

Unit 11. State competence over other areas of international interest

1.- INTERNATIONAL WATERCOURSES. 2. POLAR SPACES: THE ARCTIC AND ANTARCTICA. 3.- OUTER SPACE.



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1.- International waterways (IWC).

a) *General aspects*

- International waterways (IWCs) are those international rivers, lakes, and canals.
 - ❖ [International Rivers and lakes](#) (international watercourses): those which cross or delimit the territory of several states. Traditionally, for navigation. Currently, other uses (new problems):
 - Dual territorial/extraterritorial dimension.
 - ❖ International Canals: artificial constructions on the territory of a State connecting two parts of the sea used to facilitate navigation.

b) Regime of the uses of the IWC

- Historical evolution:
 - ❖ Classic IL: Freedom of use (navigation) and obligation of international cooperation of riparian States/Equal rights of riparian States.
 - [CPJI Judgment of 1929 –Case relation to the Territorial Jurisdiction of the International Commission of the River Oder](#): Community of interests of riparian States.
 - [1997 Gavcikovo-Nagymaros Project Judgment](#) on Danube River "shared natural resource".
 - ❖ Currently: [1997 Convention on the Law of the Non-navigational Uses of International Watercourses](#) (in force). Predominance of specific conventions for each IWC. Use for international navigation.
- Generally:
 - ❖ Europe-principle of freedom of international navigation on an equal footing for riparian states (liberal conception international trade).

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- Congress of Vienna 1815: International River Commission for the Rhine.
 - Exported to Africa: Berlin Conference 1885.

 - ❖ Sometimes: territorialist reactions (Harmon Doctrine of USA-1885), but nevertheless international instruments extend it to all IWCs (art. 338 Versailles Peace Treaty 1919-European rivers; Barcelona Convention 1921-IWC of the contracting States).

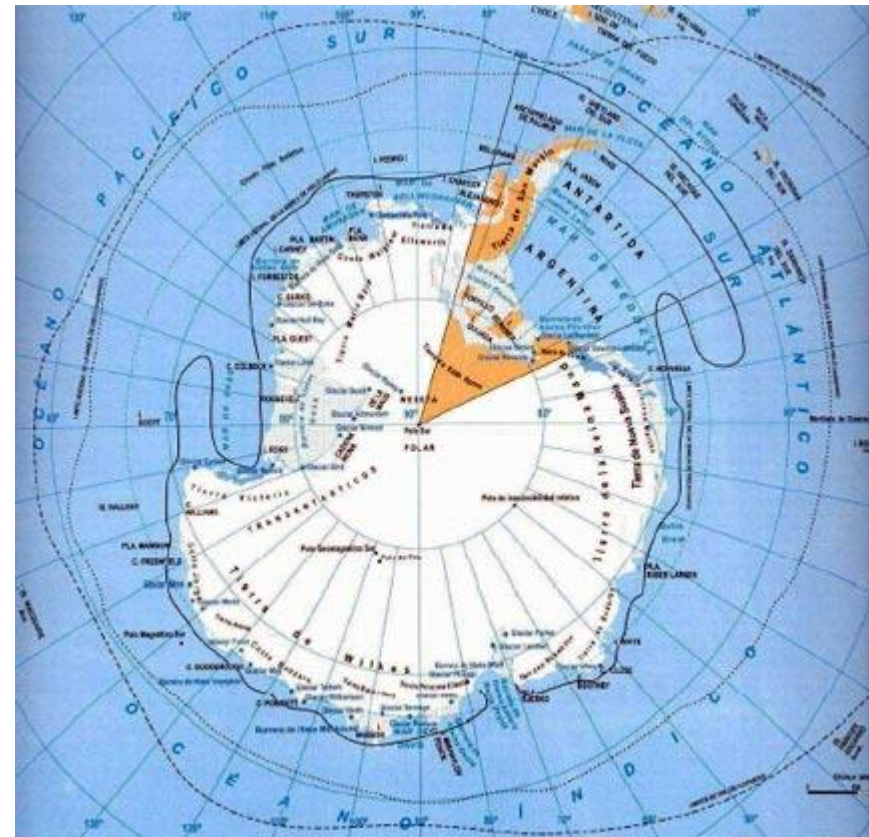
 - ❖ Use for other purposes: [1997 Convention](#) establishes three basic principles:
 - Equitable and reasonable utilization and participation.
 - Obligation not to cause significant harm.
 - General obligation to cooperate among riparian States.

c) International canals

- Canals are artificial works located in the territory of a State and, therefore, subject to its territorial sovereignty. However, their regime is sometimes internationalized in order to guarantee navigation to vessels from third States.
 - ❖ [Kiev Canal](#)-Peace Treaty of Versailles 1919.
 - ❖ Suez [Canal-Constantinople Convention 1888](#) (accepted by Egypt 1957).
 - ❖ Panamá Canal-USA and Panamá [Treaty 1997](#) (substituting Treaty of 1903).



2.- Polar spaces: the Arctic and the Antarctic



a) *The Arctic*

- Land and ocean whose surface is, as a rule, permanently frozen, although submerged navigation is possible.
- There are **8 Arctic states**: Canada, Denmark, Iceland, Norway, Sweden, Finland, Russia and the USA.
- Legal regime:
 - ❖ Arctic States are sovereign over their land and island territories, enjoying the marine spaces recognized in/by UNCLOS.
 - ❖ The rest: high seas or international seabed area.
 - ❖ Although there have been unsuccessful attempts at national appropriation, there is some functional internationalization:
 - [OTAWA Declaration 1996](#): Establishment of the [Arctic Council](#) and international cooperation for sustainable development and environmental protection.
 - [ILULISSAT Declaration \(Greenland\)](#): Applicability of UNCLOS to the Arctic Ocean.

b) The Antarctic

- General Aspects: It is a continent covered by a permanent ice sheet and surrounded by the Southern Ocean (southern foothills of the Indian, Pacific and Atlantic Oceans).
- Two limits must be taken into account: parallel 60° south latitude/Antarctic convergence.
- There have been several conflicting attempts at national appropriation:
 - ❖ 1908-1944: seven States claim sovereignty (Hinterland theory as a variant of the sector theory) Chile, Argentina, United Kingdom, Norway, Australia, France and New Zealand, some of them overlapping.
 - ❖ 15% of the territory is unclaimed (USA?).
 - ❖ Basis for other claims: Belgium (part) USA/Russia (all).
 - ❖ There are some mutual recognitions of sovereignty (Chile/Argentina and UK/Australia/New Zealand), but the rest of the States do not recognize it.
- Between 1940-1955 Conflict increases: minor conflicts with use of force (ICJ but jurisdiction not accepted).

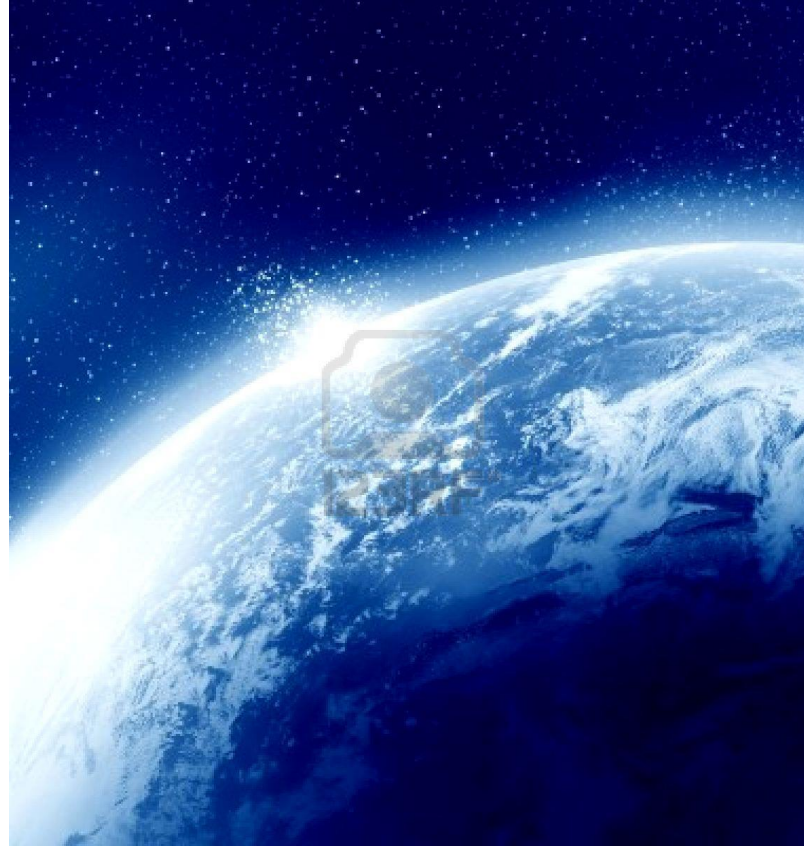
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- ❖ Third International Geophysical Year (AGI 7/1957-12/1958):
 - the need to carry out scientific research in a peaceful manner is agreed upon, and it is agreed that this will not prejudice sovereignty and scientific exchange at all bases is agreed upon.
 - USA: Convening of the Washington Conference for an international treaty of interested States (Seven Antarctic States, 5 States present in Antarctica during the AGI) (1959 ANTARCTIC TREATY).

- The Antarctic Treaty:

- ❖ Scope of application: Extended through the **AT system** (Convention on the Conservation of Seals and CCAMLR).
- ❖ Parties: 12 original States plus acceding States.
 - They are of two kinds (consultative - originating and acceding - and the other States).
 - ✓ The consultative parties have a privileged status (meetings and adoption of recommendations; appointment of Antarctic inspectors/right of veto).
- ❖ Basic principles: Exclusive use for peaceful purposes/Freedom of scientific research and obligation to cooperate/Principle of non-nuclearization/Nationalization of compliance control procedures/Agreement to disagree.

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- **The Antarctic system**: It is composed of the recommendations of the Consultative Parties and the international treaties linked and complementary to the AT.
 - ❖ Examples: Recommendation on the Conservation of Antarctic Fauna and Flora (1963); Convention on the Conservation of Antarctic Seals (1972); Convention on the Conservation of Antarctic Marine Resources (1980)....
 - ❖ Secretariat of the AT:
 - Supporting the annual Antarctic Treaty Consultative Meeting (ATCM) and the meeting of the Committee for Environmental Protection (CEP).
 - Facilitating the exchange of information between the Parties required in the Treaty and the Environment Protocol.
 - Collecting, storing, archiving and making available the documents of the ATCM.
 - Providing and disseminating information about the Antarctic Treaty system and Antarctic activities

3.- Outerspace (OS)



a) General Aspects

- The OS is that cosmic space located beyond the airspace and, therefore, not subject to National S^a.
- Use open to all States.
- Delimitation of airspace/surrounding space:
 - ❖ Where one ends, the other begins.
 - ❖ Impossible to specify.
 - ❖ Functional delimitation according to the nature of human activities?

b) Legal regime of outerspace

- After various UNGA Resolutions: 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of OS, including the Moon and Other Celestial Bodies.
- Development by UNGA:
 - ❖ Rescue Treaty: Agreement on the Rescue and Return of Astronauts and the Return of Objects Launched into UT Space, 1968.
 - ❖ Liability Treaty: Convention on International Liability for Damage Caused by Space Objects, 1972,
 - ❖ Registration Treaty: Convention on Registration of Objects Launched into Space UT, 1975.
 - ❖ Moon Treaty: Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, 1979.
- Legal status of OS: Although not legally defined, it covers at a minimum: cosmic space, "the moon and other celestial bodies" (1967) and "the moon and other celestial bodies of the solar system other than the Earth (1979). It is based on the idea of COMMON HERITAGE OF HUMANITY.

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- Guiding principles for activities in the OS:
 - ❖ Carried out in the interest of humanity (collective interest).
 - ❖ Freedom of exploration, utilization and research.
 - ❖ Not susceptible to national appropriation.
 - ❖ Peaceful use: absolute prohibition of nuclear weapons or weapons of mass destruction.
 - ❖ Absolute non-militarization of Moon and celestial bodies.
 - ❖ Environmental protection.
 - ❖ Liability of States and ROs: in case of damage on the surface of the Earth or to spacecraft in flight (international liability of the launching State or RO, objective and absolute); in case of damage outside the surface (State or RO at fault for assumption of risk).
 - ❖ Right of visit as a monitoring method of national inspection.
 - Status of persons and space objects:
 - ❖ Astronauts: Defined in 1967 treaty and expanded in 1979 agreement.
 - Subject to the jurisdiction of the launching State (not of nationality).
 - There is an obligation of all States to protect them while they are on the Moon and to provide relief in the event of a forced accident, with an obligation of immediate return.

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- ❖ Space objects: Their definition is complex and they are subject to the personal jurisdiction of the launching State.
 - As we have seen: obligation of registration to facilitate identification (1975) and in case of being outside the State of registry, obligation of return.
 - Regime of space activities:
 - ❖ Space telecommunications: The ITU (International Telecommunication Union) applies the International Telecommunication Convention to space activities.
 - Since 1959 the principle of priority in time for the granting of the frequency;
 - Since 1973 the principle of equitable access to the geostationary orbit have been in force.
 - Regional IO due to technical and financial difficulties.
 - ❖ Direct broadcasting of TV broadcasts. The ITU allocates broadcasting frequencies to satellites applying the principle of equitable access. This causes problems with direct television broadcasting.

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- Most States (third world/ex-socialist) consider it subordinate to the consent of the receiving State, while some States (developed States) authorize the installation of satellite dishes receiving signals.
 - ❖ Satellite Remote sensing and remote monitoring: There is no binding international regime, so problems arise in practice (does notification have to be made? Is there access to the information obtained? Is disclosure of data lawful?).
 - ❖ Exploitation of the "natural resources" of the Moon and other celestial bodies. There are principles designed for a future regime in the 1979 agreement, but it was not ratified in the face of US opposition.



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