An Introduction to Military Occupation

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Since ancient times, it was common to see that the conquest of territory in battle allowed for immediate annexation by the conquering army. However, during the period of the Napoleonic Wars, the international community began to change its views on this method of dealing with conquered territory, and the concept of “military occupation” was gradually established as a norm of international law.

Where did the concept of “military occupation” come from? It is generally attributed to the writings of Vattel, a Swiss legal expert and diplomat who lived from 1714 to 1767. Among other subjects, Vattel made extensive commentaries on the conditions when war could be waged, the restrictions which should be applied on how nations could conduct war, and the considerations necessary for dealing with the aftermath of war. He was influenced by the writings of Hugo Grotius, a Dutch jurist and ambassador, whose most famous work, The Laws of War and Peace, was published in 1625, and also by other authors, who had written on these types of topics as far back as the early 1400s. Vattel’s most famous book was The Law of Nations, published in 1758.

Vattel felt that the invasion and immediate annexation of territory did not conform to modern notions of justice. He therefore advanced the new legal theory that after the conquest of territory there should be an interim period, known as “military occupation.” This should be followed by a formal decision as to the disposition of the territory, which should be clearly written down in a formal peace treaty.

This distinction then became clear and has been recognized among the principles of international law since the end of the Napoleonic wars in the early 1800's. Such principles are included in the scope of what are known as “the customary laws of warfare.” These customary laws were more formally codified in the Hague Conventions of 1907.

From this simple introduction, we can see that “annexation” and “military occupation” are two opposing concepts. In the modern era, after the conquest of territory, and according to the precedent established since the end of the Napoleonic Wars (circa 1815), and codified in the Hague Conventions, there are no criteria whereby the immediate annexation of conquered territory can be accomplished.

Now let’s discuss this in a bit more detail. The condition in which territory is under the effective control of foreign military personnel is known as “military occupation,” and this may be more formally defined as invasion, conquest, and control of a nation or territory by foreign armed forces.

In regard to the military occupation of any particular area, it is important to distinguish three elements: (1) the legal occupier, (2) the beginning date of the occupation, and (3) the ending date of the occupation.

As stated above, the legal occupier is the conqueror, who has both the right and the responsibility to conduct the administration of occupied territory. But of course the law of agency is always available, and the administration of occupied territory can be delegated to other military forces. The criteria for establishing the beginning and ending dates for the occupation can be determined by examining historical precedent. The Spanish American War cessions provide some good examples.

It is clear from the examples in this table that the surrender ceremonies only mark the beginning of the military occupation. This is the only interpretation which fully complies with the customary laws of warfare, which include the Hague Conventions. There is no transfer of territorial sovereignty on this date, indeed the original sovereign maintains sovereignty until the peace treaty comes into force. As these examples are from U.S. history, the end of the military occupation, which is the end of United States Military Government jurisdiction over each area, was formally announced by the U.S. Commander in Chief.

Some people point to various documents such as the Cairo Declaration, Potsdam Proclamation, etc. as supposedly authorizing the transfer of Taiwan’s territorial sovereignty to China at the surrender ceremonies of October 25, 1945. However, such an interpretation is impossible.

The people who advance such interpretations do not understand the full scope of what is called “international law.” These people may understand PRIVATE LAW, and they may understand PUBLIC LAW as applied in normal peacetime situations. But these do not comprise the full scope of international law. Here is a table which illustrates this.

These scholars do not understand the legal implications of “surrender ceremonies” and the concept of military occupation. This is because they are unaware of the full scope of international law, which includes the laws of war, the laws of occupation, military jurisdiction in its broadest sense, etc. All of these topics fall under the general category of “The Law of Armed Conflict.”

In relation to Taiwan, there was an official Memorandum regarding Taiwan’s legal status, which was issued on February 3, 1961, by the U.S. Dept. of State. This is commonly known as the Czyzak Memorandum. Among the many references given therein, there were quotations from U.S. documents presented to the United Nations in late December 1950, which asserted that --

. . . The Cairo Declaration of 1943 stated the purpose to restore 'Manchuria, Formosa, and the Pescadores to the Republic of China.' That declaration, like other wartime declarations such as those of Yalta and Potsdam, was in the opinion of the United States Government subject to any final peace settlement where all relevant factors should be considered . . .

. . . The Yalta agreement like the Cairo declaration has been considered by the United States to be a statement of intention rather than as creating binding international commitments.