>, under "Depositary Notifications (CNs)". In addition, the Permanent Missions, as well as other interested individuals, can subscribe to receive depositary notifications by e-mail through the Treaty Section's "Automated Subscription Services", which is also available at <http://treaties.un.org>.

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Reference: C.N.687.2012.TREATIES-XVIII.14 (Depositary Notification)

UNITED NATIONS CONVENTION AGAINST CORRUPTION
NEW YORK, 31 OCTOBER 2003

CHINA: NOTIFICATIONS UNDER ARTICLE 44¹

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

The above action was effected on 30 November 2012.

(Courtesy Translation)

1. The Ministry of Foreign Affairs of the People's Republic of China is designated as the communication authority for cooperation on extradition for the purpose of Article 44 of the Convention.

Address: No. 2 Chao Yang Men Nan Da Jie, Chao Yang District, Beijing, China.

2. With regard to Hong Kong Special Administrative Region, the Secretary for Justice of the Department of Justice of Hong Kong Special Administrative Region is designated as the competent authority for cooperation on surrender of fugitive offenders for the purpose of Article 44 of the Convention.

Address: 47/F High Block, Queensway Government Offices, 66 Queensway, Hong Kong.

3. With Regard to Macao Special Administrative Region, the Office of the Secretary for Administration and Justice of Macao Special Administrative Region is designated as the competent authority for cooperation on surrender of fugitive offenders for the purpose of Article 44 of the Convention.

Address: Sede do Governo da RAEM, Avenida da Praia Grande, Macao.

3 December 2012



¹ Refer to depositary notification C.N.51.2006.TREATIES-3 of 19 January 2006 (Ratification: China).

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned. Depositary notifications are issued in electronic format only. Depositary notifications are made available to the Permanent Missions to the United Nations in the United Nations Treaty Collection on the Internet at <http://treaties.un.org>, under "Depositary Notifications (CNs)". In addition, the Permanent Missions, as well as other interested individuals, can subscribe to receive depositary notifications by e-mail through the Treaty Section's "Automated Subscription Services", which is also available at <http://treaties.un.org>.

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Reference: C.N.686.2012.TREATIES-XVIII.12 (Depositary Notification)

UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED
CRIME

NEW YORK, 15 NOVEMBER 2000

CHINA: NOTIFICATIONS UNDER ARTICLE 16¹

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

The above action was effected on 30 November 2012.

(Courtesy Translation) (Original: Chinese)

1. The Ministry of Foreign Affairs of the People's Republic of China is designated as the communication authority for cooperation on extradition for the purpose of Article 16 of the Convention.

Address: No. 2 Chao Yang Men Nan Da Jie, Chao Yang District, Beijing, China.

2. With regard to Hong Kong Special Administrative Region, the Secretary for Justice of the Department of Justice of Hong Kong Special Administrative Region is designated as the competent authority for cooperation on surrender of fugitive offenders for the purpose of Article 16 of the Convention.

Address: 47/F High Block, Queensway Government Offices, 66 Queensway, Hong Kong.

3. With regard to Macao Special Administrative Region, the Office of the Secretary for Administration and Justice of Macao Special Administrative Region is designated as the competent authority for cooperation on surrender of fugitive offenders for the purpose of Article 16 of the Convention.

Address: Sede do Governo da RAEM, Avenida da Praia Grande, Macao.

3 December 2012



¹ Refer to depositary notification C.N.1258.2003.TREATIES-31 of 31 October 2003 (Ratification: China).

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Reference: C.N.685.2012.TREATIES-VI.19 (Depositary Notification)

UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC
DRUGS AND PSYCHOTROPIC SUBSTANCES

VIENNA, 20 DECEMBER 1988

CHINA: NOTIFICATIONS UNDER ARTICLE 6¹

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

The above action was effected on 30 November 2012.

(Courtesy Translation) (Original: Chinese)

1. The Ministry of Foreign Affairs of the People's Republic of China is designated as the communication authority for cooperation on extradition for the purpose of Article 6 of the Convention.

Address: No. 2 Chao Yang Men Nan Da Jie, Chao Yang District, Beijing, China.

2. With regard to Hong Kong Special Administrative Region, the Secretary for Justice of the Department of Justice of Hong Kong Special Administrative Region is designated as the competent authority for cooperation on surrender of fugitive offenders for the purpose of Article 6 of the Convention.

Address: 47/F High Block, Queensway Government Offices, 66 Queensway, Hong Kong.

3. With regard to Macao Special Administrative Region, the Public Prosecutions Office of Macao Special Administrative Region is designated as the competent authority for cooperation on surrender of fugitive offenders for the purpose of Article 6 of the Convention.

Address: Ala. Carlos Assumpção Dynasty Plaza 7º andar.

3 December 2012



¹ Refer to depositary notification C.N.173.1989.TREATIES-12 of 27 December 1990 (Ratification: China).

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Reference: C.N.271.2011.TREATIES-2 (Depositary Notification)

CARTAGENA PROTOCOL ON BIOSAFETY TO THE CONVENTION ON
BIOLOGICAL DIVERSITY
MONTREAL, 29 JANUARY 2000

CHINA: DECLARATION IN RESPECT OF HONG KONG SPECIAL ADMINISTRATIVE REGION¹

The Secretary-General of the United Nations, acting in his capacity as depositary,
communicates the following:

The above action was effected on 9 May 2011.

(Courtesy Translation) (Original: Chinese)

In accordance with the Basic Law of the Hong Kong Special Administrative Region of the
People's Republic of China, the Government of the People's Republic of China decides that the ...
Protocol appl[ies] to the Hong Kong Special Administrative Region of the People's Republic of China.

16 May 2011



¹ Refer to depositary notification C.N.473.2005.TREATIES-13 of 20 June 2005
(Approval: China).

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<http://treaties.un.org>, under "Depositary Notifications (CNs)". In addition, the Permanent Missions, as well
as other interested individuals, can subscribe to receive depositary notifications by e-mail through the Treaty
Section's "Automated Subscription Services", which is also available at <http://treaties.un.org>.

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Reference: C.N.269.2011.TREATIES-1 (Depositary Notification)

CONVENTION ON BIOLOGICAL DIVERSITY
RIO DE JANEIRO, 5 JUNE 1992

CHINA: DECLARATION IN RESPECT OF HONG KONG SPECIAL ADMINISTRATIVE REGION¹

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

The above action was effected on 9 May 2011.

(Courtesy Translation) (Original: Chinese)

In accordance with the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, the Government of the People's Republic of China decides that the Convention ... appl[ies] to the Hong Kong Special Administrative Region of the People's Republic of China .

16 May 2011



¹ Refer to depositary notification C.N.66.1993.TREATIES-2 of 3 May 1993
(Ratification by China)

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Reference: C.N.710.2010.TREATIES-15 (Depositary Notification)

INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF ACTS OF
NUCLEAR TERRORISM

NEW YORK, 13 APRIL 2005

CHINA: RATIFICATION

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

The above action was effected on 8 November 2010, with:

Declarations and notification (Translation) (Original: Chinese)

The People's Republic of China does not consider itself bound by paragraph 1 of article 23 of the Convention.

The Convention shall apply to the Macao Special Administrative Region of the People's Republic of China and, unless otherwise notified, shall not apply to the Hong Kong Special Administrative Region of the People's Republic of China.

In accordance with paragraph 3 of article 9 of the Convention, the People's Republic of China has established the jurisdiction specified in paragraph 2 of article 9 of the Convention.

The Convention will enter into force for China on 8 December 2010 in accordance with article 25 (2) which reads as follows:

“For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.”

15 November 2010



Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned. Depositary notifications are issued in electronic format only. Depositary notifications are made available to the Permanent Missions to the United Nations in the United Nations Treaty Collection on the Internet at <http://treaties.un.org>, under "Depositary Notifications (CNs)". In addition, the Permanent Missions, as well as other interested individuals, can subscribe to receive depositary notifications by e-mail through the Treaty Section's "Automated Subscription Services", which is also available at <http://treaties.un.org>.

UNITED NATIONS  NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

Reference: C.N.377.2010.TREATIES-6 (Depositary Notification)

PROTOCOL ON EXPLOSIVE REMNANTS OF WAR TO THE CONVENTION
ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF CERTAIN
CONVENTIONAL WEAPONS WHICH MAY BE DEEMED TO BE
EXCESSIVELY INJURIOUS OR TO HAVE INDISCRIMINATE EFFECTS
(PROTOCOL V)

GENEVA, 28 NOVEMBER 2003

CHINA: DECLARATION IN RESPECT OF HONG KONG AND MACAO¹

The Secretary-General of the United Nations, acting in his capacity as depositary,
communicates the following:

The above action was effected on 10 June 2010.

(Courtesy Translation) (Original: Chinese)

In accordance with Article 153 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and Article 138 of the Basic Law of the Macao Special Administrative Region of the People's Republic of China, the Government of the People's Republic of China decides that the *Protocol* [above-mentioned] applies to the Hong Kong Special Administrative Region of the People's Republic of China and the Macao Special Administrative Region of the People's Republic of China.

10 June 2010



¹ Refer to depositary notification C.N.376.2010.TREATIES-5 of 10 June 2010
(Consent to be bound: China).

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned. Depositary notifications are issued in electronic format only. Depositary notifications are made available to the Permanent Missions to the United Nations in the United Nations Treaty Collection on the Internet at <http://treaties.un.org>, under "Depositary Notifications (CNs)". In addition, the Permanent Missions, as well as other interested individuals, can subscribe to receive depositary notifications by e-mail through the Treaty Section's "Automated CN Subscription Service", which is also available at <http://treaties.un.org>.

UNITED NATIONS  NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

Reference: C.N.281.2010.TREATIES-3 (Depositary Notification)

AMENDMENT TO THE MONTREAL PROTOCOL ON SUBSTANCES THAT
DEplete THE OZONE LAYER
BEIJING, 3 DECEMBER 1999

CHINA: DECLARATION IN RESPECT OF HONG KONG AND MACAO ¹

The Secretary-General of the United Nations, acting in his capacity as depositary,
communicates the following:

The above action was effected on 19 May 2010.

Declaration (Courtesy Translation) (Original: Chinese)

In accordance with the provisions of Article 153 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and Article 138 of the Basic Law of the Macao Special Administrative Region of the People's Republic of China, the Government of the People's Republic of China decides that the [... above-mentioned Amendment] shall apply to the Hong Kong Special Administrative Region of the People's Republic of China and the Macao Special Administrative Region of the People's Republic of China.

The Government of the People's Republic of China would also like to reiterate that Article 5 of the Montreal Protocol on Substances that Deplete the Ozone Layer shall not apply to the Hong Kong Special Administrative Region of the People's Republic of China and the Macao Special Administrative Region of the People's Republic of China.

24 May 2010



¹ Refer to depositary notification C.N.280.2010.TREATIES-2 of 24 May 2010 (China: Acceptance).

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned. Depositary notifications are issued in electronic format only. Depositary notifications are made available to the Permanent Missions to the United Nations in the United Nations Treaty Collection on the Internet at <http://treaties.un.org>, under "Depositary Notifications (CNs)". In addition, the Permanent Missions, as well as other interested individuals, can subscribe to receive depositary notifications by e-mail through the Treaty Section's "Automated CN Subscription Service", which is also available at <http://treaties.un.org>.

UNITED NATIONS  NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

Reference: C.N.279.2010.TREATIES-3 (Depositary Notification)

AMENDMENT TO THE MONTREAL PROTOCOL ON SUBSTANCES THAT
DEplete THE OZONE LAYER ADOPTED BY THE NINTH MEETING OF THE
PARTIES

MONTREAL, 17 SEPTEMBER 1997

CHINA: DECLARATION IN RESPECT OF HONG KONG AND MACAO ¹

The Secretary-General of the United Nations, acting in his capacity as depositary,
communicates the following:

The above action was effected on 19 May 2010.

Declaration (Courtesy Translation) (Original: Chinese)

In accordance with the provisions of Article 153 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and Article 138 of the Basic Law of the Macao Special Administrative Region of the People's Republic of China, the Government of the People's Republic of China decides that the [... above-mentioned Amendment] shall apply to the Hong Kong Special Administrative Region of the People's Republic of China and the Macao Special Administrative Region of the People's Republic of China.

The Government of the People's Republic of China would also like to reiterate that Article 5 of the Montreal Protocol on Substances that Deplete the Ozone Layer shall not apply to the Hong Kong Special Administrative Region of the People's Republic of China and the Macao Special Administrative Region of the People's Republic of China.

24 May 2010



¹ Refer to depositary notification C.N.278.2010.TREATIES-2 of 24 May 2010
(China: Acceptance).

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned. Depositary notifications are issued in electronic format only. Depositary notifications are made available to the Permanent Missions to the United Nations in the United Nations Treaty Collection on the Internet at <http://treaties.un.org>, under "Depositary Notifications (CNs)". In addition, the Permanent Missions, as well as other interested individuals, can subscribe to receive depositary notifications by e-mail through the Treaty Section's "Automated CN Subscription Service", which is also available at <http://treaties.un.org>.

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POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

Reference: C.N.46.2010.TREATIES-2 (Depositary Notification)

PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN
PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE
UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED
CRIME

NEW YORK, 15 NOVEMBER 2000

CHINA: DECLARATION IN RESPECT OF HONG KONG SPECIAL ADMINISTRATIVE REGION
AND MACAO SPECIAL ADMINISTRATIVE REGION¹

The Secretary-General of the United Nations, acting in his capacity as depositary,
communicates the following:

The above action was effected on 8 February 2010.

(Translation) (Original: Chinese)

In accordance with the provisions of Article 138 of the Basic Law of the Macao Special Administrative Region of the People's Republic of China and Article 153 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, the Government of the People's Republic of China decides that the Protocol shall apply to the Macao Special Administrative Region of the People's Republic of China, and unless otherwise notified by the Government, shall not apply to the Hong Kong Special Administrative Region of the People's Republic of China.

8 February 2010



¹ Refer to depositary notification C.N.45.2010.TREATIES-1 of 8 February 2010 (Accession: China).

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned. Depositary notifications are currently issued in both hard copy and electronic format. Depositary notifications are made available to the Permanent Missions to the United Nations at the following e-mail address: missions@un.int. Such notifications are also available in the United Nations Treaty Collection on the Internet at <http://treaties.un.org>, where interested individuals can subscribe to directly receive depositary notifications by e-mail through a new automated subscription service. Depositary notifications are available for pick-up by the Permanent Missions in Room NL-300.

UNITED NATIONS  NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

Reference: C.N.889.2009.TREATIES-22 (Depositary Notification)

INTERNATIONAL TROPICAL TIMBER AGREEMENT, 2006
GENEVA, 27 JANUARY 2006

CHINA: DECLARATION IN RESPECT OF HONG KONG SPECIAL ADMINISTRATIVE REGION
AND MACAO SPECIAL ADMINISTRATIVE REGION¹

The Secretary-General of the United Nations, acting in his capacity as depositary,
communicates the following:

The above action was effected on 14 December 2009.

(Courtesy Translation) (Original: Chinese)

In accordance with the provisions of Article 138 of the Basic Law of the Macao Special Administrative Region of the People's Republic of China and Article 153 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, the Government of the People's Republic of China decides that the Agreement shall apply to the Macao Special Administrative Region of the People's Republic of China, and unless otherwise notified by the Government, shall not apply to the Hong Kong Special Administrative Region of the People's Republic of China.

15 December 2009



¹ Refer to depositary notification C.N.888.2009.TREATIES-21 of 15 December 2009 (Approval: China).

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned. Depositary notifications are currently issued in both hard copy and electronic format. Depositary notifications are made available to the Permanent Missions to the United Nations at the following e-mail address: missions@un.int. Such notifications are also available in the United Nations Treaty Collection on the Internet at <http://treaties.un.org>, where interested individuals can subscribe to directly receive depositary notifications by e-mail through a new automated subscription service. Depositary notifications are available for pick-up by the Permanent Missions in Room NL-300.

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POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

Reference: C.N.179.2009.TREATIES-3 (Depositary Notification)

INTERGOVERNMENTAL AGREEMENT ON THE TRANS-ASIAN RAILWAY
NETWORK

JAKARTA, 12 APRIL 2006

CHINA: DECLARATION IN RESPECT OF HONG KONG SPECIAL ADMINISTRATIVE REGION
AND MACAO SPECIAL ADMINISTRATIVE REGION¹

The Secretary-General of the United Nations, acting in his capacity as depositary,
communicates the following:

The above action was effected on 13 March 2009.

Declaration (Courtesy Translation) (Original: Chinese)

“In accordance with the provisions of Article 153 of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China and Article 138 of the Basic Law of the Macao Special Administrative Region of the People’s Republic of China, the Government of the People’s Republic of China decides that the Agreement shall apply to the Hong Kong Special Administrative Region and the Macao Special Administrative Region of the People’s Republic of China.”

18 March 2009



¹ Refer to depositary notification C.N.169.2009.TREATIES-1 of 18 March 2009
(China: Approval).

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned. Depositary notifications are currently issued in both hard copy and electronic format. Depositary notifications are made available to the Permanent Missions to the United Nations at the following e-mail address: missions@un.int. Such notifications are also available in the United Nations Treaty Collection on the Internet at <http://treaties.un.org>, where interested individuals can subscribe to directly receive depositary notifications by e-mail through a new automated subscription service. Depositary notifications are available for pick-up by the Permanent Missions in Room NL-300.

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POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

Reference: C.N.611.2008.TREATIES-6 (Depositary Notification)

ROTTERDAM CONVENTION ON THE PRIOR INFORMED CONSENT
PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND PESTICIDES
IN INTERNATIONAL TRADE

ROTTERDAM, 10 SEPTEMBER 1998

CHINA: DECLARATION IN RESPECT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION¹

The Secretary-General of the United Nations, acting in his capacity as depositary,
communicates the following:

The above action was effected on 26 August 2008.

(Courtesy Translation) (Original: Chinese)

In accordance with the Basic Law of the Hong Kong Special Administrative Region of the
People's Republic of China, the Government of the People's Republic of China decides that the
Convention shall apply to the Hong Kong Special Administrative Region.

27 August 2008



¹ Refer to depositary notification C.N.205.2005.TREATIES-9 of 23 March 2005
(China: Ratification).

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned.
Depositary notifications are currently issued in both hard copy and electronic format. Depositary
notifications are made available to the Permanent Missions to the United Nations at the following e-mail
address: missions@un.int. Such notifications are also available in the United Nations Treaty Collection on
the Internet at <http://untreaty.un.org>, where interested individuals can subscribe to directly receive
depositary notifications by e-mail through a new automated subscription service. Depositary notifications
are available for pick-up by the Permanent Missions in Room NL-300.

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POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

Reference: C.N.579.2008.TREATIES-32 (Depositary Notification)
(Reissued)

CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES
NEW YORK, 13 DECEMBER 2006

CHINA: DECLARATIONS IN RESPECT OF HONG KONG SPECIAL ADMINISTRATIVE
REGION AND MACAO SPECIAL ADMINISTRATIVE REGION¹

The Secretary-General of the United Nations, acting in his capacity as depositary,
communicates the following:

The above action was effected on 1 August 2008, with:

(Courtesy Translation) (Original: Chinese)

In accordance with the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and the Basic Law of the Macao Special Administrative Region of the People's Republic of China, the Government of the People's Republic of China decides that the Convention shall apply to the Hong Kong Special Administrative Region and the Macao Special Administrative Region of the People's Republic of China.

The application of the provisions regarding *Liberty of movement and nationality* of the Convention on the Rights of Persons with Disabilities to the Hong Kong Special Administrative Region

¹ Refer to depositary notification C.N.578.2008.TREATIES-31 of 12 August 2008
(China: Ratification).

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned. Depositary notifications are currently issued in both hard copy and electronic format. Depositary notifications are made available to the Permanent Missions to the United Nations at the following e-mail address: missions@un.int. Such notifications are also available in the United Nations Treaty Collection on the Internet at <http://untreaty.un.org>, where interested individuals can subscribe to directly receive depositary notifications by e-mail through a new automated subscription service. Depositary notifications are available for pick-up by the Permanent Missions in Room NL-300.

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POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

Reference: C.N.584.2008.TREATIES-3 (Depositary Notification)

PROTOCOL TO THE STATUTES OF THE INTERNATIONAL CENTRE FOR
GENETIC ENGINEERING AND BIOTECHNOLOGY ON THE SEAT OF THE
CENTRE

TRIESTE, ITALY, 24 OCTOBER 2007

CHINA: DECLARATION IN RESPECT TO HONG KONG SPECIAL ADMINISTRATIVE REGION
AND MACAU SPECIAL ADMINISTRATIVE REGION

The Secretary-General of the United Nations, acting in his capacity as depositary,
communicates the following:

The above action was effected on 5 August 2008.

(Courtesy Translation) (Original: Chinese)

In accordance with the provisions of Article 153 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and Article 138 of the Basic Law of the Macao Special Administrative Region of the People's Republic of China, the Government of the People's Republic of China decides that the *Statutes of the International Centre for Genetic Engineering and Biotechnology and the Protocol to the Statutes of the International Centre for Genetic Engineering and Biotechnology on the Seat of the Centre* shall apply to the Hong Kong Special Administrative Region of the People's Republic of China from the date of the application of the protocol to the People's Republic of China.

12 August 2008



Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned. Depositary notifications are currently issued in both hard copy and electronic format. Depositary notifications are made available to the Permanent Missions to the United Nations at the following e-mail address: missions@un.int. Such notifications are also available in the United Nations Treaty Collection on the Internet at <http://untreaty.un.org>, where interested individuals can subscribe to directly receive depositary notifications by e-mail through a new automated subscription service. Depositary notifications are available for pick-up by the Permanent Missions in Room NL-300.

UNITED NATIONS  NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

Reference: C.N.554.2008.TREATIES-3 (Depositary Notification)

STATUTES OF THE INTERNATIONAL CENTRE FOR GENETIC
ENGINEERING AND BIOTECHNOLOGY
MADRID, 13 SEPTEMBER 1983

CHINA: DECLARATION IN RESPECT OF HONG KONG SPECIAL ADMINISTRATIVE REGION
AND MACAU SPECIAL ADMINISTRATIVE REGION

The Secretary-General of the United Nations, acting in his capacity as depositary,
communicates the following:

The above action was effected on 5 August 2008.

(Courtesy Translation) (Original: Chinese)

“In accordance with the provisions of Article 153 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and Article 138 of the Basic Law of the Macao Special Administrative Region of the People's Republic of China, the Government of the People's Republic of China decides that the *Statutes of the International Centre for Genetic Engineering and Biotechnology* and the *Protocol to the Statutes of the International Centre for Genetic Engineering and Biotechnology on the Seat of the Centre* shall apply to the Hong Kong Special Administrative Region and the Macao Special Administrative Region of the People's Republic of China from the date of the application of the protocol to the People's Republic of China.”

5 August 2008



Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned. Depositary notifications are currently issued in both hard copy and electronic format. Depositary notifications are made available to the Permanent Missions to the United Nations at the following e-mail address: missions@un.int. Such notifications are also available in the United Nations Treaty Collection on the Internet at <http://untreaty.un.org>, where interested individuals can subscribe to directly receive depositary notifications by e-mail through a new automated subscription service. Depositary notifications are available for pick-up by the Permanent Missions in Room NL-300.

UNITED NATIONS  NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

Reference: C.N.165.2008.TREATIES-4 (Depositary Notification)

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE
CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT
NEW YORK, 25 MAY 2000

CHINA: COMMUNICATION IN RESPECT OF HONG KONG AND MACAO¹

The Secretary-General of the United Nations, acting in his capacity as depositary,
communicates the following:

The above action was effected on 20 February 2008.

(Translation) (Original: Chinese)

In accordance with provisions of article 153 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, and of article 138 of the Basic Law of the Macao Special Administrative Region, the Government of the People's Republic of China decides that the ratification shall apply to the Hong Kong Special Administrative Region and the Macao Special Administrative Region of the People's Republic of China.

11 March 2008



¹ Refer to depositary notification C.N.164.2008.TREATIES-3 of 11 March 2008 (China: Ratification).

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned. Depositary notifications are currently issued in both hard copy and electronic format. Depositary notifications are made available to the Permanent Missions to the United Nations at the following e-mail address: missions@un.int. Such notifications are also available in the United Nations Treaty Collection on the Internet at <http://untreaty.un.org>, where interested individuals can subscribe to directly receive depositary notifications by e-mail through a new automated subscription service. Depositary notifications are available for pick-up by the Permanent Missions in Room NL-300.

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POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

Reference: C.N.31.2008.TREATIES-2 (Depositary Notification)

KYOTO PROTOCOL TO THE UNITED NATIONS FRAMEWORK
CONVENTION ON CLIMATE CHANGE
KYOTO, 11 DECEMBER 1997

CHINA: COMMUNICATION IN RESPECT OF THE MACAO SPECIAL ADMINISTRATIVE
REGION¹

The Secretary-General of the United Nations, acting in his capacity as depositary,
communicates the following:

The above action was effected on 14 January 2008.

(Courtesy Translation) (Original: Chinese)

In accordance with Article 138 of the Basic Law of the Macao Special Administrative Region of the People's Republic of China, the Government of the People's Republic of China decides that the Kyoto Protocol to the United Nations Framework Convention on Climate Change shall apply to the Macao Special Administrative Region of the People's Republic of China.

15 January 2008



¹ Refer to depositary notification C.N.1128.2002.TREATIES-51 of 25 October 2002
(China: Approval).

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned. Depositary notifications are currently issued in both hard copy and electronic format. Depositary notifications are made available to the Permanent Missions to the United Nations at the following e-mail address: missions@un.int. Such notifications are also available in the United Nations Treaty Collection on the Internet at <http://untreaty.un.org>, where interested individuals can subscribe to directly receive depositary notifications by e-mail through a new automated subscription service. Depositary notifications are available for pick-up by the Permanent Missions in Room NL-300.

UNITED NATIONS  NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

Reference: C.N.800.2006.TREATIES-16 (Depositary Notification)

UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED
CRIME

NEW YORK, 15 NOVEMBER 2000

CHINA: DECLARATION IN RESPECT OF HONG KONG¹

The Secretary-General of the United Nations, acting in his capacity as depositary,
communicates the following:

The above action was effected on 27 September 2006.

(Courtesy Translation) (Original: Chinese)

In accordance with the provisions of Article 153 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, the Government of the People's Republic of China decides that the Convention shall apply to the Hong Kong Special Administrative Region of the People's Republic of China (hereafter referred to as HKSAR).

27 September 2006

BM

¹ Refer to depositary notification C.N.1258.2003.TREATIES-31 of 31 October 2003 (China: Ratification).

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned.
Depositary notifications are currently issued in both hard copy and electronic format. Depositary notifications are made available to the Permanent Missions to the United Nations at the following e-mail address: missions@un.int. Such notifications are also available in the United Nations Treaty Collection on the Internet at <http://untreaty.un.org>, where interested individuals can subscribe to directly receive depositary notifications by e-mail through a new automated subscription service. Depositary notifications are available for pick-up by the Permanent Missions in Room NL-300.