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William J.H. Hough, III. "The Annexation of the Baltic States and its Effect on the Development of Law Prohibiting Forcible Seizure of Territory."

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Even with Baltic unity, the political movement will not succeed unless Baltic leaders raise issues that will be perceived as important by those outside the Baltic community. Not only must such issues be formulated with care but they must also be interpreted and justified on the basis of legitimate academic scholarship.

A new and extensive contribution to the supply of scholastic literature has been made by William J. H. Hough, III, a tenth generation American. His 233-page article, "The Annexation of the Baltic States and its Effect on the Development of Law Prohibiting Forcible Seizure of Territory" appeared in the winter 1985 issue of the New *York Law School Journal of International and Comparative Law.* Despite the winter 1985 date, the journal in fact appeared during the fall of 1986.

Hough's article represents extensive research. It contains 510 footnotes, some of them lengthy enough to be short articles in their own right. Though it is not light entertainment, the article deserves a full and careful reading, not only by those who seek to further the cause of Lithuanian, Latvian, and Estonian independence but also by all people, of whatever ethnic background, who are concerned with human rights.

Most people may believe that the conquest of one state by another is unlawful. However, as Hough points out, until recently such a belief would have been wrong.

Until the mid 1800s the "right of conquest" was almost universally unquestioned. The world's political units were not closely interrelated. They exhibited various degrees of indifference to one state's seizure of another's territory.

Advances in such areas as communication, transportation, and weaponry gradually forced members of the international community to relate more with each other. Legal scholars and statesmen began to realize that territorial conquest could easily have a negative impact, not only on the "losing" state but on other members of the international community as well.

International law began to evolve from the acceptance of "might makes right" to the acceptance of a norm requiring some type of consultative process as a prerequisite to territorial realignments. The first codification of this change in attitude took place in 1856 when seven Latin American republics signed the Continental Treaty during the Inter American Conference in Santiago, Chile.

However, it was only after World War I, when self-determination and the elimination of colonialism became paramount, worldwide issues, that affirmative steps were taken to abolish the right of conquest doctrine.

After Japan occupied the Chinese province of Manchuria, the United States refused to recognize this territorial conquest. Secretary of State Henry L. Stimson sent a formal note to the governments of Japan and China which set forth America's intention not to recognize any situation, treaty, or agreement brought about in violation of the Kellog-Briand Pact's renouncement of war as an instrument of national policy and its call to settle all disputes by peaceful means. Shortly after the Stimson Doctrine was announced, the League of Nations adopted a resolution which condemned any forcible seizure of territory by one state from another and denied recognition to such seizure.

The Stimson Doctrine and the League of Nations' declaration established twentieth century precedents for states to refuse recognition to forcible seizure of territory. However, these precedents were not universally followed. A rule of international law prohibiting forcible annexation of territory did not yet exist. Italy's conquest of Ethiopia was extended *de jure* recognition by many countries. Great Britain's policy of appeasing Hitler's initial conquests was another instance of a state failing to apply the non-recognition principle.

According to Hough, the real turning point in international law relative to forcible annexation of territory occurred when the Soviet Union annexed the Baltic States. The events following the annexations demonstrate the existence of a rule of law prohibiting forcible seizure of territory and establish a necessary corollary to that rule, namely, that forcible seizure of territory must not be recognized.

Hough establishes the fact that Lithuania, Latvia, and Estonia were sovereign states — a fact self-evident to Baits but not necessarily self-evident to many non-Baltic readers. He reviews the participation of each of the Baltic States as sovereign members of the international community and details the bilateral and multilateral treaties which guaranteed their independence.

Hough examines the Soviet annexations of each of the Baltic States in detail. He presents a detailed summary of the worldwide response to the annexations. This summary demonstrates that most states no longer condone forcible annexation of territory. Hough concludes that non-recognition of territorial conquest has become an accepted part of international law.

He applies his conclusion to the continued occupation of Lithuania, Latvia, and Estonia by the Soviet Union. "Refusal to recognize the annexation of the Baltic States is clearly mandated by international law. The actual annexation itself was illegal and non-recognition of the Soviet tour *de force* conforms to the principle of all laws — that illegal acts should be barred from producing legal results."

Hough recognizes that unrectified illegal acts may acquire legitimacy over time. For example, American civil law provides that after a specific amount of time has passed, an individual acquires legal title to another's land through "adverse possession." How much time must pass before international law accords similar recognition to an illegal seizure of territory and thereby eliminates the "anomaly" between the Soviet Union's continued de *facto* exercise of sovereignty over the Baltic States and the legal position that it has no right to exercise such sovereignty?

Hough prefaces the answer to this question by suggesting that international law should be in no hurry to conclude that a state has been eliminated. He reminds us that, "Since 1918, the global community of nations has witnessed the re-establishment of territorially based body politics which had theretofore been considered 'gone-with-the-wind'; states as disparate as Poland, Ghana, Mali, Israel and Zimbabwe."

Hough believes that international law requires non-recognition of forcible territorial conquest so long as there is any reasonable chance of restoration of the conquered territory. He suggests that, "Nothing even approximately final has taken place which would totally destroy any reasonable chance of an *ad integrum* restitution of the Baltic States." Quoting the international legal scholar, Krystyna Marek, Hough continues, "It would be inappropriate today to assert that the possibility of a restoration of the three Baltic States has finally vanished beyond all hope. 'The State or States who would affirm this today would run the risk of having to go back on their own attitude at some future time, as in the case of Czechoslovakia, Austria and Poland."

In his analysis of the evolution of international law concerning forcible annexation of territory, Hough does not distinguish between forcible annexation of a portion of a state's territory and the forcible annexation of an entire country. His analysis suggests that international law treats both situations in the same manner but he does not specifically address that issue. His concern is clearly with the issue of forcible annexation of an entire country.

If there is a weakness in Hough's work, it is a weakness which exists in most legal treatises on international law. The tendency is to view international law only in terms of a set of rules, the existence of which are classically discerned through treaties, international custom, general principles of law, and judicial precedents. While each of these sources helps us understand what the law is, the sources do not, without further analysis, explain why the rules of law exist.

In order to understand why international law ceased to recognize the right of conquest, it is necessary to understand how the international system has changed from a system where political units were largely isolated from each other, to systems of "balance of power," "spheres of influence," and other variations of those concepts, all premised on the fact that modern states no longer operate in isolation. If the political foundation of the international system is considered, then the rules of international law can make sense and non-recognition of the Soviet Union's conquest of Lithuania, Latvia, and Estonia does not have to seem anomalous.

International law's rejection of the right of conquest is a reflection of the international community's attempt to stabilize relations between states. Whether a certain political unit is considered "friendly," "unfriendly," or "neutral" is not necessarily as important to other states as the certainty of having stability among the units.

But, once a violation of law has taken place and territory has been forcibly annexed, does non-recognition serve any useful purpose? If stability has already been violated is there any reason why the *fait accompli* should not be recognized?

One important purpose of non-recognition is to uphold the validity of the rule that was violated. It is a sanction against the aggressor state. However, perhaps international law has evolved to the point where an additional reason requires the

application of the non-recognition principle to forcible annexation of territory? This reason relates directly to the issue of human rights.

Forcible annexation of territory almost always means that the seizure has been accomplished against the will of the people residing in the conquered territory. If so, the fundamental human rights of those people to express themselves freely and to decide how and by whom they should be governed have been violated.

Traditionally, it has been axiomatic that international law applies only to states and not to individuals. While "fundamental rights" for individuals may exist in the abstract, such rights may be given or withheld only by states in their sovereign capacity. It may be, however, that individuals are also subjects of international law. Consider, for example, the United Nations' Universal Declaration of Human Rights and the Nurenburg Tribunals. Non-recognition of territorial conquest may now be a means of securing fundamental rights for individuals through the application of international law. If so, it may mean that international law now requires non-recognition so long as the population whose territory has been seized is unable to determine its own future.

Hough acknowledges that non-recognition may be used to enhance human rights. However, he does not discuss the possibility that the attention given to human rights by many of the world's countries, at least on the verbal level, may be a primary reason for the development of the modern non-recognition rule and its continued application to the Baltic States. Non-recognition is perhaps no longer only a corollary to the rule prohibiting forcible seizure of territory. It may be evolving into a sanction to be applied, at least in certain circumstances, against a state which violates basic, internationally recognized rights of individuals.

William Hough has written an invaluable article on international law relative to the seizure of territory and its application to the Baltic States. His article is also useful as a reference book on the Baltic States. He discusses many topics of interest to Baits and Baltic activists. For example, Hough considers the legal basis of the Baltic States, the conflict between Poland and Lithuania over Vilnius, land reform in the Baltic republics, the economic and cultural aspects of independence, the Molotov-Ribbentrop Pact, the Baltic holocaust, Yalta, current Baltic dissent, and the legal anomaly inherent in the conduct of the Justice Department's Office of Special Investigations.

Rein Taagepera, President of the Association for the Advancement of Baltic Studies (AABS), stated in his November 10,1986, letter to members of the AABS that "the scholar's task consists of presenting dispassionate research findings which earn recognition and respect by other Western scholars."

William Hough's article deserves such recognition and respect. He has compiled a work which should be used not only by scholars but which should also be cited and analyzed by all those who are concerned with the protection and enhancement of human rights.

Jaak Treiman