



## UNIT 8. STATE'S POWERS OVER TERRITORY

- 1.- Territorial sovereignty of the State.
- 2.- Titles of acquisition of the territory.
- 3.- Borders and neighborly relations.
- 4.- Special territorial regimes.

## 1.- Territorial jurisdiction

- Territory: one of the essential elements of State and cannot be conceived without it.
- **Definition:** the spatial sphere in which the State exercises its powers, i.e, as the material or physical support of state sovereignty. For international law, the territory of the State comprises not only the terrestrial space (land, rivers and lakes, inland marine waters) but also those other spaces over which the State exercises its sovereignty.
- **Characteristics:**
  - must be delimited by the delimitation of borders.
  - must present a certain geographical continuity (relativized).
  - implies the exercise of State functions in an exclusive and full way.
  - Entitles a series of duties and rights:
    - Rights (*examples*):
      - ❖ sovereignty over natural wealth and resources.
      - ❖ to exploit those resources according to its own national policies.
      - ❖ to preserve the inviolability of its territory and its territorial integrity (Article 2.4 of the UN Charter and GA Resolution 2625 (XXV) of 24 October 1970). Structural principle of IL.
    - Duties (*examples*):
      - ❖ Non-detrimental use: [ICJ The Corfu Channel Case 1949](#).
      - ❖ [ILC Prevention of transboundary harm from hazardous activities](#)

# TITLES OF ACQUISITION OF THE TERRITORY

- A) Original titles of acquisition.
- B) Derivative titles of acquisition.

- How is the territory acquired?: **TITLE** by virtue of which the state is entitled to the exercise of S<sup>a</sup>. Legal and documentary title.
- **Classification** of titles of acquisition:
  - Classical: original (terra nullius)/derivative titles (transfer state to state). Problems with current state of affairs and current IL. BUT: still used in solving disputes are many derive from this classification.
  - Contemporary approach: de facto situations (occupation/terra nullius) and legal title (cession).

## A. ORIGINAL TITLES OF ACQUISITION

- Different modes throughout History:
  - **So-called historical title:** Most common title.
  - **Formation of the state on the territory.** Possibility of disputes, especially in relation to peripheral areas (enclaves, coastal islands, etc.).
  - **Occupation of territories:** Most important title.
    - Concurrence of several conditions required by international jurisprudence consistently :
      - ❖ the occupied territory be effectively a territory without owner (terra nullius).  
What is terra nullius for IL? [ICJ Advisory Opinion on West Sahara 1975](#).
      - ❖ an effective occupation of the territory (effectiveness of the occupation) interpreted as effective and continuous exercise of the functions of the State over the whole of the territory under occupation (administrative, legislative, police acts..). Possibility of attenuation (nature of territory and existence of population).
      - ❖ Supported by the unequivocal intention to acquire sovereignty over it (*animus occupandi*).
    - Actual conception: an intentional display of power and authority over the territory, through the exercise of State jurisdiction and functions, in a continuous and peaceful manner.

- **Territorial accession:** new land masses come to be incorporated into the territory of a State either naturally or artificially. Less common
  - natural geological processes: no need for formal declaration (the accessory follows the principal).
  - Artificially: Problems regarding transboundary harm.
- **What about PROXIMITY**, is it a title? On the basis of theories of "continuity" (natural prolongation of the territory) or "contiguity" (geographical adjacency). Diplomatic arguments not accepted in IL.

## **B. DERIVATIVE TITLES OF ACQUISITION**

- Those that transfer title to a territory from one State to another.
- Some of these titles are still valid today (voluntary cession, acquisitive prescription, uti possidetis iuris) while others are not valid in the light of contemporary IL (conquest).
  - **Voluntary cession:** relinquishment of sovereignty over a territory by a State in favor of another State that accepts it. Different examples (peace treaties, succession treaties, or cession agreements for free or by monetary compensation). Some still in force.
    - Concurrence of several conditions required for perfecting the title:
      - ❖ formal agreement between the Parties.
      - ❖ that the ceding State actually possessed sovereignty over the territory.
      - ❖ the said State relinquishes completely the administration of the ceded territory.
      - ❖ ceding State effectively exercises the functions of government therein.
  - **Acquisitive prescription (usucapio):** acquisition of sovereignty through the effective exercise of state functions for a certain period of time over a territory previously belonging to another State which no longer exercises its powers over it.
    - Rare and problematic: how much time is needed?
      - ❖ Theoretically: conditions needed would be:
        - the effectiveness in the exercise of the functions of government over the territory by the State that intends to acquire it

- the notoriety
- the lack of protest or acquiescence on the part of the previous sovereign State
- a lapse of a sufficient period of time.
- ***Uti possidetis iuris***: Consolidated in decolonization process: the territories belonging to the colonizing State automatically and ab initio pass into the new emancipated State, with the same territorial boundaries as they had before. Some difficulties [ICJ Case concerning the frontier dispute \(Burkina Faso v. Republic of Mali\) 1986](#), different possibilities:
  - Title+effectiveness: confirmed S<sup>a</sup>.
  - Legal title missing or unclear: effectiveness taken into consideration.
  - Legal and clear title: effectiveness does not prevail *uti possidetis*.
- What about **CONQUEST**? Historically, very important. Contemporary IL: repudiated. AG Resolution 2625(XXV).
- Territorial disputes: critical date in order to take account of the law applicable/de facto circumstances. Distinction between:
  - attribution conflicts (disputes over the title conferring S<sup>a</sup>) and
  - delimitation conflicts (determination and delimitation of borders).
 Territorial disputes awards or sentences are just DECLARATORY in nature (do not constitute a title of acquisition).



# BORDERS AND NEIGHBORLY RELATIONS

- A) State borders.
- B) Neighborly relations.

## A. STATE BORDERS

- Delimitation of spaces: delimitation of borders.
  - **Border:** delimitation of portion of the territory in which each State exercises its own authority and may require the other States to refrain from penetrating or acting therein. But there are different components in a territory (land, sea, airspace..).
- Ways of **delimitation** of frontiers:
  - Most common: Boundary treaty---lasts longer than the treaty itself.
  - Different ways depending on the type of component.
  - usually States prefer natural boundaries (mountain range; equidistant point in case of rivers, etc).
  - Technical or ideal criteria (geometric lines—airspace and marine spaces).
- Two distinct moments: delimitation and demarcation:
  - Delimitation: cartographic delimitation often carried out by boundary commissions (powers to act drawn in the boundary treaty).
  - Material Demarcation: material signs by technical experts (demarcation commission).

## **B. NEIGHBORLY RELATIONS**

- Intimate related to the notion of frontier where the S<sup>a</sup> of two States meet (frontier zone instead of frontier line). Special reciprocal relations originating in the spaces and populations located on both sides of the border.
- **Definition:** set of conventional or customary rules govern mutual relations between neighboring States in the bordering portions of their territories.
  - Community of interests implies a duty of international cooperation between the bordering States for the achievement of certain common interests and objectives: cooperation agreements.
  - Areas: land communications, the use of border rivers and lakes, the use of natural resources shared between bordering States and, more recently, the neighborliness in the area of environmental protection.

# SPECIAL TERRITORIAL AGREEMENTS

- A) Condominium.
- B) War occupation.
- C) Foreign military bases.
- D) International administration.

## A. CONDOMINIUM

- Exercise of concurrent or joint state competences over a specific spatial area, breaking the general characteristic of exclusivity. Not the same as co-S<sup>a</sup>.
- **Definition:** "status of a territory in respect of which the enjoyment and exercise of the competences recognized to States by the law of nations belongs to a partial international community characterized by the juridical and functional equality of the States that compose it, exercising their competences through particular international organs, mediate or immediate.

## **B. WAR OCCUPATION**

- Occasionally, as a consequence of an armed conflict, situations of military occupation of the territory of one State by armed forces of one or more other States occur. When? when it is de facto placed under the authority of a foreign army, the authority of the legal power having passed into the hands the occupying State and not by the mere declaration as such by the foreign armed forces (diferes from invasion done for the purpose of combat).
- In principle, occupation in contravention of the UN Charter is unlawful (GA Res. 2625 (XXV) BUT it is a de facto situation that has consequences under IL:
  - It is not capable of giving rise to the acquisition of the occupied territory by the occupying State or of altering in any way the status of the territory permanently.
  - it gives rise to the international responsibility of the occupying State in respect of all violations of international law committed in the occupied territory during the duration of the occupation
    - ICJ 1971 Advisory opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970).
  - the occupying State must respect both the rules of the rules of international humanitarian law applicable to armed conflict and the rules relating to the protection of the human rights of the population of the occupied territory

- ICJ 2004 Advisory Opinion on the [Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory](#): The International Covenants are applicable in cases where a Contracting Party exercises extraterritorial jurisdiction as a result of the military occupation of the territory of another State.

## **C. FOREIGN MILITARY BASES**

- They do not involve territorial cession, only the granting of permission for the use of certain parts of the territory by armed forces.
  - Generally, temporal in nature, but there are cases of perpetuity cession (Guantanamo).
  - USA Military bases in Spain?
  - Three different regimes: leasing, joint use and authorization of use.
- No foreign bases in Spanish territory but Spanish bases which use is authorized to the US.



## **D. INTERNATIONAL ADMINISTRATION**

- is the temporary exercise by an IO of the prerogatives of power over a territory for the purpose of:
  - protecting the population
  - contributing to the protection of the population
  - contributing to the development of the territory of another State
  - to the protection of the territory/population of another State.
  - to contribute to the maintenance of peace and security
- Recent example: United Nations Security Council in Resolution 1292 (1999) of 25 October 1999, process of transition to the independence of the territory of East Timor. United Nations Transitional Administration in East Timor (UNTAET) exercised overall responsibility for the administration of East Timor.



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