

The Doctrine of Occupation through “*Terra Nullius*” as a Right of Self-Determination of Peoples and the Legal Status of “Liberland” Territory under International Law

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How to cite this paper: Nyangaga, J. O. (2022). The Doctrine of Occupation through “*Terra Nullius*” as a Right of Self-Determination of Peoples and the Legal Status of “Liberland” Territory under International Law. *Beijing Law Review*, 13, 119-132. <https://doi.org/10.4236/blr.2022.131008>

Received: January 17, 2022

Accepted: March 12, 2022

Published: March 15, 2022

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Abstract

There has been much written about the legality of peoples’ right to self-determination, particularly the external aspect that involves the secession of a state or the formation of a new state through the landmass division of an existing state. This article departs from discussing the right of peoples to self-determination through secession and instead investigates the doctrine of occupation through *terra nullius* as an aspect of the right of peoples to self-determination. This article contends that the relationship between peoples’ right to self-determination and *terra nullius* is untenable under current international law. As a result, the author of this article disputes the liberland territory’s claim as State under the claims of *terra nullius*, arguing that claims of *terra nullius* cannot be legally claimed by an individual person, despite the territory meeting some of the requirements set out in Article 1 of the Montevideo convention on how to recognize a State. To reach its conclusion, this study employed a qualitative research method.

Keywords

Annexation, Doctrine, Occupation, Peoples, Rights, Self-Determination, *Terra Nullius*, Territorial

1. Introduction

The right of self-determination of peoples is enshrined in the United Nations Charter (UN Charter) of 1945 in Articles 1(2), 55, and 73 (United Nations, 1945). This right is also mentioned in the 1966 International Covenant on Civil and Political Rights (ICCPR) (International Covenant on Civil and Political

Rights, 1966), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, (*International Covenant on Economic, Social and Cultural Rights, 1966*) which recognize this legal right, in both statutes' Article 1. In Africa, the African Union (AU), has included the right to self-determination of peoples in its Charter on Human and Peoples Rights (*African Charter on Human and Peoples Rights, 1981*). In general, one of the most important human rights is the right of peoples to self-determination. Many scholars have written about the importance and binding nature of this right, and it is widely accepted that the right to self-determination has two components: internal and external. The external aspects involve the peoples' secession of a state to form their own independent state from the carved out territory of an existing state, while the internal right is exercised within the concerned State (Sterio, 2013).

However, the relationship between *terra nullius* (Latin for land belonging to no one or land that is unoccupied or uninhabited) and the right of peoples to self-determination is a less researched topic in international law.

Research Problem

Over centuries, the right to self-determination has always been associated with the territorial integrity of a land mass where a certain community or group of people claim ownership and de-facto administration of the concerned land.

The doctrine of *terra nullius*, as a doctrine of occupation and the right of peoples to self-determination, is arguably one of the oldest methods of ensuring a state's territorial integrity. Historically, Francisco de Victoria (1486-1546), a Spanish theologian, wrote in 1532, on *terra nullius* principle "*De Indis*," that deserted or empty land can become the property of the first occupant under the law of nations and natural law (Pagden, 1991). Victoria, a lawyer, and a Catholic Church priest had developed legal reasoning for the *terra nullius* principle and advanced the right to land. These rights were linked to Vitoria's natural rights theory ("*ius naturale*") and natural law ("*lex naturalis*") (Koba, 2020). The term "*terra nullius*" comes from the Latin word for "nobody's land," and is thought to refer to Victoria's philosophy of occupying an empty or unoccupied land. Occupation of free land occurred in the Roman Empire when someone possessed a property that had never been owned or free ("*nullius*"), as well as if the previous owner had deserted it ("*res nullius*") (Rudnick, 2017).

For example, in the Australian case, despite the fact that the Australian Court rejected the concept of *terra nullius* in 1992, the Australian state was founded on *terra nullius* claims made by British rulers. As a result, Australia existed literally as a result of the *terra nullius* landmass acquisition, in contrast to Australia's neighbour, New Zealand, where the British signed an agreement with the Maori people to acknowledge that they owned the New Zealand land (Banner, 2005). Despite the fact that the Australian High Court rejected a colonial law declaring Australia *nullius* (a Latin word meaning "on the word of no ones") in 1992, the British official argument had been that their occupation of Australia was a "*terra nullius*." This was overturned by the Australian Court in the *Mabo case* (Mabo &

Others v Queensland, 1992), the ruling which affirmed that aborigines had long occupied Australia before the British “foreigners” conquered their land.

Land or territorial ownership conflict has been a common occurrence, with different people and communities engaging in an armed conflict over territorial ownership, resulting in the split of territories internationally now recognized and referred to as States, backed by contemporary international law that regulates and affirms those States’ sovereignty over those lands.

This paper investigates the doctrine of *terra nullius* and its validity in contemporary international law, as well as Liberia’s claim as a state under the principle of *terra nullius*.

2. *Terra Nullius* as a Legal Principle of Peoples’ Self-Determination

The acquisition of properties of absentees is similar to *terra nullius* practices. In the United Kingdom, for example, in 1632, legislation was enacted that formalized adverse possession of abandoned land under English common law; this piece of legislation became to be known as the Statute of Limitations (Depoorter & Bouckaert, 2014) practiced in Britain. It can be seen that the British had a culture in which they could claim ownership of other people’s land under the doctrine of adverse possession. Indeed, the majority of commonwealth states, which are primarily made up of former British colonial territories, continue to use adverse possession as a legal means of laying claim to land and acquiring legal ownership and title. In particular, adverse possession allows possession and occupation of land by a person who has no legal title to the subject land and is neither its equitable owner nor its consenting owner. In some Commonwealth member states, primarily former British colonies, this rule is still applicable. In Tanzania, for example, citizens can invoke the landownership by invoking adverse possession rule if the absentee landowner has abandoned the property for more than twelve years. Such a claim was witnessed in the case of *Registered Trustees of the Holy Spirit Sisters Tanzania vs. January Kamili Shayo* (Registered Trustees of the Holy Spirit Sisters Tanzania vs. January Kamili Shayo, 2018), before a Tanzanian Court of Appeal. Similarly, the adverse possession law in Kenya is identical to the one in Tanzania. For example, in *Wilson Njoroge Kamau v Nganga Muceru Kamau* (WILSON NJOROGE KAMAU v NGANGA MUCERU KAMAU, 2020), the defendant sought to extinguish the plaintiffs’ adverse possession after more than 12 years of occupation of land under the Limitations of Actions Act. *Terra nullius* is related to the practice of acquiring property by laying claim to idle land or property, even if such property belongs to someone else, which has been practiced for centuries in English society. The rules and principles that apply in either *terra nullius* or adverse possession, on the other hand, are completely different. While the British claimed that their occupation of Australia was *terra nullius* rather than adverse possession or colonization, this was not the case.

It should be noted that, in addition to adverse possession or colonization, other traditional methods of acquiring territories have included inheritance, conquest, purchase, occupation, *terra nullius* or settlement. In the United Kingdom (UK), for example, when King James II became king in 1685, he inherited Scotland as James VII from his father (Barton, n.d.). Conquest to gain control of territory is an ancient act, as evidenced by the history of international law. Historically, conquest was exercised as a result of the defeat, with the victor gaining sovereignty over the conquered territory and its inhabitants (Kornan, 1996). There was, however, a requirement to show ownership of the territory. Such a requirement had to be met before the conqueror's title of ownership could be transferred. The winner was required to show that it had effective control over the territory it claimed. However, under contemporary international law, Article 2(4) of the UN Charter, prohibits the use of force in territorial acquisition. The prohibition includes, among other things, colonization as a means of dominating territories. As a result, international law statutes such as the Convention on the Rights and Duties (Montevideo Convention) of 1933, the United Nations Charter of 1945, and the Rome Statute, as well as other related international rules, prohibit the use of force *ius ad Bellum* against the territorial integrity of another country.¹

During the partitioning of African land in preparation for colonization, the colonial powers claimed that their actions were of *terra nullius*. However, history has shown that *terra nullius*, as practiced over many centuries, was only justified where occupation was of uninhabited and empty land that had never before been occupied by other people and no one or any other authority claimed it (Craven, 2015). Under international law, the act of occupation of a territory by a State under the principle of *terra nullius* is only permissible to be undertaken by States as international personalities but not by an individual person (Hillier, 1998). Furthermore, international law prohibits any kind of conquest by one state against the territorial integrity of another. The use of force by Russia during the annexation of Crimea (Marxsen, 2014), the invasion of Ukrainian territory was viewed as a violation of international law and was strongly condemned by the United Nations and several states. Russia has annexed Crimea twice, the first time in 1783, during Catherine II's reign (Anderson, 1958), and the most recent territorial annexation of Crimea by Russia from Ukraine occurred in 2014, during Vladimir Putin's presidency. It should be noted that only on two occasions does the UN Charter permit the use of force against another country's territorial integrity. The first is under Article 51, which allows states to respond against an enemy state whenever it is attacked, but only as a matter of self-defence. The second instance is under Article 42, where such action has been sanctioned by

¹See Convention on Rights and Duties of States (Montevideo Convention) 1933, Art. 11, the Article outlaws territorial occupation by use of force. The Charter of the United Nations (UN Charter) 1945 in Article 2(4) also forbids use of force against territorial integrity or political independence of a State. Indeed, the Rome Statute of the International Criminal Court (ICC), use of force against another State is prosecutable as an international crime under article 8 *bis*, referred to as Crime of Aggression.

the UN Security Council for the maintenance or restoration of international peace and security. These two mentioned international law rules that allow the use of force, is arguably derived from old principles based on the doctrine of “just war.” These rules can be traced back to the time of Saint Augustine and Saint Thomas Aquinas. Whereby wars were required to be just and equitable, that is to mean that, war needed to be directed at the party who offended, and that it be sanctioned by a sovereign power. Innocent people caught up in the war had to be treated with care and not harmed (Petreski, 2015). International law was created to regulate the characteristics of the use of force in conquest and to limit its effects to allowable parameters if war was necessarily had to occur (Gathii, 2004).²

According to Chinkin, “occupation law” for the attainment of territories based on the principle of “*terra nullius*” has made territorial occupation law multifaceted and less clear due to legal and factual challenges (Chinkin, 2009). However, there have been difficulties in strictly containing wars within international law rules as a result of post-war occupation experiences, such as Germany and Japan after WWII (Jennings, 2003), the Soviet Union’s occupation of Afghanistan in the 1980s also appears to have violated just war principles (Reisman & Silk, 1988). Later occupations, such as the United States of America (US) and United Kingdom (UK) occupation of Iraq from 2003 to 2004, and Morocco’s occupation of Western Sahara, did pose legal challenges. The purchase of territory is another contemporary method of occupying or acquiring territories outside the scope of *terra nullius*. For instance, in 1803, the United States paid \$1.5 million to France to purchase the now US constituent state of Louisiana (Brennan, n.d.), the US also purchased the state of New Mexico from Mexico. In addition, for \$7.5 million, the US purchased the state of Alaska from Russia in 1867 (Cook, 2011). The territorial acquisition has also occurred through settlement. This was observed in *Cooper v. Stuart* (1889), where according to Lord Watson, there is a distinction between a colony acquired by conquest or cession and a colony consisting of a tract of territory practically unoccupied, or settled law, at the time it was peacefully annexed to the British (Ritter, 1996), as demonstrated in (*Mabo & Others v Queensland*, 1992).

Anghie contends that European powers used *terra nullius* to justify the annexation of territories that they had designated for colonization. As a result, the principle of *terra nullius* is a work of fiction (Anghie, 2004). In their bids to acquire territories to colonize, Western powers used coercion, or the use of force

²Also, see UN Charter 1945, Art 51 which anticipates the use of force against a UN member state; see also related international rules on occupation such as the Hague Convention on Laws and Customs of War on Land 1907, the Hague convention, 1907 is observed as prime law for customary international law; the Fourth Geneva Convention for the Protection of Civilian Persons in Time of War 1949 (Geneva IV) supplemented by Additional Protocol I, 1977. Art. 42 of the Hague Regulations, it establishes that, a territory is occupied when it is in fact placed under the authority of the hostile army, this is affirmed by the Geneva Convention IV, article 2 which states that, this is applicable “all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance”.

through compulsion similar to conquest. Indeed, the colonized territories were not free lands worthy of laying claims under the principle of *terra nullius* because people were occupying those lands, and there was the notable antipathy of indigenous peoples during their takeovers, which continued even during the colonization period (Knop, 2004). Anghie criticizes Vitoria's two lectures, claiming that the central theme of his two works designated as the doctrine of *terra nullius* texts of international law was the relationship between the Spanish and the Indians in relation to colonization (Anghie, 2004). Indeed, colonization mutated and became an international crime in contemporary international law under the Rome Statute of the International Criminal Court, and thus colonization cannot be justified because it is a violation of human rights and not a process of peoples' self-determination.³ Indeed, colonization can now be prosecuted as an international crime by the International Criminal Courts. However, for three reasons, the principle of *terra nullius* remains a necessary component of the right of self-determination of peoples under international law. First, self-determination territorial or land acquisition and occupation of the peoples. Secondly, the events surrounding *Terra Nullius* aided in the acquisition of land for colonization, and now in post-colonization, the colonial territories were returned back to the indigenous owners as their right of self-determination. Third, as a consequence of the right of self-determination, territorial acquisitions have to be both *de facto* and *de jure*, with territorial integrity supplementing the right to have an international personality and absolute authority of States over the occupied territory. The law philosophers of the sixteenth and seventeenth centuries, Francisco de Vitoria (1486-1546) and Hugo Grotius (1583-1645), established some international legal theories in which they held that indigenous peoples' rights to the territories they occupied were a legal entitlement (Gilbert, 2004). Gilbert posits, "It is relatively undeniable that most of the debates that gave birth to the laws relating to territory and possession took place within the boundaries of Europe." (Gilbert, 2004)⁴ People who inhabit a sovereign territory are inextricably linked by the nature of their occupation of the land, and it is thus considered to have naturally formed an international personality under international law (Levitt, 2015). Given the preceding considerations, territorial integrity can be viewed as a primary factor that exists and allows international law to recognize state sovereignty (Hillier, 1998).

The practice of *terra nullius* was perverted by European colonizers in the eighteenth and nineteenth centuries to include legitimizing conquests as a practice of *terra nullius*, the legal theories advanced by the European powers branded indigenous people as "savages" in order to legitimize their superiority over the indigenous people and to effect colonization (Anghie, 2004). "Savages" or the original land inhabitants were labelled as uncivilized people, and the colonizers' use of *terra nullius* was to allow ownership of territories for the occupation of

³Rome Statute of the International Criminal Court (ICC), (adopted 17 July 1998) UNTS Vol. 2187, No. 38544, Article 7 (1) (e)(f)(h)(j)(k) and 7(2)(c)(e)(g)(h).

⁴Ibid at p 4.

indigenous peoples' land and colonial dominance (Anghie, 2004). The assumption under colonial rule was that ownership rights of territories put under occupation during the occupation period belonged to the colonial power that owned those territories based on rights derived from international law at the time (Ogot, 1992). Indeed, colonial powers exercised the "right to self-determination" over their colonies, assuming that "savages" were too primitive to claim territorial occupation of their territories in comparison to the spirit of current international law (Ogot, 1992). Colonial powers had a right to self-determination over indigenous peoples and their colonies, and as such, claimed territorial integrity rights over their colonies, which were later recognized as legitimate powers over their colonies by the League of Nations in 1920 (Gilbert, 2004). As a result, the General Act of 1885, signed in Berlin and used as a foundation for colonization, was a legal pact that allowed for the forcible occupation of indigenous peoples' land through the use of presumed "*terra nullius*" (Craven, 2015). However, with the advent of the UN Charter and contemporary related international rules, the right of peoples to self-determination through *terra nullius* has nearly become obsolete, given that there is no empty land without occupants to be occupied under the principle of *terra nullius*. Consequently, the use of force is prohibited (United Nations, 1945), including the abolition of colonialism, this has rendered *terra nullius* unconstitutional under modern international law (Miller, 2019).

3. The Relationship between *Terra Nullius* and Colonization

Francisco de Victoria opined that the possession of land under *terra nullius* was to be limited to non-occupied territory, but not territories occupied by people, and that this was the only way an occupation of territories under *terra nullius* was permissible (Lesaffer, 2005). It should be noted that, the concept of *terra nullius* was only applicable when there was an empty land or territory (Pagden, 1991). Consequently, scholars such as Ventel, as cited by Rudnicki, discoursed the deprivation of land from its rightful inhabitants, and opined that it does violate natural law and therefore contradicts the classical principle of *terra nullius* (Rudnick, 2017). Similarly, Stephen argues that the State practice of occupying colonial territories deviated from the classical practice of *terra nullius*, but went ahead to progress over time into the forceful occupation (Stephen, 1968). Western powers established colonization by establishing dominance over territories already inhabited by indigenous peoples by using superior military capability and labelling inhabitants as "savages." Other methods of establishing colonization included technical postponement or forceful acquisition of rights through subjugation, and thus *terra nullius* practice in the context of colonization did not strictly adhere to its legendary conceptual principle (Stephen, 1968). Case law has validated the aforementioned claims; for example, in its advisory opinion on Western Sahara, the ICJ faulted the European powers' approach to facilitating the occupation of territories to be colonized (ICJ, 1975). The court observed that the law of occupation was intended to be peaceful when acquiring sovereignty

over a territory through cession, which is a formal voluntary surrender of rights, or succession. The primary condition of cession is that the occupation of a territory is of *terra nullius* (ICJ, 1975). The court further pointed out that; “*according to the State practice of that period, the territories inhabited by tribes or peoples having a social and political organizations were not regarded as terrae nullius.*”⁵ The observations of the Court imply that the colonial powers’ dishonesty in applying the principle of *terra nullius* in the eighteenth century was already discernible from its original manifestation as *jus civile* (ICJ, 1975). In Africa, colonial powers used the principle of *terra nullius* to divide African land into territories, allowing the Western powers to demarcate territorial frontiers of control. The Berlin Conference of 1884-1885 allowed Western sovereigns to permanently transform African land by relegating indigenous peoples’ rights in order to facilitate institutional dogma by colonial rulers (Craven, 2015). The colonization of African occupied territories through the use of the principle of *terra nullius* bestowed colonial powers with authority over the “rights of self-determination,” whereby the local rules, or *jus inter gentes*, of the inhabitants were not recognized by the European powers, to the detriment of indigenous people.⁶ The European powers pioneered a widely used and practiced technique in which, once a territory is relegated, it is conquered or coaxed into submission before being colonized (Whitmore, 1896). There are questions about whether the principles of the General Act of 1885 are still applicable,⁷ the European powers did not meet the international legal requirements of the time, which could have allowed them to legalize the illegitimate occupation, which was contrary to the principles and practice of *terra nullius*. It is worth noting that colonization did not adhere to the legendary practice of *terra nullius*, as territories to be colonized were conquered and their inhabitants were forced to submit to the authority of the new rulers and laws. But, Rudnicki, view the use of conquest by European powers over territories through “invasion” as a necessity which was largely influenced by the need to claim factual possession as a *de-facto* occupant (Rudnick, 2017). Rudnicki’s assentation is rejected by Fitzmaurice disputes the legality and fairness of the entire concept of *terra nullius*, referring to it as the process or method which was used by European powers in the eighteenth and nineteenth centuries to acquire land for the purpose of colonizing territories, through illegal and immoral means. He observes that *terra nullius* was never formalized or regarded as an institutionalized legal system at the time, and therefore a mere conceptual mentality (Fitzmaurice, 2007). For these reasons, the author suggests that, *terra nullius* does not employ the forcible acquisition and occupation of territories, and therefore colonization was not an act of *terra nullius*.

⁵ibid.

⁶See, Statute of General Act of the Berlin Conference on West Africa, entered on 26 February 1885, consistently applied the phrase “rights of sovereignty or Protectorate”, especially in Articles 7, 8, 10, 11 and 30.

⁷The Statute of General Act of the Berlin Conference on West Africa, entered on 26 February 1885, consistently applied the phrase “rights of sovereignty or Protectorate”, especially in Articles 7, 8, 10, 11 and 30.

As a result, the relationship between the investigation in section two, where *terra nullius* was examined through the lens of the right of peoples to self-determination in contemporary international law, and the investigation in section three, where this principle was examined from a colonial perspective, demonstrates that neither can be regarded as valid legal means to the right of peoples to self-determination in the current international law dispensation.

4. The Concept of *Terra Nullius* in Contemporary International Law

Under international law, the doctrine of *terra nullius* has two components. First, it facilitates the occupation of an empty territory; second, it asserts international law-based sovereignty over a territory. The occupation and segregation of territories is a major factor in facilitating legal ownership of a territory, and it confers rights to achieve *de-facto* and *de-jure* tenancy over the subject territory (Carlson, 2016). In modern international law, *terra nullius* refers to land that lacks sovereignty rather than ownership or *res nullius*. Hu claims that *terra nullius* was a Roman law that was concerned with individuals rather than states because its application was accommodated by Roman municipal or natural law. As a result, the doctrine is based on Roman law known as *occupatio*, which allows an empty land that has not been occupied to be taken over by the first person who makes a claim to it (Hu, 2016).

In Western Sahara's advisory opinion on *terra nullius*, the ICJ stated that "*terra nullius*" was a legal term of "occupation" that would allow acquiring sovereignty over a territory. The distinction between *terra nullius* and conquest is that at no point in time was the conquest of land permitted to enable the transfer of title to the territory occupied (ICJ, 1975). The International Court of Justice (ICJ) clarified in Western Sahara, *opinio juris*, that State practice of the relevant period demonstrated that territories inhabited by tribes or peoples with a social and political organization were not regarded as *terra nullius*. However, in cases where local rulers concluded takeover agreements, it implied an infrastructure for the title, rather than the occupation of *terra nullius* (ICJ, 1975). The preceding *opinio juris sive necessitatis* demonstrates that the acquisition of territories for the purpose of colonization could not be considered *terra nullius*, thus disqualifying *terra nullius* claims from circumstances in which the doctrine of *terra nullius* was to be applied in territorial *occupatio* (Chinkin & Baetens, 2015). It is clear that *terra nullius* as a doctrine has undergone numerous transformations over time. *Terra nullius* manifests in a transformed form in contemporary international law, from its original principles, in which individuals could lay claim to an empty land, to the current one, in which only States can claim occupation of territories in international law. Cittadino observes that this could be because "sovereignty implies duties in addition to state rights," (Cittadino, 2016) as a result, a non-international personality cannot claim occupation of a territory, because international law does not recognize the participation of individuals on the

international plane, but only international personalities, which are the States. Contemporary international law does not have legal provisions relating to the occupation of territories through *terra nullius*; it is arguable that the UN Charter did not anticipate the possibility of an empty and unclaimed territory being acquired through the principle of *terra nullius*, given that almost all territories on the planet belong to, or are constituents of, specific sovereign States (Schwed, 1982). The phrase “*terra nullius*” is absent from the UN Charter and many other international law doctrines. The UN Charter was only concerned with recognizing the right to self-determination of peoples in non-self-governing territories who had expressed a desire for self-governance or independence from the colonial context (United Nations, 1945). Therefore, the principle of *terra nullius* can be regarded as a norm and a principle found in customary international law.

5. The “Free Republic of Liberland” *Terra Nullius* Claims under the International Law

Under the international law, the Convention on the Rights and Duties of States (Montevideo Convention) 26 December 1933, in Article 1, requires that a state as an international personality, should have, 1) a permanent population, 2) a defined territory, 3) government, and, 4) the capacity to enter into relations with other States.⁸

The “Free Republic of Liberland” or “Liberland” has claimed the right to external self-determination as a sovereign territory under the principle of *terra nullius*. The entity did apply for official recognition as a state at the UN in order to gain *de-facto* and *de-jure* status (Koebrich, 2017). According to the Liberland website, the territory is located on the west bank of the Danube River, between Croatia and Serbia,⁹ the “officials” from Liberland claim that their territory has not yet been claimed by Croatia, Serbia, or any other state and that no dispute over that parcel of land is currently underway. Since the dissolution of the Socialist Federal Republic of Yugoslavia in 1991, the area had been a “no man’s land” until Vít Jedlička “the president” and Jana Markovicova declared it a free state on 13 April 2015. The entity has a total area of about 7 kilometres square (Koebrich, 2017).

It should be noted that the legal framework established by the International Court of Justice in the Western Sahara *opinio juris* stated that any legal claim based on grounds of *terra nullius* requires, first, that the territory concerned be free of any kind of ownership; second, that it be free of occupation by the people; and third, that the claim on the territory and its takeover be peaceful and without the use of force (ICJ, 1975). The ICJ judges appear to acknowledge in the Western Sahara advisory opinion that the principle of *terra nullius* is still a good

⁸See Convention on the Rights and Duties of States (Montevideo Convention) 26 December 1933, Article 1. <<https://www.ilsa.org/Iessup/Iessup15/Montevideo%20Convention.pdf>> Accessed 15 November 2021.

⁹Liberland <<https://liberland.org/en/assets/documents/liberland-brochure.pdf>> Accessed 18 December 2021.

and applicable law where an empty land or territory that has never been acquired by a State can potentially be claimed under this principle. However, even if the entity meets all of the listed conditions in the ICJ's Western Saharan advisory opinion, as well as the rules of the Montevideo Convention of 1933 at Article 1, there is still a problem because the claimant to the Liberland territory under the principle of *terra nullius* is an individual, and not a State actor, and only State actors are subject to international law. Following the ICJ's listing of the aforementioned conditions, the question of the relevance of *terra nullius* as a doctrine of acquiring territories under contemporary international law arises. It is important to note that international law is the law of nations; it binds states, whereas peoples are the object or goal of international law. For example, the 1982 United Nations Convention on the Law of the Sea (UNCLOS) allows coastal states to claim territorial sovereignty over their coastal lines up to a maximum of 200 nautical miles from the continental shelf.¹⁰ The UN Convention on the Law of the Sea (UNCLOS) allows both coastal and non-coastal states to build artificial islands within their territorial waters or high seas. However, international law prohibits such artificial islands from being considered a new State or sovereign entity outside the jurisdiction of their parent State.¹¹ The UN Convention on the Law of the Sea (UNCLOS) further restricts and regulates the use of islands, including artificial islands that are not an integral part of an archipelagic state and are claimed under *terra nullius*. The formation of a new state from islands through *terra nullius* claims, whether natural or artificial, is prohibited.¹² Any claim of legal application of the *terra nullius* principle must be evaluated in the context of the current international law dispensation (Koskeniemi, 2004).¹³ Therefore, "Liber land" cannot be a sovereign state under current international law.

6. Findings

This study concludes that the doctrine of occupation through *terra nullius* as a means for peoples' right to self-determination cannot be practiced practically in the current international law dispensation, because the practice's conceptual practicability is no longer tenable. As a result, Liberland's claims to be a State under international law based on *terra nullius* are not supported by international law.

7. Conclusion

While *terra nullius* remains a positive law under international law, however, its relevance has declined significantly because all existing territories belong to an existing state. Natural and artificial islands that are not occupied, on the other

¹⁰See United Nations Convention on the Law of the Sea (UNCLOS), 1982, Part VI, Art. 76.

¹¹Ibid at, PART VII, Art. 87(d); Part XI, Section 2, Art. 137.

¹²See Ibid, UNCLOS 1982, PART IV, Art. 46.

¹³"Martti Koskeniemi, 'The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960' (CUP, Cambridge, 2004), p.67".

hand, cannot be claimed by any individual person, as in the case of Liberia, because their acquisitions are governed by international law, and thus, only states can own artificial islands within the guidelines of international law as outlined in the UNCLOS treaty.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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