

# A Criticism of Bourgeois International Law on the Question of State Territory

Hsin Wu

KCWTYC (newspaper) No. 7:44-51 (1960)

Reprinted and translated in J. Cohen & H. Chiu  
Vol. 1 PEOPLE'S CHINA AND INTERNATIONAL LAW 323  
Princeton University Press (1974)

Bourgeois international law sums up the various methods by which imperialist countries have historically seized territory by classifying them. Methods of acquiring territory are divided into “*original acquisition*” and “*derivative acquisition*” according to the different owners of the annexed territory.

Methods of acquiring territory are divided into “acquisition by means of treaty” or “acquisition not by means of treaty” according to the different methods adopted at the time of annexation. All these methods of acquiring territories are given legal status, and beautiful legal terms are used to conceal the reactionary essence of these actions. Let us now strip off the legal covers to see what is meant by ... [these Western terms].

“Original Acquisition:” According to the explanation of bourgeois international law, acquisition of land “without an owner” [*terra nullius*] is “original acquisition.” What is land “without an owner”? Colonialists do not conceal the fact that this is not land which is entirely uninhabited, but merely land inhabited by what they do not regard as a “civilized people.” They regard the vast lands in Asia, Africa, and Latin America as lands “without an owner,” despite the fact that millions of owners live there and various nations exist there. They regard those people and nations as “barbarous” and “backward” and believe that they cannot be the owners of those lands. The lands should be occupied by “civilized” people and the acquisition of this territory by “civilized” countries is proper; it is a legitimate method of “original acquisition.” In the words of the American scholar Hyde: “If the inhabitants of the territory concerned are an uncivilized or extremely backward people, deemed to be incapable of possessing a right of sovereignty, the conqueror may, in fact, choose to ignore their title, and proceed to occupy the land as though it were vacant.” This statement shows how this authoritative American bourgeois scholar unabashedly defends aggressors. His reactionary theory is extremely absurd.

The inhabitants of lands “without an owner” are by no means the kind of people whom colonialists and bourgeois scholars have described as barbarous, ignorant, willing to be slaves, and unable to exercise sovereignty. These descriptions are a great insult and defamation to these inhabitants. The true situation is that, whether it was in Asia, Africa, or Latin America, the indigenous inhabitants all had their own excellent cultures.

Bourgeois scholars may consider Africa, for example, as the most barbarous land.

*Reprinted with permission of Princeton University Press. Copyright © 1974 by Princeton University Press. Footnotes have been omitted. Italics have been added to several terms by the textbook author.*

But, everyone knows that the African people once had excellent civilizations in the Nile River region, the Congo River region and in Carthage. Long before their contact with Europeans, the Africans were experts in various handicraft skills and technology and were able to refine iron and other mineral ores. They could make various instruments of production, weapons, and furniture. In certain areas of Africa, national art already had reached a comparatively high standard. African folk literature was rich, colorful, and full of attraction. The allegation that they were willing to become slaves and were unable to exercise sovereignty is a lie inconsistent with history. ... It was not that they were unable to exercise sovereignty but rather that they were prevented from exercising their sovereignty by colonialists' use of massacre and suppression.

It should be pointed out that there has been a change in the view of bourgeois international law concerning the methods of "original acquisition." At first, bourgeois scholars argued that "occupation" was one method of "original acquisition," that is, a state which "first discovered a land" without an owner should be the owner of that piece of land. It was through this method of acquisition that Portugal and Spain, two of the earliest colonial powers, occupied a large number of colonies. Later, bourgeois scholars proposed the view of "effective occupation." ... The theory of "occupation" did not meet the desire of the powerful imperialist countries that subsequently emerged, while "effective occupation" provides them with a legal basis for redistribution of the spoils.

*"Derivative Acquisition:"* Bourgeois international law holds that the difference between "derivative acquisition" and "original acquisition" is that the former does not refer to the method of acquiring territory without an owner but refers to the method of acquiring territory originally belonging to another state. The imperialist powers "plundering of foreign territory naturally would not be limited to [only] lands without an owner." After lands "without an owner" were carved up, they naturally would plunder lands "with an owner." Lenin said: "When the whole world had been divided up, there was inevitably ushered in an era of monopoly ownership of colonies, and, consequently, of particularly intense struggle for the division and redivision of the world." There is no limitation on imperialism's ambition with respect to plundering territory. ...

Sometimes, imperialism nakedly uses the method of aggressive war forcibly to seize another state's territory; sometimes it uses camouflaged measures or various pretexts to force another state in fact to place its territory under imperialism's occupation. In order to prove the legality of the above-stated methods of seizing territory, bourgeois international law further classifies "derivative acquisition" into acquisition by means of treaty and acquisition not by means of treaty.

What are the methods of "derivative acquisition" by means of *treaty*? Bourgeois international law considers cession one of these methods. Every country has the right to cede its territory, and it has the right to acquire ceded territory. ... In a discussion on the form of cession [by treaty], "Oppenheim's International Law" described the annexation of Korea in 1910 by Japanese imperialism and the annexation of the Congo in 1908 by Belgian colonialists as a method of acquiring ceded territory through *peaceable* negotiation. But everyone knows that Korea was forcibly occupied by Japanese bandits and the Congo was a victim of the colonial system. From these instances, we may clearly discern that countries which ceded their territories were all under compulsion and that they were either weak, small, or defeated countries. Countries which acquired ceded territories were all imperialist countries engaging in territorial expansion. Bourgeois

international law writings have never been able to cite a single case in which an imperialist power ceded its territory to a weak or small country. Therefore, it can be said that cession of territory is a method of plundering the territories of weak and small or defeated countries used by imperialist countries through the use of war and threat of force.

... Most outspoken on this point is the American scholar Hyde, who writes in his book “International Law, Chiefly as Interpreted and Applied by the United States:” “The validity of a transfer of rights of sovereignty as set forth in a treaty of cession does not appear to be affected by the motives which have impelled the grantor to surrender them.” Obviously, according to such an interpretation, it was legitimate for Japan to force the Manchu government of China to cede Taiwan and Penghu through the unequal Treaty of Shimonoseki of 1895, after the Sino-Japanese War. This is tantamount to saying that if a robber steals property by brandishing a dagger before an owner and by threatening his life forces him to put his fingerprint on a document indicating his consent, then the act of robbery becomes legal. Is that not absurd? No wonder bourgeois international law has sometimes been described as the law of bandits. There is no exaggeration in such a description.

Besides cession, bourgeois international law also considers lease as a method of “derivative acquisition” of territory by means of treaty. ... In 1898 Germany leased Kiaochow Bay, Britain *leased* Wei-hai-wei, and France leased Kuang-chou Wan from China. These leases were acquired by concluding unequal treaties. These unequal treaties absolutely were not concluded through “peaceable negotiations” as described by bourgeois international law. As a matter of fact, lease of the above-mentioned Kiaochow Bay and other places was executed under threat of force. In November 1897 Germany sent four men-of-war to Kiaochow Bay to occupy Tsingtao on the ground that its missionaries had been killed. It was under these circumstances of armed occupation that the “Treaty of the Lease of Kiaochow” was concluded. The leases of Wei haiwei and Kowloon were also obtained under similar conditions....

Bourgeois international law considers “conquest” a method of *acquiring territory where no treaty exists*. So-called conquest means that a state uses its armed forces for long-term occupation of the territory or a part of the territory of another state. Undoubtedly, this is a savage and aggressive act. Bourgeois international law, however, considers such a method of acquiring territory lawful, even though it does not go through the process of concluding a treaty. In analyzing the causes of war, “Oppenheim’s International Law” states: “If ... territory cannot be acquired by peaceable means, acquisition by conquest alone remains if International Law fails to provide means of peaceful change in accordance with justice.” Charles Rousseau, Professor of International Law at the University of Paris, in his book “Principles Generaux du Droit International Public,” held that conquest is a means of acquiring sovereignty over a certain territory. The British jurist Schwarzenberger held: “In the international society law is subordinate to the rule of force. If the whole State machinery [of the defeated State] has collapsed, conquest would permit acquisition of title to the territory of this State.” According to these theories, colonial wars or other aggressive wars started by imperialist countries in order to annex territories of other countries are lawful. The Japanese seizure of China’s three northeastern provinces, Italy’s annexation of Ethiopia, and Fascist Germany’s occupation of Poland, Czechoslovakia, and so forth were all lawful.

“Prescription” is also considered a method of “derivative acquisition” of territory not by means of treaty. According to the explanation of bourgeois international law, “prescription” means the acquisition by a state of title to a territory through prolonged occupation. Obviously, this recognizes imperialism’s acquisition of legal title to a territory through prolonged occupation by force. “Oppenheim’s International Law” held that “a State is considered to be the lawful owner even of those parts of its territory of which originally it took possession wrongfully and unlawfully, provided that the possessor has been in undisturbed possession for such a length of time as is necessary to create the general conviction that the present condition of things is in conformity with international order.” This means that any country, regardless of its motive or the means it used—whether by way of annexation or aggression—as long as it has the power to be in prolonged occupation by force of the territory of another state, may consider its aggressive act as “lawful.” History shows that colonialists in fact frequently used the concept of “prescription” to plunder the territory of other countries. Even recently, in certain countries, certain persons in power and bourgeois scholars have attempted to resort to the concept of “prescription” as a legal basis for putting certain territory of China’s Tibet under the jurisdiction of another country.

In view of the foregoing, the “derivative acquisition” either by means of treaty or not by means of treaty mentioned by bourgeois international law is a general term which describes the various methods used by imperialist countries to plunder the territory of colonized countries and weak and small countries.