

Практика свидетельствует о необходимости толкования ряда конституционных норм, что относится к компетенции Парламента. Принятие соответствующих конституционных законов способствовало бы обеспечению законности, точному применению конституционных норм.

## **LEASED TERRITORIES AND THEIR INFLUENCE ON NOTIONS OF SOVEREIGNTY**

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Territorial leasing is recognized in international relations and international law as a means by which states can exercise control over territory without having sovereignty over it. Leases allow states to reallocate sovereign rights over specific areas without transferring title to them or altering any boundaries.

Territorial leases started to become more widespread at the end of the 19th century. Political and legal scholars have generally considered them to be a marginal phenomenon in relation to the Westphalian system of states, but leased territories sometimes play a more prominent role in the system than many states do — Hong Kong, the Panama Canal and Guantanamo Bay being contemporary examples. An obvious reason for this prominence is that leased territories raise questions about the nature of fundamental concepts that underpin the Westphalian system — most notably sovereignty and related notions like legal jurisdiction. The very structure of leasing arrangements involves giving one state sovereign rights, sometimes comprehensively, over territory where another state has sovereignty.

As creations of states, leased territories do not exist for the purpose of challenging the Westphalian order, but this is arguably their most important contribution to it. Questions about the nature of sovereignty affect the entire system of states, reaching far beyond any two states that are directly involved in creating and administering a specific lease.

Territorial leasing and the related concept of international servitudes between states derive from private law concepts that pertain to property ownership and the rights associated with it [1, p.p. 91—92, 94—96]. Generally, one can define a territorial lease as an agreement that creates sovereign rights for one state on the territory of another, when the form of the agreement emulates the form of a lease in private law. These rights can be said to comprise a servitude that effectively limits the sovereignty of the lessor state and extends the sovereign competences of the lessee state.

Sovereignty and Territorial Leases. Many scholars consider sovereignty as monolithic in substance, although its exercise is divisible [2, p. 85]. Others consider sovereignty to be the sum of a potentially variable set of state competences [3, 64—70]. Whichever way it comes about, the notion that specific and identifiable competences exist within the context of sovereignty gives rise to the notion that sovereignty can be both internal and external, and also to the notion that it can have limits, with individual competences

being present or absent or even transferable between states. Together these provide the conceptual foundation for territorial leases and servitudes.

Limits on sovereignty do sometimes endanger its existence, and territorial leases and servitudes are among the ways this can occur. When rights that are transferred through a lease are comprehensive, they may raise questions about which state actually has effective control over the territory involved. This has led to shifts in sovereignty on several occasions, such as when Great Britain annexed Cyprus during World War I after administering it since 1878 under a lease from Turkey.

Sometimes leased territories are ceded to the lessee state at the end of the lease, and sometimes they are not. Historically it appears that a mix of factors affects whether this happens — the interests of the states involved, their relations with each other and their intentions vis-a-vis the territory. Leases and servitudes between states typically arise as case-by-case solutions to issues regarding territory, rather than being standard instruments that are applied to specific territorial situations. The scope of their objectives is limited only by the range of activities that states engage in. These objectives can be categorised as economic, military, administrative or diplomatic, although a few leases have been made for other reasons, such as resolving disputes about sovereignty over territory. Occasionally new objectives are found for leases; the value of the U.S. lease of Guantanamo Bay from Cuba, for example, has shifted — as the site became less strategically vital as a naval station, it became valuable as an extra-jurisdictional territory outside the established domestic legal systems of both states.

**The Structure and Functioning of Territorial Leases.** Territorial leases are typically made by treaty, and their structure normally has three main elements: the rights that are transferred from the lessor state to the lessee, the duration of the arrangement and the compensation to be paid by the lessee state to the lessor. Each of these elements has many variations in actual practice.

A territorial lease has the aura of a private law contract, and the connotations resulting from this can give states broader options for dealing with a territorial issue than might be otherwise possible. Each state can claim a legal association with the territory in question, and through this association each state can claim some form of control over the territory while also addressing its own interests.

A leasing arrangement can allow the states involved to address a territorial issue in a way that avoids or delays what might otherwise be a firmer, more decisive, more acute or more contentious question about sovereignty. Keeping potentially contentious issues regarding territory from becoming open conflicts is one of the ways that states safeguard their security and territorial integrity and, by extension, the integrity of the international system of states. Territorial leasing can thus be seen as an instrument of international relations that helps preserve the sovereignty of states and the framework in which sovereign states exist, even if it forces the concept of sovereignty to adapt to the presence of territory that does not fit the traditional Westphalian pattern of being part of a state that acts as the sole exerciser of sovereignty.

Whether a territorial lease achieves the objective it is meant to address can be influenced by many factors, such as the quality of relations between the states, the nature of the issue to be resolved, the intensity with which the states display their competing claims, the specific terms of the lease, and the ability of these terms to adapt to evolving situations and interests of the states involved. Other influences on how a lease functions derive from the physical and human characteristics of the leased territory — where it is located, and whether it is large or small, populated or empty, rich or poor in natural resources, and high or low in economic potential.

As with any bilateral arrangement that involves territory where both states perceive an interest, a lease has the potential to alleviate the issue or make it worse. Either result can impact the broader relations between the two states, propelling the lease into becoming a dominant feature of these relations. Israel's leases of two small territories in Jordan, Naharayim/Baqura and Zofar/Al-Ghamr, showed how leasing can enhance the viability of both states. The leases were a critical part of the peace treaty that Israel and Jordan signed in 1994, thus ending a legal state of war that posed a relatively greater threat to the existence of one or both states. By contrast, the U.S. lease of the Canal Zone from Panama in 1903 eventually became a source of tension that caused both states to negotiate a new treaty in which the USA gave up its rights on the territory at the beginning of 2000.

**Assessment of the Leasing Practice.** Territorial leasing is a classic example of an international regime, reflecting common behaviour among states in response to the perceived need for territory that lies outside of the territory over which they have title and sovereignty. A territory that is leased may be valued by states for that very quality, as it lends a distinct political and legal status to the territory that is different from the status of the states that create it. As entities that are inherently different from the states that create them, leases have different experiences vis-a-vis sovereignty than states do. They act as laboratories of international relations and international law, and in doing this they reveal themselves to be significant, rather than marginal, actors in shaping notions of sovereignty that are moving the system of states itself into a post-Westphalian era.

1. Lauterpacht, H. *Private Law Sources and Analogies of International Law* / H. Lauterpacht. — Hamden, Conn., Archon Books, 1970.

2. Sukiennicki, W. *La Souverainete des Etats en Droit International Moderne* / W. Sukiennicki. — Paris, A. Pedone, 1927.

3. Fowler, M. *Law, Power, and the Sovereign State: The Evolution and Application of the Concept of Sovereignty* / M. Fowler, J. Bunck. — University Park, Pa., The Pennsylvania University Press, 1995.

## **РАЗВИТИЕ ЭКОНОМИКИ: ПОСТАНОВКА ПРОБЛЕМЫ**

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