



THE ACQUISITION  
AND GOVERNMENT OF  
BACKWARD TERRITORY  
IN INTERNATIONAL LAW

BEING A TREATISE ON THE LAW AND PRACTICE  
RELATING TO COLONIAL EXPANSION

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second comer to curtail the constructive occupation of the first comer.

It appears that, as maintained by Great Britain, such operation as is allowed to the rules for constructive occupation—the limits of which we shall discuss in Chapter XXVII—is the same for a discoverer as for a subsequent occupant. The only advantage gained by the discoverer is the right to a period of grace for making a settlement. During that period, the whole of a territorial unit, discovered and formally annexed, is protected by the rule. But if, after a reasonable lapse of time, no actual possession of the unit is taken by the discoverer, and another State occupies part of that unit, the benefit of such rules of constructive occupation as may be applicable passes completely to the occupying State.

Martens-Ferrão in 1890, on behalf of the claims of Portugal to territory in Africa, contended that the rights gained by discovery could be kept alive by maintaining 'rudimentary relations' or 'rudimentary commerce' with the natives of the discovered territory. But although such relations, if they were carried on exclusively by subjects of the discoverer's State, would be a factor to be considered in determining for how long a period the rights acquired by discovery had survived, they would not be sufficient to extend that period indefinitely.

On the other hand, the fact that subjects of other Powers had similar relations with the natives, would also be a factor in the determination. Thus, in 1856, the British Government warned Portugal against extending her occupation on the West Coast of Africa in such a way as to interfere with the rights which British subjects had 'for a long series of years enjoyed of carrying on a free commercial intercourse with the natives of the districts to the north of Angola.' And Prince Bismarck, in 1884, put forward the existence of German commercial establishments on the Caroline Islands as one ground of opposition to the claims of Spain, which were based, in part, upon a sixteenth-century discovery.

Effect of relations maintained between the discovering Power and the natives.  
Westlake, I. VI.  
23 R. D. I. 262.

68 S.P. 981

See Ch. XIX below.

## CHAPTER XIX.

### EFFECTIVE OCCUPATION.

THE Roman law of Occupation was quite unequal to the task of deciding between claims to territory based upon mere discovery. When it came to be recognized that possession was necessary to the perfection of the title, the Roman rules regarding possession could be appealed to. But although these rules, as we shall see in Chapter XXVII, were of some slight assistance when the question to be determined was the size of the area over which the given act or series of acts might be considered to give possession, they tell us nothing with regard to the kind of act by which possession might validly be taken in the process of acquiring sovereignty; and, for a long time after it had been recognized that some such acts were necessary, no agreement was arrived at as to their nature.

Claims were based upon trivial and isolated acts. It was not uncommon for the representatives of a State to set up a pillar, plant a flag, or fix an inscription upon unoccupied territory, and claim thereby to have taken possession on behalf of their State. 'It has always been taken,' said Lord Chancellor Hardwicke in his judgment in *Penn v. Lord Baltimore* (1750), 'that that European country, which has first set up marks of possession, has gained the right, though not formed into a regular colony.' In the negotiations which resulted in the Treaty of the Escorial in 1790, Spain asserted a right of 'Sovereignty, navigation, and exclusive commerce to the continent and islands of the South Sea,' and claimed that 'although she might not have establishments or colonies planted upon the coasts or in the ports in dispute, it did not follow that such coast or port did not belong to her.'

But the sufficiency of such acts was all along denied by jurists: 'Praeter animum possessionem desidero, sed qualemcunque, quae probet, me nec corpore desiisse possidere,' wrote Bynkershoek in 1702. 'Ce n'est pas sans raison,' said G. F. de

Dig. XLI.  
1 & 2.  
Westlake,  
I. V.  
Pollock on  
Maine's  
Ancient  
Law, Ch.  
VIII, note O.

Claims to territory were at first based upon trivial acts.  
1 Vesey's  
Reps. at  
451.

Twiss:  
*Oregon*, 315.

But jurists did not recognize the sufficiency of such acts.  
*De dominio maris*, c. 1.

sovereignty was the actual control and administration of the territory. In his speech at the opening of the Conference on November 15th, Prince Bismarck said that, 'Pour qu'une occupation soit considérée comme effective, il est, de plus, à désirer que l'acquéreur manifeste, dans un délai raisonnable, par des institutions positives, la volonté et le pouvoir d'y exercer ses droits et de remplir les devoirs qui en résultent,' and the Conference adopted the substance of this statement as a rule to be applied to the territories with which it was concerned. The Final Act was signed by the plenipotentiaries of Great Britain, Germany, Austria-Hungary, Belgium, Denmark, Spain, the United States, France, Italy, the Netherlands, Portugal, Russia, Sweden and Norway, and Turkey. It was not, however, ratified by the United States.

The part of the Act with which we are here more particularly concerned is Chapter VI, which comprises Articles 34 and 35 of the Act. It reads as follows:—

*Declaration relative to the essential Conditions to be observed in order that new Occupations on the Coasts of the African Continent may be held to be effective.*

*Article 34.*

Any Power which henceforth takes possession of a tract of land on the coasts of the African Continent outside of its present possessions, or which, being hitherto without such possessions, shall acquire them, as well as the Power which assumes a Protectorate there, shall accompany the respective act with a notification thereof, addressed to the other Signatory Powers of the present Act, in order to enable them, if need be, to make good any claims of their own.

*Article 35.*

The Signatory Powers of the present Act recognize the obligation to insure the establishment ('*l'existence*' in the French text) of authority in the regions occupied by them on the coasts of the African Continent sufficient to protect existing rights (*droits acquis*) and, as the case may be, freedom of trade and of transit under the conditions agreed upon.

Article 34 will be dealt with in the Chapter on 'Notification.' Article 35 calls for several observations.

The conditions imposed, though they were stated to be 'essential,' were not necessarily exhaustive. They represented, as was pointed out at the Conference, 'the minimum of the obligations which devolve on an occupying State.' And one of the Belgian representatives observed that, as the Conference

C.-4361  
(1885),  
p. 3.

76 S.P. 4.

C.-4361  
(1885),  
312.  
C.-4739  
(1886).

The conditions essential but not exhaustive. C.-4361 (1885), 214sq.

was 'not establishing questions of doctrine, but prescriptions of public law, it would be best to keep at first to a few rules as simple and as general as possible, leaving to the wisdom of the Governments the business of completing them by later arrangements if experience should call for them.'

The Declaration was definitely confined to 'new occupations.' This point was several times insisted upon in the course of the Conference, and although the United States Minister inquired 'if existing occupations were not in future to be subject to the same conditions of being entirely under the authority of the Sovereign Power,' no pronouncement was made with regard to such cases.

Again, the Declaration applied only to acquisitions to be made on the coasts of the African continent. The British Ambassador would have preferred that the rules should apply to the whole of Africa, but this suggestion was not adopted, one objection to it being that so little was then known of the interior of the continent. The Russian plenipotentiary expressly declared that the assent of his Government was strictly limited to the countries to which the attention of the Conference had been drawn; the French plenipotentiary specially mentioned that Madagascar was excluded from the provisions of the Declaration; and the Turkish representative made similar reservations with regard to the possessions of the Sultan to the north and east of the continent.

Now the Declaration itself was of course confined to the cases specially mentioned in it, and was, moreover, binding only upon the Signatory Powers in their dealings with one another. But it does not follow that other occupations were not at that time governed by the same rules. A sufficient reason for not including them within the scope of the Declaration was that they did not properly come within the purview of the Conference, as the invitations to the participating Governments had limited this part of the discussion to 'new occupations on the African coasts'; and, further, the statesmen concerned were loath to make any pronouncement which might furnish a pretext 'for disturbing in any manner, or indeed for scrutinizing in any way, the possessions of the Powers.'

The French representative, it is true, remarked that the 'application to future occupations of Rules which mark a progress in International Law will constitute a sort of propaganda, the example of which may induce certain Governments to extend voluntarily to their ancient possessions the Rules estab-

The Declaration dealt only with new occupations.

on the African coasts; See also 'Sergent Malamine' Award, 95 S.P. 141. C.-4361 (1885), 209.

but the principles it embodies have a wider application.

C.-4205  
(1884).

C.-4361  
(1885),  
216.

they should be under a recognized and actual political control.' 'Political control' was defined as 'the exercise of sovereignty over a territory, through political or governmental administration.'

Great Britain refused to allow that any particular spot not occupied by Holland or Great Britain *ipso facto* belonged to Spain or Venezuela. The fifty years' rule, she contended, did not apply to territory which was vacant when she took possession of it; and she maintained her right to any such territory however recent her taking of possession might have been.

The points upon which the delimitation of the frontier should mainly turn, Great Britain submitted, were:

- (1) The extent of effective occupation and political control on each side.
- (2) The natural features of the country. She laid down that:

Effective occupation means the use and enjoyment of the resources of the country and the general control of its inhabitants, under the protection and by the authority of a Government claiming and exercising jurisdiction in that behalf.

Venezuela would not agree that the discoverer's title is not perfected until he has 'brought into use the resources of the whole territory discovered, and has subjected its savage inhabitants to his control.' She contended that political control without actual settlement was sufficient to establish the discoverer's title; and that 'it is the law and the international usage of the 16th and 17th centuries, and not the stricter modern view of occupation, expressed in the Berlin Convention of 1884, that must govern in this case.'

The Award of the Arbitrators is dated 3rd October, 1899. They gave no reasons for their decision, but they drew the boundary line in such a way as to give to each Party the territory of which it had been able to show the more effective control, while allowing due recognition to the natural features of the country. For the greater part of its length, the boundary followed the Schomburgk line. But that line was varied in two respects. At its northern end, it was moved so as to give Venezuela control over the mouths of the Orinoco, the exploration, settlement, and effective defence of which river by Spain had been admitted by Great Britain; while, lower down, the Schomburgk line was shifted eastwards for part of its course along the Cuyuni River, in the neighbourhood of the region

C.-9336  
(1899),  
149.

C.-9501  
(1899),  
196.

7b. 232.  
See hereon  
the Norway-  
Sweden  
Frontier  
Arbitral  
Award.  
102 S.P.  
844.  
C.-9533  
(1899).  
92 S.P. 160.

where the Venezuelan case had alleged the existence of Spanish Mission stations, and near where a modern Venezuelan post had been established.

*British Guiana and Brazil Boundary Arbitration.*

In his Decision of the 6th June, 1904, as Arbitrator between Great Britain and Brazil, the King of Italy laid down the condition of effective occupation as one of the rules that should have governed the determination of the frontier separating British Guiana and Brazil. Although he was unable to obtain any definite result when he applied the rule to the facts at his disposal, that does not render less significant his citation of the rule in regard to a dispute about territory quite outside the region dealt with in the Berlin Act, and involving facts dating from before the acquisition of British Guiana from the Dutch in 1814. He held in this case:

Cd. 2166  
(1904).  
99 S.P. 930.

That the occupation cannot be held to be carried out except by effective, uninterrupted and permanent possession being taken in the name of the State, and that a simple affirmation of rights of sovereignty or a manifest intention to render the occupation effective cannot suffice.

*The cases of Recent and of Older Acquisitions.*

In view of the adoption by Great Britain, Germany, France, and the United States, both before and after the Berlin Conference, of the principle of effective occupation, and of the fact that, during recent years, no colonial Power appears to have taken exception to the applicability of the rule to new occupations, it seems to be justifiable to say that all recent acquisitions of territory, whether on the coasts of Africa or not, are subject to it.

With regard to older cases, it has been suggested that the position is not so clear. It is possible that, as the case of the Caroline and Palaos Islands would seem to indicate, the rule would not be applied to them with the same strictness. But it follows from the British Guiana boundary cases that the actual exercise of sovereign powers would have to be shown; and it would appear that a State could legitimately be required to show the existence of an authority sufficient for the protection of life and property in any region from which it claimed to exclude the political action of others.

See Heim-  
burger,  
p. 140.



*The presence of an extraordinary amount of crime is evidence against Effective Occupation.*

An erroneous notion as to what is required for effective occupation appears to have been entertained by the Peruvian Government in 1912. That Government, according to the Peruvian Consul-General, had not protested earlier against the crimes known to exist in the Putumayo for the reason that 'it could be proved that they were committed almost exclusively by Colombians, and that this very fact would support a claim of effective occupation by Colombia, which would go far to sustain that country's pretensions to possession.' It would seem, on the contrary, that the very fact of the absence from the Putumayo of an authority sufficient to protect the natives from violence, and particularly from such crimes as were revealed by the report of the British Consul-General and by the winding-up proceedings in the English Court in connection with the Peruvian Amazon Company, Limited, was in itself sufficient to show that no effective occupation had taken place.

Ca. 6678  
(1913),  
Pp. 7 & 8.

See  
Ch. VIII.  
above.  
29 Times  
Law Re-  
ports, 384.

*Uninhabited lands unsuitable for settlement.*

The case of uninhabited lands which are not suitable for settlement requires special consideration. It has been suggested, for example, that the North Polar regions have a 'high strategic value,' and that Wrangel Island and other islands in the Arctic Ocean might contain minerals, or be of use as aircraft bases, or for purposes of wireless telegraphy, or in connection with the Arctic fisheries.

In such cases, it would seem that an occupation would be rendered effective by the establishment of any organization (however rudimentary) or of any system of control, which, having regard to the conditions under which the area appropriated was being used or was likely to be used, was reasonably sufficient to maintain order among such persons as might resort there.

Again, small uninhabited islands are sometimes occupied for some special or temporary purpose, such as the collection of phosphate or guano, or the exploitation of the fishery. Here also no elaborate administrative machinery is called for, and the presence of an official may be all that is reasonably required to ensure that order is maintained among the workpeople and others employed there.

See Ch. II.  
above.

1b.

*Summary.*

Thus the rule which to-day is generally accepted, and in favour of which several arbitral decisions, and the acts of a considerable number of States, can be quoted, even with regard to cases outside the scope of the Berlin Act, is that a valid title to backward territory—at all events to newly acquired territory, and probably also to older acquisitions—depends upon the existence throughout the region, within a reasonable time after the first formal taking of possession or the announcement of a claim to exclusive control, of an administration sufficient for the protection of life and property.

What is sufficient will depend upon all the circumstances. If the territory contains a large population, or is one to which a good many traders resort, elaborate administrative machinery may be necessary. If, on the other hand, it is remote, or small, or incapable of accommodating more than a small or transitory population, a rudimentary administrative organization may be all that is required; while in the case of small islands used merely for the purpose of a particular business, such as the catching and curing of fish or the collecting of guano, the presence of an official or two may be sufficient.

What is sufficient depends upon all the circumstances.  
88 S.P. 1288.  
I. Moore's  
Digest, 269.  
Hall: *Foreign Powers, etc.*, § 96.  
Pollock on  
Maine's  
*Ancient Law*,  
Ch. VIII,  
note O.

CHAPTER XXIX.

NOTIFICATION; AND THE ASSENT OF OTHER STATES.

Ch. XIX.  
above.

WE saw when discussing the Declaration with reference to 'new Occupations on the Coasts of the African Continent' in the General Act of the Berlin Conference that, by Article 34 of the Act, the notification of an acquisition was made, as between the signatory Powers, one of the essential conditions of the effectiveness of the acquisition. And this condition was to apply to the assumption of a protectorate as well as to a taking of possession. But the Article was limited in its geographical scope, and has, moreover, been repealed for such of the Powers as have ratified the relevant Convention of St. Germain-en-Laye of September 1919, so that it is important to enquire what is the legal position with regard to notification apart from the requirements of the Act.

Cmd. 477  
(1919).

A taking  
of posses-  
sion must  
be open.

See West-  
lake, 23  
R.D.I.  
258-9.

Vattel:  
I. § 207.

5 Robin-  
son's Reps.  
at 115.

See e.g.,  
94 S.P.  
1303 & 4.

Notifica-  
tion means  
a direct  
communi-  
cation.

That a taking of possession, in order that it may be valid by International Law, must be carried out openly and in some well understood and unequivocal manner has for long been recognized.

Thus Vattel laid down that a nation which has taken possession of an uninhabited and ownerless country cannot be deprived of it by another nation 'after it has sufficiently made known its will in this respect.'

Again, Lord Stowell, in his judgment in *The Fama* (1804) said that 'even in newly discovered countries, where a title is meant to be established, for the first time, some act of possession is usually done and proclaimed as a notification of the fact.'

But the erection of a flag or notice on the territory and the reading of a proclamation there, or even the public announcement or ratification by the acquiring State of an acquisition made on its behalf—facts which would generally soon become known to other States—is not a notification in the sense in which we are considering it. For our present purpose, a notification means a definite formal pronouncement made directly to another Government by the acquiring State.

The utility of such a notification is not far to seek. It strengthens the position of a State which has properly taken possession of, or established its protection over, available territory, during the 'reasonable delay' within which it is perfecting the administration of the region. It marks the latest date which should be given to the title of the acquiring State as against the Powers notified. And it enables other States to put forward any claims they may have to make in respect of the territory at such a stage that the claims can be dealt with before the acquiring Power has taken any difficultly retraceable steps in regard to the region.

The value  
of notifica-  
tion.

In the case of the second of the 'essential conditions' of the Berlin Act, namely, that of effective occupation, we were able to show that, before the assembling of the Conference, the requirement had already met with considerable acceptance on the part of statesmen and jurists. The same cannot, however, be said with regard to notification.

Position  
before the  
Berlin Con-  
ference.  
See  
Ch. XIX.  
above.

Twiss, writing in 1861, said that:—

A State may indeed notify to other States any important additions to its territorial limits, which it may have acquired either by occupation or by cession, but such notifications are matters of courtesy for mutual convenience, and the announcement of the fact of any such acquisition is not obligatory upon the State which makes it.

§ 19.

It is true that he also said that for a discovery to serve as the foundation for an exclusive title to territory, it was necessary that it should be notified to other nations. But it does not appear that, in this connection, he had in mind a direct notification, but merely some act, of the kind we have already mentioned, manifesting to other nations the intention to appropriate the territory.

Law of  
Nations  
§ 111; &  
Oregon  
157 sq. &  
239.

Prior to the Berlin Conference, however, several express notifications of acquisitions had been made. For example, between 1848 and 1880, nearly 400 treaties and conventions concluded by the Netherlands Government with native princes in the Eastern Seas were from time to time communicated by the Dutch to the British Government; and in August and September 1884, the German Government notified the British Government that the territory afterwards known as South-West Africa had been placed under the protection of the Emperor. France had also notified her protectorate over Tunis.

C.-3109  
(1882), p. 44.

75 S.P. 538  
& 546

Despagnet  
§ 394.

While the Conference was sitting, the German Government notified to Great Britain that the German flag had been hoisted

Notifica-  
tions at  
the time of  
the Con-  
ference.  
76 S.P.  
780-1.  
Hertslet:  
Map of  
Africa, etc.,  
II. 682.  
77 S.P.  
1103.

At the Con-  
ference  
C.-4361  
(1885), 214.  
Notifica-  
tion was  
recognized  
to have  
been  
previously  
optional.  
Ib. 215.

C.-4284  
(1885).

Notifica-  
tion apart  
from the  
Final Act  
since the  
Confer-  
ence.  
Despagnet  
§ 394.  
77 S.P. 940.

76 S.P. 58.

Martens,  
2nd Series,  
12, p. 295.

on the north coast of New Guinea and in certain of the adjacent islands; and the subsequent extension of the British protectorate in New Guinea was officially communicated to the German Government by the British Ambassador. Just after the conclusion of the Conference, the German Government informed the participating Powers of the treaties that German subjects had made in East Africa during the time the Conference had been sitting.

At the Conference, the utility of notification was generally accepted, and, as we have seen, the Powers represented agreed to make it an essential condition of the validity of an acquisition in the regions with which the Conference was concerned. But it was realized that, in this respect, they were not merely applying a rule which already formed part of International Law. 'Notification is not yet wholly sanctioned by practice,' ran the report of the Commission charged by the Conference with the examination of the draft of Articles 34 and 35; and the Commission considered that it would be 'a useful innovation in public law.' The British representative, in his anxiety after the Conference to prove that 'international duties on the African coasts remain such as they have been hitherto understood,' went so far as to say that the requirement of notification in the Final Act was 'rather an act of courtesy than a rule of law.'

Since the Conference, a few acquisitions made outside of the territories dealt with in the Final Act have been notified. For example, France notified her protectorate over Grand Comoro, Johanna, and Mohilla, stating at the same time that those Islands were not strictly within the regions dealt with by the Act.

In one or two cases, moreover, such a notification has been provided for by special international agreements. Thus by the agreement of the 7th March, 1885, between Great Britain and Germany on the one hand and Spain on the other with reference to the Sulu Archipelago, Spain agreed to communicate in each case the effective occupation of a point in the Archipelago to the Governments of Great Britain and Germany, and at the same time to inform commerce by a notification in the official journals of Madrid and Manilla. It was further provided that no imposts should be levied or regulations enforced by Spain in any point so occupied until six months after the publication in Madrid. Similar provisions found a place in the arrangement made between Germany and Spain in December of the

same year with regard to the Caroline and Palaos Islands, following the mediatorial recommendations of the Pope to which we have referred in Chapter XIX. Again, in the Anglo-German Agreement of the 1st July, 1890, the contracting Powers promised to notify to one another all treaties that might be made in territories intervening between the Benue and Lake Chad.

These isolated special agreements, when taken in conjunction with the fact that, apart from the region dealt with in Article 34, notifications have been the exception rather than the rule, serve to emphasize the point that such notifications were not required by the general law. In respect of the territories covered by the Declaration in the Berlin Act, notification stood on a level with effective administration as an essential element in the establishment of a good title. In the Declaration adopted by the *Institut de Droit International* in 1888, notification was made similarly vital in all cases. But the practice of States does not appear to warrant the attachment of such an importance to notification at present.

Although, however, notification is not strictly necessary, it is, as we have seen, valuable as a protection to an acquiring State. In his arbitral Award in 1902 in the matter of the 'Sergent Malamine,' Baron Lambermont gave weight to the fact that the British protectorate over the banks of the Benue had been notified, although, as he noted, these territories are not on the African coast and therefore did not fall within Article 34.

#### *Conditions with which a Notification should comply.*

From a consideration of the wording of Article 34 and the circumstances connected with its adoption at the Conference, it is possible to determine some of the conditions with which a notification should comply if it is to be effective.

#### *(i) It should be given as soon as possible.*

First, as to when the notification should be given, the terms of Article 34 are that the Power taking possession or assuming a protectorate 'shall accompany the respective act with a notification thereof.' It would thus appear that the intention of the Conference was that the notification should be given as soon as, but not before, possession has been formally taken or a treaty for a protectorate has been concluded.

An examination of different cases shows that notification

82 S.P. 42.

Notifica-  
tion not  
legally  
necessary ;

X. Ann.,  
201.  
See Oppen-  
heim § 224.

but advisable.  
See Bonfile §555.  
Despagnet §394.  
Westlake :  
Collected  
Papers, 165.

95 S.P. 141.

Bonfile  
§ 555.

has not usually been delayed for long after the actual acquisition. Great Britain has allowed the following periods to elapse between the date of taking possession or of establishing a protectorate and the date of notification; six days, eight weeks, ten weeks, twenty-four weeks, eighteen months. A German notification was given, in one case nine days, and in another seven days, after the sovereignty had been assumed by the Government. Corresponding periods in French cases have been twelve weeks after the ratification of treaties which had been made, in some cases, nearly a year previously, and sixteen weeks after the ratification of treaties made within the preceding five months. An Italian notification was given, on one occasion four days, and on another three weeks, after the assumption of the protectorate. Spain in one instance allowed some two months to pass between the signature of the treaties and their notification.

In view of the wording of the Article, and the simple nature of the requirement, one or two of these delays would seem to have been unduly long. But no exception appears to have been taken by the notified Powers on that account.

(ii) *It should be made directly to the State to be affected with it.*

By the Article, the notification was to be 'addressed to the other Signatory Powers.' In the Declaration of the *Institut de Droit International* it was provided that the notification might be made by publication in the form usually adopted in each State for the notification of official acts, as well as by diplomatic means. But it would seem that an intimation should always be sent or given directly to the Power which it is desired to affect with the notice.

(iii) *It should describe the boundaries of the territory.*

The draft of the Article as presented to the examining Commission by its sub-committee included the following paragraph:

The act of notification shall contain an approximate settlement of the limits of territory occupied by such Power or placed under its Protectorate.

The British Ambassador expressed himself in favour of retaining this provision in the Article. But other members of the Commission did not consider it necessary, regarding it rather as a question of form than of principle. It was, however,

C.-5432  
(1888).  
75 S.P. 538.  
Hertslet:  
*Map of  
Africa, etc.,*  
II., 882.  
II., 745-7.

III., 1125 &  
1123.

III., 1164.

X. Ann.,  
202.

See e.g.  
78 S.P. 759.

C.-4361  
(1885), 218.

C.-4361  
(1885), 214.

recognized that such particulars were necessary. 'To notify the occupation or the taking possession of a territory,' ran the Report of the Commission, 'implies necessarily a definition, more or less precise, of the situation of that territory.' Moreover, it remained understood 'that the notification was inseparable from a certain determination of limits, and that the Powers interested could always demand such supplementary information as might appear to them indispensable for the protection of their rights and interests.'

In the days when it was customary for a Power to take possession of part of a large area of unappropriated territory with the intention of extending its sovereignty over as much of it as possible, such a Power would, no doubt, have been neither able nor willing to specify limits to its acquisition. Thus after Russia had, by Ukase in 1881, announced the annexation of the territory of the Téké Turkomans, the Russian Minister informed the British Government, in reply to an enquiry as to the boundaries of the territory in question, that he did not know what the boundaries were; and during the next two or three years Russia continued to extend her dominion in that region.

72 S.P.  
1076-8.

Skrine,  
Ch. VII.

But vast stretches of available territory, within which a Power can gradually extend the area under its sway to an indefinite extent, no longer exist. Future advances will, it would seem, be made chiefly by the setting up of protectorates over territory already in the possession of States in a more or less advanced stage of development; and in all future cases the notification of limits should be possible. As a matter of fact, such particulars have generally had a place in the notifications that have been made in the past. An 'approximate determination of the limits' was made a necessary feature of the notification in the Declaration of the Institute.

Such information would appear to be one of the most valuable features of the notification. International disputes with reference to newly acquired territory frequently turn upon the position of boundaries; and an announcement, at an early stage in an acquisition, of the extent of territory which the State concerned considers its action to have covered would prevent misunderstandings, minimize the possibility of disputes under this head in the future, and bring to light adverse claims at a time when they could be disposed of more readily than after one or other of the claimants had taken action in the disputed territory. A notification could not be regarded as effective in respect of territory not clearly covered by its terms.

Bonfils  
§ 556.



*Claims by notified States.*

The reason assigned for the notification in Article 34 was that the notification was to be given in order to enable other Powers 'if need be, to make good any claims of their own.' Before this phraseology was finally adopted by the Conference, one or two other wordings had been proposed, and several pertinent points discussed.

C.-4361  
(1885), 215.

The Italian Ambassador raised the question whether a notified Power could take any objections to the occupation or protectorate other than those which it could base upon acquired rights. The general opinion was that it could. Some of the delegates, for example, suggested that objections might rest upon mere commercial intercourse with the territory.

But no objections that were not based upon actual rights could, it would seem, affect the title of the acquiring Power from the legal point of view. To take the example referred to, a State whose subjects had established commercial relations with the territory might, no doubt, reasonably ask for a promise from the acquiring Power that no regulations would be enforced or imposts levied of a nature calculated to injure those relations; but the acquiring Power would be legally free either to grant or to refuse such a request. Thus, when Great Britain, in recognizing Germany's acquisition of South-west Africa in 1884, asked for an undertaking that no penal settlement would be established there, Bismarck replied that, while Germany had no intention of setting up such a settlement, he would give no promise on the subject, as he disputed the British right to require it; and the British Government thereupon acquiesced in this position by accepting the annexation unconditionally.

F.O. Hand-  
book, No.  
42, p. 57.

Another point raised was whether the notifying Power was to wait indefinitely for replies from all the other Powers. It was proposed to fix a compulsory delay, but this motion was rejected 'through considerations of international courtesy,' and it was agreed to admit a reasonable delay.

Thus a notified Power which did not, within a reasonable time, put forward any claims that it might have to make, would afterwards be foreclosed from doing so.

This principle was appealed to by Lord Salisbury during the Anglo-French controversy with regard to the valley of the Upper Nile. His Lordship, referring to certain 'warnings' which France had received, some of them in the form of communications made directly to the French Government, to the

C.-9055  
(1898), &  
See p. 216  
above.

Objections  
should be  
sent in  
within a  
reasonable  
time.

effect that a seizure of land in that locality could not be accepted by Great Britain, said that 'If France had throughout intended to challenge our claims, and to occupy a portion of this territory for herself, she was bound to have broken silence.'

It is true that, in this case, any duty that may have lain upon France to formulate her objections was only a political one, because Great Britain's claim was merely to a sphere of influence, which does not, by itself, give rise to legal rights. But the principle involved is the same whether applied in the realm of politics or of law.

It is in such a principle that an important legal effect of notification is to be found. The fact that a Power had been directly notified would considerably shorten the period within which it might legitimately put forward its rival claims.

See Bonfilis  
§ 557.

*Sanction of the requirement of Article 34 of the Berlin Act.*

It is clear that the validity of a title to territory on the African coasts could not now be brought into question merely on the ground of the non-notification of an acquisition that was made while Article 34 was in full force. But it is of interest to enquire what was the precise nature of the sanction of the requirement to notify in the Berlin Act.

Jêze goes to the length of saying that, even where a State had effectively occupied territory on the coasts of Africa, if it had not notified its occupation to the other Powers, another Power might have hoisted its flag there, notified its taking of possession, and so obtained a better title to the territory than the State actually in occupation.

pp. 293-5.

It is true that no title to territory acquired on the African coasts while the Berlin Act was in full force could be considered to be complete and absolute under the Act if the 'essential condition' of notification had not been complied with in respect of it. But it appears to be going too far to say that effectively occupied territory remained open to appropriation by another Power merely through the absence of a notification.

The sanction of the requirement in the Act would appear to have been this. A State taking possession of territory, or assuming a protectorate, on the African coasts without notifying the other Powers thereof would have had no contingent title to the territory while it was setting up an administration there, and might have found itself superseded by another State which, before the administration had been rendered efficient, had formally taken possession, or concluded a treaty for a pro-

tectorate, and notified the fact to the other signatory Powers; in the absence of notification, a full title would have had to await the time when it could be placed upon a prescriptive basis.

On the other hand, a Power which had notified its taking of possession or its protectorate was secured for a reasonable time thereafter—depending upon the difficulty of setting up an administration in the territory—against any subsequent acts on the part of other States; and its position could not be affected even by claims based upon facts antecedent to the notification, if those claims had not been formulated and sent to it within a period after the notification reasonably sufficient for the purpose.

*The assent or recognition of other States.*

In the draft Declaration as originally proposed by the German and French Governments, the object of notification was said to be to enable other Powers to recognize the occupation as effective or to establish their objections. The British Ambassador's suggestion, that the obligation should be limited 'to the fact of the notification alone, without putting the Power which receives it to the alternative of either acknowledging without delay or of formulating its objections on the spot,' did not meet with general approval, although it was pointed out that an occupation would not be truly effective at the moment of taking possession but could only become so later by the fulfilment of the necessary conditions.

In spite of the fact that the reference to the recognition of the effective character of the occupation was omitted from the Article as finally adopted, it might thus appear that there was an idea in certain quarters at the Conference that the title of the acquiring State was in some way dependent upon the acquiescence of other Powers. There seems, however, to be no authority for such a condition; and the Commission refrained from suggesting to the full Conference that it should be imposed in the case of the territories with which the Conference was concerned. 'It resulted,' runs the Report of the proceedings in the Commission, 'from all these discussions that unanimous agreement is not a preliminary requisite to insure the validity of an act of taking possession.'

Although the mere assent or dissent of other States does not in law affect the goodness of an otherwise valid title, it may be of considerable moment politically and diplomatically. In some

The assent of other Powers not a necessary condition of a valid title; C.-4361 (1885), 194 and 215.

but is of considerable political importance.

cases, so effective has been the dissent of other Powers that an agreement made between two States with reference to a territorial title has been set aside on account of it.

For example, the Anglo-Portuguese Treaty of the 26th February, 1884, in which Great Britain, after much previous controversy, agreed to recognize the claim of Portugal to the territory around the mouth of the Congo, extending from 8° to 5° 12' of south latitude on the coast, remained unratified in deference to the objections of other Powers, especially Germany.

Prince Bismarck maintained that Portugal had no stronger claim to the territory in question than any of the other Powers interested in the Congo trade, and declared that he could not, in the interests of German commerce, consent that a coast which had hitherto been free land should be subjected to the Portuguese colonial system. But such an objection could have had no legal validity if Portugal had actually possessed herself of territory to which no other Power had a better claim. Its force was political, and as such it prevailed.

Again, although France and Germany gave a legal form to the objections which, as we have seen, they respectively directed against the leases provided for in the Anglo-Congolese Agreement of the 12th May, 1894, those objections were of doubtful validity from the legal point of view, and such success as attended the protests must again be attributed to political causes.

The political and diplomatic disadvantages flowing from the non-recognition of an acquisition are sometimes utilized by other States to bring pressure to bear upon an acquiring State with a view to obtaining the recognition of rights or the performance of obligations. Thus the British Government refused to recognize the transfer of the territory of the Independent State of the Congo to Belgium until they were satisfied that the Belgian Government were fulfilling their treaty obligations as regards the treatment of the natives.

In one case, however, the mere assent or dissent of other States may be of legal importance. If it should become necessary to determine whether, at a given period in the past, a particular State was sovereign of certain territory, the fact that various Powers had acknowledged or disputed the title of the State at that time may be valuable as evidence upon the point. For example, in the Delagoa Bay Arbitration, Portugal made a strong point of the fact that her rights had been recognized, expressly or tacitly, in the past by other nations; and

Germany's objection to Portugal at the mouth of the Congo. Hertslet: *Map of Africa, etc.*, III. 1004. Scott & Keltie, 142 sq. C.-4205 (1884), 2 & 3.

French and German objections to the Anglo-Congolese leases. See pp. 215 & 240 above.

Great Britain and the Belgian Congo. Ca. 6606 (1913), p. 22

The recognition of other States in the past may be important as evidence of title. C.-1361 (1875), 89 & 198. *Ib.* 243.

among the grounds upon which the French President based his Award in that case in 1875 were the facts that Holland in 1732, Austria in 1782, and England herself in 1817 had accepted the position of Portugal in the disputed territory.

Such a recognition is, of course, of particular importance if it was made by a rival claimant to the territory. Thus the Emperor of Russia in his Award of May 1891, regarding the boundary between French and Dutch Guiana, gave weight to facts showing that the French authorities in Guiana had recognized Dutch dominion over the disputed territory; and the President of the United States, in his Award in the Bulama Arbitration in 1870, found that none of the acts done in support of the British title had been acquiesced in by Portugal.

83 S.P. 426.  
See also  
88 S.P.  
1282 and  
100 S.P.  
1101.

61 S.P.  
1103, *sq.*

*Summary.*

Thus, although a notification of an acquisition of territory is not an essential condition of the validity of the title thereto, such a notification is advisable, and one of its effects is to curtail the period within which the notified Powers may present any adverse claims in respect of the acquired territory. The notification should be given directly to the Powers to be affected with it, and as soon as possible after the acquisition has been made. It should specify the limits of the area acquired.

The assent of other States is not a necessary element in a valid title, and, apart from the fact that it may subsequently serve as evidence tending to show whether or not the territory belonged to a certain State at a given period, its importance is political and not legal.

PART IV.

THE EXERCISE OF THE SOVEREIGNTY.

CHAPTER XXX.

SCOPE OF PART IV.

THE well-established rule with regard to politically advanced countries is, speaking broadly, that a State may enforce what laws and do what acts it pleases within and in relation to its territory, so long as it does not thereby infringe any of the rights of another State. With regard to its own subjects and their property, it is not under any restriction from International Law. Over foreigners and their property within its territory it may exercise jurisdiction. But its rights of compelling resident or visiting foreigners are limited, particularly in regard to such matters as military service, and it is under an obligation to their State to afford reasonable protection to their persons and property while within its borders.

Hall, I. II.  
§ 10.

ib. II. IV.  
§ 61.

It may, however, well be that rules which serve for politically advanced countries require to be modified or supplemented when they are applied to newly appropriated and backward territories. Even when the annexation has been completed, the presence of an indigenous population in the territory introduces a factor which might not unreasonably be expected to have some influence upon the rules governing the rights and duties of the sovereign; and where only a part of the sovereignty has passed to the acquiring State the position is quite different from that to which the old-established rules that we have mentioned apply.

In this, the fourth part of this treatise, we shall, therefore, enquire whether any, and what, special and peculiar rights and duties attach to a State in respect of backward territory over which it has acquired the sovereignty either wholly or in part, and we shall deal with the matter as it affects other States and their subjects and as it affects the natives.