

LECTURE NINE

OBJECTS OF INTERNATIONAL LAW

Title to Territory

Territorial objects are either an object already subject to the Jurisdiction of an International Person or those susceptible of Territorial Jurisdiction. Res nullius or areas that do not admit of appropriation eg Res extra commercium e.g. high seas - (but note expanding notions of E.E.Z. etc.). Antarctica (Whilst Antarctica Treaty lasts states can't challenge existing claims), the moon and celestial bodies. Res communis - common property & the "Common Heritage of Mankind" post 1972 convention regarding the sea bed - resources etc. United Nations.

Acquisition of Title : There is not much left unclaimed. (Volcanic Islands - newly created (1986 Hirogiwa & Iceland & Antarctica) - Redrawing of Colonial territory . Boundaries : South Africa.

5 modes : Occupation : Prescription : Accession : Conquest : Accretion

Original title & Derivative title has been distinguished but how useful is this. It is often a historic process of historical consolidation.

Occupation : Acquisition of land not already part of another state Boundary disputes can arise.

Legal status of E. Greenland Case P.C.I.J. 1933 Denmark & Norway : Held : claim based merely on continuing authority. Displays two elements 1) Will of Sovereign - i.e. intention of state to claim sovereignty (cf. scientific presence) and 2) actual exercise or display of authorities.

Held : Denmark's intention clear effectiveness of the occupation Absence (importance of) a competing claim - onus slighter - Importance of the nature of the territory - Arctic & inaccessible - couldn't expect intensive activity . Denmark could show acts which complied - & to ? treaties where other states had agreed to exclude Greenland - i.e. acquiescence by other states & recently (pre 1933) number of Acts expressly recognise Denmark's claim . Held . Denmark's territorial claim to title upheld.

Consolidation - estoppel by acquiescence - good faith - acts of recognition - and consent : Discovery - Historical Inchoate title . An option may not be able to take over immediately. Option must be exercised in a reasonable time temporary right pre effective occupation.

Prescription. State may establish by exercise of peaceful and effective jurisdiction for a long period. Good faith principle in action by other states, acquiescence & estoppel.

Acquisitive Prescription . (compare occupied and not occupied territory - here another state had made a claim).

Acquisitive & Extinctive Prescription. Passage of time bars a previous owner from challenging one who has wrongfully displaced him and has continued for a long time in adverse possession - must be continuous - public and peaceful.

How much must original owner protest to prevent prescription from running - originally - a protest sufficient - but more needed as time passes - raise with United Nations etc. e.g. Falkland island dependencies - Argentina and Chile established bases on various islands United Kingdom attempted proceedings in P.C.I.J. . Argentina and Chile didn't go to court.

Sucession : based on consent : usually by treaty . Treaty of Session . Curria Muria Islands 1968 Sultan of Muscad of Ohmad & United Kingdoms 1854 Treaty . Islands given back to the Sultan

Danish West Indies - sold to United States 1916

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Conquest . De Gellatio . Now insufficient . but may persuade country to enter into succession (without coercion).

Accretion, Accession & Alluvian . Increase in land by natural forces . Island rises in the sea - extension ipso facto. Alluvian : expansion of river bank etc.

Frontiers

LAND . No such thing in law as a natural frontier . River frontiers . where is the frontier ? Navigable rivers. Middle of channel / Thalweg. Non navigable rivers the median line ? What if there are changes in course of river frontier remains in the old channel.

Uti Possidetis Juris Doctrine from 19th century Latin American states. Pre independence Spanish colonies . New boundaries as with old Spanish provinces .

Applied : 1986 : Frontier dispute : (Old Upper Volta). Africa : Respect for the principle of intangibility of frontiers inherited from old colonial powers . consent But a useful doctrine regarding ex colonial powers since there are conflicts with the people's rights of self determination.

Air Frontiers. Sovereignty includes air space. But what is it ? Held where conventional flight possible : but not space flight.

The Sector Principle

Canada and Latin America. extension of longitudinal lines to Poles. Regard sector as within one's sovereignty and also U.S.S.R. . But not generally accepted

Harris discusses Eastern Greenland . Clipperton I.C.

Antarctica

International Geophysical year. 1957. successful collaboration wished to continue it . Antarctic treaty 1961 . 1959 - Article 12 - not given a time limit - but can and was reviewed in 1991 : See the hand out in booklets.

Conflict threatens the treaty : Seven states have made claims to Antarctica. United Kingdom : 1908 : --- France, Australia ---- Chile - Argentina. Claims overlap.

Neither United States or U.S.S.R. have claimed . Scientifically active - but do not wish to see territory claimed by anyone - Eighteen parties to the Treaty of whom fifteen were known as consultative parties : Article 9 (2) : one may become a consultative party by conducting substantial scientific activity there . C.P.'s Article 9 (1) . report of C.P.'s who meet in order to consider . - peaceful use - scientific research - International cooperation - rights of inspection (Article 7) Jurisdiction questions ! - preservation and conservation of living resources in Antarctica : But no reference to non living - i.e. mineral resources !

Preamble to treaty relates history and intentions : Articles :

- 1) Peaceful purposes - prohibits military activity and weapons testing (Military personnel can be used for scientific research).
- 2) Each of contracting parties - appropriate efforts - to stop principles and purposes of treaty being defeated by non-signatories).
- 4) Title : Freezes all claims in Antarctica
- 5) Nuclear free zone - and excludes nuclear waste.
- 6) Falklands outside Treaty. 7) Inspection.

1980 Treaty : Antarctica

Antarctic marine living resources : Regarding non-living - mineral resources fragile environment : implications for whole world : 18+ consultative powers Howe 1985 conference Common Heritage Risk of destabilisation of environment

The position regarding living resources . 1980 Treaty .Starting point Article 9 1959 Treaty .

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Recommendations regarding the preservation of living resources : Eccles system approach. Preamble. International responsibility to preserve in interests of mankind prime responsibility preservation of environment . integrity of Eccles system in Antarctica

Article 2 : Objectives of Convention

2(3) all creatures - krill to whales. Not simply a question of fish stocks includes protection of environment - mining and pollution dangers.

Territorial Scope : The Atlantic Convergence : Scientific demarcations

Weaknesses of the Convention

- 1) Article 9.6. States not bound by the Commission's recommendations
- 2) Third World countries not bound.
- 3) Bifocal approach to treaty making, where disagreement - treaty vague various interpretations to satisfy each party.

The Mineral Position

Conflict between Developed and Undeveloped powers : Consultative powers have sought to set up a commission to regulate extraction on behalf of all mankind.

The Moon and Other Celestial Bodies

Is the moon subject to International law ? Why not ? Preamble . Space treaty 1987 post 1962 and 1963 resolutions . Instant I.C.L. . Do the Gen. Ass. Res. create new rules of I.C.L. re. new problems created by technology.

Preamble reference to mankind and the common interest of all mankind Benefit of all peoples - irrespective of development. Articles

- 1 Exploration and Use. to benefit all countries & shall be for benefit of all mankind. Free Access. What is use ? Can one exploit these areas ? Freedom of scientific investigation
- 2 Outer space . not subject to sovereign appropriation - by use or occupation - or any other means
- 3 International Law and United Nations Charter applies.
- 4 One may not place in orbit around the earth weapons of destruction - or on celestial bodies or elsewhere. Must be used for peaceful purposes only May be military personnel for scientific research.
- 5 Envoys.
- 6 Not responsible for damage in space.
- 8 Quasi territorial jurisdiction regarding space craft and rights of ownership of such objects.
- 9 Measures to ensure contamination to earth by extra terrestrial matter
- 12 Inspection provisions

The Moon Treaty 1979

Activity of states on moon and other celestial bodies . who has the right to exploit mineral resources ? Treaty leans towards Common Heritage . Preamble . Benefits of exploitation of moon etc.... need to define and develop provisions re. progress in the future. Articles :

- 1 Applies to moon and other bodies unless other provisions made elsewhere
- 3 The MOON shall be used
- 4 Exploration and use province of all mankind benefit of all states irrespective of development.
- 5 States parties shall inform United Nations to greatest feasible practicable - of their activities on the moon.

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- 6 Freedom scientific . may collect samples etc. for scientific purposes . Have regard to desirability of making available to others
- 7 Protection of Environment . ref. to radio active material - notify to United Nations location of radio active power bases on the moon
- 11 Exploit mineral resources moon and natural resources common heritage of mankind which finds its expression in the provisions of this (convention) agreement and in particular paragraph 5. Neither surface nor subsurface or any part thereof or natural resources "IN PLACE" shall become the property of any state : Does it mean no right to an area ? or one cannot mine resources ? Must establish International regime to govern exploitation, as such exploitation is about to become feasible Cross reference Article 18. To facilitate establishment of regime . United Nations to be informed where possible (What of commercial secrecy ?)
- 18 Review of Agreement. Provided for : Review conf. can consider implementation of Article 11 . taking into account technical development. If no agreement - would there be a moratorium ? See Chen Article. A mere agreement to make an agreement.

FURTHER READING

Jennings : Acquisition of Territory in International Law 1963

Cheng : Extra Terrestrial Application of International Law 18 CLP 1965 Cheng : 1967 Space Treaty : 95 Journal de Droit International 1968 Cheng : The Moon Treaty 33 CLP 1980

Schwarzenberger & Brown Manual Ch 4 & 5

Harris : Ch5

The Antarctica Treaty 1959 UKTS no 97 1961 Cmnd 1535 Harris p181

Outer Space Treaty 1967 UKTS No10 1968 Cmnd 3519 Brownlie 204 : Harris p187

Agreement Governing activities of States on the Moon and other celestial Bodies 18.12.79 18 I LM 1979 p1434

Palmas Case 1928 : Green 421 : Harris 151

Clipperton Island Case 1931 : Harris 159

Eastern Greenland Case Green 160

Corfu Channel Merits Case Green p228

Minquiers & Ecrehos Case Green p8, Harris p162

The Temple of Preah Vihear Green p457

Western Sahara Case Green p434, Harris p165

Beagle Channel Arbitration Argentina & Chile 1977 HMSO 1977