

Grounds for Territorial Changes in International Law

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Տարածքային փոփոխությունների հիմքերը միջազգային իրավունքում

Մարտիրոսյան Լիլիթ Գ.

Հայ-Ռուսական (Միավորական) համալսարան,

Միջազգային և Եվրոպական իրավունքի ամբիոնի ասպիրանտ (Երևան, ՀՀ)

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Անփոփում. Պետության տարածքը պետականության առանցքային տարրերից է: Որոշ հեղինակների կարծիքով տարածքը մի տարր է, առանց որի պետականությունը չի կարող գոյություն ունենալ: Ժամանակակից աշխարհում տարածքների բնական բաժանումն ավարտված է: Այնուամենայնիվ, երբեմն պետությունները գործ ունեն այնպիսի իրավիճակների հետ, երբ պահանջվում է տարածքների ձեռքբերման անհրաժեշտություն: 21-րդ դարում տարածքների ձեռքբերման ազդեցիկ ուղիներն արգելված են, սակայն միջազգային իրավունքը նախատեսում է տարածքների ձեռքբերման գործիքների և մեխանիզմների լայն շրջանակ: Տվյալ հոդվածում հեղինակը վերլուծում է միջազգային իրավունքով ներկայացված տարածքների ձեռքբերման իրավական ուղիները և բարձրացնում դրա որոշ խնդիրներ:

Հանգուցաբառեր՝ տարածք, ինքնիշխանություն, ձեռքբերում, զիջում, առևտուր, վարձակալություն, միջազգային իրավունք, պետականություն

Основания для территориальных изменений в международном праве

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Аннотация. Территория государства является одним из ключевых элементов государственности. По мнению некоторых авторов, территория является элементом, без которого не может существовать государственность. В современном мире завершилось естественное деление территорий. Однако, иногда государства имеют дело с ситуациями, когда возникает потребность в приобретении территории. В 21 веке агрессивные способы территориального приобретения запрещены, но международное право предусматривает широкий спектр инструментов и механизмов для территориального приобретения. В данной статье автор анализирует правовые способы территориального приобретения, представленные международным правом, и поднимает некоторые его проблемы.

Ключевые слова: территория, суверенитет, приобретение, уступка, торговля, аренда, международное право, государственность

In the past, territories were often acquired through war and conquest, but modern international law offers other methods for gaining territory without using force. The UN Charter, which serves as evidence of this, includes a principle that prohibits the use of force against the territorial integrity or political independence of any state and also includes the right of self-defense for nations in the event of an armed attack. This is outlined in Article 2 point 4 and Article 51 of the Charter.

International law of the XX-XXI century is all about peace, security, stability, progress and friendly relations. This is evidenced and proved by the UN Charter. The latter contains the principle of

restriction of use of force. Namely, Article 2 point 4 states: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations” [1]. At the same time, it provides for the right of self-defense, which is incorporated in Article 51 of UN Charter. Thus, Article 51 of the Charter states: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain

international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security” [1].

The rules of international law that govern the methods of altering state territory in the present day are based on the fundamental principles outlined in the UN Charter and other key international documents. The International Court of Justice also plays a significant role in shaping these norms. The legal means for changing state territory are closely tied to the main principles of international law, including principles such as territorial sovereignty, territorial integrity, self-determination, and the equality of states, as outlined in the UN Charter and other legal documents.

International law recognizes specific ways to change the ownership of a territory. One way is through a transfer of control from one state to another, which is called "cession" in legal terms. For this to take effect, the treaty must be approved by the people through ratification. Another option is to exchange territories, typically when defining borders, in a way that neither side experiences a loss in their territory [2]. Cession of territory in international law refers to the transfer of sovereign rights over a piece of territory from one state to another. This transfer is done through an agreement between the two states and must be ratified by the people of the transferring state, as a state's territory belongs to its citizens. Cession of territory is a recognized legal method in international law for altering the ownership of a territory. It is a permanent transfer of control, with the receiving state becoming the new sovereign over the transferred territory. The principles of justice and fairness must be respected in all transfers of territory, and cession is no exception. The international community must ensure that all transfers of territory, including cession, are conducted in a manner that respects the sovereignty of states and the rights of individuals.

Other legal methods for changing state territory include transfer, lease, and sale, which can be done through agreements between states and are reflected in international agreements. It is important to consider the national interests of all involved states when acquiring territory, except in cases of self-determination which will not be discussed in this article.

Another way territory can be changed is through trade, as seen in the agreement between Russia and the United States for the trade of Alaska.

Along with cession and territorial exchange, there is also a focus on lease agreements between states. With these agreements, the transferring state still maintains control over the territory and the receiving state only obtains the right to use it as outlined in the agreement. Therefore, a lease agreement doesn't represent a permanent transfer of territory but rather the acquisition of the right to utilize the territory for its intended purpose [2].

International law does not recognize other methods of acquiring territory, such as military conquest, aggression, or effective control, as legal. According to the International Court of Justice, it's crucial for parties to follow key principles when transferring territory. For instance, in the case of Sovereignty over Pedra Branca/Pulau Batu Puteh, the court emphasized that passive acceptance of claims cannot be assumed and that consent to conflicting claims must be established distinctly and beyond doubt [3]. It's important to note that the acquisition of territory must comply with international law, as well as the principles of justice and fairness. Any transfer of territory must respect the sovereignty of states and the rights of individuals, and cannot be achieved through the use of force or coercion. By following these principles, the international community can ensure that territorial disputes are resolved peacefully and in accordance with international law. Thus, The International Court of Justice (ICJ) has a clear stance on the various methods of territorial changes between states. The ICJ recognizes legal methods, such as cession and territorial exchange, but considers other methods, such as conquest or aggression, as illegal under international law. The ICJ stresses the importance of adhering to key principles, such as respect for sovereignty and the rights of individuals, in any transfer of territory. The ICJ holds that transfers of territory must be conducted in a manner that is fair and just, and cannot be achieved through the use of force or coercion. In general, the ICJ maintains that transfers of territory must comply with international law, and must respect the principles of justice and fairness, in order to ensure that territorial disputes are resolved peacefully and in accordance with international law.

As stated by number of scholars, the State that is alleged to have acquiesced should have direct or constructive knowledge of the acts accomplished by the other side. In addition, the acquiescing State must be under a duty to react to them. This will be the case when there is a clear claim of sovereignty over a territory by another State. The International Court of Justice stressed the importance of a state's reaction to a rival claim when it comes to territorial sovereignty in the Temple of Preah Vihear case. The court determined that a state's failure to respond to a

claim can be interpreted as a tacit recognition of the other state's sovereignty or an acceptance of the drawn border, indicating the state's belief in their lack of title or decision not to assert it. As we can see, in The Temple of Preah Vihear Case the Court explained the *notion of estoppel* which can be regarded as one of the principles that should be taken into consideration in cases concerning territorial acquisition and territorial disputes.

From the analysis presented, it is clear that modern international law offers a diverse set of regulations for the acquisition of territory. These regulations provide a variety of forms that can be used in different scenarios and situations, from the complete transfer of sovereignty over a certain territory to a lease agreement. Despite this, the world is still plagued by armed conflicts that often disguise themselves under other issues such as human rights. However, the true motivation behind these conflicts is often the acquisition of territory. International law recognizes certain legal ways of acquiring territory such as transfer, lease, sale and trade. However, it also prohibits illegal ways of acquiring territory like conquest, effective occupation, and aggression. The International Court of Justice plays an important role in the progressive development of norms related to territorial acquisition. It is important that while acquiring

territory, the cornerstone principles of territorial sovereignty, territorial integrity, self-determination, and equality of states are maintained.

References:

1. United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI,
2. 3. Lapshina I.E. International legal grounds and ways of changing the state territory // E-Scio. 2019. №9 (36). URL:
3. Sovereignty Over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge, Malaysia v Singapore, Judgment, Merits, **ICJ GL No 130, ICGJ 9 (ICJ 2008)**, 23rd May 2008, International Court of Justice [ICJ]
4. Territory, Acquisition, Marcelo G Kohen, Mamadou Hébié, November 2021, Max Planck Encyclopedias of International Law [MPIL]
5. Temple of Preah Vihear, Cambodia v Thailand, Merits, Judgment, [1962] **ICJ Rep 6, ICGJ 160 (ICJ 1962)**, 15th June 1962, United Nations [UN]; International Court of Justice [ICJ]

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