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California's Offshore Islands: Is the
"Northern Archipelago" a Subject for
International Law or Political
Rhetoric?

JORGE A. VARGAS*

I. INTRODUCTION

Few topics in international law generate such intense emotion and controversy as the acquisition or loss of sovereign territory. Since the beginning of the law of nations, the acquisition or loss of sovereignty over a given territory has tended to produce an array of extremely delicate questions. These questions, both legal and extra-legal, must be dealt with in a cautious manner if they are to be kept within the bounds of legal objectivity and reason and outside passionate nationalism.

Throughout its history, Mexico has handled territorial controversies with detailed interest, technical and diplomatic professionalism, and above all, strict observance of international law. Mexican policy in this area has been characterized by extraordinary zeal in dealing with questions involving territorial sovereignty. This zeal is the result of the great territorial losses Mexico suffered throughout its history. Four examples of territorial losses are: (1) the Treaty of Guadalupe Hidalgo in 1848, known as the Treaty of Peace, Friend-

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ship, Limits, and Settlement with the Republic of Mexico;¹ (2) the Gadsden Purchase, known as the Treaty of La Mesilla, in 1853;² (3) the Chamizal arbitral decision of June 15, 1911;³ and (4) the arbitral decision by King Victor Emmanuele III of Italy in which Mexico lost the Island of Passion (Clipperton Island) to France in a territorial dispute.⁴

The problems over the Northern Archipelago are virtually unknown in Mexico, and in the United States even specialists are not familiar with them. Very little has been written in Mexico on this topic.⁵ Yet, because of its close relationship to the history of territorial limits between the United States and Mexico, the topic is important to historians, jurists, and diplomats. Yet the whole affair has been relegated to its present status as a relatively obscure chapter of the relations between the two nations. With the passage of time the

1. Treaty of Peace, Friendship, Limits and Settlement with the Republic of Mexico, Feb. 2, 1848, United States-Mexico, (exchanged at Queretaro May 30, 1848, ratified Mar. 16, 1848, proclaimed by President July 4, 1848) [hereinafter Treaty of Guadalupe Hidalgo], 9 Stat. 922, T.S. 207; 9 BEVANS, TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES OF AMERICA, 1776-1949, at 791 (1972); COMPILED LAWS OF THE STATE OF CALIFORNIA 1850-1853, at 23-28 (1853); 102 PARRY, CONSOLIDATED TREATY SERIES 29 (1969); 1 MALLOY, TREATIES, CONVENTIONS, INTERNATIONAL ACTS, PROTOCOLS AND AGREEMENTS, 1776-1909, at 1107 (1910); 1 Secretariat of Foreign Relations [hereinafter SRE], RELACION DE TRATADOS Y CONVENCIONES EN VIGOR 15 (1930); SRE, RELACION DE TRATADOS EN VIGOR 22 (1988).

2. Treaty of La Mesilla (Gadsden Purchase), Dec. 30, 1853, United States-Mexico, 10 Stat. 1031, T.S. 208; 9 BEVANS, TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES OF AMERICA, 1776-1949, at 812 (1972); TREATIES IN FORCE 149 (U.S. Dept. of State 1988); 23 SRE, RELACION DE TRATADOS Y CONVENCIONES EN VIGOR 211 (1930); SRE, RELACION DE TRATADOS EN VIGOR 149 (1988).

3. The Chamizal Treaty, Jan. 14, 1964, United States-Mexico, 15 U.S.T. 21, T.I.A.S. 5515; 505 U.N.T.S. 185; TREATIES IN FORCE 150 (U.S. Dept. of State 1988). See also Talleres de Artes Graficas, *Granja Experimental de Zoquipa*, MEMORIA DOCUMENTADA DEL JUICIO DEL ARBITRAJE DEL CHAMIZAL (1911). Fifty-six years passed before Mexico was able to take possession of the disputed land. The United States and Mexico finally signed a convention in Mexico City on August 29, 1963, which became effective on January 14, 1964.

4. See SRE, ISLA DE LA PASION LLAMADA CLIPPERTON (1909); see also A. GOMEZ ROBLED, MEXICO Y EL ARBITRAJE INTERNACIONAL 103-57 (1965).

5. The most extensive studies concerning the dispute were published in the last century by the Mexican Society of Geography and Statistics. See Speech by Esteban Chazari, "The Northern Archipelago Situated in Front of the California Coast, Is It Mexican?" (Jan. 15, 1894), the decision by the Commission on the rights of Mexico to the Northern Archipelago on June 7, 1894, and the legal opinion by Isidro Rojas, appearing as an appendix to the Commission's decision. The complete title of the Commission's study is "Decision of the Commission in Respect to the Rights of Mexico over the Northern Archipelago, Situated in Front of the Coasts of the Upper California." The three are printed in 3 BOLETIN DE LA SOCIEDAD DE GEOGRAFIA Y ESTADISTICA DE LA REPUBLICA MEXICANA 148-206, 338-57 (1894) [hereinafter BULLETIN].

topic has been shrouded in mystery and silence as a result of general indifference.

Nevertheless, there was a wave of political interest in the Archipelago around the turn of the century, near the end of the regime of Mexican President Porfirio Diaz. The interest concerned claims that the United States did not have valid legal title to exercise territorial sovereignty over the Archipelago, off the shore of California from Point Conception to the Mexican border, which consists of Anacapa, San Clemente, San Miguel, San Nicolas, Santa Barbara, Santa Catalina, Santa Cruz and Santa Rosa islands.

The claims were based on the fact that the islands are not explicitly named in article V of the Treaty of Guadalupe Hidalgo ("Treaty"),⁶ through which Mexico gave up more than half of its territory to the United States. Because of this, some allege that the Mexican government never intended to transfer its sovereign control over these islands to the United States. In other words, what Mexico arguably ceded in the Treaty was only the continental mass north of the boundary, but not the nearby islands. If so, the United States may not have valid title to the islands and might not hold these islands legitimately; therefore, Mexico should reclaim them in order to incorporate them under its sovereignty.

This article analyzes the problem from both legal and historical perspectives. It must be borne in mind that the Mexican government has never made a diplomatic protest or asserted a legal claim against the United States over the islands. It is this author's opinion that the Mexican government has not officially approached the problem since the middle of the last century, when it ratified the Treaty because it has concluded that there are no valid international legal arguments justifying a claim over the islands.

Jurists, historians and other researchers in Mexico have barely exhibited a passing interest in the topic. The Mexican people have in general been ignorant about the matter. How then can it be said that this topic is known among Mexican academicians? A possible answer is through sensational newspaper reports on the Northern Archipelago that occasionally appear in a few dailies in Mexico City,⁷ reports

6. See *supra* note 1. See also C. SEPULVEDA, *LA FRONTERA NORTE DE MEXICO, HISTORIA, CONFLICTOS 1762-1975*, at 57-69 (1976).

7. See generally Apicue, in "Excelsior," Mar. 20, 31, 1970; Palacios & Velasco, *El Archipelago del Norte. Punto Final de la Invasión y Guerra Estadounidenses*, in "Excelsior," Jan. 14, 17, 25, 27, 18, and Feb. 2, 1989. Recently, "El Sol de Tijuana" published a series of nine articles on this topic written by Celso Aguirre Bernal, October 2-11, 1989.

that invariably take an extremely nationalistic political approach. Despite the government's official silence over the matter since the end of the last century, the publication of these newspaper reports has resulted in the treatment of the Archipelago issue as an anti-American political argument that accuses the United States of possessing the islands arbitrarily and contrary to law.

Developing first as a newspaper topic, the issue of the Northern Archipelago is now a current political topic. Recently, it became a topic of discussion in the Congressional Chamber of Deputies. In 1981 and 1984, two proposals were presented in the Chamber.⁸ Although the first proposal was presented "to investigate the situation [concerning] the islands . . . in reference relevant to Mexico according to historical antecedents,"⁹ to date, the matter has not been addressed.¹⁰ However, it is likely that this issue will be officially discussed in the forthcoming session of the Mexican Congress.

Thus, the Northern Archipelago issue may resurface at any time during Carlos Salinas de Gortari's Presidential Administration. It could also become a political argument that opposition parties might present to the Mexican government, and indirectly against the ruling party in order to demand energetic and radical action. Clearly, such a political strategy, supported by fiery nationalistic demagoguery and fueled by an active journalistic machine, could not only provoke a national debate over the problem, but also persuade the Mexican government to abandon its official silence which it has maintained for decades.

The principal reasons behind the preparation of this work are the topic's legal and historical importance and the author's desire to offer objective information to help form a rational opinion concerning Mexico's possible rights over these eight California offshore islands.

II. THE NORTHERN ARCHIPELAGO

The name Northern Archipelago ("Archipelago del Norte") may be attributed to Esteban Chazari.¹¹ Chazari referred to these islands

8. The first proposal was made by Deputy Manuel Terrazas Guerrero during the 51st Legislature, on December 28, 1981 (reported in the *Diario de los Debates*, Year III, Tomo III, No. 8, at 15-19 (1981)).

9. *Id.* at 12.

10. Letter from Benjamin Martinez, director of *Diario de los Debates*, to Miguel Angel Garita Alonso, personal secretary to the President of the Grand Commission of the Chamber of Deputies (Dec. 29, 1988).

11. Actually, some jurists and diplomats question whether the term "archipelago" is

using the generic term, Northern Archipelago, when he presented a paper on this topic in 1894 in order to become a member of the prestigious Mexican Society of Geography and Statistics.¹² The Society's subsequent investigation of this question led Angel M. Dominguez and Trinidad Sanchez Santos to create a Special Commission. The Commission studied the nationality of the Archipelago and, on June 7, 1894, produced a report concerning the legal status of the islands.

The term Northern Archipelago is also found in a detailed study prepared by the Avila Camacho Commission ("Commission").¹³ The details of the study were never publicly disclosed; however, the final decision, included in the voluminous report, issued by the Commission, was submitted for final consideration by then-President Miguel Aleman Valdez five years after the Commission was formed.¹⁴

The islands fall into two major categories, depending on their relative location between Point Conception and the Mexican border. The first category includes the northern islands, made up of Anacapa, Santa Cruz, Santa Rosa and San Miguel islands. These are located in a line off the coast of Santa Barbara and Ventura counties. The second category encompasses the southern islands, comprised of Santa Barbara, San Nicolas, Santa Catalina and San Clemente. These are in the ocean space between the cities of Los Angeles and San Diego.¹⁵

At eleven miles offshore, Anacapa Island is the closest to the coast of California, whereas San Nicolas, being sixty miles offshore, is the farthest. Six of these islands make up the Channel Islands National Park: Anacapa, Santa Barbara and San Miguel, which are federal property; and Santa Catalina, Santa Rosa and Santa Cruz, which are private property.

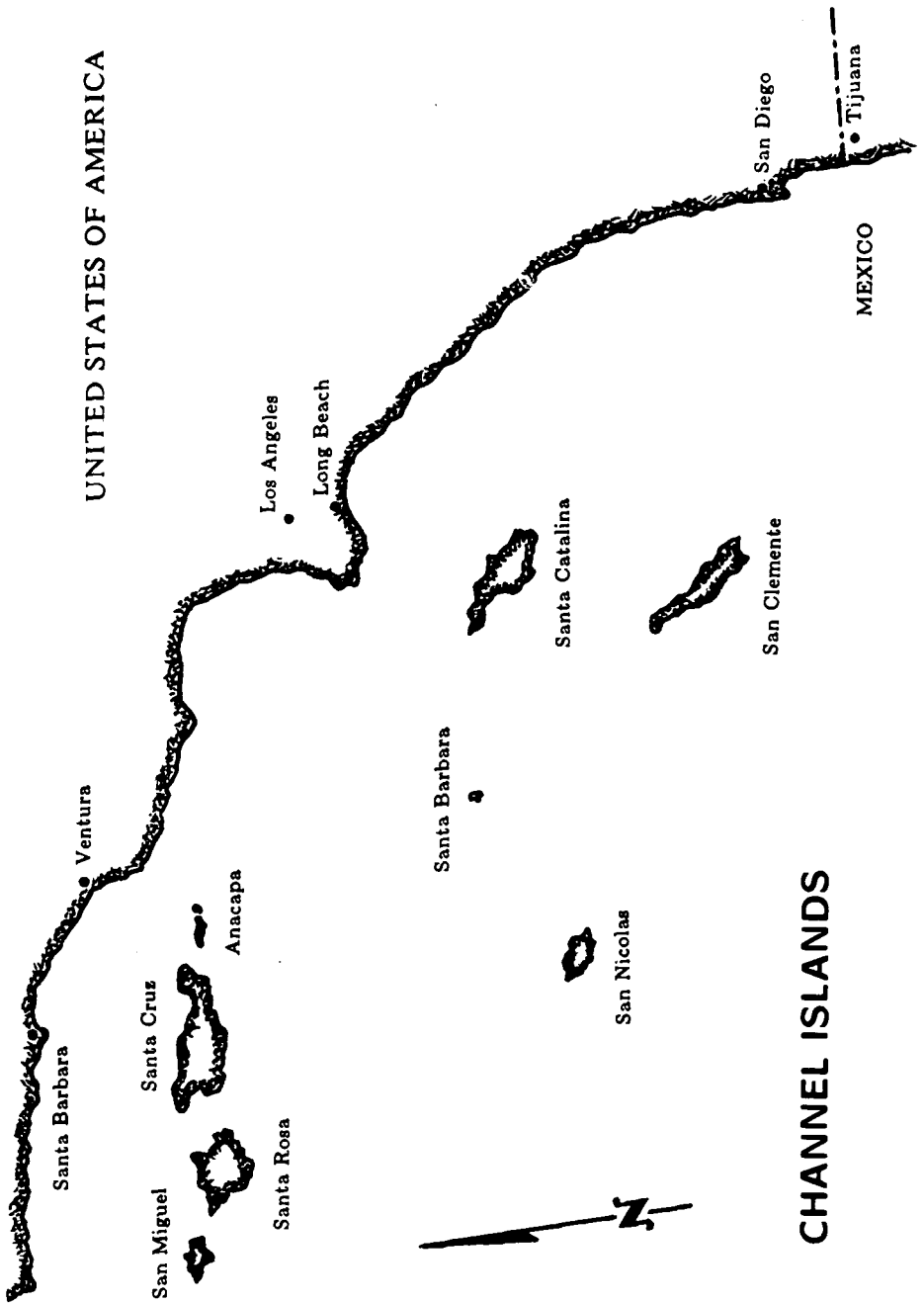
technically correct in referring to these islands. In the United States the islands are generally known by the names attributable to each individual island, with Santa Catalina Island being the best known, although "Santa Barbara Channel Islands" or simply "Channel Islands" are other terms commonly used. Other less common names for the Archipelago include "Santa Catalina Islands," "Santa Barbara Islands" and "California Islands."

12. See *supra* note 5.

13. This Commission was formed by Presidential agreement on December 9, 1944, by General Manuel Avila Camacho, then President of Mexico. It worked on the study for nearly five years under the chairmanship of Lorenzo L. Hernandez, General Director of International Boundaries and Waters of SRE. Its existence was terminated at the end of the study. See *infra* note 14.

14. Information on the Avila Camacho Commission appears in *Diario de los Debates* of the Chamber of Deputies, 52d Legislature, Year III, Tomo III, No. 8, Sept. 13, 1984, at 18.

15. See 1 CHANNEL ISLANDS, GENERAL MANAGEMENT PLAN, VISITOR USE/INTERPRETATION/GENERAL DEVELOPMENT, CHANNEL ISLANDS NATIONAL PARK (ANACAPA, SANTA BARBARA, SAN MIGUEL ISLANDS) (Sept. 1980).



A. Juan Rodriguez Cabrillo's Expedition of 1542

Juan Rodriguez Cabrillo, a Spanish explorer, discovered the islands in 1542.¹⁶ Following instructions from Viceroy Antonio de Mendoza, Cabrillo's squadron, made up of the ships "San Salvador" and "Victoria," left Puerto de Navidad on the western coast of New Spain and headed north on June 27, 1542, along the Pacific Coast.

Cabrillo's navigation diary contains the first detailed descriptions available of the California coast and its inhabitants.¹⁷ According to the diary, the explorer passed by the Coronado Islands, which he called "Desert Islands,"¹⁸ on September 17-26, 1542. The following day, the group arrived at a well-protected port named "San Miguel." This port is today known as the city and port of San Diego. The expeditionaries stayed there until October 3.

On October 7, 1542, Cabrillo's expedition found the first two California islands which Cabrillo named "San Salvador" and "La Victoria"¹⁹ in honor of his two ships. Cabrillo's diary reads: "At dawn on Saturday the 7th of the month of October they arrived at the islands which they named San Salvador and La Victoria."²⁰ However, Cabrillo suffered a tragic accident on one of those California islands. Despite the seriousness of his injuries (from which he was to die), the explorer courageously continued until nearly reaching what is today the limits of Oregon at about 44° N Latitude North. There, cold strong winds forced his return. According to the diary, Cabrillo died on January 3, 1543, and his body was buried in what was then called the Island of Possession, today called San Miguel Island.²¹ Under the direction of Pilot Bartolome Ferrelo, the demoralized

16. Rodriguez Cabrillo's nationality has been a controversial subject. Although he was traditionally thought to be a Portuguese in the service of Spain, more recent investigations have indicated he was Spanish. On the subject of the explorer, see Mathes, *The Discoverer of Alta California: Joao Rodriguez Cabrilho or Juan Rodriguez Cabrillo?*, 19 J. SAN DIEGO HIST. 1, 1-8 (1973); C. SOARES, CALIFORNIA AND THE PORTUGUESE (1939); H. KELSEY, JUAN RODRIGUEZ CABRILLO (1986).

17. Paez, *Cabrillo's Log 1542-1543: A Voyage of Discovery*, in 5 THE WESTERN EXPLORER Nos. 2-3 (1986).

18. *Id.* at 6. See also *California: Cabrillo Expedition, Relation of the Voyage of Cabrillo* at 20-21. The islands today belong to Mexico and are located close to that country's boundary with the United States.

19. See *California: Cabrillo Expedition*, *supra* note 18, at 24.

20. *Id.* Wagner especially has criticized Vizcaino's proclivity to rename sites already identified by Rodriguez Cabrillo in 1542, such as the renaming of San Miguel as San Diego and San Salvador as Catalina Island. See *infra* notes 22 and 25 and accompanying text.

21. *Id.* at 33. Despite attempts at finding it, the location of the explorer's grave remains a mystery.

crew, with many members ill, returned to Puerto de Navidad at the end of April 1543.²²

During this journey, Cabrillo took possession of the recently discovered lands "in the name of his Majesty, the King of Spain, and the most illustrious Sir Don Antonio de Mendoza," the then-vice-roy of New Spain, who had sponsored and financed the expedition.²³ Consequently, these territories became part of the Spanish dominion in conformance with the methods of territorial acquisition at the time.²⁴

B. Sebastian Vizcaino's Expedition of 1602

On May 5, 1602, following instructions of King Felipe III of Spain,²⁵ Sebastian Vizcaino and his fleet left Acapulco to discover and mark the California coast "so that very clearly and extensively can be placed and marked on a map or chart what has been discovered"²⁶ Because the expedition placed a premium on exacting detail and zeal for scientific precision, scholar Alvaro del Portillo attributes a profound impact to the number and quality of the documents produced. Today they can be found in the archives of Spain and Mexico.²⁷ In this way, after sixty years, Vizcaino effected the "rediscovery" or "re-baptism" of the California offshore islands that are the subject of this present investigation.

Fray Antonio de la Ascencion, a poor Carmelite priest, was the rapporteur, or chronicler, and second cosmographer in Vizcaino's expedition. His "Short Report"²⁸ is peppered with anecdotes of inci-

22. Henry R. Wagner is one of the foremost experts on explorations of the U.S. Pacific Coast during the 16th and 17th centuries. See H. WAGNER, SPANISH VOYAGES TO THE NORTHWEST COAST OF AMERICA IN THE SIXTEENTH CENTURY 72-93 (1966).

23. For account of the possession, see *id.* at 82. For account of Mendoza's involvement, see Mathes, *supra* note 16, at 2. See generally del Portillo y de Sollano, *Descubrimiento y Exploraciones en las Costas de California*, 20 PUBLICACIONES DE LA ESCUELA DE ESTUDIOS HISPANO-AMERICANOS DE SEVILLA, Monografos No. 7, at 152-57 (1947); R. POURADE, THE EXPLORERS, THE HISTORY OF SAN DIEGO 45-54 (1960).

24. See C. SEPULVEDA, DERECHO INTERNACIONAL 217-24 (13th ed. 1983); C. GARCIA, 1 DERECHO INTERNACIONAL PUBLICO 782-88 (1983).

25. See Letter from Phillip III to Viceroy Marquez de Montes Claros, San Lorenzo, Aug. 19, 1606, Manuscript No. 18,393 in the National Library of Madrid, Nos. 55-60, *quoted in* del Portillo y de Sollano, *supra* note 23, at 175.

26. See Letter of King Phillip III on Sept. 27, 1599, with instructions, *reproduced in* Del Portillo, *supra* note 23, at 175.

27. See del Portillo y de Sollano, *supra* note 23, at 175.

28. Fray Antonio's work was titled "Relacion breve en que se da noticia del descubrimiento que se hizo en la Nueva España en la Mar del Sur, desde el Puerto de Acapulco, hasta mas adelante del Cabo Mendocino, en que se da cuenta de las riquezas y buen temple y comodidades del Reyno de Californias, y de como podia su Majestad a poca costa

dents that occurred during the journey. It also relates detailed descriptions of the region's geography, its natural resources, and meetings with the natives of the region.²⁹ In his report, Fray Antonio narrates the group's arrival in San Diego on November 10, 1602:

We finally arrived with great difficulty at the port of San Diego, which is very good and capable, and has many very good accommodations for a Spanish settlement; here the ships were cleaned and stocked anew, because it is a calm port and there are many Indians of a genial and friendly character, others use bow and arrow, and appear bellicose and brave, although daily they came to see us, they always treated us with suspicion and never wanted to trust us; those who heard us speak in our tongue had good pronunciation, and those who only heard them without seeing them, would have said they were Spaniards.³⁰

After ten days in San Diego, the expedition continued and on November 24, they found the first islands of the Northern Archipelago. As Fray Antonio wrote:

After leaving the port of San Diego, we went discovering many islands, one after another, most of which were inhabited by many loving and friendly Indians, who had contact with the mainland, and could be subjects of a kingdom on the mainland which came via a canoe with eight rowers.³¹

Historians agree that the first islands discovered by Vizcaino were San Clemente and Santa Catalina. On December 2, Vizcaino sighted two more islands, which he named San Nicolas and Santa Barbara, and the ships then anchored in a channel named Santa Barbara. These names are still used today.³²

pacificarle y incorporarle en su Real Corona, y hacer que en el se predique el Santo Evangelio. Por el Padre Fray Antonio de la Ascension, Religioso Carmelita Desclazo, que se halla en el, y como Cosmografo lo demarco." A copy of the original of this manuscript can be found in the Special California Collection in the Special Documents Section of the Central Library at the University of California, San Diego (UCSD).

29. Fray Antonio's work can be found in the National Library in Madrid, Manuscript No. 3042, Nos. 21-35. It is also examined in del Portillo y de Sollano, *supra* note 23, at 176-84. The official report on the voyage was published in L. CEBRERO BLANCO, COLECCION DE DIARIOS Y RELACIONES PARA LA HISTORIA DE LOS VIAJES Y DESCUBRIMIENTOS (1944). For an English translation, see J. BOLTON, SPANISH EXPLORATIONS IN THE SOUTHWEST 1542-1706 (1916); H. WAGNER, *supra* note 22, at 72-93.

30. de Portillo y de Sollano, *supra* note 23.

31. *Id.* This was paragraph 11 in the original. See also H. WAGNER, *supra* note 22, chap. II and notes at 378-408; M. MATHES, SEBASTIAN VIZCAINO Y LA EXPANSION ESPANOLA EN EL OCEANO PACIFICO 1580-1630, 55-72 (1973).

32. See M. MATHES, *supra* note 31, at 65-66.

The Vizcaino expedition made three important accomplishments. First, it completed a demarcation of the California coast fundamental to further Spanish exploration in the region. Second, the expedition established current geographic nomenclature in the region. Finally, it expanded the Spanish Crown's territorial sovereignty in that part of the world.³³

III. MEXICO'S ALLEGED RIGHTS TO THE CALIFORNIA ISLANDS

Mexico's claims to sovereignty over the eight California islands are based primarily on two sources: first, Chazari's presentation to the Mexican Society of Geography and Statistics³⁴ in 1894; and second, the findings a few months later by that Society's Special Commission³⁵ created *ex profeso* to evaluate Chazari's presentation. These findings not only confirmed the sovereignty claim that Chazari proposed but also served to add to the reasoning that the islands *were not ceded by Mexico to the United States* in the Treaty. This allegation is directly opposed to the idea generally accepted in both countries, that the islands unquestionably became part of the United States, just as did vast portions of territory that Mexico legally ceded by virtue of the Treaty.

In this way, the arguments formulated in the two sources toward the turn of the last century helped to maintain a ray of hope among some Mexicans that Mexico possesses certain rights over the islands, rights that, although not yet accepted, may someday serve to reclaim the islands. This author believes that a series of circumstances of historical, diplomatic and cultural nature have served to keep that chimeric aspiration alive.

Historically, Mexico underwent its most dramatic political and social upheaval at the beginning of this century, with the Mexican Revolution of 1910. The Revolution prevented the Mexican government from dealing with the problem of the islands at the time. After all, it was a question that did not arise until nearly the end of the presidency of Porfirio Diaz. This legal question was not reconsidered until thirty years later, during the era of President Manuel Avila Camacho, who constituted a blue-ribbon commission to study it.³⁶ As such, it was with Chazari's presentation that the problem was first

33. *Id.* at 72.

34. *See supra* note 5.

35. *Id.*

36. *See supra* note 13.

planted in the social consciousness of the era and of the Mexican people in general, only to be buried by the turmoil of the Mexican Revolution. Once Mexico achieved political stability between the end of the 1930s and the beginning of the 1940s, the problem of the Northern Archipelago reappeared. That is, it "germinated" in the new Mexican society once conditions allowed it.

Perhaps the problem reappears sporadically as a topic of national interest because the Mexican government has systematically avoided making an official declaration that might establish its stance regarding the legal ownership of the islands. Politically, it seems impossible for the Mexican government to recognize that it no longer has any sovereign rights over territory it once owned. This political difficulty is aggravated because the beneficiary of such a declaration is the United States, a nation with which Mexico has had many political differences regarding territorial limits. Not only would such a declaration open old wounds, it might also be interpreted negatively by certain sectors of the population, especially political opposition parties. These parties argue that Mexico's unilateral recognition of U.S. sovereignty over the islands would be abandoning possible rights, which because of their importance should be taken to an international tribunal. In other words, the parties consider such a decision a surrender to the wishes of the United States.

Cultural considerations must also be taken into account. The vast extensions of territory that Mexico lost as the result of the U.S.-Mexican War of 1846-48, followed by the additional loss in the forced sale of La Mesilla in 1853, have produced an intense emotional load that, despite the 141 years since the Treaty, continues to generate feelings of animadversion against the United States.³⁷ This loss of territory, perceived as having resulted from an unjust war, has had a historically traumatic effect. This may explain why Mexicans cannot resign themselves to accept a loss suffered more than a century ago and why even today they struggle to find arguments, albeit more emotional than rational, which allow them to maintain the hope that at least some lost territories may some day be returned to Mexico.³⁸

Until now, there have been few studies published in Mexico which precisely detail, from a legal point of view, the supposed sover-

37. See C. SEPULVEDA, *supra* note 24; see also G. GARCIA CANTU, *LAS INVASIONES NORTEAMERICANAS EN MEXICO* (1980).

38. *Contra* see Mendez Silva, *Las Islas de la Fantasia*, *El Dia*, Apr. 29, 1983, at 2; Vargas, *Archipelago del Norte: Mexico no tiene Malvinas*, *Uno mas Uno*, Apr. 13, 1982, at 6, and *No hay Argumentos para Demandar el Archipelago del Norte*, "Excelsior," Apr. 8, 1983.

eight rights that Mexico has over the eight Northern Archipelago islands.³⁹ Basically, the most complete argument to date has been Chazari's work and the subsequent research done by the Commission under Porfirio Diaz.

A. Chazari's 1894 Presentation to the Mexican Society of Geography and Statistics

Chazari's presentation was an eminently historical work, yet it lacked solid legal arguments. Until now, no Mexican study has noticed the numerous historical and legal errors in the work.⁴⁰ Nevertheless, Chazari's work is the foundation, from a rhetorical standpoint, in favor of Mexico's claim to the islands.

What are Chazari's arguments favoring Mexico's claim of sovereign rights over the islands? Chazari uses five principal arguments:

(1) The islands are

completely *outside* of the boundary line specified to the United States; they are not *inside* of the boundaries of that republic; they were not *ceded* and continue under the dominion of Mexico, forming, since before the beginnings of our [Mexican] Republic, an integral part of that territory.⁴¹ It should be understood as reserved all that which has not been ceded expressly If our Northern Archipelago has been in accordance with the text of the 1848 Treaty in the same way as it was before that agreement, namely, outside of the United States of the North [sic], it is clear that, not having since that date . . . any resolution which in a legitimate manner takes it away from us, it continues to belong to us in accordance with the Treaty of 1819.⁴²

(2) The islands do not belong to the United States because they are outside the territorial sea. In reference to this, Chazari argues

39. The studies have generally taken a personal or political point of view. See Vega Vera, *Los Derechos de Mexico sobre el Archipiélago del Norte*, 10 ANUARIO DE DERECHO INTERNACIONAL ENEP-ACATLAN, at 231-56 (1981).

40. Some of Chazari's errors include: (1) a belief that Vizcaino discovered the California islands in 1602, and not Rodriguez Cabrillo in 1542; (2) Chazari omits Santa Catalina Island as part of the Archipelago, although he names a "San Juan" island; (3) he believed the U.S.-Mexico boundary was moved for the third time following a "diplomatic agreement" on July 10, 1854, when he was referring to the Treaty of Mesilla on December 10, 1853; (4) he confuses islands formed in rivers with islands of marine origin; and (5) he claims that the California islands are "not included in the territory assigned to the Department of California nor to any other of the American Union." See BULLETIN, *supra* note 5, *passim*.

41. *Id.* at 156.

42. *Id.* at 162.

our archipelago is not expressly included in the territory mentioned to the United States in the Treaty of 1848, so the U.S. tacitly takes away what was named territorial waters or territorial sea, in taking away from us the territory added to the United States, following the islands as a principal part adjacent to the same.⁴³

(3) “[T]he California Constitution [does not] mention the islands, being that it with complete clarity and precision determines the boundary of the state and the jurisdiction of its authorities.”⁴⁴

(4) Chazari further argues that:

[i]n the capitulations for the delivering of California, following a prolonged and unpleasant defense of this territory, the islands were not included, and because of this, when the American government took possession of California, it did not extend its dominion over these; there are two soldiers in the City of Santa Barbara of the ones who occupied California during the era referred to, who affirm that the Americans never took possession, their ships of war never made on any of these, not even once, a campsite.⁴⁵

(5) Since the Mexican government issued titles to private property on Santa Rosa, Santa Cruz and Santa Catalina islands prior to 1847, and since such titles were recognized by the United States government, all eight islands continue to belong to Mexico. This follows since the protocol of the Treaty establishes that:

[t]he American government, in eliminating Article X of the treaty of Guadalupe, has not in any way attempted to nullify the concessions made by Mexico of the various lands in the ceded lands. These concessions, although eliminating the treaty's article, keep their legal value and the concessionaires can make valid their titles in American tribunals.⁴⁶

Finally, Chazari concludes, “[t]he islands that form the Northern Archipelago, have not ceased belonging, by just law or patent, to the Republic of Mexico.” Therefore, it is necessary to “rescue that part of our land . . .” anticipating that “the illustrious government that leads us shall give us a new proof of its already well-accredited patriotism, taking once again to the legitimate limits of the North the eagle of the Republic.”⁴⁷

43. *Id.* at 163.

44. *Id.* at 165.

45. *Id.* at 166.

46. *Id.* at 156.

47. *Id.* at 167.

To date, no author has analyzed the validity and application of these arguments with the attention and patience that they deserve. So being, this will be attempted.

1. First Argument

The argument that the islands in the Northern Archipelago continue to belong to Mexico because they "were not ceded" to the United States in the Treaty of 1848 will probably be the one most commonly used reason to defend Mexico's supposed rights over the islands.

Chazari argues that the islands were not ceded because each island was not mentioned explicitly by its proper name in article V of the Treaty which transferred enormous territory from Mexico to the United States. The findings of the Special Commission of the Mexican Society of Geography and Statistics are clear on this point.⁴⁸ The Commission argues that when dominion of a region is transferred, whether it be between individuals or states,

if realty is not mentioned expressly or at least tacitly, it cannot be considered to have been transferred. [T]his is the way it is with the Treaty of Guadalupe Hidalgo, in that the Northern Archipelago is neither expressly nor tacitly written in the cession that Mexico made to the U.S.A.; then in those treaties that part of our territory is not included in those treaties.⁴⁹

Chazari's argument is flawed for four reasons. First, the Treaty does not specifically enumerate each part of the territory that Mexico ceded to the United States, nor does it identify with particularity the islands that were passed from one country to the other. The Treaty actually drew an international boundary line between the two nations through little-known and practically unexplored regions. Thus, the negotiators chose to simply draw a line between astronomical or known geographical points of reference, such as the mouth of the Rio Grande, a town called "Paso," the junction of the Gila and Colorado rivers, the port of San Diego, etc., rather than specify each portion of the ceded territory. This is why article V of the Treaty leaves open various alternatives to tracing the international border, depending on the existence of geographical "accidents" such as the possibility of the

48. *Id.* at 172. To the question "In the cession of a great portion of its territory that Mexico made to the United States, according to the Treaty of Guadalupe Hidalgo, is the Northern Archipelago included? The Commission answers in the negative."

49. *Id.* at 172.

Rio Grande "having at its mouth various branches," or if the western limit of New Mexico is interrupted by the "first branch of the Gila River (or if it should not intersect any branch of that river, then to the point on the said line nearest to such branch, and thence in a direct line to the same)."⁵⁰ Apparently, this system of demarcation of international boundaries was common during that era in Europe, the Americas, and other parts of the world.⁵¹

As can be seen, there is little support for the argument that because the islands were not explicitly mentioned in the Treaty, they were therefore not ceded to the United States. They were not mentioned in the Treaty because it did not specifically name any of the ceded territories. Instead, it limited itself to establishing "the boundary line between the two Republics."⁵² The statement is notable for the way in which it deals with the enormous and painful loss of territory Mexico suffered because it merely notes the existence of a new boundary line between the two countries.

Second, the argument is also flawed because the islands historically belong within the jurisdiction of Upper California. It is undisputed that Upper California (i.e., Alta California) was in fact ceded to the United States by the Treaty. The Treaty's negotiators agreed that

to preclude all difficulty in tracing upon the ground the limit separating Upper from Lower California, . . . the said limit shall consist of a straight line drawn from the middle of the Rio Gila, where it unites with the Colorado, to a point on the coast of the Pacific Ocean distant one marine league due south of the southernmost point of the port of San Diego, according to the plan of said port made in the year 1782 by Don Juan Pantoja, second sailing-master of the Spanish fleet, and published at Madrid in the year 1802

50. Treaty of Guadalupe Hidalgo, *supra* note 1, art. V. For a critical study, see J. ZORRILLA, *HISTORIA DE LAS RELACIONES ENTRE MEXICO Y LOS ESTADOS UNIDOS DE AMERICA*, 1800-1958, (2d ed. 1977).

51. See, e.g., the Treaties of Puerto Velazco between Santa Anna and Texas on May 14, 1836, in 23 SRE, *RELACION DE TRATADOS Y CONVENCIONES EN VIGOR* (1930). Article V of the Treaty of Guadalupe Hidalgo provides:

The boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte . . . from thence up the middle of said river . . . to its western termination; thence, northward, along the western line of New Mexico until it intersects the first branch of the River Gila . . . thence down the middle of the said branch and of the said river, until it empties into the Rio Colorado; thence across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific Ocean.

52. *Id.*

. . . .⁵³

According to the territorial division of New Spain, Upper California exercised administrative jurisdiction over all the islands off its coastline.⁵⁴ In this way, the governor of the "Department of the Californias" exercised jurisdiction over all the California islands. This jurisdiction extended from the Farallones group, the most northern group, located opposite San Francisco Bay, to San Clemente Island, the most southerly, just south of San Diego and at the line dividing Upper from Lower California.

If Upper California's cessation to the United States by the Treaty is accepted, the cessation of the California islands, including the Northern Archipelago, should also be recognized. This follows because at the time, they formed an integral part of the Department of the Californias and were jurisdictionally and administratively dependent on Upper California.

The foregoing discussion supports the conclusion that the Mexican negotiators accepted Upper California's passage to the United States under the Treaty, including the islands off the Upper California coast. Those islands, including the Northern Archipelago, were jurisdictionally and administratively part of Upper California. In short, Upper California passed to the United States in the same form it existed as a territory of Mexico—together with all of its integral dependencies and possessions.

Because the islands were an integral part of the territory of Upper California, the only way the Mexican negotiators could have excluded the islands from the surrender of the territory would have been by explicitly excluding them from the package being negotiated. The responsibility would theoretically belong to the Mexican negotiators to specify that, for extraordinary reasons, the islands of the Northern Archipelago would remain a Mexican possession and would not be turned over to the United States. No doubt, had they formulated such a proposal, they would have met with the strongest resistance from the U.S. negotiator.

Third, it is extremely unlikely that the United States would have intended that Mexico retain its rights to the islands after winning the war against Mexico. Since the beginning of the last century, the rich and vast lands along the northern frontier of New Spain, and later

53. *Id.*

54. See E. O'GORMAN, *HISTORIA DE LAS DIVISIONES TERRITORIALES DE MEXICO* 105-10 (3d ed. 1966).

independent Mexico, had been gradually invaded by soldiers of fortune, explorers and colonists from various nations including England, Russia and, finally, the United States. It would have been difficult for the Mexican negotiators to formulate solid arguments to persuade the U.S. negotiator to leave under Mexican control what had, after all, been lost on the battlefield during the conflict.

Finally, the importance of the islands to the United States in general and California in particular must be taken into account. In an era of territorial expansion and Manifest Destiny, it would have been a waste of time for the Mexican negotiators to suggest that an important group of islands from Point Conception to San Diego, possessing unique strategic importance to the western coast of the United States, remain under the dominion and control of a country other than the United States. One cannot seriously suggest that a nation that had just defeated another in a war of territorial expansion would have allowed the most strategically-located islands off its west coast, islands acquired by force of arms, to remain under the sovereign control of the country that had been its enemy.

2. Second Argument

Chazari and the Special Commission of the Mexican Society of Geography and Statistics argue that the Northern Archipelago was not ceded to the United States because the islands were outside the U.S. territorial sea and therefore remained under the sovereign control of Mexico.⁵⁵ They argue that the

Northern Archipelago is not between [sic] the territorial waters of California; the archipelago is outside these waters; for the same reason, it is impossible to consider it ceded in the cession of the Upper California, nor included in the dominion of the United States, inasmuch as it imposes its dominion of these over the coast.⁵⁶

In formulating this argument, Chazari and the Society wrongly assume that a coastal state cannot exercise sovereign rights over islands or rocks located outside the limits of territorial waters. They confuse the concept of the width of the territorial sea with the methods accepted under international law by which a state can acquire sovereign rights over territory.

The error and inconsistency in this argument can be illustrated

55. See BULLETIN, *supra* note 5, para. 1.

56. *Id.* at 175-76.

by Mexico's valid claims over several islands located at considerable distances from its own coastlines. For example, in the Pacific Ocean Mexico claims the Marias Islands (located 8 to 144 nautical miles from the coast of Nayarit), Guadalupe Island (153 nautical miles from Baja California) and the Revillagigedo Archipelago, the farthest (221 to 381 nautical miles) from the Mexican mainland.⁵⁷ Clarion Island, part of the Revillagigedo group, is 381 nautical miles from the mainland, yet Mexican sovereignty over the island is undisputed. Following Chazari's and the Society's reasoning, Mexico's claims over these islands cannot be consistently justified and yet at the same time deny the United States' claim to the islands of the Northern Archipelago.

According to principles of international law, coastal states can validly exercise territorial sovereignty over islands located outside their territorial sea, as long as the states have some legal basis for exercising a valid international title. Examples of valid cases include discovery followed by effective and valid occupation, conquest; and a valid sale or cession.⁵⁸ As a result, whether the islands are located inside or outside the territorial waters of Mexico or the United States is irrelevant. The decisive factor in this case is whether the islands were under the exclusive territorial sovereignty of Mexico at the time of cession. As mentioned above, the islands of the Northern Archipelago clearly formed part of the territory of Upper California, then under Mexico's sovereign rule. When Mexico transferred Upper California to the United States under article V of the Treaty, it also transferred the islands to the United States.

The Special Commission also argued:

The treaty does not say that the boundary line in the west, that is to say, the Pacific Ocean, enters the water, as in the extreme east,

57. SECRETARIA DE GOBERNACION, REGIMEN JURIDICO E INVENTARIO DE LAS ISLAS, CAYOS Y ARRECIFES DEL TERRITORIO NACIONAL, 1981 (1981); SECRETARIA DE MARINA, REGIMEN JURIDICO DE LAS ISLAS MEXICANAS Y SU CATALOGO No. 5 (2d ed. 1979). The Marias Islands include Maria Madre (144 nautical miles from Nayarit), Maria Magdalena (84 miles), Maria Cleofas (25 miles) and San Juanito (8.33 miles). The Revillagigedo Archipelago is made up of the Clarion, Roca Partida, Socorro, and San Benedicto (Anublada) islands, between 221 to 381 miles from the Mexican coast. For more information, see J. A. VARGAS, TERMINOLOGIA SOBRE DERECHO DEL MAR (1979).

58. See L. HENKIN, R. PUGH, O. SCHACHTER & H. SMIT, INTERNATIONAL LAW, CASES AND MATERIALS 287-93 (2d ed. 1987); M. MCDUGAL & W. REISMAN, INTERNATIONAL LAW IN CONTEMPORARY PERSPECTIVE: CASES AND MATERIALS, 610-94 (1981); C. SEPULVEDA, *supra* note 24, at 217-224; M. VAZQUEZ, DERECHO PUBLICO 246-48 (1979); and C. ARELLANO GARCIA, DERECHO INTERNACIONAL PUBLICO 782-86 (1983).

in which it reaches an imaginary three leagues into and over the waters of the Gulf [of Mexico]. As has been seen, the treaty terminates the line on land, at the geographically specified point.⁵⁹

Article V of the Treaty specifies that the boundary line between the two nations terminates by "following the division line between Upper and Lower California, to the Pacific Ocean."⁶⁰ As the Commission found, it is true that the Treaty omits an explicit statement as to whether the line continues into the Pacific Ocean. Nevertheless, the Commission disregarded the legal consequences of the transfer as it pertains to the Northern Archipelago since these islands formed part of Upper California and that transfer to the United States has never been legally challenged.⁶¹

Finally, a well-established principle of international law known as *res accessoria sequitur rem principalem*, invalidates the Commission's argument. This principle means that the accessory follows the principal.⁶² Applying this concept, there is no alternative to the conclusion that if the vast territory of Upper California was transferred to the United States, so were the islands, which constituted an integral part of that territory.

3. Third Argument

Chazari argues that the islands of the Northern Archipelago are not included . . . in the territory assigned to the territory of California, nor to any other of the American Union; nor does the Constitution of the State of California refer to these islands, therefore with complete clarity and precision it determines the limits of the state and the jurisdiction of its authorities.⁶³

At his reception speech, Chazari reproduced the text of article XII of the California Constitution adopted by the Constitutional Convention on October 10, 1849, which established the territorial limits of the state. The article specifies that "[t]he boundaries of the State of California shall be as follows: . . . from here to the west, along the boundary line to the Pacific Ocean . . . including all the islands, ports

59. See BULLETIN, *supra* note 5, at 174.

60. See Treaty of Guadalupe Hidalgo, *supra* note 1, art. V. See also *supra* notes 53 and 54 and accompanying text.

61. See *supra* note 50 and accompanying text.

62. BLACK'S LAW DICTIONARY 1174 (5th ed. 1979). This ancient principle of Roman Law is codified in MEXICO CITY CIVIL CODE, arts. 886-932.

63. See BULLETIN, *supra* note 5, at 156.

and bays along and adjacent to the coast."⁶⁴

The final part of the geographical description clearly states that "all of the islands, ports and bays along and adjacent to the coast" form an integral part of the territory of the State of California. This indicates that the islands along the California coast, including the Northern Archipelago, are incorporated into what would become the thirty-first state of the United States.⁶⁵

According to accounts of the debates of the California Constitutional Convention, disagreements concerning the definition of California's territorial limits provoked heated discussions among early legislators. However, the controversies dealt with the determination of only the eastern, not western, borders of the state along the Sierra Nevada and its abutment with the Utah and Nevada territories.⁶⁶ With reference to the western limits, however, the forty-nine constitutional representatives based their discussions on Upper California's territory under the assumption that it had been transferred in its entirety to the United States, and took for granted that the offshore islands were an integral part of the ceded territory.

Chazari reproduced the text of article XXI of the California Constitution of 1879 (identical, insofar as boundaries are concerned, to article XII of the 1849 California Constitution) which specifies that the islands form part of the state. Thus, Chazari claims "the California Constitution [does not] bother with the islands." Amazingly, Chazari is firm in his contention that the Northern Archipelago is not an archipelago "along and adjacent to the coast," like the Farallones in San Francisco Bay. As such, Chazari concludes that the Northern Archipelago "does not have this condition, nor is adjacent to California, situated as it is from 20 to more than 100 kilometers from the continent."⁶⁷

64. In the original 1849 Constitution, the state boundaries were described in article XII and not in article XXI as Chazari claimed. No doubt Chazari consulted and translated the text of the 1879 Constitution, in which the boundaries of the state were described in article XXI, instead of examining the 1849 Constitution on which he based his argument. California's first Constitution was adopted October 10, 1849, at the Constitutional Convention held in Monterey. It was ratified on November 13, 1849, and proclaimed on December 20, 1849. On various occasions it was amended; the most radical changes occurred in 1856, 1862, 1871, and 1879. See CALIFORNIA CONSTITUTION (Mason 1931).

65. California was not admitted to the United States until September 9, 1850. See J. SHERER, THIRTY-FIRST STAR (1942); R. HUNT, THE GENESIS OF CALIFORNIA'S FIRST CONSTITUTION (1895); J. BROWNE, REPORT OF THE DEBATES IN THE CONVENTION OF CALIFORNIA ON THE FORMATION OF THE STATE CONSTITUTION (1850).

66. See J. BROWNE, *supra* note 65, at 123-24, 154, 167-69, and 418-61.

67. See BULLETIN, *supra* note 5, at 166.

Finally, Chazari's allegation that the islands "are not included in the territory assigned to the California territory, nor to any other of the American Union"⁶⁸ is blatantly incorrect. On the contrary, among the first pronouncements of the First California Legislature, which met in San Jose between December 15, 1849 and April 22, 1850, was legislation which administratively subdivided the recently-established state into twenty-seven counties with seats for local civil tribunals. The legislation's fourth section expressly included "the islands of Santa Barbara, San Nicolas, San Miguel, Santa Rosa, Santa Cruz, and all of the others in the same area" inside the limits of Santa Barbara County with the City of Santa Barbara serving as the county seat.⁶⁹ The same legislation also specified that Santa Catalina and San Clemente islands were in Los Angeles County.⁷⁰ Therefore, one of the California Legislature's most significant first acts was to incorporate the Northern Archipelago into the state's territorial administrative subdivision. The legislature did not hesitate to include these islands as an integral part of the territory of the Golden State.

4. Fourth Argument

To further support his conclusion that the Northern Archipelago was not ceded to the United States in the Treaty, Chazari argues that "these islands were not included, because . . . when the American government took military possession of California, it did not extend its dominion over these."⁷¹ But, in reality, during the time between Mexican independence until the war with the United States (1846-1848), vast areas of the northern territories, particularly Texas, New Mexico, and Northern California, were continually invaded by adventurers and colonizers from Russia and England, as well as the United States. In their incursions into the vast, unpopulated and militarily

68. *Id.*

69. See "An Act sub-dividing the State into Counties and establishing the Seats of Justice therein," approved Feb. 18, 1850, in J. WINCHESTER, STATUTES OF CALIFORNIA 58-63 (1850). The state was divided into 27 counties. Today there are 58. The original counties were San Diego, Los Angeles, Santa Barbara, San Luis Obispo, Monterey, Branciforte, San Francisco, Santa Clara, Contra Costa, Marin, Sonoma, Solano, Yola, Napa, Mendocino, Sacramento, El Dorado, Sutter, Yuba, Butte, Colusi, Shasta, Trinidad, Calaveras, San Joaquin, Tuolumne and Mariposa.

70. *Id.* at 59. Although not part of the Northern Archipelago, the same legislation assigned the Farallones Islands, Alcatraz, Yerbabuena, and Rock to San Francisco County. *Id.* at 60. Other islands, such as San Pablo, Coreacas and Treasure went to Contra Costa County, while Dos Hermanos and the Marin Islands were assigned to Marin County and Yegua Island to Sonoma County. *Id.*

71. See BULLETIN, *supra* note 5, at 166.

unprotected territories, explorers displayed great interest in taking possession of the areas along the California coast, including the islands because they had considerable strategic value.

Manuel Pesado, Minister of the Interior of Mexico, wrote a letter in July 1838 to the President of Mexico, which makes it clear that Mexican officials were well aware of foreigners' incursions. The letter stated that one of Pesado's goals was "the protection of the population of the deserted islands adjacent to this [California] territory that are part of the national territory," as well as to "block . . . the many foreign explorers who take advantage of these extensive areas where they can damage our fishing industry, commerce and other interests. . ."⁷² Thus, even before the U.S. military victory in 1848, much of Upper California was already under the control of non-Mexicans.

Unquestionably, in the war with Mexico, the United States government sought as a goal the control of California.⁷³ Even before the war with Mexico began, President Polk suggested that the best way to take over California was by tactics of "infiltration and disturbance"⁷⁴ similar to those used in Texas. In a conversation with George Bancroft, Secretary of the Navy, Polk noted that his objectives were the "acquisition of California," a tariff reduction, an independent treasury, and the setting of the Oregon boundary.⁷⁵ Some time later, on June 24, 1845, Bancroft sent a "secret and confidential"⁷⁶ message to Rear Admiral John D. Sloat, commander of the Pacific United States Naval Force, and instructed Sloat to use his forces to the greatest advantage as soon as it was positively determined that the Mexican government had declared war against the United States. Sloat was also instructed to take the port of San Francisco and any others he

72. The text in Spanish of the "Pesado Letter" is in Bowman, *The Question of Sovereignty of California's Offshore Islands*, 31 PAC. HIST. REV. 291, 297-98 (1962). An English translation appears in A. DORAN, *PIECES OF EIGHT CHANNEL ISLANDS* 192 (1980). These historians, as well as Bancroft, Hittel, and Eldredge comment that the letter was delivered from Mexico City to Governor Alvarado in Santa Barbara by messenger Andres Castillero. However, official Mexican authorities have not decided its authenticity.

73. Most United States and Mexican historians agree that acquisition of California was a decisive factor in U.S. plans for territorial expansion. See J. ROA BARCENA, *RECUERDOS DE LA INVASION NORTEAMERICANA 1846-1850* (1902); G. GARCIA CANTU, *supra* note 37; J. SMITH, *THE WAR WITH MEXICO* (1963); C. DUFOUR, *THE MEXICAN WAR, A COMPACT HISTORY* (1968).

74. C. DUFOUR, *supra* note 73, at 22-23.

75. See *id.* at 22-23.

76. J. CUTTS, *THE CONQUEST OF CALIFORNIA AND NEW MEXICO BY THE FORCES OF THE UNITED STATES, IN THE YEARS 1846 & 1847*, 103, 252-53 (1965).

could as soon as war broke out.⁷⁷

By the beginning of 1846, the United States assembled its most powerful naval force in twenty-five years and stationed it off the Mexican Pacific Coast. The force was made up of the frigates "Savannah," "Constitution" and "Congress," each with fifty cannons, and the warships "Portsmouth," "Levant" and "Cyane" with twenty-two cannons each, and the "Warren" with twenty-four cannons. This was a total of 244 cannons and 2,210 officers and men.⁷⁸ Analyses of contemporary documentation establishes without doubt that President Polk had definite ambitions of occupying Upper California. This was clearly reflected in his military orders which he sent to Rear Admiral Sloat in July and August 1846. These communiques outlined a plan of conquest in California and were based on the rule of conquest in international law and *uti possidetis*.⁷⁹ Because of this rule the orders stressed the importance of taking the Mexican ports of San Francisco, Monterey, and San Diego.⁸⁰

Furthermore, Chazari seems to ignore the prevailing feelings among "Californios" (the Mexican inhabitants of California) during that era. According to most contemporary chroniclers, the Californios felt autonomous and distant from the centralist government in the Mexican capital. The great physical distance between Mexico City and the farthest reaches of the Mexican republic also created an enormous political gulf that spurred separatist feelings among the Californios. Some favored the complete independence of California, while others proposed annexation to a world power such as Great Britain or the United States.

Among the 7,300 Californios in the territory, there were another 700 North Americans who directly or indirectly encouraged separation from Mexico, and at the same time, stressed the advantages of annexation to the United States. Their presence, as well as commercial activities by the U.S. whaling fleets in California ports,⁸¹ motivated the naming in 1844 of Thomas Larkin as first consul of the

77. *Id.*

78. *Id.* at 104.

79. Instructions from Bancroft to Rear Admiral Sloat on July 12, 1846: *Id.* at 106. *Uti possidetis* is defined as a principle by which parties to a treaty (in this case the Treaty of Guadalupe Hidalgo) "retain possession of what they have acquired by force during the war." BLACK'S LAW DICTIONARY 1386 (5th ed. 1979).

80. Military order of Aug. 13, 1846. *Id.* at 107.

81. The whaling fleets were stationed in San Francisco. There were about 650 ships with 17,000 men. See D. NAVIN, THE MEXICAN WAR 102 (1978).

United States in Upper California.⁸²

The political atmosphere in California in 1846 prompted Navy Secretary Bancroft to instruct Rear Admiral Sloat that, because of rumors that California was ready to begin friendly relations with the United States, Sloat should foster such alliances.⁸³ At first the U.S. military victories in California were dazzling and effective. The first came to Commander Sloat on July 7, 1846, when he took Monterey without a shot. Sloat then said,

California will be a portion of the United States and its peaceable inhabitants will enjoy the same rights and privileges they now enjoy They will also enjoy a permanent government, under which life, property and the constitutional right and lawful security the Creator in the way most congenial to each one's sense of duty secured.⁸⁴

After the military occupation of Los Angeles (pop. 1,000), Commander Stockton wrote to Secretary Bancroft on August 28, 1846: "the flag of the United States is flying from every commanding position in the territory of California, and this rich and beautiful country belongs to the United States, and . . . is forever free from Mexican dominion."⁸⁵ He further described:

So, in not less than one month after I assumed the command of the United States forces in California, we have chased the Mexican army more than 300 miles along the coast, more than 1,000 miles in the interior of its own country; we have pushed and dispersed them, and we have assured in this way the territory of the United States; we have finished the war; reestablished the peace and the harmony among the people, and established a civil government that operates successfully.

Returning to Chazari's argument, what *was* agreed upon in the negotiated surrender between the American negotiators and the Mexican commissioners?⁸⁶ The capitulation was brief and dictated in very general terms. Its goal was to confirm the military surrender of the Mexican forces at the hands of the United States Army. As such, it

82. *Id.*

83. Instructions from Washington, D.C., dated June 8, 1846. *Id.* at 255.

84. *See* J. CUTTS, *supra* note 76, at 112-13.

85. *Id.* at 119.

86. *Id.* at 120. The Mexican commissioners were Jose Antonio Carrillo, squadron commander and Deputy Augustin Olvera. The U.S. interests were represented by California Battalion Chief P.B. Reading, William H. Russell, and Louis McLane Jr. Fremont and Pico approved the surrender. The complete text is in J. CUTTS, *supra* note 76, at 135-36.

did not stipulate the extensions or limits of the conquered California territories. In article I, the surrender articles stipulated that the Mexican forces . . .

shall deliver up their artillery and public arms, and they shall return peaceably to their homes, conforming to the laws and regulations of the United States, and not again take up arms during the war between the United States and Mexico, but will assist and aid in placing the country in a state of peace and tranquility.⁸⁷

The occupation forces exercised, with only a few temporary reversals, effective control of the Upper California principal cities of San Francisco, Los Angeles, Monterey, San Pedro, Sacramento, Santa Barbara, and San Diego. Despite some defeats, the situation was controlled well by the United States military, which was superior to the Mexican forces in warships, equipment, supplies and men.

All the time, the Northern Archipelago was virtually uninhabited. The few inhabitants did not resist the occupation of United States military forces. In addition, the reinforced U.S. naval fleet, which extended to California and Mexican ports in the Pacific,⁸⁸ was never threatened by Mexico. This is because at that time, Mexico completely lacked any naval forces in that portion of its territory.

In this way, Upper California was occupied by military force and was treated as conquered territory during the U.S.-Mexican war.⁸⁹ In accordance with contemporary international law, the U.S. military forces which controlled Upper California maintained existing civil institutions and immediately issued decrees and other administrative dispositions to preserve order. For example, one of the first decrees established new mayors in various cities. Among the first named was Walter Colton, who was designated mayor of Monterey and charged as guardian of the public peace.⁹⁰

Mexico's civil law tradition, derived from Roman law and inspired by France's Napoleonic Code, was one of the first victims once California fell. Gradually but certainly, it was replaced by the common law brought by the conquering army.⁹¹ One of the first acts of the first legislature, passed on April 13, 1850, adopted English com-

87. *Id.* at 135.

88. The warships "Lexington" and "Columbus" reinforced the fleet in March 1847. See J. CUTTS, *supra* note 76, at 138-39.

89. See A. ROLLE, CALIFORNIA: A HISTORY 182-89 (1967).

90. *Id.* at 182.

91. See R. POWELL, COMPROMISES OF CONFLICTING CLAIMS, A CENTURY OF CALIFORNIA LAW, 1760-1860 (1977).

mon law not in conflict with the U.S. Constitution, the California Constitution or state law.⁹²

The military occupation forces that took Upper California undoubtedly exercised their dominion not only over the continental territory but also over the nearby islands including those of the Northern Archipelago. The capitulations agreed upon with respect to the disposition of Mexican territory did not mention the military occupation of the islands, because these islands did not in any way affect the military advances of the U.S. forces. Furthermore, the capitulations did not specify each particular area that fell under the occupation of U.S. naval forces. In fact, the capitulation of the Mexican forces in Upper California did not stipulate anything concerning the Northern Archipelago because the documents were not signed with the intent to inventory the conquered territories. Therefore, Chazari's conclusion that the California offshore islands' conspicuous absence in the documents indicates that the United States did not extend its dominion over the islands is absurd.

5. Fifth Argument

In his fifth argument, Chazari claims that because the titles issued by Mexico to private property on Santa Rosa, Santa Cruz and Santa Catalina islands were recognized as valid by the U.S. government, these three islands and all the other islands making up the Northern Archipelago continue to belong to Mexico.⁹³ The Mexican government, acting through the governor of the California territories, gave concessions to private property to individuals on each of the three islands. The Mexican government conferred power to the governors to grant concessions of individuals in order to encourage settlement and colonization of the islands for agricultural development. These concessions were issued pursuant to the Colonization Law of 1824 and its subsequent regulations in 1828.⁹⁴

For example, petitions were granted for Santa Catalina, Santa Cruz, and Santa Rosa islands. Thomas Robbins, a Monterey merchant and former captain of the corvette "California," petitioned on July 4, 1846 to Governor Pio Pico asking that Santa Catalina Is-

92. "An Act adopting the Common Law," 1850 Cal. Stat 95.

93. See BULLETIN, *supra* note 5, at 156.

94. This power was exercised by the Mexican governors in California until July 17, 1846, when Commander Sloat took California for the United States. See R. POWELL, *supra* note 91, at 59.

land be granted to him as private property.⁹⁵ The governor ordered the title to the property issued to Robbins. The record was filed in the Mexican government archives on April 12, 1850.⁹⁶ Researcher Doran traced the successive changes of ownership of Santa Catalina from 1846 to 1919 when it was acquired by millionaire William Wrigley, Jr.⁹⁷

Santa Cruz Island was reportedly first owned by a Frenchman, Justinian Caire, who was attracted to Santa Cruz because of its similarity to islands located off the French Mediterranean coast. Between 1865 and 1869, Caire managed a European-style cattle ranch, where French and Italian immigrants resided.⁹⁸ However, Chazari claims that Andres Castellero sought and obtained from California Governor Juan B. Alvarado a concession for eleven leagues of land on Santa Cruz, the title to which was granted on May 22, 1839.⁹⁹ Santa Rosa Island was reportedly granted by Governor Alvarado to Jose Castro on November 1, 1841, but soon afterwards Governor M. Micheltorena transferred title of the property to the brothers Jose and Carlos Carrillo.¹⁰⁰

Chazari was not an attorney. In his argument, he apparently confused the notion of private property with the concept of eminent domain. The validity of the concessions of private property issued by the various Mexican governors prior to 1846 is undisputed, because during that time California territory was under the exclusive sovereignty of Mexico. True, the Treaty states that all property rights existing in the ceded territories which belong to absentee Mexicans would be "inviolably respected."¹⁰¹ Nevertheless, this does not in any way indicate that the properties would continue under Mexican rule, as Chazari erroneously believed.

A correct interpretation of the Treaty is that the eminent domain powers over the territories passed to the United States, with the understanding that the titles to private property issued by the Mexican government would be recognized by U.S. authorities and tribunals.

95. See A. DORAN, *THE RANCH THAT WAS ROBBINS'—SANTA CATALINA ISLAND* 156 (1963).

96. *Id.* at 66. See also 19 Record of Enciente 414-15, quoted in A. DORAN, *supra* note 95.

97. *Id.* at 177.

98. C. HILLINGER, *THE CALIFORNIA ISLANDS* 95 (1958). The first owner was J. Cairn, of whom little information is available.

99. See BULLETIN, *supra* note 5, at 167.

100. See A. DORAN, *supra* note 95, at 197.

101. See Treaty of Guadalupe Hidalgo, *supra* note 1, arts. VIII-IX.

In this way, the United States acquired the right to exercise its eminent domain (in other words, its sovereignty) over the territories ceded by Mexico, whether continental or island properties, and at the same time, it agreed to recognize the legal validity of the property titles issued by Mexican authorities prior to the Treaty.

Chazari's arguments are motivated primarily by his feelings of nationalism. They cannot survive careful analysis under concepts of international law. It is not likely that an international tribunal would seriously consider an attempt by Mexico to reclaim the California offshore islands if such a claim were based on Chazari's type of argument.

Clearly, it is no secret why the Mexican government has attempted no official or diplomatic action against the United States. It has not publicized the results of the detailed study of the Avila Camacho Commission because there simply are no valid reasons to do so.

B. Additional Arguments by the Society's Special Commission

Chazari's presentation generated intense interest among members of the Mexican Society of Geography and Statistics. When Chazari finished his lecture, the Society agreed that the presentation was "interesting from a scientific point of view, even more so as a work that was of current international interest . . . [and] established rights that, with the exception of whatever error, belonged to the Mexican nation."¹⁰² The Society then formed a Special Commission to study the issue and reach a formal decision.¹⁰³

The Commission issued its conclusion on June 7, 1894—six months after Chazari's presentation. The study was generally far more extensive, serious, and detailed than Chazari's presentation. It included a historical and legal point of view which was based on opinions of international experts of the era and known sources of the law of nations. As such, the Commission's study, in contrast to Chazari's, was more objective and above all more legally-oriented.

The Commission focused on the question whether the Northern Archipelago is Mexican, as its central theme. It answered a definitive "yes." In its study, the Commission also analyzed a series of "secondary questions,"¹⁰⁴ that, because of their strong historical focus, will

102. See BULLETIN, *supra* note 5, at 167.

103. The Commission was made up of Angel J. Dominguez, Trinidad Sanchez Santos and Isidoro Epstein. *Id.* at 168-206.

104. *Id.* The secondary questions were: (1) "The Northern Archipelago, did it belong to

not be the subject of this work. The Commission agreed with Chazari and affirmed, based on the same arguments, that when Mexico ceded its territory to the United States under the Treaty, the Northern Archipelago was not included.¹⁰⁵

In addition, two questions were posed by the Commission: (1) If the Northern Archipelago were not ceded to the United States, can that nation claim some other title to the islands? and (2) Has the U.S. taken the Archipelago from Mexico by prescription?¹⁰⁶

In addressing the first question, the Commission analyzed the principal methods of acquiring sovereign territory under international law. It referred to discovery and to conquest, without further consideration. The Northern Archipelago, along with territories that today make up the southwestern portion of the United States, were unquestionably discovered by Spanish explorers. They took possession of the territory in the name of the Spanish Crown. Nor is there controversy that the transfer of these territories to Mexico occurred when Spain recognized Mexican independence in the Treaties of Cordoba. These territories and islands were not, however, specifically named in the treaties.

It would likewise be difficult to deny that the territories became part of the United States through conquest during the U.S.-Mexican war. Nevertheless, this is a moot issue because the transfer of the territories is based not on conquest but on cession effected by Mexico under the terms of the Treaty. This cession was made upon payment of \$15 million "[i]n consideration of the extension acquired by the boundaries of the United States, as defined in the fifth article of the present treaty . . ."¹⁰⁷ However, it seems that the Treaty was more than a cession, but rather was a contract of sale imposed by the force of arms.

The Commission then described the occupation as a legitimate method of acquiring territory only when it is applied to a territory "that has no owner" whereas if there were an owner, it is a "usurpa-

New Spain?" and (2) "Independent Mexico, did it exercise sovereignty over this same archipelago?" *Id.* at 170. Both questions should have been answered affirmatively. But in the author's opinion, these questions have little to do with the issue under consideration. The problem is not historical, nor does it deal with the sovereignty of Mexico prior to 1846. Sovereignty over the Archipelago during the era of New Spain is undisputed, as is Mexican sovereignty prior to the signing of the 1848 Treaty. The legal questions in the case instead center on the interpretation of the Treaty text and succeeding acts.

105. *Id.* at 170.

106. *Id.*

107. Treaty of Guadalupe Hidalgo, *supra* note 1, art. XII, para. 1.

tion." In this way, the Commission quickly concluded that "the occupation of the Northern Archipelago perpetrated by the United States . . . instead of constituting a legitimate title of sovereignty over this group of islands, constitutes an arbitrary act, an [sic] usurpation in every form."¹⁰⁸

The Commission's conclusion deserves a brief comment on occupation. The *Island of Palmas Case* (United States v. the Netherlands) is a classical legal analysis of occupation as a method of acquisition by a state of a particular territory. In that case, the sole arbiter indicated that the occupation, in order to constitute a valid claim of territorial sovereignty, should be effective, and should offer certain guarantees to other states and their nationals.¹⁰⁹ Similarly, a title of national sovereignty is occasionally derived from notions of contiguity, particularly in references to coastal islands.¹¹⁰ But, contrary to the Commission's opinion, current international law recognizes occupation as a valid method of acquiring territorial sovereignty by a state over a given territory, regardless of whether that territory is *terra nullius* or is under the dominion of another state. Consequently, the Commission's thesis is unsupported.

Concerning the question whether the United States had taken the Northern Archipelago from Mexico by prescription, the Commission first considered whether prescription (akin to adverse possession) could be applied to issues of public international law. The Commission was aware that specialists in the field disagree on the issue, which continues to generate controversy. However, the Commission noted that even if prescription were a valid concept, according to renowned specialist Andres Bello, three conditions had to be met: "(1) the duration must be uninterrupted a certain number of years, (2) the possessor's good faith and (3) the owner must have actually disregarded its rights."¹¹¹ The disregard of the owner is shown, according to Bello, if "(1) the owner was not ignorant of its ownership, (2) it kept silent, and (3) it could not justify its silence with plausible reasons, such as oppression or fear of a great danger."¹¹²

Consequently, to explain why Mexico should not be considered an owner who had disregarded its rights concerning the California

108. See BULLETIN, *supra* note 5, at 185.

109. See *Island of Palmas Case* (United States v. The Netherlands), 2 R. Int'l Arb. Awards 829 (1928), and commentary in L. HENKIN, *supra* note 58, at 287-93.

110. L. HENKIN, *supra* note 58, at 289.

111. See BULLETIN, *supra* note 5, at 197.

112. *Id.*

islands, the Commission attempted to explain the extraordinary conditions that forced the Mexican government to keep silent for almost a half century (i.e. from 1848, the date of the Treaty, to 1894, the year of the Commission's decision).

It was not an easy task for the Commission to form a plausible argument to explain the inexplicable. But it tried. According to the Commission, the Mexican government had not attempted to interrupt the U.S. prescription of the islands nor did Mexico attempt to reclaim them because during that period Mexico suffered "an indeterminate number of conflicts and problems that created internal tribulations, international difficulties and numerous abysses, from which it has barely begun to emerge."¹¹³ Because of all this, so the Commission claimed, Mexico was unable to claim the islands, and therefore its rights, far from having been lost, were alive and indisputable. Surprisingly, the Mexican government has to this date still not broken its silence over the matter.

The Commission used a theory from the "International Code Project" of North American author David Dudley Field which states that a fifty-year period is sufficient to eliminate "all claims by any other state."¹¹⁴ Today it cannot be said that this supposed "fifty-year rule" is part of international law. Nonetheless, the Commission used this argument to demonstrate that in a worst-case scenario, Mexico still could exercise its rights, since there had passed fewer than the fifty years indicated by the "Code." The Commission therefore concluded that Mexico had not lost its rights over the Northern Archipelago by prescription.

In its decision, the Commission requested that a communication be sent to "the Supreme Government" via the Secretariat of Foreign Relations ("SRE") noting that an investigation by the Society of Geography and Statistics revealed that "the limits of the national territory have been transgressed by the occupation of the archipelago by the United States of America."¹¹⁵ Neither SRE nor any other agency of the Mexican government has presented a claim against the United States government since 1894. The reason for this lack of official action is that the SRE has never found valid legal arguments to support the Commission's decision. The experience and specialization found within the SRE are without a doubt superior to any other academic or

113. *Id.*

114. *Id.* at 202.

115. *Id.* at 206.

research institutions in Mexico. Consequently, if there were the remotest possibility of a Mexican right to territory under the control of a foreign power, the SRE would undoubtedly defend the right.

After consciously studying the issue of possible rights Mexico may have concerning the Northern Archipelago, the SRE has since arrived at the conclusion that those rights plainly do not exist. The Mexican people should recognize the validity of the SRE's decision especially since no other institution has the experience and specialization required to address questions as delicate as those arising from territorial questions. Failure to respect this criterion would result in the issue of the Northern Archipelago being politically and rhetorically handled without any relation to the technical considerations necessary. That is, it would be treated without regard for principles of international law. The issue, although legally lost, would be converted to a political question to be won through demagoguery.

IV. FINAL CONSIDERATIONS

In the preceding pages, an attempt has been made to demonstrate the imprudence and, at times, the inapplicability of the arguments advanced by the Mexican Society of Geography and Statistics in its endeavor to show that, as of the end of the last century, Mexico had territorial rights to the eight California offshore islands—rights that if taken to an international tribunal, would have supposedly produced recognition of Mexican territorial rights over the islands and allowed them to be reincorporated as Mexican territory. Of course, none of these rights existed.

Some speculation has been made regarding why the Mexican government did not pursue the petition suggested by the Society on an international level. Nonetheless, this apparent lack of official action should not mean that the significance of the interest in the islands that arose during the Porfirio Diaz era has been eliminated or forgotten by competent Mexican government authorities.

To the contrary, this author's primary thesis has been that the Mexican government, following a detailed study from an international law point of view, has concluded that Mexico does not have any right to interpose an international claim for the Northern Archipelago. Indeed, the Mexican government itself is convinced that it does not have the proper basis necessary to allow it to submit in good faith its case to an international tribunal.

Three concrete reasons form the basis for the author's opinion.

First, the opinion is based on the study and conclusion of the Special Commission formed by President Avila Camacho in 1944. This Commission was composed of "very distinguished and eminent men of government, geographers, historians and jurists"¹¹⁶ and was presided over by Lorenzo L. Hernandez, Director of International Boundaries and Waters of the SRE.¹¹⁷ Although the Commission's final decision has never been made public, consultation with other official sources leads one to the conclusion that the Commission decided that the Northern Archipelago was part of territory ceded by Mexico under the Treaty.¹¹⁸

Second, none of the catalogs of Mexican islands published periodically by various Mexican government agencies,¹¹⁹ for the purpose of listing the islands that form an integral part of Mexican national territory, includes any island off the California coast. Finally, in the Treaty on Maritime Delimitation of 1978 between Mexico and the United States, Mexico implicitly recognized North American sovereignty over the California islands, especially over San Clemente Island. The treaty states that Mexico "does not claim, nor shall exercise for any reason sovereign or jurisdictional rights" north of the line that delimits the lateral marine boundary between the respective exclusive economic zones ("EEZ's") of the two nations.¹²⁰

A. *The Avila Camacho Commission Study and Its Conclusion*

Although the results of the Avila Camacho Commission have been kept secret by the Mexican government,¹²¹ there are other offi-

116. "Declarations of the Secretary of Foreign Relations, Antonio Carrillo Flores, concerning certain islands of the Pacific Ocean in front of the coasts of California of April 1, 1970," reproduced in MEMORIA OF THE SECRETARIAT OF FOREIGN RELATIONS, SEPTEMBER 1, 1969-AUGUST 31, 1970, at 188-89 (1970).

117. See *supra* note 13.

118. Addendum to personal letter from SRE Subsecretary Alfonso de Rosenzweig Diaz Jr. written to the author on Nov. 4, 1988.

119. A complete list of catalogs appears in Vargas, *supra* note 38.

120. Treaty of Maritime Delimitation between the U.S. and Mexico signed on May 4, 1978. It was ratified by the Mexican Senate in January 29, 1979, D.O. of January 30, 1979. But the U.S. Senate has yet to advise and consent to the treaty. From an international law point of view, some authors have expressed concern over this refusal. Mexico's position is that U.S. ratification is irrelevant because the boundary is based on an exchange of notes of November 24, 1976, and has been respected. For the text of the treaty, see J.A. VARGAS, LA ZONA ECONOMICA EXCLUSIVA DE MEXICO 77-80.

121. Carrillo Flores explained the reasons the Avila Camacho Commission results have been kept confidential:

Since the case of the islands has never resulted in a controversy between the two countries, SRE did not consider that it should publicize the document, since addi-

cial sources that have revealed the precise contents and conclusions of the Commission's report. In particular, a declaration was made by the then-secretary of SRE, Antonio Carrillo Flores, at a press conference in 1970 concerning this issue. Carrillo Flores said:

None of the Mexican governments that have ruled the destinies of the country, since the signing of the Treaty of Guadalupe Hidalgo until our days, has considered that it could formulate a claim over these islands against the government of the United States. The study in 1947 explains the reasons.¹²²

This declaration clearly shows that the Mexican government, based on the presidential Commission's study, arrived at the conclusion that there were no valid serious legal arguments that would allow it to formalize a claim over the islands against the United States. Likewise, the SRE, in a note following Carrillo Flores' declaration, affirmed the following:

The point which the commission concluded in reference to the problem was if, within the territory lost by virtue of the Treaty of Guadalupe Hidalgo, the Northern Archipelago was included or not. Its studies took it to an affirmative conclusion over the particular question.¹²³

The affirmation of the SRE cannot be more explicit: the Commission concluded that the islands of the Northern Archipelago were included within the territory that Mexico lost by virtue of the Treaty.

B. *Official Inventories of Mexican Islands*

In international law, territory is one of the classic attributes of a state.¹²⁴ Over a given territory, the state exercises absolute and complete sovereignty. The territory includes not only that which is geographically located upon the continental mass but also certain air and marine spaces which includes islands.

At different times, Mexico has been criticized for the relative lack of care it demonstrates over its coasts, especially its islands. It has

tionally it would have established a precedent contrary to the national interest, that Mexico would publish opinions that it asked of Mexicans concerning issues that could be sensitive.

MEMORIA OF THE SECRETARIAT OF FOREIGN RELATIONS, *supra* note 116. The explanations are not convincing to this author.

122. *Id.*

123. *Id.* at 201.

124. See C. SEPULVEDA, *supra* note 24, and the works of Vazquez, Garcia, and Henkin, *supra* note 58.

been suggested that the country has to define itself as an ocean nation rather than an agricultural one. As a result, Mexico has recently shown greater interest over the so-called "Mexican insular territory."¹²⁵ To demonstrate, at least politically, the government's interest in the Mexican islands, beginning in the 1970s several agencies began to publish a series of catalogs or inventories of islands that are definitely considered an integral part of the territory of the Mexican republic.

For instance, the Secretariat of the Navy published a catalog in 1979¹²⁶ as did the Secretariat of the Interior, the Secretariat of Programming in 1981,¹²⁷ and the Navy again in 1988. None of the catalogs included any of the islands that form the Northern Archipelago as belonging to Mexico. These are all recent publications. Likewise, even in the first "Catalog of Islands Belonging to Mexico"¹²⁸ published by the SRE in 1900, soon after Chazari's and the Society's studies, none of the California islands were listed as Mexican islands. This catalog was prepared by Antonio Garcia Cubas, a renowned authority during the time of Porfirio Diaz.

It is reasonable, then, to believe that if Mexico had the remotest possibility of claiming the California islands, it would have mentioned it in some form in its catalogs or inventories. As a point of reference, it may be recalled that the official position of the Mexican Constitutional Congress which convened at Queretaro in 1916-1917, regarding the dispute with France over Clipperton Island, was that the island was part of Mexico's territory.¹²⁹

125. The interest in maritime affairs began to emerge in the Mexican national consciousness during the regime of President Luis Echeverria Alvarez, during which Mexico's port industries, marine science and technology, fishing development, marine pollution, and a 200-nautical mile EEZ, were developed.

126. SECRETARIA DE MARINA (Secretariat of the Navy), REGIMEN JURIDICO E INVENTARIO DE LAS ISLAS MEXICANAS Y SU CATALOGO (2d ed. 1981).

127. SECRETARIA DE GOBERNACION (Secretariat of the Interior), REGIMEN JURIDICO E INVENTARIO DE LAS ISLAS, CAYOS Y ARRECIFES DEL TERRITORIO NACIONAL (1981); SECRETARIA DE PROGRAMACION Y PRESUPUESTO (Secretariat of Programming and Budget), CATALOGO PROVISIONAL DE ISLAS Y ARRECIFES (1981).

128. *Catalogo de Islas pertenecientes a la Republica Mexicana*, IX BOLETIN OFICIAL DE LA SECRETARIA DE RELACIONES EXTERIORES (1900). The islands do not even appear to be listed in M. MUNOZ LUMBIER, *LAS ISLAS MEXICANAS* (1946).

129. During the Congressional Constitutional Congress of Queretaro, the delegates included Isla de la Pasion (Clipperton Island) in Art. 42, which enumerated the continental and insular portions of Mexico's national territory. At the time, the case was awaiting an international arbitral decision. In 1931, when King Vittorio Emanuele III of Italy, the arbiter, rendered his decision in favor of France, the Mexican Constitution had to be amended to

C. *The Maritime Delimitation Treaty of 1978*

For Mexico, 1976 was the year in which the concept of an EEZ, created as the result of the Third United Nations Conference on the Law of the Sea, was incorporated into general international law and recognized as "a legal institution that counts with the general consensus of the general community of nations."¹³⁰ Mexico was one of the first nations to adopt a 200-nautical mile EEZ, by adding paragraph 8 to article 27 of the Mexican Constitution.¹³¹

In order to establish the maritime boundary in the Pacific Ocean, the United States and Mexico drew a line between geographic points listed in the Treaty; points that are opposite San Diego, California, and Tijuana, Baja California. The Mexican government took for granted that San Clemente Island, the southernmost island of the Northern Archipelago, belonged to the United States. This action was based on the fact that the presence of San Clemente Island adversely affected Mexican interests in determining the boundary. If Mexico had put the question of U.S. sovereignty over the island at issue, the boundary would clearly have been different from the one decided. This decision is conclusive in determining which nation exercises sovereignty over the island¹³² and, by implication, the other islands in the group, namely, the United States.

In addition to the important question resolved in article I, a vital stipulation was included in article II. There, both parties agreed "to not claim, nor exercise for any purpose, any rights of sovereignty or jurisdiction," outside of their respective limits, that is, Mexico north of the boundary and the United States south of it. In this way, the article contains an explicit and clear renunciation by the Mexican government of any rights over the Northern Archipelago or any land situated north of the maritime boundary established by the 1978 treaty. Article II reads:

The United Mexican States to the north of the marine boundaries established in Article I, and the United States to the south of the said boundary, shall not claim nor exercise for any purpose rights

exclude the island. See J.A. VARGAS, *TERMINOLOGIA SOBRE DERECHO DEL MAR* 156-61 (1979).

130. For communications between the President and the Senate on November 4, 1975 concerning the establishment of an EEZ, see J.A. VARGAS, *supra* note 120, at 49-51 (1980), and A. SZÉKELY, *MEXICO Y EL DERECHO INTERNACIONAL DEL MAR* 148-58 (1979).

131. Presidential decree published in Mexico's Official Gazette on Feb. 6, 1976.

132. See *supra* note 120. See also J.A. VARGAS, *MEXICO Y LA ZONA DE PESCA DE ESTADOS UNIDOS* (1979).

of sovereignty or jurisdiction over the waters, or the sea bed or ocean floor.¹³³

Thus, the Maritime Delimitation Treaty of 1978 undoubtedly is the most explicit official declaration that can be expected of the Mexican government in accepting that the Northern Archipelago islands belong to the United States.

V. CONCLUSION

Throughout almost a century, the Mexican government maintained silence concerning the question whether it has territorial rights over the eight islands comprising what is known as the Northern Archipelago. The alleged rights of Mexico over the Archipelago were formulated for the first time by Chazari in 1894, and then were expanded and detailed by the investigation of the Special Commission formed by the Mexican Society of Geography and Statistics. Although the arguments by Chazari and the Society were well-intentioned, they were invalid from the point of view of international law. After the question was studied at the end of the last century, it has not since received the serious attention that the Mexican people deserve. On more than one occasion, the topic has been brought up for purely political ends.

The primary purpose of this article is to demonstrate the unreasonableness of the arguments advanced by the members of the Mexican Society of Geography and Statistics. It has also served to suggest that the Mexican government has in fact recognized that the islands were lost in 1848 to the United States.

Another purpose is to show that the Mexican government, after a detailed study of the possible rights it has to the Northern Archipelago, concluded that it lacks any right under international law to reclaim the islands. In other words, the islands were legally ceded to the United States by the Treaty in 1848.

It is time that the important study produced by the Avila Camacho Commission in 1944 be revealed to the public. Since 1970, through statements of various government authorities, it has been known that the Avila Camacho Commission rejected the notion that Mexico might have territorial rights over the California islands. But, although Mexico has no rights to the islands, the people should know

133. Treaty of Maritime Delimitation, *supra* note 120, at 79.

of the study's content and conclusions. That work has been the most complete and only official study on this controversial question.

Throughout its history, Mexico has shown itself to be a nation that knows and respects international law. This knowledge and respect has always been maintained, regardless of whether international law favors Mexico's national interests. It is time for the Mexican people to know the truth about these islands. Their historical and political maturity deserves and demands it.