Chapter Five

Territory Under International Law

Principle of Territorial Integrity

When we see the historical evolution of the principle of territorial integrity is as old as the notion of state sovereignty. It is one of the rights inherent in sovereignty and independence. Its chief importance lies in the field of IL on the use of force.

The principle of territorial integrity reveals that countries should avoid promoting border changes or secessionist movements in other countries. This principle was developed many centuries ago due to the belief that intruding into another territory is an act of aggression which justifies war. Many wars including the First and Second World War have been fought as a result of applying the territorial integrity principle. The adoption of the UN charter by countries supported territorial integrity.

The principle of territorial integrity is an important part of the international legal order and is enshrined in the Charter of the UNs, in particular Art 2 (4) the prohibition of the use of force. The concept includes the inviolability of the territory of state, including territory under the effective control and possession of a state. Moreover, the ICJ has held that the scope of the principle of territorial integrity is confined to the sphere of relations between states.

Territorial Sovereignty

Territorial Sovereignty means the power of a state to exercise fill and exclusive authority over its territory. In other word territorial sovereignty implies the full and exclusive authority of a state over its territory. This includes, it is state alone is entitled to exercise jurisdiction over the objects and subjects within its territory to domestic legislation and to enforce these rules.

New States and Title to Territory

The concept of territory in International Law

IL is based on the concept of the state. The state in its turn lies upon the foundation of sovereignty, which expresses internally the supremacy of the governmental institutions and externally the supremacy of the state as a legal person. But sovereignty itself, with its retinue of legal rights and duties, is founded upon the fact of territory. Without territory a legal person cannot be a state.

It is undoubtedly the basic characteristic of a state and the one most widely accepted and understood. There are currently some 200 distinct territorial units, each one subject to a different territorial sovereignty and jurisdiction. Since such fundamental legal concepts as sovereignty and jurisdiction can only be comprehended in relation to territory, it follows that the legal nature of territory becomes a vital part in any study of IL. Indeed, then principle whereby a state is deemed to exercise exclusive power over its territory can be regarded as a fundamental axiom of classical IL.

On the other hand, the employer ***is not*** a 24 hours' insurer of his employee. It is only for those liabilities that are associated with employment. In the case of publisher, it is only associated with article published and defamatory statement therein. In common law legal systems, vicarious liability is "instead of" liability; i.e. the vicarious defendant is held liable alternatively.

For French legal system however, vicarious liability is "in addition to" liability; i.e. the liability is cumulative. It is in addition to the principal defendant that the vicarious defendant will be held liable.

In Ethiopian Civil Code,Article 2136 provides that (1) A person who caused damage shall repair it notwithstanding that another person is declared by law to be liable for such damage. (2) The person who caused the damage and the person whom the law declares to be liable for such damage shall be jointly liable to repair such damage.

Under sub-article (2), the liability is joint, not alternative as that of common law legal system. Unlike the common law legal system, in civil law legal system, the fact that the injured man proceeds against the vicarious defendant doesn't mean that he will not have a right to bring action against the principal defendant. There is also a certain procedural difference between strict liability and vicarious liability.

The development of IL upon the basis of the exclusive authority of the state within an accepted territorial framework meant that territory became ‘perhaps the fundamental concept of international law’. Most nations indeed developed through a close relationship with the land they inhabited.

The central role of territory in the scheme of international law may be seen by noting the development of legal rules protecting its inviolability. The principle of respect for the territorial integrity of states is well founded as one of the linchpins of the international system, as is the norm prohibiting interference in the internal affairs of other states.

Modes of acquisition of territory Under IL

The traditional view is that there are several distinct modes by which sovereignty can be acquired over territory. The classification of these modes was originally borrowed from the Roman law rules on the acquisition of property, which is not surprising, since sovereignty over territory bears some resemblance to ownership of property; and in the sixteenth and seventeenth centuries, when modern IL began to develop, the then current theories of absolute monarchy tended to regard a state’s territory as the private estate of the monarch.

In recent years, however, the most frequent form of transfer of territory (more precisely: the transfer of sovereignty over territory) has occurred when a colony has become independent;6 since territory is an essential ingredient of statehood, the birth of the state and the transfer of territory are inseparable a state is its territory.

- **Accretion**

This describes the geographical process by which new land is formed and becomes attached to existing land, as for example the creation of islands in a river mouth or the change in direction of a boundary river leaving dry land where it had formerly flowed. Where new land comes into being within the territory of a state, it forms part of the territory of the state and there is no problem.

When, for example, an island emerged in the Pacific after an under-sea volcano erupted in January 1986, the UK government noted that: 'We understand the island emerged within the territorial sea of the Japanese island of Iwo Jima. We take it therefore to be Japanese territory.' As regards a change in the course of a river forming a boundary, a different situation is created depending whether it is imperceptible and slight or a violent shift (*avulsion*). In the latter case, the general rule is that the boundary stays at the same point along the original river bed.

➢Cession

Cession is the transfer of territory, usually by treaty, from one state to another. If there were defects in the ceding state's title, the title of the state to which the territory is ceded will be vitiated by the same defects; this is expressed by the Latin maxim, *nemo dat quod non habet* (nobody gives what he does not have).

For instance, in the *Island of Palmas* case, Spain had ceded the Philippine islands to the United States by the Treaty of Paris 1898; the treaty described the island of Palmas as forming part of the Philippines. But when the United States went to take possession of the island, it found it under Dutch control. In the ensuing arbitration between the United States and the Netherlands, the United States claimed that the island had belonged to Spain before 1898, and that the United States had acquired the island from Spain by cession.

The arbitrator, Max Huber, held that, even if Spain had originally had sovereignty over the island (a point which he left open), the Netherlands had administered it since the early eighteenth century, thereby supplanting Spain as the sovereign over the island. Since Spain had no title to the island in 1898, the United States could not acquire title from Spain.

Except for territorial changes following the conclusion of peace treaties, cession of territory (such as France's cession of Louisiana to the United States for 60 million francs in 1803, or Britain's cession of the island of Heligoland to Germany, in exchange for Zanzibar, in 1890) has now become rare and concerns marginal areas, such as, for example, the transfer of the Swan Islands in 1971 by the United States to Honduras.

- **Occupation**

Occupation is a method of acquiring territory which belongs to no one (*terra nullius*) and which may be acquired by a state in certain situations. The occupation must be by a state and not by private individuals, it must be effective and it must be intended as a claim of sovereignty over the area. The territory may never have belonged to any state, or it may have been abandoned by the previous sovereign. Abandonment of territory requires not only failure to exercise authority over the territory, but also an intention to abandon the territory.

Now days there are hardly any parts of the world that could be considered as *terra nullius,* because most of the land areas of the globe are at present placed under the territorial sovereignty of an existing state.

But many modern disputes over territory have their roots in previous centuries, when territory was frequently acquired by occupation, for example, the sovereignty dispute between Argentina and the UK over the Falkland Islands. In previous centuries European international lawyers were sometimes reluctant to admit that non-European societies could constitute states for the purposes of international law, and territory inhabited by non-European peoples was sometimes regarded as *terra nullius*.

- **Prescription**

It is a mode of establishing title to territory which is not *terra nullius* and which has been obtained either unlawfully or in circumstances wherein the legality of the acquisition cannot be demonstrated. It is the legitimization of a doubtful title by the passage of time and the presumed acquiescence of the former sovereign, and it reflects the need for stability felt within the international system by recognizing that territory in the possession of a state for a long period of time and uncontested cannot be taken away from that state without serious consequences for the international order. It is the legitimization of a fact. If it were not for some such doctrine, the title of many states to their territory would be jeopardized.

The International Court in the *Botswana/Namibia* case, while making no determination of its own, noted that the two parties were agreed that acquisitive prescription was recognized in international law and further agreed on the criteria to be satisfied for the establishment of such a title, viz. the possession must be `*a titre de souverain,* peaceful and uninterrupted, public and endure for a certain length of time. The Court did not contradict this position.

N.B ***Prescription differs from occupation in that it relates to territory which has previously been under the sovereignty of a state. In spite of this, both concepts are similar in that they may require evidence of sovereign acts by a state over a period of time.***

- **Conquest and the use of force**

How far a title based on force can be regarded as a valid, legal right recognizable by other states and enforceable within the international system is a crucial question. Ethical considerations are relevant and the principle that an illegal act cannot give birth to a right in law is well established in municipal law and is an essential component of an orderly society.

However, IL has sometimes to modify its reactions to the consequences of successful violations of its rules to take into account the exigencies of reality. The international community has accepted the results of illegal aggression in many cases by virtue of recognition. Conquest, the act of defeating an opponent and occupying all or part of its territory, does not of itself constitute a basis of title to the land. It does give the victor certain rights under IL as regards the territory, the rights of belligerent occupation, but the territory remains subject to the legal title of the ousted sovereign.

Sovereignty as such does not merely pass by conquest to the occupying forces, although complex situations may arise where the legal status of the territory occupied is, in fact, in dispute prior to the conquest. Conquest, of course, may result from a legal or an illegal use of force.

By the Kellogg–Briand Pact of 1928, war was outlawed as an instrument of national policy, and by article 2(4) of the United Nations Charter all member states must refrain from the threat or use of force against the territorial integrity or political independence of any state. However, force will be legitimate when exercised in self-defence.

Whatever the circumstances, it is not the successful use of violence that in IL constituted the valid method of acquiring territory. Under the classical rules, formal annexation of territory following upon an act of conquest would operate to pass title. It was a legal fiction employed to mask the conquest and transform it into a valid method of obtaining land under IL. However, it is doubtful whether an annexation proclaimed while war is still in progress would have operated to pass a good title to territory. Only after a war is concluded could the juridical status of the disputed territory be finally determined. This follows from the rule that has developed to the effect that the control over the relevant territory by the state purporting to annex must be effective and that there must be no reasonable chance of the former sovereign regaining the land.

Today that the acquisition of territory by force alone is illegal under IL. This may be stated in view of article 2(4) of the UN Charter and other practice. Security Council resolution 242, for example, emphasized the ‘inadmissibility of the acquisition of territory by war’, while the 1970 Declaration of Principles of IL adopted by the UN General Assembly provides that: the territory of a state shall not be the object of acquisition by another state resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal.