CHAPTER 5

Structural Components

Affirmation of Sovereignty

One of the early building blocks of international law was the principle that a sovereign state may grant rights on its territory to another state.\textsuperscript{452} Leases of territory are based on this rule and act as affirmation that sovereignty in a leased zone resides in the lessor state. Every territorial lease is contingent on both parties’ acceptance of this fact as a source of the rights that are transferred and the authority to assign them. The lessor’s sovereignty usually reflects prior recognition of the lessor’s title to the territory, although sometimes it is established simultaneously with the lease.\textsuperscript{453}

The affirmation of sovereignty is one of several features of a territorial lease that comprise what may be considered its structural components—the elements that leases have in common and that occur together, even when one or another element is implicit or absent from the text itself. The others include the rights and obligations elaborated in the lease, the duration of the arrangement and the compensation or other consideration.

As a prerequisite rather than an operative aspect of a lease, the affirmation of sovereignty may or may not appear among its provisions. When it does, the reason is often diplomatic rather than legal, although its legal value is evident. A common motive in leases of the late nineteenth century was saving face for the lessor when it was the weaker party.\textsuperscript{454} A clause that mentions the lessor’s sovereignty also may reassure the lessor (and alleviate concerns among other states) about the lessee’s ultimate intentions regarding the territory, with the aim of pre-empting or minimizing problems of a political nature that might affect the lease’s successful implementation or otherwise negatively impact relations between the parties.

\textsuperscript{452} “There exists no reason why a nation, or a sovereign if authorized by the laws, may not grant various privileges in their territories to another nation” (Emmerich de Vattel, \textit{The Law of Nations, or Principles of the Law of Nature}, trans. (London: G.G. and J. Robinson, 1797), 168.

\textsuperscript{453} \textit{E.g.}, when the lease is part of a broader arrangement to resolve contested sovereignty in a frontier zone (Treaty of Bayonne, Dec. 2, 1856; Israel-Jordan Peace Treaty, Oct. 26, 1994; \textit{et al.}).

\textsuperscript{454} Perrinjaquet, \textit{Des cessions temporaires}, 261.
The U.S. lease of the Canal Zone from Panama in 1903 took such sensitivities into account when it referred to “the sovereignty of such territory being actually vested in the Republic of Panama”455 while granting the United States the exclusive right to engage in sovereign activities.456 As described by William Howard Taft,

It is peculiar in not conferring sovereignty directly upon the United States, but in giving the to United States the powers which it would have if it were sovereign. This gives rise to the obvious implication that a mere titular sovereignty is reserved in the Panamanian Government. Now, I agree that to the Anglo-Saxon mind a titular sovereignty is like what Governor Allen, of Ohio, once characterized as a “barren ideality,” but to the Spanish or Latin mind poetic and sentimental, enjoying the intellectual refinements, and dwelling much on names and forms it is by no means unimportant.457

A lease thus acknowledges the de jure situation of the leased territory not only relative to both parties but also relative to the sovereign activities carried out in the leased area. Particularly when the lessor’s sovereignty is affirmed in the lease’s text, it distinguishes the agreement as not being a cession of sovereignty and title, however it may appear, including to other states, if the lessee visibly engages in sovereign behavior in the leased zone.

The affirmation also establishes a supplemental legal hurdle to any future challenge to the lessor’s title there. While estoppel has not been a rigid principle of international law, it often is a relevant one in cases involving territorial claims.458 A situation of estoppel created by both parties’ confirmation that the lessor state is sovereign can discourage the lessee from claiming title over the leased area as the national interests of both parties and/or their bilateral relationship change over time. In at least one case—the reciprocal leases of

455 Hay-Bunau-Varilla Treaty, Nov. 18, 1903, pmbl.
456 Ibid., art. 3.
457 U.S. Senate Committee on Oceanic Canals, Testimony by William Howard Taft, Apr. 18, 1906, in Investigation of Panama Canal Matters, Vol. 3 (Washington: Government Printing Office, 1906), 2527. At the time, Taft was the U.S. Secretary of War and oversaw the Panama Canal’s construction. The italicized words were emphasized in the source.