

CONFLICT OF TERRITORIAL SOVEREIGNTY- A CONTEMPORARY CHALLENGE

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INTRODUCTION

The concept of International Law has been present since time immemorial and is established on the ground of State.²⁹⁴ The foundation of sovereignty is relied upon, by the state which helps in expressing the internal supremacy of the government and the strength of the state as a legal person too²⁹⁵. International Law can develop if the aspect of co operation is seen between the sovereign States. Co operation is a vital component that has to be present between various sovereign States in order to avoid conflicts between each other.

Article 1 of The Montevideo Convention on Rights and Duties of States, 1933²⁹⁶ mentions that the concept of State has 4 important components namely:

- i. A defined territory
- ii. A well enforced Government
- iii. A permanent population
- iv. The capacity to enter into relations with other States.

Other essentials of statehood have occasionally been advanced, for example, that a certain degree of civilization necessary to maintain international relations be allowed,²⁹⁷ or that a state's government be constituted consistently with the principle of self-determination.²⁹⁸

A conflict on territorial sovereignty can arise based on the first component namely, a defined territory. A State requires a well defined territory for it to be recognized on the International front. A particular boundary must differentiate it with other States and on the International plane, it is

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²⁹⁴ MALCOM N. SHAW, INTERNATIONAL LAW 487 (CAMBRIDGE UNIVERSITY PRESS, 6d. ed. 2008)

²⁹⁵ *Id*

²⁹⁶ Montevideo Convention on the rights and Duties of States, 1933. Art 1 , 26 Dec, 1933, 165 L.N.T.S. 19

²⁹⁷ Charles C. Hyde, 1 *International Law Chiefly as Interpreted and Applied by the United States* 17 (Boston : Little, Brown, 2 vols, 1922)

²⁹⁸ See, e.g., JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 102-06 (Oxford : Clarendon Press, 1979) , IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 593-96; *cf.* chap 3 (Oxford : Clarendon Press, 3d. ed. 1979)

necessary that International boundaries are present in order to separate two sovereign States from each other. The principle of territorial jurisdiction evolved during the 17th and 18th Century.

A State would have State sovereignty when it had exclusive jurisdiction and power over its own territory without any interference from any other neighboring States. There would be a breach of territorial sovereignty when one State interfered and intervened in the working of another State. To prevent disputes between two States, the concept of boundaries and fixed territories was established wherein, a State had a defined boundary and any area beyond that boundary did not belong to it.

It was noted by Judge Huber in the famous *Island of Palmas* case²⁹⁹ that:

Sovereignty in relation to a portion of the surface of the globe is the legal condition necessary for the inclusion of such portion in the territory of any particular state.³⁰⁰

Territorial sovereignty was defined by Brierly in context of the presence of rights over a particular territory rather than independence given to the State.³⁰¹ The concept of territorial sovereignty has both a positive and a negative aspect to it. The positive aspect is that there is exclusive competence which a state possesses with respect to its territory and the negative aspect is that it has an obligation of protecting the rights of the other states.

Territorial sovereignty has its base and essence in the concept of title. The conditions relating to facts and law under which the territory supposedly belongs to an authority is connected to the term title. The International Court in the case of *Burkina Faso/ Mali*,³⁰² held that the word title perceived any kind of evidence which showed the presence of a right and the actual root of that right.

²⁹⁹ 2 RIAA, pp. 829, 838 (1928); 4 AD, pp. 103, 104. See also the Report of the Commission of Jurists in the *Aaland Islands* case, LNOJ, Supp. No. 3, p.6

³⁰⁰ SHAW, *supra* note 1, at 489

³⁰¹ *The Law of Nations*, 6d ed, Oxford, 1963, p. 162

³⁰² ICJ Reports, 1986, pp.554, 564; 80 ILR, pp.440,459)

Territorial conflict and sovereignty

The maxim that every other nation has an exclusive jurisdiction and sovereignty within its own territory has already been looked into.³⁰³ The direct effect of this proposition is that the laws of every state are binding on all its properties, be it personal or real, and also all the people who reside in it, be in aliens or natural subjects. It is hence the state's discretion to regulate the manner under which any particular property may be transferred or held.

It can be noted that the above statements contain assertions not only of the facts of the existence of "sovereign" states, each with "exclusive jurisdiction" over its territory, but also of certain consequences which, it is said, follow directly and necessarily from those facts.³⁰⁴

"Sovereignty" and the accompanying corollary of the equality of states have been termed "the basic constitutional doctrine of the law of nations."³⁰⁵ At the same time, however, the content of the term "sovereignty" is at best murky, whatever its emotional appeal. It can be seen that the meaning of sovereignty is very controversial in its roots and by its nature. The meaning of sovereignty is very disputed indeed and since the time it came into existence in political science, there is not one meaning of sovereignty which has been universally agreed upon.³⁰⁶

The nature of territorial sovereignty necessarily implies the fundamental limitation that one state cannot impose its will on the territory of another state, unless it is provided as an exception like a narrow circumstance in which the protection of a state's own nationals is at stake. Since 1945, the prohibition against the threat or use of armed force would seem to have emerged as a norm of customary law (if not *jus cogens*), although debates as to the precise meaning of article 2(4) of the UN charter continue.³⁰⁷

³⁰³ Walter Wheeler Cook, *The Jurisdiction of Sovereign states and the Conflict of Laws*, 368-384 at p. 369, COLUMBIA LAW REVIEW, Vol 31, No.3 (Ar., 1931). See also, STORY, COMMENTARIES ON THE CONFLICT OF LAWS (8d ed. 1883) §§ 17,18).

³⁰⁴ *Id.* At 9

³⁰⁵ IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 287 (Oxford : Clarendon Press, 3d. ed. 1979). See also, HURST HANNUM, AUTONOMY, SOVEREIGNTY AND SELF- DETERMINATION, THE ACCOMMODATION OF CONFLICTING RIGHTS

³⁰⁶ L.F.E.OPPENHEIM, 1 INTERNATIONAL LAW 103 (London : Longman, 2 vols. 1905,1906)

³⁰⁷ International Court of Justice, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America(Judgment , I.C.J. Reports 1968, p 14, and Harold G. Maier (ed.), " Appraisals of the ICJ's Decision: Nicaragua v. United States (Merits), " 81 Am. J. Int'l L. 77 (1987)

The state has a difficult problem of acquiring its own territory in international law and it can only be enumerated through certain political and legal terms. Under the classic international law, until a new state or entity is born or comes into existence, there is no legal person who exists who can hold a title.

The problem has been approached in one way and it is seen that recognition is the factor needed to constitute a state irrespective of the method of acquiring the territory.

Territorial disputes remain an important source of conflict between States and can erupt into armed confrontation³⁰⁸. We have seen that there have been a lot of territorial disputes and rivalry between States since the end of World War II. Some examples of countries having territorial disputes since the end of World War II are Arab- Israel , India- Pakistan over the territory of Kashmir or Iran- Iraq over the Shatt-al-Arab Waterway³⁰⁹. Most of the disputes since the end of World War II have remained unresolved until the end of 1990s. These can lead to more disputes often resulting in wars between the disputed States.

A territorial dispute can involve either a disagreement over the colonial borders or common homeland between two States, or it can be a situation wherein one country contests the right of another country even to exercise sovereignty over some or all of its colonial territory or homeland.³¹⁰

Generally, one country does not accept the border line which separates the two countries and the other country contends that the border line which is currently in dispute is right based on a previously signed Treaty or Agreement. An example of this is the China- Nepal dispute wherein both the governments disputed over their common border based on the previously signed treaties in the 18th and 19th Century. Another example of the same can be the disputed area over of the Preah Vihar Temple, over which Thailand and Cambodia have been claiming their rights of territoriality.

³⁰⁸ PAUL HUTH, STANDING YOUR GROUND : TERRITORIAL DISPUTES AND INTERNATIONAL CONFLICT, p. 4

³⁰⁹ *Id*

³¹⁰ *Id.* at p 19

In the *Island of Palmas* arbitration case³¹¹, sovereignty over an island in the Pacific was the dispute between USA and Netherlands. USA contended that it had acquired sovereignty over the island under the Treaty of Spain of 1898. Netherlands claimed that the island was not under effective occupation of Spain and hence Spain had no authority to transfer the island to America. The Permanent Court of Arbitration through the Arbitrator Max Huber, made the award in favor of Netherlands on the basis that the island was not under the effective occupation of Spain and said that effective occupation was a requirement to achieve sovereignty over a territory.³¹²

The arbitration of the *Clipperton island* case³¹³ revolved around a dispute between France and Mexico. The issue in question was over an uninhabited island. It was emphasized by the arbitrator that the actual taking of possession was an essential ground of occupation, and not the nominal. The taking of possession could be done in many ways and it depended on the nature of the territory in question.³¹⁴

In the *Eastern Greenland* case³¹⁵, the sovereignty of Denmark was claimed by both Denmark and Norway. Denmark owned certain colonies in various parts of Greenland and had given concession to the same. Denmark declared and announced that all treaties related to Greenland extended to the territory as a whole. The Court opined that the acts put forward by Denmark were adequate to base a good title and that it was higher than the Norwegian actions.³¹⁶

The issue of territorial conflict and territorial sovereignty between Russia and Ukraine involved the region of Crimea. It was seen as a crisis having an international element involved in it, in 2014 which involved Russia and Ukraine primarily, until Russia annexed the Crimean region. The region of Crimea has a majority of Russian population and a minority of Ukrainian and Crimean population. In the year 1992, Crimea wanted independence and thus the Parliament of Crimea voted for a referendum to pronounce independence. But the Parliament of Russia voted to annul the cession of Crimea to Ukraine. After two years of that, a Russian nationalist won the presidential election of Crimea and he organized a referendum on Crimea's status. Russia then recognized the

³¹¹ 2 RIAA, pp. 829 (1928)

³¹² SHAW, *supra* note 7, at 512

³¹³ (26 AJIL, 1932, p. 390; 6 AD, p. 105.)

³¹⁴ SHAW, *supra* note 19, at 512

³¹⁵ (PCIJ, Series A/B, No. 53, 1933, p.46; 6 AD, p.95)

³¹⁶ SHAW, *supra* note 21, at 512

legal status of Crimea, and said that it was a part of Ukraine and it promised to uphold the territorial integrity of Ukraine in the Budapest memorandum signed in the year 1994.

But the Ukrainian crisis began in a proper manner in November 2013, when the President Viktor Yanukovich rejected a deal for greater integration with the European Union. That led to various protests and Russia invaded the region of Crimea as one of the results of non integration. Russia reprobated the new government saying that it was not legitimate and it reacted by sending many troops to take over and seize the Crimean region belonging to Ukraine. Russia went ahead and annexed Crimea in spite of all the international condemnation on March 18. There were several armed men who seized government buildings in many cities in Eastern Ukraine. The separatists held “referendums” on self-rule, and after holding the same, they proclaimed their independence from Ukraine.³¹⁷ As a result of the non integration, the country got divided between Ukrainians who saw Ukraine as a part of Europe and on the other hand, as a part of Russia.

The people of Russia generally point out that their antecedents worked very hard and diligently to incorporate Crimea and a major portion of Ukraine into the empire of Russia. It was believed that it was harder to sustain the territory within the empire, in spite of many wars. Ethnic Russians make up 17.3 % of Ukraine’s population³¹⁸ and 58.3% of the population in Crimea.

Russia has opted for adequate measures against Ukraine which involves the imposition of certain de facto trade sanctions against all the imports of Ukraine. It is believed that certain servers belonging to the Ukrainian government have been hit by high profile cyber attacks, which are allegedly from Russia, although there is no proof to support the same.

Presently, the Ukraine’s new government has faced grave issues. Ukraine has problems in drawing the attention of foreign investment. The IMF gave a \$17 billion loan as a first installment in May 2014. The European Union has also been helpful and has provided Ukraine a package of 11.175 billion Euro aid.

³¹⁷ Steven Woehrel, *Ukraine: Current Issues and U.S. Policy*, Congressional Research Service, CRS Report, , May 12, 2011

³¹⁸ *Id.* at 8

The Europeans and the people belonging to US have a strong view that an independent Ukraine is an effective tool to build a strong Europe. There are many advantages to Ukraine such as a strategic location, soil which is rich and an industrial sector which is heavy by its nature, but still, it is seen that Ukraine is poorer than the other European countries.³¹⁹The main priority of the foreign policy of the Ukraine Government is to secure international support for the territorial integrity and sovereignty of Ukraine, which includes the non-recognition of the annexation of Crimea by Russia.

The region has been in crisis since anti government protests took place in Ukraine since 2013. The most recent crisis was that of July 17th, when someone shot down the Malaysian passenger plane MH17 which had 298 people on board. The Malaysian Airlines crashed in the area of Eastern Ukraine. It was speculated that the rebels shot down the plane thinking or having mistaken the plane for a Ukrainian Military aircraft. It was claimed by the Ukrainian government that they had evidence to prove that Russia and certain other rebels were responsible for the crash. Thus, the government of Ukraine accused the Russian rebels for the plane crash. At the time being, there is no link between the plane crash that happened and the Ukraine crisis but there was a lot of tension involved previously.

CONCLUSION

The concept of territorial sovereignty can be subjective in nature and the conflict of territorial sovereignty can be solved through various ways. The conflict of territorial sovereignty in relation to Russia and Ukraine involved the region of Crimea and where Crimea had to belong. It is a very ambiguous and unclear state at present since legally Crimea had to belong to Ukraine. Crimea was a part of Ukraine since the 1950s. The majority of Crimeans voted for independence from Russia, when Crimea joined Ukraine and Russia also promised to honor the same. But when it comes to the concept of history, Crimea technically belonged to Russia. The population of Crimea mostly has Russians ethnically and not Ukrainians. But for almost the past 200 years Crimea has been a part of Russia. The author opines that here is a state of confusion in the minds of the Crimeans as to whether they belong to Russia or Ukraine. Some people wanted to be a part of Russia and some people a part of Ukraine. The USA strongly recommended that it would be better for Russia to destabilize eastern Ukraine. President Obama had warned that if Russia didn't withdraw its troops

³¹⁹ *Id.* at 4

from Ukraine, it would cost for Russia. As a result of all this, the United States has found a favorable situation to suspend certain bilateral cooperation with Russia. This shows that the Russian annexation of Crimea has affected other parts of the world at large too. The conflict of the territory has not reached a level that it would lead to a war but the risk of war has certainly been increasing ever since.