The Sovereignty Aspect on Earth (Arctic, Antarctic, Seabed and Ocean Floor) and on Moon: Comparative Study

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ABSTRACT

The increased attempts to utilize moon has emerged issue relating to its sovereign status. This research attempts to compare sovereignty aspect on earth (Arctic, Antarctic, seabed) and on moon, by applying normative legal research. On Earth, several states have claimed their territories upon the Arctic and the Antarctic. However, those claims remain unresolved, and in any event, the Arctic and the Antarctic territories are still open for public. On the other hand, seabed and ocean floor have been regulated by international legal instruments that no sovereignty may be claimed upon. On Moon, several treaties and declarations have governed that no sovereignty may be claimed upon, and that any activity there must be for the peaceful purpose of mankind. Subsequently, the Arctic, Antarctic, seabed and ocean floor, and also moon have been declared as common heritage of mankind.

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1. Introduction

Outer space, including the moon is the known and unknown areas of the universe beyond the airspace.¹ Putting human on moon is acclaimed as human greatest milestone ever made, but that is not a cheap effort.² Apollo mission which was for scientific research³ and only sent 12 persons to Moon surface cost USD 25 billions (estimated to be valued USD 170 billions at modern monetary value).⁴ Apollo mission 1 was undertaken in 1967⁵ and

⁴ Richard Gray, loc. Cit.
Apollo mission 17 which was the last mission\(^6\) of the Apollo mission series was undertaken in 1972.\(^7\)

Nowadays, a plan rises not only to go back to moon, but also to stay there.\(^8\)

That plan came out from China through China National Space Administration (CNSA) and European States who are gathered in European Space Agency (ESA).\(^9\) CNSA and ESA cooperate to execute plan named ‘Moon Village’,\(^10\) while NASA also plan to establish the moon base.\(^11\) From the private sector, a company named SpaceX plans to undertake the same.\(^12\)

As the activities on moon are expected to be massive in the future, the issue of sovereignty on moon needs to be discussed. On earth, the Arctic, Antarctic, seabed and ocean floor may have similar situation with the moon concerning sovereignty issue. Subsequently, a comparative study could be done to analyze it.

1.1. Formulation of the Problems
1. What is Sovereignty?
2. What legal instruments do concern the sovereignty aspect on earth (Arctic, Antarctic, seabed and ocean floor) and on moon?
3. What are the similarities and differences concerning sovereignty aspect between on earth (Arctic, Antarctic, seabed and ocean floor) and on moon?

1.2. Objective
The objective of this legal research is to analyze the sovereignty aspect on earth (Arctic, Antarctic, seabed and ocean floor) and on moon, to which the international law perspective is applied. It aims to explain whether the state, possesses sovereignty on moon as it does on earth.


2. Method

This legal research applies normative legal research as the type of research method. Normative legal research is a legal research conducted by examining primary and secondary sources.\(^\text{13}\) This legal research applies statute approach, analytical approach and conceptual approach as type of research approach.\(^\text{14}\) This legal research uses secondary data. Secondary data include:

1. Primary legal materials, including conventions, treaties, agreements and declarations in the scope of public international law generally and international space law specifically;
2. Secondary legal materials, including legal materials that explain concerning the primary legal materials, for instance legal researches, cases or literatures that are relevant with the issues analyzed in this legal research;
3. Tertiary legal materials, including legal materials that will provide guidance and explanation concerning the primary and secondary materials such as dictionary, encyclopedia and so forth.

The steps in normative legal research include collecting, reading, and analyzing literatures that are related with the issues in this research as well as quoting several supporting opinions or statements to answer the issues in this research. Subsequently, all of the materials are arranged systematically as the legal basis to answer the issues.

The techniques of analyzing legal materials used in this legal research are descriptive and systematic. The descriptive technique is a technique explaining about the real condition or position from the legal or non-legal proportions. The systematic technique is a technique used to find the relation of the concept of law of legal proportion between regulations.

3. Main Heading of the Analysis or Results

3.1 Basic Concept of Sovereignty

Sovereign means characteristic of or endowed with supreme authority.\(^\text{15}\) Sovereignty expresses the supremacy of the governmental institutions (internally) and the supremacy of the state as a legal person (externally).\(^\text{16}\)


\(^{15}\) Bryan A. Garner (ed), *op. cit.*, p. 1523.

Nicaraguas,\textsuperscript{17} sovereignty means that each state is permitted to decide freely. Those free decisions include, but not limited to, the choice of a system (economic, politic, social and cultural) and also formulation of the foreign policy.\textsuperscript{18}

In Island of Palmas,\textsuperscript{19} sovereignty in its relation to a portion of the globe surface is the legal condition which is necessary for the inclusion of the mentioned portion in a territory of any particular state.\textsuperscript{20} Sovereignty in its relation to a territory is called ‘territorial sovereignty’ in the present award.\textsuperscript{21} Sovereignty in the relations between States signifies independence. Independence in its regard to a portion of the globe is the right to exercise the functions of a State, to the exclusion of the other States.\textsuperscript{22}

From all the meanings of sovereignty as explained earlier, the state which exercises sovereignty could be interpreted that the state, by supremacy, may decide freely concerning all lawful measures taken in its territory with the exclusion of any other states.

\textsuperscript{17} Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment of 27 June 1986, I.C.J. Reports 1986, ¶205.


3.2 Sovereignty on Earth (Arctic, Antarctic, Seabed and Ocean Floor)

With regard to the Arctic region, Denmark possesses Greenland and its associated islands within the region, while Norway has asserted sovereign rights over Spitzbergen and other islands.23 The Norwegian sovereignty was recognized by 9 (nine) nations in 1920, although the Soviet Union had protested.24 The former USSR25 and Canada26 has made the concept of contiguity to assert claims over areas forming geographical units with those already occupied, in the form of the so-called ‘sector principle’. The other Arctic states of Finland, Norway, the United States of America and Denmark have abstained from such assertions.27 Consequently, it is doubtful whether the sector principle can be regarded as sovereignty.28 The former USSR made some claims to relatively immovable ice formations of the Arctic region as being subject to its national sovereignty, however the overall opinion remains to treat these as part of the high seas open to all.29

With regard to the Antarctic region, several states namely Argentina,30 Australia,31 Chile,32 France,33 New Zealand,34 Norway35 and the United Kingdom36 have made claims. However, the 1959 Antarctic Treaty was signed, in which one of the rules is to govern territorial claim.37 Article IV(1)

34 Klaus J. Dodds and Kathryn Yusoff, 2004, Settlement and Unsettlement in Aotearoa/New Zealand and Antarctica, University of London, Surrey, p. 141.
of the Antarctic Treaty provides that no rule contained in the Antarctic Treaty shall be interpreted as first, a renunciation by any Contracting Party of previously asserted rights of or claims to territorial sovereignty in Antarctica; secondly, a renunciation or diminution by any Contracting Party of any basis of claim to territorial sovereignty in Antarctica which it may have whether as a result of its activities or those of its nationals in Antarctica, or thirdly, prejudicing the position of any Contracting Party’s recognition or non-recognition of any other State’s claim to territorial sovereignty in the Antarctica.  

In the same treaty, Article IV(2) then provides that no acts or activities may be exercised, while the Antarctic Treaty is in force, that shall constitute a basis to assert, support or deny a claim to territorial sovereignty in the Antarctica or create any rights of sovereignty in the Antarctica. No new other claim, or enlargement of the existing claim, to territorial sovereignty of the Antarctica shall be asserted while the Antarctic Treaty is in force. 

The rule of non-sovereignty in the Antarctic Treaty is reiterated in Article IV of Convention on the Conservation of Antarctic Marine Living Resources. Accordingly, both Antarctic Treaty Convention on the Conservation of Antarctic Marine Living Resources remain unclear whether or not they have to reject the existing claim of sovereignty on Antarctic. Consequently, it left unresolved the pre-existing territorial sovereignty claimed by several nations.

As the Arctic and Antarctic regions may not be subject of national appropriation or sovereignty claim, consequently, both the Arctic and Antarctic regions, could arguably be considered as the common heritage of mankind. However, in regard to the base, no relevant legal instrument specifically provides for the “free access” to other state’s base each other. With regard to the seabed and ocean floor, there is no any existing claim made by any state. In any event, there exists legal instruments providing for the seabed and ocean floor. In 1970, the United Nations General Assembly adopted Resolution 2749 (XX), which annexed the Declaration of Principles

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41 Paul Stephen Dempsey, 2008, Public International Air Law, Mcgil University Institute and Centre for Research in Air and Space Law, Montreal, p. 31.

42 Susan Breau, op. cit., p. 94.
Governing the Seabed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction. The Declaration rules that seabed and ocean floor shall not be subject to appropriation by any means by States nor persons, natural or juridical, and also no State shall claim or exercise sovereignty over any part thereof.” The rule was reaffirmed in the 1982 Convention on the Law of the Sea, Articles 136 and 137, in which it was provided that no sovereign rights would be recognized with regard to the area and that exploitation could only be exercised in accordance with the structures and rules constituted by the Convention. Furthermore, the 1970 Declaration states that the seabed and ocean floor are the common heritage of mankind. However, in regard to the base, no relevant legal instrument specifically provides for “free access” to other state’s base each other.

3.3 Sovereignty on Moon
With regard to the moon, there is no any existing claim made by any state. In any event, there exists legal instruments providing for the moon. The United Nations General Assembly adopted several resolutions which concerned the sovereignty on moon. In Resolution 1721 A (XVI), the United Nations General Assembly states that outer space and celestial bodies are not subject to national appropriation.

In 1963, the United Nations General Assembly adopted Resolution 1962 (XVIII) which annexed the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space. In such declaration, Article 3 rules that outer space and celestial bodies are not subject to national appropriation by claim of sovereignty. In 1996, the United Nations General Assembly adopted Resolution 51/122 which annexed the Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States, Taking into Particular Account, the Needs of Developing Countries.

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44 Malcolm N. Shaw III, op. cit., p. 533.
49 UNGA Res. 51/122, 13 December 1996, Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States, Taking into Particular Account, the Needs of Developing Countries.
In this resolution, the Preamble set forth that member states are desirous to facilitate the application of the legal principle that the exploration and use of the outer space, including the Moon and other celestial bodies shall be the province of all mankind.\textsuperscript{50} In the annexed declaration, Article 1 rules that International cooperation of states in relation to the exploration and use of outer space for the peaceful purposes shall be conducted in accordance with international law, including the United Nations Charter and also the Treaty on the Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies 1967 (the “Outer Space Treaty”). The same Article also rules that the outer space shall be the province of all mankind, in the light that account should be taken of the needs of developing countries.

According to treaties, in Outer Space Treaty, Article I provides that the exploration and use of the outer space, including the moon and other celestial bodies shall be the province of all mankind.\textsuperscript{51} The Outer Space Treaty through Article II also provides that outer space, including the Moon and other celestial bodies, is not subject to any national appropriation by claim of sovereignty.\textsuperscript{52}

The rule of non-sovereignty in the Outer Space Treaty is reiterated in the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (the “Moon Agreement”). Article 4 provides that the exploration and use of the moon shall be the province of all mankind.\textsuperscript{53} The Moon Agreement through Article 11(2) also provides that the Moon is not subject to any national appropriation by claim of sovereignty.\textsuperscript{54} The subsequent implication of the rules above is that as similar as on earth (Arctic, Antarctic, seabed and ocean floor), sovereignty could not also be claimed on the Moon. Additionally, Article 11(1) of the Moon Agreement also provides, similar as on earth (Arctic, Antarctic, seabed and ocean floor), that the Moon and its natural resources are the common heritage of mankind.\textsuperscript{55}


In regard to the base, unlike on earth (Arctic, Antarctic, seabed and ocean floor), there exists legal instrument providing for “free access” to other state’s base. Article I of the Outer Space Treaty provides that outer space, including the Moon and other celestial bodies, shall be free for exploration and use and in which there shall also be free access to all areas.\footnote{56} However, such Article must be read in the light of Article XII of the same treaty, which provides that all stations, installations, space vehicles and other equipment on the Moon and other celestial bodies shall be open to representatives of any other States parties to the Outer Space Treaty on a basis of reciprocity.”\footnote{57} The term “free access” of the Article I would consequently be read in the meaning that there shall be free access to all areas of outer space and celestial bodies at all times, except as ruled in Article XII.\footnote{58} Thus, Article I emphasizes the non-sovereignty rule on the Moon.

4. Conclusion

In regard to similarities, on earth, sovereignty may not be claimed on the Arctic, Antarctic, seabed and ocean floor. The same rule applies on moon, on which no sovereignty may be claimed. Furthermore, it is affirmed that the Arctic, Antarctic, seabed and ocean floor on earth, including the moon are the common heritages of mankind. Consequently, all conduct on those areas shall be beneficial for mankind with no exception.

In regard to differences, there are existing claims of sovereignty on Arctic and Antarctic regions. However, no relevant legal instrument specifically provides whether or not such existing claims must be rejected. Meanwhile, there is no any existing claim of sovereignty on seabed, ocean floor and on moon. Consequently, it is not necessary for any legal instrument concerning seabed, ocean floor and moon to provide for the status of existing claim. On the other issue, there is no any legal instrument, concerning the Arctic, Antarctic, seabed and ocean floor, specifically provides for “free access” to other state’s base each other. While on moon, there exists such regulation. When any base is established on the moon, the provision of “free access” must be applied, to which it must be open to other representatives of other states on the basis of reciprocity and international cooperation.

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