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WORLD MARITIME UNIVERSITY

Malmö, Sweden

HAITI'S CLAIM OVER NAVASSA ISLAND:

A CASE STUDY

By

Michaëlle Pierre

Haiti

A dissertation submitted to the World Maritime University in partial

Fulfillment of the requirement for the award of the degree of

MASTER OF SCIENCE

IN

MARITIME AFFAIRS

(MARITIME LAW AND POLICY)

2014

DECLARATION

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessary endorsed by the University.

Signature: *Michelle Fene*

Date: *19/09/2014*

**Supervised by: Associate Professor Maria Carolina Romero
World Maritime University**

**Assessor: Associate Professor Yoshinobu Takai
Institution/organisation**

**Co-assessor: Professor Proshanto Mukherjee
Institution/organisation**

ACKNOWLEDGMENT

First and above all, I am grateful to the Almighty God, for giving me the strength to proceed successfully my degree. I thank my mother, a wonderful woman who always believed in me and support me no matter what; without her I will not be able to achieve a single milestone of my life.

I thank deeply the Nippon Foundation and Ocean Policy Research Foundation for their generosity, because of their fellowship I had the opportunity to study at the World Maritime University (WMU).

A special thanks to the library staff, Chris Hoebeke and Anna Volkova who help me finding the materials for my research; their work was speechless.

Last but not least, I'm thanking my supervisor Professor Carolina Romero as well as all the professors who in a way or another have giving me advices for the realization of that dissertation.

Abstract

Title of the dissertation: **Haiti's claim over Navassa Island: A case study**

Degree: **MSc**

This study is based on the dispute of sovereignty and jurisdiction claim of Haiti over Navassa Island which remains an important issue for Haiti and the United States of America. This paper examines the origin and cause of the dispute on the legal rules and principles. The views and legal arguments of Haiti's constituting its claim is analyzed on the basis on it views and legal argument to the matter. This thesis will examine Haiti's approach to the dispute since 1857 when the issue first started. In parallel an analyze of the Guano Act is conducted in order to determine its viability and application, and also define if it is consistence with the international law and do not violate the autonomy of Haiti as well as the rule of international law applicable for all. Finally a settlement of the maritime dispute will be proposed by the mean of an agreement which constitutes one of the relevant rules and principles of international law.

However, before making any kind of conclusive remarks relating to the settlement of the dispute, the disputed aspect will be of course establish and an examination of the applicable principles of maritime law will be done. The concept of sovereignty, territorial acquisition and intertemporal law will be study and understood in this regards. The analysis of Haiti's claim and the study of the Guano Act in the light of the international law, the settlement of the dispute will be the major element of this work. The concluding remarks point out the aim of this dissertation by indicating the amicable legal settlement expected from the dispute.

Keywords: sovereignty, territorial acquisition, international law, original title, terra nullius, Guano Act, intertemporal law, Navassa Island, dispute resolution, treaty, archipelagic state.

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CHAPTER 1: INTRODUCTION

1.1 Background of the dispute

In the 19th century the United States of America (USA) economy was an agricultural economy. Agriculture was the largest single industry in that time, fertilizers were very important and guano was the compost by excellent for farmers in that period. But what is the guano? The guano is natural manure composed of the excrement of sea birds such as gannets, penguins and or cormorants. The best source of guano was on the coast of Peru. However other islands located in the Pacific and the Caribbean contained abundant guano reserves. In order to satisfy its citizens' interest, the national government of the USA went guano hunting.

The emergence of the United States as a world of power started with the Spanish-American War (Logan, 1941). During 1849 and 1856 the USA had expanded into the Pacific and the Caribbean, not only because they were searching for guano, but also because they were in the colonial business. To do so the USA starts seizing some islands rich in guano under what they called the "Guano Act" which act is supposed to legitimate these seizures. The historians of guano mania explain that the act was sponsored by William Henry Seward in 1856 while he was still in the Senate; it gave merchants the necessary security they wanted before they claimed and worked many islands in the Pacific and the Caribbean (Skaggs, 1994). These guano islands were the first territorial acquisitions beyond the continent by the United States. However, the question is what is the legality of this Guano Act? It can be seen as another form of colonialism implemented by the USA during that period.

That was the beginning of the expansion of the United States territory. The amount of land and water controlled by the Americans as a result of the Guano Islands Act ensured was massive. Under this Act more than 100 islands were claimed by the USA; the United States of America started acquiring territory and it was also a projection of the American power. Half a century was the duration of the guano boom, and then it was replaced by artificial fertilizers, however the number of territories and water remaining under the control of the Americans as a consequence of the Guano Act was considerable (Kuschik, 2011).

Nowadays most of these islands have returned to their original owners via concession or agreement; only a few of them remain under the control of the United States of America (USA) and are not disputed by any other nations such it is the case for Baker island located in the Central Pacific Ocean and other are still in dispute such as Navassa Island. Since 1857 when Peter Duncan has arrived on the island with his crew Haiti is in conflict with the USA for the possession and the sovereignty over the island. Disputes between these countries over their respective rights and interest in the Navassa Island case have remained unsolved for several decades.

Navassa is a very important topic for Haitians not only because of the fisheries on which depends an important population of the Southwest of the country but also because neighboring country such as Jamaica are expecting the matter to be resolve in order to determine their maritime boundary delimitation with Haiti. But more importantly Haiti will determine it entire territory and proclaim sovereignty and will be able to claim once for all the status of archipelagic state.

The present dissertation is an attempt to address the issues relating to Navassa Island on the basis of international law while analyzing the Guano Act and exposing Haiti's claim. It will also present the different ways to settle a dispute in accordance with the rules and norms of the international law and choose the most appropriate one.

1.2 Purpose

Several authors have mentioned the story behind Navassa Island but so far none of the books consulted applies the principle of international law to the fact. The purpose of this paper is to examine in a critical way the development of the claims of the different nations over the dispute related to Navassa Island .This research will look at the nature of the Guano Act created by the USA, more importantly how a unilateral act can affect the sovereign rights of a country. My attempt is to conduct an analysis beyond the mentioned act. The principles of international law will serve as a basis to find out if the claim of the USA relating to that island do not interfere with the sovereignty right of Haiti over its jurisdiction, or vice versa.

The problem of Navassa Island is again the question of the ownership and/or sovereignty. Our study will focus on some specific point and can be summarized as the following:

- Determine what is the existing problem of the dispute over Navassa island;
- Examine the principles of international law and their application to the Navassa Island;
- Determine the principles of international law relative to the case;
- Evaluate unilateral national claims to sovereignty and/or ownership over he Navassa Island;
- Provide an analysis and overview of the Guano Act which has generated the dispute between the parties;
- Offer a possible solution through agreement to resolve the dispute ;
- And determine the possibility for Haiti to claim a status of archipelagic state once sovereignty and possession on all the islands around the mainland has been properly determined.

1.3 Significance of the study

The focus of the dissertation will be on Haiti's position in the Navassa Island dispute, the study of the Guano Act and the solution to settle the dispute. The intention is not only to determine the relative laws applying to the island dispute, but also examine the facts and/or the circumstances that bring the conflict. This will be feasible by examining the various aspects of the history of Haiti and United States' with regards to Navassa Island's dispute.

1.4 Structure

An introductory chapter which offers an overview of the history of the dispute and allows understanding how the study will be conducted. It is followed by a second chapter on the context of the Navassa Island providing enough information about the location and the importance of the island and as well as some legal and historical background, which will facilitate the appreciation of the case. In this chapter the root and the background of the dispute will be examined concisely.

The third chapter will provide a brief synopsis regarding the applicable law of the law of sea. It defines the concepts of sovereignty, territorial acquisition and describes the importance of the intertemporal law. The law applicable in international law will determine the validity of the claim.

The fourth chapter is a profound analysis of the Guano Act. It describes what exactly the Guano Act is and put it in the light of international law.

Chapter five will analyze the claim of Haiti. This chapter will determine the validity of the claim of this nation based on the rules of international law. It will also determine the conduct of the Haiti toward the dispute and discuss the special non-geographical circumstances involved in the case.

Chapter six is based on the treaty agreement proposed in order to resolve the dispute in a friendly manner and avoid arbitration, which is time consuming and money consuming. This chapter also elaborates on the principle of good faith, which constitutes a major element in the creation of a treaty and mentions briefly the economic benefits for Haiti.

The next chapter, the seventh one, refers to the importance of the resolution of the dispute. It will highlight the possibility for Haiti to claim an archipelagic status.

Chapter eight provides concluding remarks, a brief summary, as well as the view of the author regarding the subject.

1.5 Literature review

The adequate and relevant literature will be studied and analyzed. It will include appropriate documentation such as report, case law, publications, and articles from contemporary journals, conferences, books and remarks, ratio decidendi in judicial precedent, information from suitable websites

The primary sources of information for the case study of Navassa Island are contained in official documents such the Guano Act of the USA under which the island was claim, the Constitution of Haiti establishing the territory of the country.

The history book *The Great Guano Rush: Entrepreneurs and American overseas expansion* by Jimmy Skaggs, gives a background and understanding of the dispute; this book does make very interesting reading, because it shows so many other sad examples of distortions of international law in the many U.S. claims to guano islands, however the book does not fully state or analyze the many pillars upholding the Haitian claim to Navassa. *Colonies and Connections: American Interest in Guano, Santo Domingo and Haiti, 1849-1869*, a thesis by Brian Boland, *Navassa Island: Haiti and the U.S. A Matter of History and Geography*, an article by Serge Bellergerde, *The diplomatic relations of*

the United States with Haiti, 1776-1891 by Rayford W. Logan provide further historian explanation. These books attempt to give a more complete picture of the whole situation. They analyze the relation more comprehensively within a portion of time.

The Edges of an Empire and the Limits of Sovereignty: American Guano Islands a paper by Christina Duffy Brunett is an analysis of the Guano Act and applicability.

Several books related to the principles of international law will be used in the study. The legal regime of the islands in international law by Dereck W. Bowett which explains the concept of an island as well as the concept of sovereignty over it. The Territorial Acquisition, Disputes and International law by Surya P. Sharma, the emphasis is not only the description of the traditional criteria of territorial acquisition but it also demonstrates their inadequacy and shortcomings in the present time, but also deals with the contemporary doctrine and conflicts. The Maritime zones of Islands in the international law by Clive Symmons is treating subject such as special circumstances and others. Principles of Public International law by Ian Brownlie he refers to the many and varied laws, rules and customs which govern, impact and deal with the legal interactions between different nations, their governments, businesses and organizations, to include their rights and responsibilities in this matter.

The list mentioned above is not exhaustive.

1.6 Methodology

The methodology of the research will be qualitative. The qualitative method focuses on gathering information that is later analyzed in a subjective, impressionistic subjective manner. This study will be based on the analysis of the Guano Act to determine its validity and also the analysis of Haiti's claim as well as the principles of international law. The qualitative method will help to understand the events and analyze them better. It will help find the answers for the questions such as how, what or why this conflict

exists. With this method it will be easier to analytically use predefined sets of procedures to answer these questions and collect evidence.

Various documents such as the law of the sea convention, principles of international law, the Haitian constitution, Guano Act and others sources such as newspapers, articles, books, reports and any other valuable documentation relative to Navassa Island will be used for the analysis of the claim and all the related subject's. Hence, the qualitative method seems the most suitable method to apply. This study will also include formal and informal individual interviews to any credible persons capable of providing suitable information such as lawyers, historians, journalists and others.

CHAPTER 2: CONTEMPORARY CONTEXT OF NAVASSA ISLAND

2.1 Physical aspect of the Navassa Island

2.1.1 Geography and strategic location of Navassa Island

In order to determine the sovereignty over Navassa Island, it is important to have a brief description of the location of the island. To determine sovereignty of respective claims the location of the land or the territory in dispute is the starting point; besides this is also one of the methodology used by the international tribunal to decide sovereignty over an island's maritime resources.

Navassa is a small island about 5.2 km² that lays in the Caribbean Sea , is located at approximately 36 miles west of Cape Dame Marie, Haiti, 85 miles east , Northeast of Morant Point , Jamaica and about 100 miles South of Guantanamo Bay, Cuba . At the time of the guano rush Navassa was austere and uninhabited, save for iguanas and sea birds (Skaggs, 1994). The situation on island remains the same until today.

Exposed coral, limestone and enough grassland to support goat herds are the consistence of the terrain of Navassa Island. There is absolutely no fresh water on the island .Only four tree species are found on the island short-leaf fig, pigeon plum, mastic and poisonwood ("Navassa Island"). Despite of it inhospitality some Haitian fishermen use the island to camp and to rest ("Navassa Island"). On the island there is only an

offshore anchorage, there is no port or harbors; its single natural resources is the fertilizer known as guano, apart from it no other natural resources such as oil or mineral deposits, are reported.

2.1.2 Importance and Resources of Navassa Island

The Windward Passage is an important congested point for the trade of strategic resources, principally alumina and bauxite to the east coast of the USA from the Caribbean. Navassa Island is very well located to offer surveillance over this movement; furthermore, ownership of Navassa would allow a claim of some 4,100 nmi² of surrounding sea (Anderson, 2000).

The value of Navassa Island as a unique marine habitat, which can be established through continued studies of its marine ecosystem. As Navassa Island is uninhabited and remote, it definitely provides an important platform for researchers to examine a Greater Antilles habitat that practically remain in a relatively unexploited state. A senior researcher scientist of the Center for Marine Conservation (CMC), Michael Smith and leader of the expeditions of 1998 in Navassa Island, alleged initial findings from the first two-week of the trip, he pointed out the existence of two hundred and fifty (250) plant and animal species not yet known to science. (Corbett, 1998). It is estimated that ten percent (10%) to eighteen percent (18%) of these species discovered are exclusive and unique to Navassa Island, Roger McManus president of the Center for Marine Conservation (CMC) said: "What we found exceeded all of our expectations"(Corbett, 1998). The coral reefs surrounding the island was described by Nina Young – who led the marine portion of the expedition – as the most remarkable, the most spectacular in the Caribbean. She said: "It's like looking into an aquarium.....It's what aquariums aspire to imitate when they display coral reefs" (Corbett, 1998).

2.2 Overview on the history of Navassa Island

2.2.1. Historical background

The present dispute cannot be understood without acknowledging the historical event. In 1504 the Navassa Island was discovered by a group of Spanish seamen during a voyage directed by Columbus (Skaggs, 1994); because of the shape of the island they named it Navaza (Nava-meaning plain or field). Years later with the Ryswick treaty signed in 1697, Spain recognized France's presence on the island of Hispaniola and cedes to France the western third of the island and the surrounding island. Once Haiti became independent in 1804, all the territories that once belong to France automatically were transferred to the new sovereign Empire. The situation with Navassa emerges on July 1857 when Peter Duncan stopped by the island in his search for Guano. Duncan later declared, that after inspection of the island, he found "phosphatic guano varying in depth from one to six feet and estimated in quantity at one million tons" (Skaggs, 1994). In September of the same year the seafarer John L. Lewis took possession of the island on behalf of Duncan. In the meanwhile Duncan sold his interests in the island as well as its guano to Captain Edward O. Cooper, and his son, Edward Keman Cooper, in a Baltimore mercantile house, which had a branch in Kingston, Jamaica.

Meanwhile, in 1858 Ramos a former Jamaican business associate who used to work for the Coopers' travels to Haiti offering to the British consul of that time, Henry Byron a share of the profits of the island if he can secure from the Haitian government an exclusive concession of Navassa (Skaggs, 1994). Byron wrote a letter to the Vice Admiral Sir Henry Kellett at Port Royal to be informed about the status of Navassa Island he state: "*previously to the receipt of Commodore Kelletts' letter, I had ascertained that Navassa was **undoubtedly** a possession of Hayti*" (Bellegarde, 1998).

In April 1858 when Emperor Soulouque of Haiti informed about the digging activities of the Cooper's men, he sent two warships on Navassa Island to proclaim its sovereignty over the island and to order American to cease their operations; The expedition invite the diggers to ask permission from the Haitian government to be able to operate there and subsequently ordering them to abandon Navassa (Montague, 1940). In return E.K. Cooper sent a letter to the Secretary of State requesting protection under the military powers clause on the Guano Act, and also informs them that Haitian government had shut down the operation on the island. Lewis Cass, the US secretary of State at this time issued a correspondence to Isaac Tourcey the secretary of the navy which can be read as follow:

“The president being of the opinion that any claim of the Haitian Government to prevent citizens of the United States from removing guano from the Island of Navassa is unfounded...directs that you will cause a competent force to repair to that island, and will order the officer in command thereof to protect citizens of the United States in removing guano therefrom against any interference from authorities of the Government of Haiti, or of any other government” (Akiboh, 2012).

Days later, to confirm the letter US vessel proceeded to Port-au-Prince to inform the Haitian government of the American position and that the US would keep “a cruiser there to protect Americans as long as they remained there” (Skaggs, 1994).

At this time there was no diplomatic relations between Haiti and the USA, so a commercial agent of Haiti located in Boston was instructed to present to the Secretary of state of United States Haiti's claim but the American soon replied in negative and ignored the claim (Spadi, 2001). This period is the starting point of the dispute between Haiti and the United States of America. Between 1872 and 1873 there was several exchange of letter regarding the matter but no result, both parties stayed on their positions (Spadi, 2001). The request from Haiti to have a third party decided about the

conflict was rejecting by the United States. The exploitation of the Guano continues even with the protest of the Haitian denouncing the action of the United States in Navassa which they consider to be part of their territory.

By the end of 19th century the mining of the guano cease but the Americans interest now was other, they wanted the island due to its strategic and maritime safety; with the opening of the canal of panama in 1914 their attention to the island has increased. In 1916 the American built a lighthouse on the island in order to help maritime navigation; years later in 1996 the lighthouse was removed from the island considering the advances in electronic navigation; at the same time the American coast guard remove the sign indicating the island was a restricted area ("Navassa Island History and Facts,").

In the other hand Haitian fishermen come to the islands very often and the US never take any kind of action to regulate activities on or around the island; a church was built on the island by the Haitian government in 1950 for the spiritual need of the fishermen using the island; In 1989 six Haitian radio ham operator were operating in the Navassa with the approval of the Haitian government. Later on, the island was also allocated to a Haitian call prefix assigned by the Haitian communication authority (Day & Bell, 1982).

In parallel , on December 3, 1999 following the Secretary's Order No3210, the United States Fish and Wildlife Service "assumed" administrative responsibility for Navassa, and classify it as wildlife refuge ("Navassa Island: A Photographic Tour (1998-1999)). Nowadays the US declares Navassa Island as an unincorporated possession of the United States;

2.3 Legal background

Disputes over territories boundaries have been existed for ever. The disputes over ownership on islands have become an increasingly significant matter within the international law in past years. The reason is due to new discovery of above and/or below the seabed of natural gas reserve, oil, minerals; it is also due to the desire of some countries to extend their the limits of their fishing areas and other countries to their wish of increasing their territory.

One important aspect in resolving the issue of sovereignty over the island is whether Navassa Island is an island in the sense of UNCLOS¹. Is it capable of sustaining human habitation and economic activity? In fact Navassa do not fulfill these requirements in the exact sense. However, both parties of the dispute consider Navassa as an island, they take for granted. So the status of Navassa Island is not in discuss and we can focus on the sovereignty and the possession of the island.

Sovereignty is no longer an intra-national concept within the international law. To determine the sovereignty, it involves now greater consideration of questions concerning the entire community. Determining the demarcation of maritime territorial claims with national jurisdiction must be acceptable not only by the parties in conflict or the party interested but by the entire international community.

The delimitation of maritime boundaries delimitation is important not only for the concern of sovereignty or again to resolve the matter of the ownership over resources of the ocean but for the protection of the marine environment. The coastal state has the

¹ Article 121 of UNCLOS, Regime of islands

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
2. [...]
3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

responsibility for the maintenance and the preservation of the marine environment but most importantly it has to secure the conservation of the non-renewable as well as the renewable resources. Determining the maritime boundaries delimitation will facilitate the protection and the use of the maritime resources appertaining to the zones claimed.

To resolve problem relative with the law of the sea, the international bodies have dynamically establish principles, promoting changes within the maritime law at an international level. These principles will serve us as the basis for the study of our case. It must be acknowledged that numerous legal questions arise in this dispute. Under public international law, when resolving this kind of dispute it is important to:

1. Resolve the question of the sovereignty and jurisdiction over the island;
2. To analyze the applicable law and principle of international law relative to the topic;
3. Determine the validity of element that has created the conflict in that case the Guano Act that has
4. Once resolved these question it is important to focus now on settlement of the dispute between the counties concerned.

CHAPTER 3: INTERNATIONAL LAW AND ITS APPLICABILITY TO THE DISPUTE

3.1 The international law and its application

A system of law is not only important to regulate the society, the relation between its members but it also important to establish the relation between one country to another. The law which is defining the relation between the states as well as their conduct is known as international law. The rules of International law are generally accepted by all nations because it is in their interest to honor their obligations under international law (Harris, 1991). International law is a living body of practical rules and principles which have gradually come into existence by the custom of the nations and the international agreements.

It is important to understand how the principles of international law on territorial sovereignty apply to the dispute. The rules and principles of international law often influence the conduct of the parties in dispute and frame the discussion or the debate. In addition, the rules of international law have an important influence and impact on how the international community perceives the legitimacy of the positions of the claimant States on the matters.

In the dispute opposing Haiti and the USA, defining the notion of sovereignty is necessary and it even more relevant to apply the rules of customary international law on the acquisition of sovereignty over territory. At the same time it is also essential to mention the principles of the international law and their applicability.

3.2 General principles of international law

Article 38(1) of the Statute of the International Court of Justice establishes the sources of law to be applied by the Court, which are: treaties, customs and “the general principles of law recognized by civilized nations. General Principles are considered to be law and not something else. International tribunal relies on these principles when they cannot find authority in other sources of international law. According to Jalet, general principles of law are “*principles that constitute that unformulated reservoir of basic legal concepts universal in application, which exist independently of institutions of any particular country and form the irreducible essence of all legal system*” (Freeman, 1962-1963).

These principles offer a mechanism to resolve international matters not already subject either to treaty provisions or to mandatory customary rules. Such general principles may arise either through municipal law or through international law. The basic notion is that a general principle of international law is some proposition of law so fundamental that it will be found in virtually every legal system. When treaties and customary international law fail to offer a needed international rule, a search may be launched in comparative law to discover if national legal systems use a common legal principle. If such a common legal principle is found, then it is presumed that a comparable principle should be attributed to fill the gap in international law (Apple, Onorevole, & Solomon, 2007). Examples of this type of general principle are the principles of consent, reciprocity, equality of states, finality of awards and settlements, the legal validity of agreements, good faith, equity, domestic jurisdiction, the freedom of and the seas (Brownlie, 2003).

3.3 Intertemporal Law

One of the most important results of the universalization of international law has been the doctrine of intertemporal law. The doctrine of intertemporal law may be viewed as a practical rule of law in one sense, and as a rule of interpretation in another sense (Elias, 1980). The conception of the principle of the intertemporal law has to be considered as a tool for conserving the equilibrium between the stability in state relations and the gradual development of international law.

According to Judge Huber in the Island of Palmas arbitration the intertemporal law as :*“A juridical fact must be appreciated in the light of the law contemporary with it, and not of the law in force at the time when a dispute in regard to it arises or falls to be settled”*²(Island of Palmas,1928). In the same case –Island of Palmas- Judge Huber define the doctrine even more: *“As regards the question which of different legal systems prevailing at successive periods is to be applied in a particular case(the so-call intertemporal law) a distinction must be made between the creation of a right and the existence of a right. 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 a right, in other words its continued manifestation, shall follow the conditions required by the evolution of law”*(Island of Palmas,1928).

However the intertemporal law doctrine comport two elements, the first on is that the acts should be judges according to the contemporary law with their creation and the second is that the rights developed or acquired in a lawful way in the light of the contemporary law and may be lost if not preserved in accordance with the modifications brought about by the development of international law (Elias, 1980).

It is to be understood that the doctrine of intertemporal law promotes the crystallization and the manifestation of a right that must be examined through the

² Island of Palmas case, Netherlands v United States. International arbitration award 831-845

application of international law as it was at the point in time when the right arose. So, if a dispute concerning sovereignty over a certain piece of land or territory arose in the 19th century, international law as it existed then must be applied to examine the factual matrix.

3.3.1 Relevance to the Navassa Island dispute

The intertemporal law's principle applies to the current case and must be taken into consideration while assessing the claim. A declaration of title must be based on serious ground, it should be founded under the condition legally required to support such title under contemporary law. Doesn't matter the viability of the rights over a territory at the time they were supposedly acquired, their validity must be governed by the contemporary rules. The question of whether the Guano Act is sufficient and valid to constitute the basic root for the declaration of title of the USA over Navassa Island must be referred to the inter-temporal law;

3.4 The concept of sovereignty

Without territorial sovereignty a State cannot exist the State is the only one capable to exercise sovereignty; consequently, the concepts of sovereignty, territory and statehood are joined (Roszakis, 2000). Territorial Sovereignty can be seen as the right to exercise the functions of a State within a portion of territory, to the exclusion of any other State. Territorial sovereignty may be exercised over continental land territory and over islands. Oppenheim states:

“State territory is that defined portion of the surface of a globe which is subjected to the sovereignty of the State. A State without territory is not possible, although the necessary territory may be very small. The importance of State territory lies in the fact that it is the

space within which the State exercises its supreme authority”, (Oppenheim, Jennings, & Watts, 1992).

Sovereignty in the sense of contemporary international law represents the foundation of the international legal status of a State that is not subject to any other law and regulation of a foreign State, within its territorial jurisdiction. Nevertheless, most descriptions and definitions of sovereignty highlight the role of recognition, as Thomson says, “sovereignty is not an attribute of the state but is attributed to the state by other states” (Thomson, 1995). Recognition delivers legitimacy, and legitimacy signifies that other states will behave to approve the actions of the sovereign State over its recognized sovereign territory. But still, sovereignty represents a problematic aspect, on one side sovereignty is resulted from the recognition of other states; but, on the other side, States can exercise sovereignty deprived of the recognition of other states.³

When we refer to territorial dispute, these two aspects recognition and authority are fundamental. Authority is the aptitude to really exercise sovereignty over the area, the territory, or to avoid another state from doing so.

3.5 Acquisition of territory

There are five modes of acquisition through which a State may take possession of additional territory, they are: prescription, terra nullius, accretion, cession, and conquest (Shaw, 2003). Usually, it refers to accretion where a new territory is added mainly through natural causes to a territory that already under the sovereignty of a state, acquisition by accretion takes place. Accretion refers to the physical expansion of an existing territory through geographical process (Qadir, 2012); however this type of

³ An interesting example of a state existing for decades in the absence of the recognition of a majority of states is Taiwan. Even though Taiwan does not enjoy international recognition, informal recognition by (and support from) the most powerful state in the world has enabled it to continue its existence despite its larger neighbour claiming it as inherent Chinese territory

acquisition is irrelevant for the purpose of the current dissertation. The cession is the passive or the peaceful transfer of territory from one state to another, often by exchange, treaty, or sale, by following a war (Shaw, 2003). In the other hand conquest consist of the transmission of a space by the use of force. The validity of cession and conquest is, determined by recognition which is as we discuss earlier is a key element of sovereignty of State.

Nevertheless, among the five ways of acquiring sovereignty and the possession under traditional customary international law, only two applies for territories located in remote places, which are occupation and prescription.

Occupation applies to territory that is terra nullius, that is, territory which is not under the sovereignty of any State and is subject to acquisition by any State. Occupation requires proof of two elements: (1) the intention or will to act as the sovereign; and (2) the continuous and peaceful display of sovereignty. The requirements for manifestations of territorial sovereignty for tiny, remote uninhabited islands are far less than for land territory.

In the other hand prescription applies to territory that was claimed by another State. It is described as the acquisition of territory through a continuous and undisturbed exercise of sovereignty during such a period as to usurp another State's sovereignty by its implied consent or acquiescence.

In practice, the difference is often indistinct, especially in the case of tiny, remote off-shore islands. In contemporary cases such as the Pedra Branca Case⁴, the Court does not examine whether the historical requirements of occupation or prescription. The

⁴ The Pedra Branca dispute [2008] ICJ was a territorial dispute between Singapore and Malaysia over several islets at the eastern entrance to the Singapore Strait, namely Pedra Branca (previously called Pulau Batu Puteh and now Batu Puteh by Malaysia), Middle Rocks and South Ledge. The dispute began in 1979 and was largely resolved by the International Court of Justice (ICJ) in 2008, which opined that Pedra Branca belonged to Singapore and Middle Rocks belonged to Malaysia.

requirements for remote, inaccessible and uninhabitable islands are much less severe as we will see while developing the subject.

The procedures for acquisition of territory were succinctly abridged by the tribunal in the first Eritrea/Yemen⁵ Arbitration Award (1998):

“The modern international law of the acquisition (or attribution) of territory generally requires that there be: an intentional display of power and authority over the territory, by the exercise of jurisdiction and state functions, on a continuous and peaceful basis. The latter two criteria are tempered to suit the nature of the territory and size of its population, if any”.

3.5.1 The Jurisprudence of Territorial Dispute Resolution

The modes of acquisition defined above are all legal: it is the principles and decides whether their application is legitimate and legal or not. There are innumerable explanations and justifications which States have made for their claims to territory, from historical title to contiguity Thomas Franck makes a remarkable point when he stated: “for every principle, there is a countervailing one” (Frank, 1983). Even though historical claims are the most common way to claim, the jurisprudence and or the juris rendered during arbitration of any territorial dispute has established a hierarchy of principles which are often called upon in a consistent manner; they constitute the precedents.

This is the reason why several case law including jurisprudence will be used in the dissertation in order to defend the position of Haiti, relative to the claim.

⁵ Eritrea and Yemen both claimed sovereignty over a group of islands in the Red Sea, but agreed to settle their dispute on questions of territorial sovereignty and maritime delimitation before the Arbitral Tribunal. The Eritrea/Yemen case, which counts among the more important cases in the history of international adjudication and arbitration, was settled by means of two Awards rendered unanimously by the Five-Member Arbitral Tribunal, namely the Territorial Sovereignty and Scope of the Dispute Award (Phase I) of 9 October 1998 and the Maritime Delimitation Award (Phase II) of 17 December 1999.

CHAPTER 4: STUDY OF THE GUANO ACT

4.1 What is the Guano Act and its intention?

The study of the Guano Act is relevant in order to understand the position of the United States and determine the applicability and the legality of this act. The Guano Act is a product of the United States with the objective to protect their citizen every time they discover an island or rock with a guano deposit. The sec 1 of this act states:

“Whenever any citizen of the United States discovers a deposit of guano on any island, rock, or key, not within the lawful jurisdiction of any other government, and not occupied by the citizens of any other government, and takes peaceable possession thereof, and occupies the same, such island, rock, or key may, at the discretion of the President, be considered as appertaining to the United States”.

By analyzing the Guano Act (Appendix D), it is to understand that several factors should be taken into account in order to apply the said act and consider any island, rock or key as appertaining to the United States. One of the fundamental requirements mentioned in the act and which is relevant for this work is that the island, rock or key should not be within the lawful jurisdiction of any government, the second one is the discoverer had taken and kept peaceable possession thereof in the name of the United States and the third one or again the satisfactory evidence had been furnished to the State Department showing that the island had not been taken out of the possession of any other government or people. All these criteria are clearly elaborate in the section 1 of the act. However the principal of the act was violated and its application was completely

contrary. Navassa Island is an example of the complete derogation of the law and history can prove it when 1857 Peter Duncan stopped by the island in his search for Guano.

Another necessary consideration is the spirit itself of the Guano Act. The Bill's only intention was to allow American citizen to extract guano from the territories rich in guano, once they respond to the criteria stipulated in section 1 of this act. Senator Seward itself, the drafter of the Guano Act explains the objective of the bill and how it should be useful for the protection the US citizen, he stated:

“If there was any such thing as a prospect of dominion to be secured to the United States resulting from the discovery and occupation of these islands, it would be a subject for some jealousy, but the bill is framed so as to embrace only these more ragged rocks, which are covered with this deposit in the ocean, which are fit for no dominion, or for anything else, except for the guano which is found upon them. There is no temptation whatever for the abuse of authority by the establishment of colonies or any other form of permanent occupation there” (Burnett, 2005).

While interpreting this act we realize there is no mention of sovereignty of the United States over the islands “discovers”. Further, there is absolutely nothing in this act to oblige the United States to retain possession of such island, rocks or key after removing the guano from them, section 4 of the act is clear about it. Further, Seward on his explanation to the act mention that “whenever the guano should be exhausted, or cease to be found on the islands they should revert and relapse out of the jurisdiction of the United States” (ibid).

It is important to make the emphasis on this part because even if the USA though that one they had jurisdiction over Navassa Island it clearly end now under the same law that made them think that they have such right. In other term all the rights of the USA will terminate once the guano had been removed. The fact is when guano operation

ceases, the island was no longer of great interest and it fell into disuse by the USA until the opening of the canal of Panama and the construction of the light house.

4.2 Did the Guano Act give title to the USA over Navassa Island?

Title is following the rule establish by the international law is acquired by discovery, occupation, cession, occupancy or conquest. However none of this element was apply to claim title over Navassa Island. Haiti never ceded Navassa Island to the United States and it never conquers it neither. Discovery is not applied to the case considering history and the origin of the name of the island mention in chapter 2. United States tent to have title over Navassa Island by a form not contemplated by the international law.

The section 6 of the Guano Act of August 18, 1856, is clear. It say that this act does not assume to extend the admiralty jurisdiction over land, but merely extends the provisions of the statutes of the United States for the punishment of offenses upon the high seas to like offenses committed upon the guano islands. However, in the case of *Jones v United States*⁶ in order to resolve the issue of the murder, the court held that Navassa Island appertain to the United States. The Jones opinion referred to Navassa as a "possession" of the United States, explained that the island was subject to the "exclusive jurisdiction" of the United States and suggested that the United States had extended 'sovereignty over Navassa (*Jones v United States*). The statement is confusing considering the fact that federal officials of United States repeatedly denied that the country has sovereignty over the islands conquer under the Guano Act and this before and after Jones case (Burnett, 2005). But at the same time in the same time in the same particular case

⁶ The case is result of a riot by the workers on Navassa Island and killed and killed five supervisors in a protest of their horrendous working conditions, which included long hours, high likelihood of injury, docked pay and increased rent in case of injury, ultra-high prices as the "company store," and placement in stocks if workers talked back (Matthews, 2014).

However in the second case, Peter Duncan's widow claimed profits from the Navassa Phosphate Company or if it is not possible to obtain the profit, she wants possession of a part of the island. Duncan's widow founded her claim on dower right, the interest in her husband's property which was a right that widow had under the law at that time. In that case the Supreme Court mentioned that nothing in the Guano islands Act obliges the United States to retain possession of islands claimed under the act after the guano is removed (Duncan v Phosphate Company Co, 1891). With respect to the discoverer, the only right the act confers is a license to occupy the island to remove the guano; this right cannot last after the guano is removed. It concludes also that Mrs. Duncan has no right to the island (Duncan v Phosphate Company Co, 1891).

In 1918, it was issued an opinion of the attorney general of the United States stating the country had “never *acquired sovereignty of any kind or extent over*” the guano islands under the act (Burnett, 2005). What it is to be understood is that the Supreme Court interprets the Guano Act in the way it is most favorable for them. So there is no one interpretation both several according to the circumstances.

4.3 The Guano Act in the light of international law

Guano Islands Act differed from the international law standard of territorial acquisition by "occupancy, discovery, conquest, or cession and as mentioned earlier ,Haiti, then as now, had definitely not ceded Navassa island to the United States. In international law there is a twin requirement for territorial occupation the first is the intention and will to exercise sovereignty (*animus occupandi*) , the second is the taking possession of the territory (Sharma, 1997). The Guano Act never had the intention to grant the USA sovereignty over Navassa; neither today they have the intention qualifying Navassa as an unincorporated territory.

In the other hand international law recognize customary law as a source of international law. Custom is one of the sources of international law. The International

Court's Statute refers to international custom, as evidence of a general practice accepted as law, as a basis of international law. Two elements are important to establish the proof of the existence of a customary international law: first a general and consistent practice adopted by States; the second element is the *opinio juris*, meaning the conviction that the practice is one which is either required or allowed by customary international law (Lowe, 1999); which mean an acceptance of the practice is bidding. In other term customary law requires practice joined with *opinio juris*. A State that relies on a customary must prove that the rule invoked is in accordance with the constant and uniform practice of States concerned and accepted as law by them (Acer, 2003).

The Guano Act was only applied to the United States; it was not a consistence practices adopted by States, or has and acceptance of the practice as binding. How can a law from one country and only applicable to it affect the order of the international rules? Even its application is inconsistent, there were violation of the requirements establish. Beside if the Guano Act was valid it should be considered under the international law as an abuse of right. We refer to abuse of right when a State avails itself of its right in an arbitrary fashion in such manner as to cause upon another State a wrong or an injury which cannot be justified by a legitimate consideration of its own advantage (Oppenheim, 1955). According to Garcia-Amador, the purpose of the principle of abuse of right is to "limit the exercise of right the exercise of rights which are not always well-defined and precise rules in general international law or in the particular instruments which recognize them" (Garcia-Amador, 1960).

CHAPTER 5: EVALUATION AND ANALAYS OF HAITI'S CLAIM IT CONTENTION

5.1 Haiti's original title

Today the principles governing acquisition of title of territory that applied were recognized during the period of colonialism at the beginning of the 16th century (Triggs, 2006). The title is used in international law designate the origin of a right as well as the evidence that can probably establish the existence of such right (Giola, 2009). Historic Titles are relevant factor in territorial disputes. Furthermore an allegation of title must be made upon the condition legally established to support such a title under contemporary law (Bowett, 1978).

5.1.1 Title by cession

Cession is another method by which sovereignty over territory can be transferred from one State to another. A cession is an official transfer of sovereignty which is frequently done by means of a treaty.

For Haiti the State's title to Navassa resulted from its inclusion in the French possessions established over Hispaniola in the 17th century, formally transferred from Spain to France in accordance with the Treaty of Ryswick in 1697⁷ which was automatically handover to Haiti when she obtains her independence from France in 1804. It is true that the Treaty of Ryswick did not mention Navassa island but it did not mention St Domingue neither which is part occupy by France (Spadi, 2001).

⁷ By the treaty of Ryswick in 1697, Spain abandoned the western part of Hispaniola to the French, who then established the colony of St Domingue legally.

The boundaries delimitation of the French and Spanish colonies was drawn by the Aranjuez Convention of 1777⁸ which did not refer to Navassa or to other islands around Hispaniola (Parry, 1969). Navassa being part of Haiti has its roots with the Spanish discovery of the island. When the island was discovered by Spanish they call it Navassa Island because of its features. So by being a Spain discovery it automatically became a French possession by treaty which sovereignty was transferred to Haiti when it gained its independence. Here we are talking of the application of the *uti possidetis* principle which is very well used to determine the post-colonial boundaries. It is a doctrine under which the freshly independent state inherits automatically the pre-independence administrative boundaries delimitation set by the former colonial power (Ratner, 1996). The doctrine specifies that title to the colonial territory is transferred to the local authorities and prevails or overcomes over any opposing claim based on occupation. (Sumner, 2004)

5.1.2 Haiti Constitution

The constitution is the fundamental and supreme law of the land. When on January 27, 1801, General Toussaint Louverture took over the Island of Santo Domingo which had been ceded to France by the Treaty of Bâle in 1795⁹; he instantly set out to write a constitution (Bellegarde, 1998). On July 8, 1801, the Constitution was promulgated in the city of Cap-Haïtien, it is the first Constitution, even before the independent nation, and after independence, and similar language was used in the articles dealing with sovereignty over the adjacent islands (Bellegarde, 1998). When

⁸ In the Treaty of Aranjuez in 1777, Spain officially recognized the sovereignty of France in Saint Domingue.

In 1697 the island of Hispaniola was split in two by the Treaty of Ryswick. This treaty was finally ratified by the Treaty of Aranjuez on June 3, 1777, and the Treaty of Basel on July 22, 1795, leaving the western one-third of Hispaniola, Saint-Domingue a French colony and the eastern two-thirds, the current Dominican Republic to Spain (Sagas, October 14-15, 1994).

⁹ *Traité de Bale* known as Treaty of Basel (22 July 1795) in which Spain ceded the eastern two-thirds of the island of Hispaniola- today shared by Haiti and Santo Domingo- to France in exchange for keeping Gipuzkoa.

Haiti got its independence from France 3 years, all the territory that once belong to France per the Treaty of Ryswick automatically became possession of Haiti, which can be considered as an historical heritage as mentioned above.

This why when in 1805 after the proclamation of independence, a new constitution was promulgated and it defines clearly the territory of the new borne nation. In all the Haitian Constitution from 1801 to now the present day all define the whole territory of Haiti composes by la Gonave, les Cayemites, La Grande Caye, La Tortue, l’Ile-à-Vaches, la Saone as well as other **adjacent islands**, constitute the territory of one colony which is part of the French Empire, but is submitted to specific laws (see annex I). These adjacent islands are: La Tortue, La Gonâve, l’Ile-à-Vaches, les Cayemittes, La Navase (emphasis added) la Grosse-Caye and all the others which are located within the limits prescribed by the rights of the people.

A constitution is a document with a real value, absolute and incontestable. The constitution is the fundamental and supreme law of the land. If the Haiti wanted to cede the Navassa Island to the USA, there would need to be a constitutional amendment since 1857 which is not the case.

5.1.3 Title by contiguity

Navassa Island is located at approximately 36 miles west of Cape Dame Marie, Haiti (Skaggs, 1994).The principle of contiguity, in regard to islands, may not be out of place when it is a question of allotting them to one State rather than another, either by agreement between the Parties, or by a decision not necessarily based on law. Under customary international law, contiguity is not an independent basis for the acquisition of territory; in the island of Palmas case Judge Huber has rejected that doctrine enunciated by the United States in their claim. But, the Palmas Island and Navassa Island has each one distinctive feature and cannot be assimilated as the same. Palmas Island has a permanently inhabited, occupied by a population sufficiently numerous for it to be

impossible that acts of administration could be lacking for very long periods when in the other hand Navassa Island is uninhabited island. Each case must be appreciated in accordance with the particular circumstances.

In a more recent case, the interpretation vis-à-vis to uninhabited island emerge. In the dispute of Land Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) , involving in a claims of sovereignty over certain islands, the International Court of Justice treated the island of Meanguerita as a “dependency” of the island of Meanguera because of the smallness of the former and its contiguity to the island, as well as due to the larger fact that it was uninhabited and the claimants themselves treated it as a singular unity (Land ,island and Maritime Frontier Dispute, 1992).

Even more when referring to a group of island the notion of contiguity applies; it may not be out place. When an island can be consider as a part of a larger geographical unit it may be enough for a State to show its sovereignty in relation to the unit as a whole, even when no particular act of sovereignty has been manifested on the individual island (Bowett, 1978). Navassa Island falls within the attraction of the mainland Hispaniola. Haiti’s claim is reinforced by the fact that its Constitutions preceding the US interference with the Guano Act, all of them mentioned that the dependent islands as being part of the State’s territory.

The reference to a non-specified relationship of dependence might be the issue in clarifying the matter. But the International Court of Justice (ICJ) has had to confront similar situations several times. In the case of Land, Island and Maritime Frontier Dispute mentioned earlier, the ICJ had provided an incomplete definition of what constitutes a dependency and subsequently, a territorial unity:

“The small size of Meanguerita, its contiguity to the larger island, and the fact that is uninhabited, allow its characterization as a ‘dependency’ of Meanguera” (Land, island

and Maritime Frontier Dispute, 1992). Base on this case, contiguity apply in the Navassa case.

Haiti's claim is based on the fact that Navassa Island is being adjacent to the mainland. The point is that the evident factor of that contiguity results in the fact that the island is visible from the Southwest of the mainland which gives weight or power to the argument that it is subject to the attraction of the mainland. Eye contact is the frame within which human interest and relations are usually and presumably stimulated. So the argument that the island was and is adjacent to Haiti has without any doubt a significant weight. In the 18th century the principle of the "range of vision" was often used by jurist to determine the areas and the sea areas subject to the coastal state's sovereignty (Spadi, 2001).Adjacency relationship between Haiti and Navassa exist not only based on historical fact but as well as the use of the island and its surrounding waters by Haitian fishermen which will be discuss later on.

5.2 Navassa Island was not terra nullius

In International Law 'terra nullius' describes territory that nobody owns so that the first nation to discover it is entitled to take it over.

Times ago, in International Public Law numerous scholars considered every territory to be terra nullius, provided that no one lives there or provided that the people living there did not belong to a civilized polity (Oppenheim, 1955).Nevertheless this though or the interpretation of terra nullius was changed in the Clipperton Island case, where the island was uninhabited, physical and continuing occupation was not necessary not required as a condition of possession.

Due to the fact there no fresh water on Navassa Island people prefers not to stay there. Actually the court while applying the international law take into consideration the nature of the island as an element of factor to determine the case as it happen it the case mention earlier Clipperton Island.

As Bowett mention in his book “The legal regime of islands in international law”, the nature of the island can depend upon location, size, whether populated or not, the degree of economic activity carried on there and the level of state activity needed to constitute occupation will reflect all these variables (Bowett, 1978) . The more remote, the smaller, the less inhabited, and the less important the island the less governmental activity will be required; and it can be less in degree and less in continuity and frequency (ibid).

In the other hand, the fact that Haiti lack to exercise her authority on Navassa island does not imply that she has subsequently lost her right by dereliction or abandonment since she never had the animus of abandoning the island. Also, the physical presence on isolated and hostile islands or islets might represent a significant challenge in order to exercise real control on these distant territories.

Besides, the isolated islands, parcel of land have never experimented any kind of effective administration -even in the extremely light form which is internationally accepted for deserted or inaccessible locations- and still they are considered to be part of one State (Spadi, 2001).The remote nature of some islands made the courts reexamine the strict requirements, which they previously demanded for an assumption of effective control (Triggs, 2006). Again Clipperton case illustrates very well the reconsideration of the court. In this case, the sole arbitrator King Emmanuel III of Italy stated:

“Thus, if a territory, by virtue of the fact it was completely uninhabited, is, from the first moment when the occupying state makes its appearance there, at the absolute and undisputed disposition of that state, from that moment the taking of possession must be considered as accomplished, and the occupation is thereby completed.” Clipperton Island Case (1933)

Therefore the arbitrator found that France had occupied the islands and had showed no intention of abandoning the island. The case is important as it reveals the few

requirements established for isolated and uninhabited islands. The requirements of effective occupation on these remote islands are much lower than elsewhere (Koskenniemi, 2005).

Another important fact demonstrating that Navassa Island was not terra nullius and was not discovered by the American is the name of the island. The fact that the island was originally called, as customarily, by Spanish name, the first that arrive on Navassa Island and not by a name borrowed from the English language to show that no landing was made on the island at the moment of the so call discovery. In the other hand, under international law sovereignty over terra nullius is normally acquired by peaceful administration and occupation; history has showed that is not the case with Navassa Island considering the continual protest of Haiti. Besides, Navassa Island was clearly established in the Different constitution of Haiti as mentioned earlier. So when Peter Duncan arrives in Navassa Island he was within the jurisdiction of Haiti and the Guano Act cannot apply.

5.3 Guano Act is irrelevant

By examining the Guano Act it is clear that the United States has violated the essence of the act. The act provide that it is possible to take possession of the islands , rock or key if it is not within the territorial jurisdiction of a State, that mean if the territory is terra nullius; which wasn't the case with Navassa island.

The first intention of the act was to protect the right and the citizen American citizen in their search for guano when they discover a res nullius island. In the case *Grafflin v Navassa Phosphate Company*, the circuit court for the District of Maryland concludes:

“Looking to the language and purpose of the Guano Act...we find nothing which indicates that it was the intention of Congress to claim title to or recognize in the discoverer...any title to the land; on the contrary, the provisions of the law entirely negative any idea that such islands were in any sense to become part of the territorial

domain of the United States” ; And in the case of Navassa the US Executive did not even bother to proclaim the island a US appurtenance but limited itself to declaring that the American citizens involved were entitled to the rights and privileges provided for by the Act (Spadi, 2001).

More significant document is the internal memorandum drafted in 1904 for the Assistant Secretary of State A.A. Adee (Skaggs, 1994). The memorandum clearly stated: “*The United States possesses no sovereign or territorial rights over guano islands*” and that the Act “*simply protects American citizens who discover guano on an island...in the prosecution of their enterprise which extends only to appropriation and disposal of guano.*”

In 1907, when the Isthmian Canal Commission¹⁰ asked officially about the status of Navassa from a political point of view Adee replied that: “*it cannot be claimed that this or other guano island ‘belong’ to the United States.*” (Hackworth, 1940). Furthermore during the same year, the Department of State of the United States had expressed a similar view: “*...the United States possess no sovereign or territorial rights over guano islands*” (Hackworth, 1940).

It is clear that it is the United never had intention to claim sovereignty over the island; the animus is not present. Prior to 1916, the United States had been claiming possession but not sovereignty. The aim of the tactic is to prevent or to stop any other government for claiming Navassa Island without taking measures to obtain full territorial sovereignty over the island for itself (Spadi, 2001). For the United States their actions are valid and the Solicitor for the Department of State stated that “*there could [not] be any reasonable objection on the part of any other government to a change in the manner of our occupation of a guano island like Navassa, and the assertion on our*

¹⁰ The Isthmian Canal Commission (often known as the ICC) was an American administration commission set up to oversee the construction of the Panama Canal in the early years of American involvement. Established in 1904, it was given control of the Panama Canal Zone over which the United States exercised sovereignty (Parker & Georges, 2008).

part of full sovereignty thereover” (Spadi, 2001). What we can understand by this declaration is that they have “possession” of the island but they are not interested about the sovereignty, the only purpose is to prevent other government from exercising their authority, their power. Now the question is, is it an admissible or better says it is a lawful position in light of the international law?

Later, in 1913, the Congress provided capitals to build a lighthouse on Navassa Island as navigational aid for the ships transiting in the Canal of Panama. In contradiction with what is mentioned above the former President of the United States Mr. Woodrow Wilson proclaimed in 1916 that, “Navassa was reserved for lighthouse purposes... deemed necessary in the public interest”¹¹. However it is know that the construction of a lighthouse has no necessary reference to a claim of sovereignty but it is motivated only by the willingness and the desire to facilitate navigation, it is a navigational aid (Bowett, 1978). When the canal of Panama was created in 1914, shipping between the American eastern seaboard and the Canal goes through the passage between Cuba and Haiti and Navassa Island represented a danger a true hazard for navigation; this is the only reason why the light house has been created. Further on August 29, 1996, the light house was dismantled by the US Coast Guard; with the new technology in place the light was not necessary for navigational aid. That mean that the USA has absolutely no reason to stay or to use the island, considering the fact that there is no more lighthouse , and no plan of light house in the future due to technology .

In the overall, the application of the Guano Act was illegal. Anyhow, doesn't matter the validity of rights over territory at the time of their supposed acquisition, their validity should be governed by the rules of law now prevailing; this is the essence of the intertemporal law. This notion was mentioned by Judge Huber in the Island of Palmas case as specified in the previous chapter.

¹¹ Presidential Proclamation, No. 1321, Jan 17. 1916

5.4 Inconsistency of Guano Act

The application of the Guano Act should be applicable with the same uniformity for all. Under the Guano Act of 1856, the United States has claimed a number of islands. Today, only the one administered as US Minor Islands are at a number of eight and the one annexed Samoa and Hawaii remain as possession of the United States. Most of the islands once claimed are now conceded by the USA to their first owner, such is the case for example of the Arcas key conceded to Mexico in 1889, the Fox Island¹² conceded to Canada in 1899, Gorda Bank conceded to Honduras in 1919, Great Island conceded to Mexico in 1933 ; others islands acquired under the same act are transferred via treaty such for example Brinies Island transferred to the Republic of Kiribati by treaty of 1979, Clarence Duke of island transferred to the Republic of Tuvalu by treaty of 1979, Quita Sueño Island and Roncador Island transferred to Colombia by treaty of 1972 (Skaggs, 1994);

It is evident that the United States has given up any claims on what it call insular areas or unincorporated territories , but it still claims Navassa Island and its handful and actively opposes against Haiti's claim. What is the reason? Should not all the countries to be treated the same? According to international it can be any disparity in the application, the interpretation and the implementation of the law, it should be equal footing for all. So, what is the reason why the USA has chosen to concede or transfer the island once claimed under the Guano Act and not Navassa Island? What were the requirements established?

According to international law, Wolf Vattel State all nations: "are by nature equal and hold from nature the same obligations and the same rights" (Armstrong, 1920).

The status of states or a country in international law is independent of their relative strength, that mean a small Republic is no less a sovereign and capable then the most powerful country. So if we refer to equality between States what is consider to be lawful or unlawful for a nation shall be equally lawful or unlawful for all the countries over the world; if it is good or bad for one it will automatically have the same effect for another. So again why the United States has not conceded or transfers Navassa Island to Haiti. It is because Haiti is a small nation? Does the United States decide the treatment for each country?

5.5 Conduct of the parties

5.5.1 Rule of persistent objector/ Protest

When in 1857 the Peter Duncan and its crew arrive on Navassa Island Haiti has protested, indeed as we saw it in chapter one, Haiti sent a warship to order the American present on the island to leave. At this precise moment when the American start invading Haitian as well as European diplomats were confronted with the reality of U.S. naval control and authority in the area and the obvious use of gunboat diplomacy (Levy, 1999). If the Haiti does not insist much more to reclaim its right is was to avoid some undesired consequences. It would have be a David v Goliath but with less satisfactory outcome. Diplomatic records at the time refer to the fear that a vigorous assertion of Haiti's rights might have a dramatic destabilizing effect throughout the Caribbean (ibid).

A significant feature in accessing a State's proof of sovereignty is the reaction of other State which is claiming sovereignty over the same territory. Also, diplomatic correspondence is proof of protest and is admissible in international law. The Government of Haiti went to a diplomatic offensive when looking for the support of the British and French Consuls in the matter of Navassa Island (Bellegarde, 1998). In the

same period, Haiti makes an official protest through Haiti's agent in the United States Mr. Clark, Haitian Consul in Boston (Bellegarde, 1998).

In parallel Haiti performs several act in Navassa Island, in 1950 the government of Haiti built a church on the island for the passing Haitian fishermen (Anderson, 2000). As well as the implementation of radio station on the island by Haitian. Never the USA has objected to these activities which can be considered as acquiescence from their part. In the Pedra Branca Case¹³, the matter of acquiescence was an important factor. The Court gave a very significant weight to the fact that Singapore has realized different acts with respect to Pedra Branca which were the indication, the proof that it believed it had sovereignty over the island, and Malaysia failed to object or protest these acts. On July 1981, the government of Haiti gives the authorization of a group of six(06) Haitian amateur the authorization to operate their radio station called "Radio Hams" on Navassa Island, they were joined by cameraman from the Haitian Communications Authority (Sharma 1997). Before that, as mentioned previously a church was built on the island by the Haitian government in 1950 for the spiritual need of the fishermen using the island. That were obviously an act of sovereignty exercised by the Haitian government and the no reaction of the USA proved their approbation, it assimilated to acquiescence.

5.6 Consideration of relevant circumstances: non-geographical factors.

Economic factors.

Economic factors include the existence of natural resources such as gas, oil and fish, as well as socio-economic factors, Such as States economic dependency on natural resources and national economic wealth. It is imperative to determine the importance of

¹³ The Pedra Branca dispute [2008] ICJ 2 was a territorial dispute between Singapore and Malaysia over several islets at the eastern entrance to the Singapore Strait, namely Pedra Branca (previously called Pulau Batu Puteh and now Batu Puteh by Malaysia), Middle Rocks and South Ledge. The dispute began in 1979 and was largely resolved by the International Court of Justice (ICJ) in 2008, which opined that Pedra Branca belonged to Singapore and Middle Rocks belonged to Malaysia.

this island for Haitian and also to study the possible catastrophic repercussions for the livelihood and the economic well-being of the population close to Navassa Island.

From the Southwestern (Anse d'Hainault, Dame Marie, Les Irois, Tiburon, or Roche à Bateau principal cities) of the mainland of Haiti it is possible to see Navassa Island. People on this region live on fishery. For Haitian fishers the fishing of Navassa is extremely important. According to a report The United States Department of Commerce National Oceanic and Atmospheric Administration National Marine Fisheries Service base on their interview with people in the region they came to the conclusion that farming and fishing included small micro business activities are the main sources of revenue of that region (Wiener, 2006). Base to the same source they say further that most of the people interviewed in the area were in the fisheries activities and stated that at least 75 per cent of the region's revenue was from fishery related activities; for the family a fishing tradition it represent 100% of the income of the family. The value of the fisheries and interconnected activities to the whole region is estimated to be between USD \$5,000,000 and USD \$10,000,000 a year (Wiener, 2006); for communities known to use Navassa the value of their fisheries and connected activities are estimated at between USD \$1,000,000 and USD \$2,000,000 a year, of which Navassa's fisheries (Wiener, 2006). All fishermen interviewed in Haiti in the Southwest region stated that fishing at Navassa was worth the effort despite the danger associate with the crossing between the mainland and Navassa Island. All the fishermen interviewed indicated that the fisheries at Navassa are very important to the local economy. Those who are able to make the trip to Nvassa say they find more fish there than anywhere else and this thank to that they are able to provide for their family, this is their source of income. The closing of Navassa's fisheries would have catastrophic consequences for the persons and the communities already struggling to provide food and to meet the principal needs for their relatives. Families which are in very bad economic situation would find themselves

in impossibility to maintain even the most minimal standard of living. It obvious that people from this region has an economic dependence upon the area of Navassa Island.

Present coastal communities in Haiti have generally been highly dependent on local fisheries since their establishment during the colonial era. Haitian fishers go fish on Navassa Island for years. Always from the same report, interview with old fishers around their sixty more or less, claimed that individuals from the region have been fishing at Navassa for as long as they can remember. When fishing the fishers spent around two to twenty one days on the Island, other with can stay for shorter time, these are the one who have engagement businessmen on the mainland (Wiener, 2006).

It is critical to notice that the United States which is pretending to have possession of the island never prohibited the fishing in the 12nm surrounding the island that is calming neither prohibit the fishermen to stay on the island, the report is clear about that. This attitude should be considered of acquiescence from there part.

Acquiescence can consider of having the same effect with recognition, it occurs from the conduct, the absence of protest when it is normally expected (Brownlie, 2003). We refer to acquiescence when someone knowingly stands by without objecting the violation of their rights, it is normal to refer in such case as a permission given by silence or passiveness. The International Court in the Gulf of Maine¹⁴ Case defined acquiescence as “equivalent to tacit recognition manifested by unilateral conduct which the other party may interpret as consent”

As Shaw explains, this means that “where states are seen to acquiesce in the behavior of other states without protesting against them, the assumption must be that such behavior is accepted as” (Shaw, 2003). Protest, recognition and acquiescence are the elements fundamentals in territorial disputes and help establish the politics of the dispute.

¹⁴ The Gulf of Maine Case was an ICJ arbitration involving the US and Canada following unsuccessful attempts to delimit their east coast maritime border

CHAPTER 6. DISPUTE SETTLEMENT

6.1. Types of maritime dispute resolution

To resolve maritime disputes, the Convention on the Law of the Sea (UNCLOS) offers full freedom to the States Parties concerned to settle their differences through negotiation or any other peaceful diplomatic measures between them at any time. In the case that there is no settlement between the parties, they have the possibility to submit the request to the tribunal or the court in order to have jurisdiction over the issue.

Several international organizations, such as the United Nations refer to the necessity of peaceful settlement of disputes in their charters, international conventions such as United Nations Convention on the Law of the Sea, mention the same in it articles. Provisions in these documents offer various peaceful dispute settlement methods for resolving interstate issues, starting from bilateral negotiations, to non-binding third party settlement such as conciliation , good offices and mediation, to binding settlement through an international court or an arbitration panel .

According to article 279 of UNCLOS, “the parties in conflict have the obligation to settle disputes by peaceful means in accordance with Article 2, paragraph 3, of the Charter of the United Nations and, to this end, shall seek a solution by the means indicated in Article 33, paragraph 1, of the Charter”. Article 33(1) states: “the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice”. As specified in

Article 280 of UNCLOS, the parties in dispute are given complete freedom to elect at any given time, the way they want to settle their dispute; as a result, they may by agreement suspend any process or procedure and have the option to choose a different peaceful way of dispute settlement.

With that said, to resolve a dispute, State parties can easily select one of four possible procedures which are available for every country who wish to use them .The four dispute settlement opportunities are: 1) the International Court of Justice (ICJ), 2) the International Tribunal for the Law of the Sea (ITLOS), 3) arbitration under Annex VII of the UNCLOS treaty or 4) arbitration under Annex VIII of the UNCLOS treaty. These procedures are generally used when the parties cannot come to an agreement such as for example a bilateral negotiation and they need the intervention of a third party to resolve the conflict.

1) The International Court of Justice

The International Court of Justice (ICJ) is the major judicial organ of the United Nations (UN) and it is located in the Hague, the Netherland. As specified in its statutes, only States can bring contentious cases before it, either by special agreement between both of the parties in dispute or by a unilateral application by either party. The court's aim is to resolve the legal dispute in conformity with the international law and to provide advisory opinions on the matters submitted to them.

According to the article 38 of the statute of international the applicable laws for the ICJ are:

- a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
- b) International custom, as evidence of a general practice accepted as Law;

- c) The general principles of law recognized by civilized nations;
- d) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

In addition to the responsibility of the court to settle the dispute in accordance with the international law, article 38(2) gives the court the power to decide *ex aequo et bono* that is on the basis of equity, if, of course, the parties agree (UNCTAD 2003).

2) The International Tribunal for the Law of the Sea

The creation of the International Tribunal for Law of the Sea (ITLOS) was to bring the method of dispute settlement of the United Nations Convention on the Law of the Sea into complete operation. It is the newest international judicial organ established in 1994 after the entry into force of the United Nations Conventions on the Law of the Sea. It organized its first sitting in Hamburg, its seat in 1996. The principal aim of the tribunal is especially for the settlement of maritime disputes. The International Tribunal for the Law of the Sea is an autonomous judicial organ established by the United Nations Convention on the Law of the Sea to settle disputes arising out of the application and the interpretation of the Convention as mentioned in article 21 of the statute of the tribunal. ITLOS has both contentious and consultative jurisdiction. With the contentious jurisdiction it is allowed to deal with disputes submitted to it by agreement of the parties in disputes; however, it also has compulsory jurisdiction for specific matters such as the area, this is the reason why the Seabed Disputed Chamber has been created and it has exclusive jurisdiction in such matter (Chandrasekhara, 2001). The tribunal also takes charge of disputes relating to the release of vessel and its crews according to article 292 of the statute of ITLOS and to temporary measures pending the constitution of an arbitral tribunal (García-Revilla, 2012).

Regarding the applicable law, the Tribunal shall decide all disputes and applications in accordance with article 293. The article mentions that:

1. A court or tribunal having jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention.
2. Paragraph 1 does not prejudice the power of the court or tribunal having jurisdiction under this section to decide a case *ex aequo et bono*, if the parties so agree.

The Tribunal has jurisdiction over any dispute concerning the interpretation or application of the Convention, and over all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal (Statute, article 21). It is important to notice that unlike the Court, the Tribunal can give Advisory Opinions only with respect to specific seabed disputes referred to it (UNTACD 2003).

3) Arbitration

Apart from the judicial settlement mentioned above, arbitration is also an option available to the parties in conflict. According to annex VII, arbitration is generally applied for the settlement of disputes between the parties when they cannot agree to the same procedure to resolve the issue or when they have not made a declaration of choosing a specific procedure. In given situation, the case should be brought before Arbitration by a written notification which is addressed to the competing party. Article 1 of annex VII specifies that the claim shall be accompanied by a declaration of the aim based on solid grounds.

In accordance with article 5 of Annex VII of the Convention, in arbitration the tribunal decides its own procedures and gives the opportunity to each party to present their case and to be heard. The resolution on the internal judicial practice of the tribunal in its article 6 declares that a majority of its members is required for all decisions of the arbitral tribunal and if there is no majority, it is the president who will have the casting

vote (Resolution on the internal judicial practice of the tribunal 1997). The award of the judgment is final without appeal and binding on the parties to the dispute unless if the parties concerned agreed in advance to an appellate procedure (Ravin, 2005).

4) Special arbitration

There is another mean of peaceful settlement which is the special arbitration. It is established in the Annex VIII of UNCLOS, but it is not related to our case. This special arbitration is there for the application and the interpretation of the articles of UNCLOS relating to fisheries, protection and preservation of the marine environment, marine scientific research and the navigation including pollution from vessels and by dumping.

We can see that the United Nations Convention on Law of the Sea (UNCLOS) as well as the International Tribunal for the Law of the Sea (ITLOS) provide legislative and judiciary power in the domain of ocean affairs. The International Tribunal as well as the other three procedures enumerated play a significant role in guaranteeing a peaceful maritime settlement.

6.2 The treaty, other mean of dispute settlement

Previously it has have been exposed the four means of dispute settlement; however, article 280 of UNCLOS states that nothing in the convention should impede the parties in conflict the right to agree on the peaceful means of their choice. The increasing need of the parties to resolve their issues in friendly a way, without the typical technicalities and the legal burden brought about by the exploration of other ways to resolve the dispute. The fact is that sometimes, some disputes are better resolved by some other processes depending, of course on the nature of the case and the circumstances.

6.2.1 The treaty

After a study of Haiti's claim as well as the Guano Act and all the other material relative to that matter, came to the conclusion that an agreement is the best way to resolve the dispute between the two countries. It might sound bizarre to be talking now about agreement after exposing Haiti's claim and demonstrating the invalidity of the Guano Act. However it is important to be realistic, practical and not let emotion affect our view of the situation.

6.2.1.1 What is a treaty?

The Vienna Convention of 1969 defines a treaty as an international agreement settled between States in written form and ruled by international law; whether embodied in a single instrument or in two or more related instruments and whatever its particular designation. The Vienna Convention, 1986 spreads the definition to incorporate international agreements including international organizations as parties. However in order to be a treaty some specific characteristic have to be met. Firstly, it has to be a binding instrument, meaning that the parties concerned create legal duties and rights. Secondly, the treaty must be concluded by international organizations with treaty-making power and the States, and thirdly, it shall be governed by international law (United Nations, n.d.).

6.2.1.2 Why a treaty as a mean of dispute settlement?

Taking the matter to court or to arbitration should be one of the solutions available. However, as is the case in many developing countries, the presence of domestic expertise and the financial resources is a difficulty in making use of the

judicial settlement established because international litigation is indeed an expensive and luxurious undertaking ; a significant amount of money is usually implicated and it varies depending of the length and the complexity of the case. These kinds of procedures are not only money consuming but time consuming as well. Time consuming, because it can easily take several months for the parties to put together the cases and get ready for the arbitration or the tribunal, and the hearing itself will take some days sometimes a week or more and even more time for the awards. In 1986 in the El Salvador-Honduras Frontier Dispute including the intervention of Nicaragua, with Nicaragua intervening the entire case from the beginning to the end, took 2101 days (Park, 2002). A few years before in 1981 in the US Canada Gulf of Maine Case, the parties present no less than thirty volumes of documents and with these there were annexed more than 450 maps (Park, 2002).

With all this said it is normal to understand why other friendly means are proposed. The article 2(3) in the Charter of the United Nations mentions “All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered”. With the agreement from both parties, Haiti and the USA, it is possible to save not only time and money but both parties can be winning in a sense. Haiti needs the island; not only does she wants possession and sovereignty over it, but because she can extend her maritime delimitation and take all the advantages that come with it. USA wants the island for its position; it can easily control the area and its proximity with Guantanamo makes it perfect.

Actually Haiti does not have the recourses necessary to have a permanent presence of the island due it the inhospitality or to control it effectively (military speaking) but the United States do have the resources, the manpower and the money to do so. An agreement is the key element in this dispute; a lease of the island and to it surrounding water will constitute the motif of such arrangement. Through it Haiti will have complete jurisdiction, control and sovereignty while the USA will have complete

right of use for the purpose of surveillance. It can be considered as a winning winning compromise where both parties obtain what they want without wasting time, money and energy.

6.2.2 The principle of good faith for treaty in international law

A treaty is defined in the Vienna Convention on the Law of Treaties as “ an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.” In a treaty the principle of good faith is the primordial interest. It is clear for international lawyers that the principle of good faith is a well-established principle of international law and can be considered as one of the most fundamental ones. Article 2(2) of the Charter of the United Nations, reinforced by General Assembly Resolution 2625(XXV) on the principles governing in a amicable way the cooperation and the relation between states, and articles 26 and 31(1) of the Vienna Convention on the Law of Treaties, demonstrate very well and are relied upon to demonstrate the acceptance of this principle in state practice (Virally, 1983). According to these articles all duties and responsibilities deriving from treaties are to be understood and applied in good faith.

The purpose of the principle of good faith in the international law is to establish a link between the obligation and the way in which an obligation is to be executed. Some international judgments are in complete agreement with this principle; such is the case for example of the case of Nicaragua v. Honduras and the Nuclear Tests. In that case the ICJ emphasized that principle and state it is: “one of the basic principles governing the creation and performance of legal obligation”¹⁵

¹⁵ In the Nicaragua v Honduras Case, the Court pointed out that “The principle of good faith is..... one of the basic principles governing the creation and performance of legal obligations...” ICJ Rep. 1988. par.

Therefore the principle of abuse of right described as the existence of bad faith in the exercise of a right or discretion (Acer, 2003), shall be avoided when implementing the treaty.

6.2.3 Economic advantage

With a lease of Navassa Island the government of Haiti will have the possibility to use that money for the development of the Southwest of the country. As was noticed in the previous chapter for people in that area, their economy relies mostly on fishery, agriculture and small micro business activities. Now the State would have the capacity and the ability to produce a specific good or services that will help people in that region.

6.2.4 The proposed treaty

TREATY OF NAVASSA ISLAND

Between the Republic of Haiti and the United States of America;

Reaffirming the cordial relations between the both countries, especially the historical, the cultural, the social and economic bonds between the people of Haiti and the people of United States;

Conscious of the necessity to resolve the issue of Navassa Island;

They have reached an agreement to that end, as follows:

94, pp. 105-106. The ICJ in the Nuclear Test cases observed that "One of the basic principles governing the creation and performance of legal obligations, whatever their sources, is the principle of good faith." par. 46

ARTICLE I. PURPOSE OF THE AGREEMENT

The sole and unique aim of this agreement is for the lease of Navassa Island and the 12 nm of water surrounding it by the Republic of Haiti to the United States for the purpose of surveillance. The lease includes the right to use the land and to occupy the surrounding waters.

ARTICLE II. LOCATION AND DESCRIPTION OF THE ISLAND

Navassa Island has a territory of about two (2) square miles (5.2 km²). It is positioned 40 nautical miles (46 mi; 74 km) west of Jérémie, off the south-west peninsula of the mainland, 90 nautical miles (100 mi; 170 km) south Guantanamo Bay, Cuba and approximately one-quarter of the way from Haiti to Jamaica in the Jamaica Channel. The island's latitude and longitude are 18°24'10"N, 75°0'45"W.

ARTICLE III.

The Republic of Haiti hereby leases to the United States, for a period of (to be determined) Navassa Island described above as well as the 12nm surrounding the island for the purpose of surveillance for an amount of (to be determined) payable each year. This amount shall be payable no more than 30 days prior to the beginning date of the annual contract. This agreement is not automatically renewable. At the end of the period of (as determined by the parties) both parties shall be agree to renew the agreement

ARTICLE IV. TERM AND CONDITION

Considering the fact that Navassa Island is a wildlife refuge it is important to protect its ecosystem, and therefore no construction is authorized on the island. The island shall be managed for the preservation and the protection of the species living on the island. Any scientific expedition, study or research shall be approved by the Republic of Haiti.

Any kind of activity not stipulated in this agreement is unlawful and will be consider as a breach of the terms of the Treaty which will automatically terminate it.

ARTICLE V.

The United States recognizes the continuance of the ultimate sovereignty and jurisdiction of the Republic of Haiti over the above described areas of land and water; on the other hand the Republic of Haiti consents that during the period of the use of the described territory by the United States it shall exercise control over and within said areas.

ARTICLE VI

Navassa Island shall not be subject to sale or permanent right of occupation by the United States. At the end of the lease if for any reason it is not renewable or it can't be renewable the sovereignty and jurisdiction of Haiti over Navassa Island will not be in discussion.

ARTICLE VII

Any disagreement relative to the interpretation or the application of the disposition of the present Treaty shall be resolved through direct negotiation between the respective Governments.

ARTICLE VIII

States Parties to this agreement shall fulfill in good faith the obligations assumed under this Treaty and shall exercise the rights, jurisdiction and freedoms recognized in this Treaty in a manner which would not constitute an abuse of right.

ARTICLE IX

The present Treaty is subject to ratification, according to the constitutional procedure of each party and will come into force at the date of the interchange of the instruments of the ratification.

Done in duplicate at Port-au-Prince, Haiti, and

Signed by the President of Haiti XXX on the XXX

Signed by the President of the United States XXX on the XXX.

CHAPTER 7. IMPORTANCE OF THE RESOLUTION OF THE DISPUTE: CLAIM OF ARCHIPELAGIC STATE

7.1 What is archipelagic state

It was an important innovation for the Law of the Sea Convention (LOSC) when the Third United Nation Conference on the Law of the Sea (UNCLOSIII) has adopted the archipelagic regime. It was a serious improvement from which several countries can benefit. To the present date, the status of archipelagic has been claimed by twenty States¹⁶ and from them the archipelagic baselines have been drawn around their archipelagos by fifteen of them (Kopela, 2009).

An archipelagic State is a group of three or more islands which are unified by economic, historical, geographical and political connections that the islands are considered as a whole (Dubner, 1976). The United Nations Convention on the Law of the Sea (UNCLOS) in its article 46 defines the archipelagic state as a State constituted wholly by one or more archipelagos¹⁷ and may include other islands.

¹⁶ These states are Antigua and Barbados, Bahamas, Cape Verde, Comoros, Fiji, Indonesia, Jamaica, Kiribati, Maldives, Marshall Islands, Papua New Guinea, Philippines, St. Vincent, and Grenadines, Sao Tome and Principe, Seychelles, Solomon Island, Trinidad and Tobago, Tuvalu, Vanuatu and the Dominican Republic (DR). Bahamas, Comoros, Kiribati, Marshall Islands and Seychelles have not defined their archipelagic baselines.

¹⁷ Article 46(b) UNCLOS, "archipelago" means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters

7.2 Claim of Archipelagic State

Haiti is composed of several other smaller islands such as: La Gonâve, the largest island off the mainland, located to the west-northwest of Port-au-Prince, La Tortue the second largest offshore island of the mainland, located off the northwest coast of the mainland, Île à Vache is a small island located off southwestern of the mainland and Les Cayemites, a pair of islands located in the Gulf of Gonâve off the southwest coast of the mainland. Haiti is eligible to claim an archipelagic state and to be internationally recognized.

Under the notion of archipelagic state all the connected islands shall be considered as a single unit a political unit, for reasons of law, history, economics, security and geography , so that the waters around, between, and linking the islands of the archipelago are part of the internal waters of the state and are subject to its exclusive sovereignty. As stipulated in the article 50 of UNCLOS, the archipelagic States within its archipelagic waters, may draw closing lines for the delimitation of internal waters. The interest of the archipelagic status is the interests of the archipelagic states for which the conservation of the island group's unity is of key importance and which necessarily involve jurisdiction over intervening waters and seabed areas (Munawwar, 1995).

7.3 Economic benefit

In the case of archipelagic water the sea included its resources could have a significant aspect for the development of the archipelagic states, which have a richness of marine resources in the waters surrounding the islands (Munawwar, 1995). One of the benefits of the archipelagic status is that all the sea water falling inside the encirclement

and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.

of archipelagic baselines is automatically converted to internal water of that State, and the sovereignty of the State extends to the archipelagic water, the sovereignty is spread to the air space of this archipelagic water its subsoil, seabed and the natural resources contained (Gupta, 2005). The status of archipelagic water will help Haiti to protect not only the marine resources but also the tourist potential, i.e., uncontaminated or unpolluted beaches. Another advantage can be the capacity for employment and income gained from the fishing and marine industry from which Haiti can benefit. An example is the Maldives which economy relies on fishing and tourism since 1972 are becoming the nation's principal source of income (Gupta, 2005*ibid*). Something very important with archipelagic state it is the state has the exclusive exploitation of marine resources which again is very usefully for developing country such as Haiti.

It will be good for Haiti to claim the status of archipelagic State in order to benefit the resources within the archipelagic water. This is why resolving the issue of Navassa Island is necessary; Haiti will have the opportunity to improve its economy by exploiting the water surrounding her. It is true that internally the government will need to improve its modus operandi in order to really enjoy these advantages; but once the base is set up it is easier for the government to take action.

CHAPTER 8: SUMMARY AND CONCLUSION

The present dissertation has attempted to clarify justify and to defend the position of Haiti in the maritime dispute with the United States, conflict which have developed since 1856. So far the two have failed to settle the issue .In international law as well as in international relations, possession or again ownership of a territory is important because sovereignty over land determines what constitutes a state (Gilbert, 1998).¹⁸ Furthermore, as Machiavelli proposed, the territorial acquisition is one of the objectives of most states (Machiavelli, Marriott, Fuller, & Hobbes, 1955). For a modern Sate to function effectively, its boundary should be clear, well defined which an advantage of having a territory is. However it can happen that the borders or part of the territory is subject to opposing international claims which is the case with Navassa Island.

Nevertheless all the issue with Navassa Island result with the creation of the Guano Act which in a way has disturbed the peace and the tranquility of several countries in Caribbean and the Pacific. The objective of the Guano Act was simple, extract guano from island not falling into the jurisdiction of any other nation and supply the guano the Americans citizen with inexpensive guano. Indeed the act made it clear that the United States need not keep a guano island once the guano was gone. But the application of the act was different , as we saw the American citizen took possession of Navassa Island knowing it was within the jurisdiction of Haiti and until know they are claiming possession of the island. It is a very well established principle of international

¹⁸ Paul Gilbert: "To claim a right to statehood is to claim a right to some territory over which the state can exercise political control."

law that a State cannot defend its illegal comportment or behavior in the international community based only of an internal regulation or law.

By analyzing the Guano Act we came to the conclusion that it is not only irrelevant, or not a customary law but its application by the American is not equitable. The United States title to Navassa Island does not rest on valid grounds. Some people will mention that the United States may have title to Navassa Island for claim base on prescription, but some criteria need to meet for this to occur one of them is the peaceful and the uninterrupted possession a titre souverain. But there are some major objections such the contradictions in the animus of the occupant as we discuss earlier, and the persistent objection of Haiti meaning the possession was never peaceful. The major argument for the United States will be probably to demonstrate that Navassa Island was terra Nullius in 1857 when Peter Duncan arrived on the island in conquest for guano. But how the declaration of a simple American civilian be enough to determine the status of the island and decide that it did not failed into any jurisdiction.

In this dissertation the application of the general principle of international law and the use of the decisions of international court and the work of academics were necessary as a mean of recognizing the law established. It is well know that the Court often refer to its past advisory opinions and decisions to explain their case. As mentioned in the article 38(1)(d) in the statute of the International Court of Justice: “judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law”. The analyze of the claim of Haiti is not based on any other case similar considering the fact that all the islands that the American has conquest under the Guano Act are resolve by the mean of agreements or they have ben concede to their original owner by the United States. Anyhow Navassa Island is important for both parties for different reason. For Haiti because of the fishing activities and the claim of archipelagic water; and for the United States because of its geographical location. This study is based on Haiti’s claim

principally , however if the aim of this dissertation was an evaluation of the different claim of Haiti and USA for the objective of establishing who possession and sovereignty over Navassa it will be the same as trying to untie the Gordian knot. That mean it will be a complicated package of presumptions, legal theories and history as it exposed previously. Nevertheless the situation can be considered to be a little more complicated than the Gordian knot considering the fact that unilateral action will not put an end to the matter. The best solution in that case is an agreement between the claimants which have been proposed in this study. As explaining before taking the case to arbitration or to court will be time consuming and money consuming and there is the possibility for one of the party to lose completely. To avoid such situation the agreement is the most amicable way to resolve the dispute and it is also a wining situation for both parties.

Further, once the issue is terminated and the status of the island have been resolved, Haiti will have the chance to claim for an archipelagic state with archipelagic water which will allow it to extent its maritime space according with the international law. For developing country, ocean resources are of vital economic significance, this way it is important to claim the status. Also it will be a great opportunity for Haiti to confirm its existence as an independent sovereign State does not exist in a vacuum. However the status of Haiti as an archipelagic state should be the subject for another study which will be discuss deeply.

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Appendix I

MAP OF NAVASSA ISLA



ND

Appendix II

THE GUANO ACT

34th Congress, 1st Session. Chapter 164- An act to authorize protection to be given to citizens of the United States who may discover deposits of guano.

Sec.1. *Be it enacted by the Senate and House of Representatives of the United States in Congress assembled,* That when any citizen or citizens of the United States may have discovered, or shall hereafter discover, a deposit of guano on any island, rock, or key not within the lawful jurisdiction of y other government, and not occupied by the citizens of any other government, and shall take peaceable possession thereof, and occupy the same, said island, rock, or key may. at the discretion of the President of the United States, be considered as appertaining to the United States: Provided however, that notice be given by such discover or discoverers, as soon as practicable, to the State Department of the United States, of such discovery, occupation, and possession, verified by affidavit, latitude and longitude thereof, as near as may be, and showing that such possession was taken in the name of the United States, and that satisfactory evidence be furnished to the State Department that such island, rock, or key was not, at the time of discovery hereof or of the taking possession and occupation thereof by the claimants, in the possession or occupation of any other government or of the citizens of any other government.

Sec 2. *And be it further enacted.* That the said discoverers or discoverers, or his or their assigns, being citizens of the United States, may be allowed at the pleasure of Congress, the exclusive right of occupying said island, rock or keys, for the purpose of obtaining said guano, and of selling and delivering the same to citizens of the United States, for the purpose of being used therein, and may allowed to charge and receive for every ton

thereof delivered alongside a vessel, in proper tubs, within reach of a ship's tackle, a sum not exceeding eight dollars ton for the best quality, or four p per ton in its native place of deposit Provided. however, That no guano shall be taken from kid island, rock, or key, for the of citizens of the States, of persons resident except use United or therein, as aforesaid. *And further provided, also*, That said discoverer or discoverers or his or their assigns, shall first enter into bonds, with such penalties or securities as may be required by the President, to deliver the said guano to citizens of the United States, for the purpose of being used therein, and to none others, and at the provide al price aforesaid, and to necessary facilities for that within a time to be fixed in said bond. And breach of provisions thereof shall be taken any and deemed a forfeiture of all rights accruing under and by virtue of this act.

Sec3. *And be it further enacted*, That the introduction of guano from such islands, rocks, or keys, shall be regulated as in the coasting trade between different parts of United States, and the same the laws shall govern vessels concerned therein.

Sec. 4. *And be it further enacted*, That nothing in this act contained shall be construed obligatory on the United States to retain possession of the islands, rock, or keys, as aforesaid, after the guano have been removed from the same.

Sec. 5. *And be it further enacted*, That the President of the United States is hereby authorized, at his discretion, to employ the land and naval forces of the United States to protect the rights of said discover or discoverers or assigns, as aforesaid.

Sec. 6. *And be it further enacted*, That until otherwise provided by law, all acts done and offenses or crimes committed, such island, rock, or key, by persons who may land thereon, or in the on waters adjacent thereto, shall be held and deemed to have been committed on the high seas, on board a merchant ship, or vessel belonging to the United Stat and be punished according the laws of the United States relating to such ships or

vessels and offenses on the high seas which law, for the purposes of aforesaid, are hereby extended to and over such islands, rocks, or keys.

APPROVED. [and signed into law by Franklin Pierce). August 18, 1856.

Appendix III

DIFFERENT CONSTITUTIONS DESCRIBING THE WHOLE OF HAITI

Constitution of 1801

Art. 1. The whole territory of Saint-Domingue and Samana, La Tortue, la Gonave, les Cayemites, l'Ile-à-Vaches, la Saone as well as other adjacent islands, (Emphasis added) constitute the territory of one colony which is part of the French Empire, but is submitted to specific laws.

Imperial Constitution of 1805

Art. 18 Are considered integral parts of the territory of the Empire the following islands: Samana, La Tortue, La Gonave, les Cayemites, l'Ile à Vâche, la Saône and other adjacent islands. (Emphasis added)

Constitution of 1806

Art. 29 The Island of Haiti, along with the adjacent islands attached to her constitutes the territory of the Republic of Haiti.

Constitution of 1816

Art. 40 The Island of Haiti, along with the adjacent islands attached to her constitute the territory of the Republic of Haiti

Constitution of 1843

Art. 1 The Island of Haiti and the adjacent islands attached to her constitute the territory of the Republic of Haiti.

Constitution of 1846

Art. 1 The Island of Haiti and the adjacent islands attached to her constitute the territory of the Republic of Haiti.

Constitution of 1849

Art. 1 The Island of Haiti and the adjacent islands attached to her constitute the territory of the Republic of Haiti

Constitution of 1867

Art.1 (second paragraph). Her territory and the islands, which are attached to her, are inviolable and cannot be alienated by any treaty or convention.

Constitution of 1874

Art.2 its territory and the adjacent islands that depend on it are inviolable and cannot be alienated by any treaty or convention. These adjacent islands are La Tortue, La **Navaze**, Grosse Caye and all others who are in the radius limits enshrined in the law of the people.

Constitution of 1879

Art. 1 The Republic of Haiti is indivisible, essentially free, sovereign and independent. Its territory and the islands that depend on it are inviolable and cannot be alienated by any treaty or convention. These adjacent islands are La Tortue, La **Navaze**, Grosse Caye and all others who are in the radius limits enshrined in the law of the people.

Constitution 1987

Article 8 (a): The territory of Haiti is composed of:

The Occidental part of the Island of Haïti as well as the adjacent islands :la Gonâve, La Tortue, l'Ile à Vache, les Cayenites, **La Navase**, La Grande Caye et les autres îles de la Mer Territoriale;