



PUBLIC INTERNATIONAL LAW

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SURBHI WADHWA

Assistant Professor (Law)

Jiwaji University,

Gwalior

Introduction

- The acquisition of territory by a state can be more correctly referred to as acquisition of territorial sovereignty, by an existing state and member of the international community over another state.
- At the very outset, it needs to be made clear that the recognition of a new state cannot be considered as the acquisition of territory.

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- There may also be cases where private individuals or corporations gain certain rights or even authority over a territory which wasn't under the territorial supremacy of any recognized state.
 - Such cases are again not within the scope of “modes” of acquisition of state territory.

Modes of Acquisition of State Territory

- The five modes of acquiring territory have traditionally been distinguished into cession, occupation, accretion, subjugation, and prescription. Before looking into these modes of acquisition which have been derived from Roman law rules on property it is necessary to understand that they are no longer appropriate or applicable. However, these “modes” of acquisition of territory still help us explain how countries got their titles.

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- Also, these methods are divided into two categories: original and derivative mode of acquisition. This division is on the basis of whether the title given to the state is derived from a prior owner-state or not. Hence, the only cession is a derivative mode.

Cession

- Cession of the state territory is the transfer of sovereignty over state territory by the owner state to another state. Its basis lies in the intention of the concerned parties to transfer sovereignty over the territory in question, and it rests on the principle that the right of transferring its territory is a fundamental attribute of the sovereignty of a State.

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- The cession may comprise a portion of the territory of the ceding State or the totality of its territory.
 - In the latter case, the ceding State disappears and merges into the acquiring State. To constitute a cession it must be intended that the sovereignty will pass.

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- The only form in which a cession can occur is an agreement normally in the form of a treaty between the ceding and the acquiring state; or between several states including the ceding and cessionary states. A lot of times cession is an outcome of peaceable negotiation or war, and maybe without compensation although certain duties could be imposed in the acquiring state.

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- Such cessions are agreed upon by the interested states for different motives and for different purposes, like a gift or voluntary merger. An example is when Austria, during its war with Prussia and Italy in 1866, ceded Venice to France as a gift. Later France ceded Venice to Italy.

Occupation

- Occupation is a state's intentional claim of sovereignty over territory treated by the international community as terra nullius, or territory that does not belong to any other state. Jennings writes it is "the appropriation by a state of a territory, which is not at the time subject to the sovereignty of any other state."

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- Article 42 of The Hague Regulations of 1907 defines occupation as follows:
“Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.”

Accretion

- Accretion refers to the physical expansion of an existing territory through the geographical process. It is the name for the increase of land due to some new formations. Such formation may be a modification of the existing state territory for example, when an island rises within a river (not increasing the territory, only the land) or when an island emerges in the maritime belt.

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- It is a customary rule of international law that enlargement of territories by new formations, takes place ipso facto by accretion, without the state concerned taking any special step for the purpose of extending its sovereignty. Hence, accretion too is a direct mode of acquisition of territory.

Subjugation

- Subjugation is the acquisition of territory by conquest followed by annexation. This direct mode of acquisition is often called title by conquest. In those days war wasn't illegal and so making of war was recognized as a sovereign right. There is a very fine distinction between cession and subjugation.

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- Like compulsory cession, conquest followed by annexation would transfer territory by compulsion, but unlike cession, it involved no agreement between the concerned parties. In most cases, the victors in a war enforced a treaty of cession.

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- Simple title by subjugation is rare. **Article 10 of the League of Nations Covenant** made it unlawful to wage war for the purpose of acquiring territory. The acquisition of territory through the use of force is also outlawed by the Charter of the United Nations, which obliged the member States to refrain from the use of force against the territorial integrity or political independence of any State.

Prescription

- A prescription can be defined as *‘the acquisition of sovereignty over a territory through a continuous and undisturbed exercise of sovereignty over it during such a period as is necessary to create under the influence of historical development the general conviction that the present condition of things is in conformity with the international order.’*

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- There was no rule laid down as regards the length of time or other circumstances necessary to create such a title by prescription. The conditions differ from case to case basis. As long as other states keep up protests and claims, the actual exercise of sovereignty isn't disturbed, nor is there the general conviction that the present condition of things is in conformity with international order.

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- After such protests cease, however, there may be a situation arising where it becomes in conformity with the international order. The question of what time and under what circumstances such a condition of things arises is one of fact merely.

Loss of State Territory

- Now that we have discussed all modes of acquiring territory or rather acquiring sovereignty over territory we can easily point out the corresponding methods of losing state territory. These are cession, dereliction, operation of nature, subjugation, prescription and there is a sixth mode that is Revolt.

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- Loss of territory by subjugation, cession, and prescription is pretty straightforward and requires no further explanation. It's simply the corresponding loss of territory due to the gain of that territory by another state.

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- Revolt, on the other hand, has been accepted as a mode of losing territory to which there is no corresponding mode of acquisition. There is no hard and fast rule regarding the time when a state which has broken off from another can be established permanently as another state. A revolt, however, seems to be more of a political issue than a legal mode of loss of territorial sovereignty.

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- Dereliction as a mode of losing territory corresponds to occupation. Dereliction frees a territory from the sovereignty of the present state possessor. When the owner state completely abandons a territory with the intention of withdrawing from it permanently and relinquishing sovereignty over it dereliction is effected.

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- Actual abandonment alone cannot amount to dereliction as it is assumed that the owner will and can retake possession. Hence, just like occupation there has to be an abandonment of territory (corpus) and an intention (animus) to withdraw too.

Thank You!