[ Powerpoint ]

Taiwan and

the Principle of Conquest

Background to a Discussion of the Principle of Conquest in international relations

At the Norman Conquest of England in 1066, all the land of England was claimed as the personal possession of William the Conqueror under allodial title. The monarch thus became the sole "owner" of all the land in the kingdom, a position which persists to the present day.

allodial [definition]

Free; not subject to the rights of any lord or superior; owned

without obligation of vassalage or fealty;

This is a representative example. But similar situations can be found in the history of many other countries. We can summarize these events by saying that in the classical legal tradition, the conquest of territory resulted in immediate annexation

From the second half of the eighteenth century onwards, international law came to distinguish between the modern norms of conducting (1) military occupation of a country and (2) the historical norms of making territorial acquisition by invasion and direct annexation.

However, in 1758 a Swiss philosopher, diplomat, and legal expert Emerich de Vattel published The Law of Nations,and wrote extensively about the difference between the classical legal view and a more civilized modern view.

two concepts was originally expounded upon by Emerich de Vattel in his opus The Law of Nations (1758). The distinction then became clear and was widely accepted by diplomats, scholars, and military personnel throughout the world. As a result, since the end of the Napoleonic wars (1803 – 1815) the concept of military occupation has become firmly recognized among the important principles of international law which must be respected by all peoples and all nations.

To put this another way, after the close of the Napoleonic period, when military troops entered any area, it was no longer legally permissible for the outright confiscation, expropriation, annexation, etc. of the territory. Such actions ceased to be recognized by international law as a legitimate means of territorial acquisition. These rules were more formally codified in the Convention respecting the Laws and Customs of War on Land of 1907, which is commonly called “Hague IV.” This Convention also contains explicit provisions concerning the protection of civilians and their property in occupied territories.

In relation to the military occupation of a particular area, we are faced with three central questions. These are

Question #1: When did the military occupation begin?

Question #2: Who is "the occupying power," aka “the legal occupier”?

Question #3: When did the military occupation end?

Answer #1: In order to answer the first question, it is necessary to have a definition of “military occupation.” Military occupation may be defined as:

(1) invasion, conquest, and control of a nation or territory by foreign armed forces, or

(2) a condition in which territory is under the effective control of foreign armed forces.

Answer #2: In order to answer the second question, it is necessary to understand which party in the conflict has the right and the responsibility to conduct the military occupation. There are many U.S. Supreme Court cases which discuss such topics, and the following quotation from a 1901 case is representative.

"The right of one belligerent to occupy and govern the territory of the enemy while in its military possession is one of the incidents of war, and flows directly from the right to conquer. ….. Such authority and such rules are derived directly from the laws of war, as established by the usage of the world and confirmed by the writings of publicists and decisions of courts,- in fine, from the law of nations. . . .

Dooley v. United States of America (1901)

U.S. Supreme Court

A close reading of this passage clearly shows that it is the “conqueror” that has jurisdiction over the conquered territory. The conqueror has the right, and indeed the obligation, to conduct the military occupation. We should also note that the surrender ceremonies and the ensuing military occupation are two different things. Arrangements for the surrender ceremonies may be delegated to allies.

Next, we must understand that military occupation is conducted under “military government.”[[1]](#footnote-1) Arguably, the earliest clarification of this concept was made by the U.S. Supreme Court justices in the 1866 case of Ex Parte Milligan. But in the current era we turn to U.S. Army Field Manual FM 27-10 for a definition in modern language.

Paragraph 362

Military government is the form of administration by which an occupying power exercises governmental authority over occupied territory.

The book Military Government and Martial Law, written by William E. Birkhimer,further clarifies this to say that –

The US Constitution has placed no limit upon the war powers of the government, but they are regulated and limited by the laws of war. One of these powers is the right to institute military governments.

In regard to territory acquired by conquest, Birkhimer continues to say that –

The conquering power has a right to displace the preexisting authority, and to assume to such extent as may be deemed proper the exercise by itself of all the powers and functions of government.

Answer #3: Finally, in order to answer the third question, we need to understand that

Military government continues until legally supplanted.

But, how is military government legally supplanted?

[ SCREEN: TABLE of Sp – Am War cessions

 Surrender, Treaty, end of Military Gov., Final Status

 ADD Mexican American War cession data ]

In each case, military government is legally supplanted by a civil government structure fully recognized by the legal occupier.

We must note several important points.

First, for territories separated from the “motherland” via the specifications of a peace treaty after war, the military occupation does not end with the coming into force of the treaty, but continues until legally supplanted (by a recognized civil government for the territory.

Second, it is easily seen that there are only two possible outcomes for the “final political status” of the occupied territory. In the first case, the territory becomes a sovereign nation in its own right, otherwise, the territory becomes "part" of another sovereign nation.

~~ANCHOR 5\_7:~~ According to US government pronouncements, Taiwan fits neither of these classifications. Since the end of the Second World War, it has been the official policy of the United States government that the status of Taiwan is "an unsettled question . . . . " This is clear proof that the military occupation of Taiwan has not ended. It is also a confirmation that Taiwan has not yet reached a final political status, hence, Taiwan remains in interim status under the law of occupation.

More plainly speaking, in the current era Taiwan is still occupied territory. According to the Senate ratified San Francisco Peace Treaty, the United States of America is the principal occupying power.

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1. In the situations of the Spanish American War, Mexican American War, the Pacific War, etc. we commonly see that military occupation before the peace treaty came into effect is termed “belligerent occupation.” Contrastingly, in current terminology, military occupation after the peace treaty has come into effect may be referred to as “the civil affairs administration of a military government,” or simply “civil affairs administration.” [↑](#footnote-ref-1)