

---

**INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH**

---

**TRANSFER OF SOVEREIGNTY: AN ANALYSIS FROM THE PERSPECTIVE OF THE  
DEMOCRATIC REPUBLIC OF CONGO AND ITS CONTEMPORARY RELEVANCE**

- RAGHAV SHARMA & MONISH PATWA<sup>1</sup>

**ABSTRACT**

The present research paper explores the conceptual topic of transfer of sovereignty through a model analysis of the case of the Republic of Congo. While the eventful history of Congo is tragic, to say the least, it perhaps also stands as an example of what would entail if the international laws are handled in a frivolous and uncouth manner, without any intervention. This could also stand as a reminder that war and oppression could never be justified nor could it be considered as right under International Legal System. We will delve in the History of Congo and the Belgium invasion and the oppression inflicted by King Leopold II on the Congolese people. The paper will further explore how the international laws allows the transfer of sovereignty and would also caution about the current diplomatic ignorance shown in many regions of the world such as in Ukraine and in Afghanistan.

**Introduction**

*The country isn't the earth beneath our feet, it's the people ~ Tagore*

A nation's heart beats with the hearts of its citizens. Protecting a territory from brutal international tactics of accession or occupation is the core principle of a country as well as the International laws. Public International Law provides such protection from hostile takeovers. But what about those which happened long before such complex and rightful laws were in place. Those territories who were swallowed by colonial powers, before modern international law and modern concept of sovereignty emerged, still languishes under wrong nation. While there are some who embraces the new title, there are those who believes in a democratic right

---

<sup>1</sup> Students at National Law University, Jodhpur

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

for independence. Without the right to choose its heritage, we deprive people of their identities, over war or feuds or transactions which took place centuries ago.

Similar was the case of Congo, a country which has been tugged and pushed by international forces for quite a long time. And yet it had broken free from the chains of colonial era and fought its way towards sovereignty and independence. The transfer of sovereignty from Belgium, after years of atrocities from their King, Congolese were able to gain their independence. Such concept or transfer of sovereignty facilitated both as the reason of their captivity by Belgium and as their means of independence. One might go as far as saying that the concept is a double-edged sword. However, we will provide you with the true reasons why the concept of transferable sovereignty is not at fault but rather those who had abused their powers.

While the History of Congo is that of torture and horror, we will provide you an analysis of the situation and delve in the understanding of the tool of transfer of sovereignty. We will further examine the importance of this concept in the modern times, employing the tool on some modern, contemporaneous issues.

## **Chapter I: A View of the Past**

To truly investigate the Congolese-Belgium situation, one must peer into the past and there he will discover the roots of Congo crisis. The History of Congo is evidently a matter of fascination and demands a more thorough inspection. And for the sake of simplicity, we will present the unfolding of the relevant History in a chronological order.

### **LEOPOLD II'S INTRUSION**

From 1885 to 1908 the King of Belgium, Leopold II had the absolute and unrestricted control over the Congo Free State (Etat Independent du Congo). The whole of the property was a private possession of the King, which he could control as was his will. Such freedom was not granted in the Nation of Belgium itself, where the King was restricted by his constitutional burden from making any public decision without the approval of a minister. But in a privately controlled colony the King's word was law and his actions unlimited. But by 1908 the Belgian government was forced to announce Congo as a Belgian colony because the international or one might say that the European countries were horrified by the bloody Iron

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

<https://www.ijalr.in/>

fist with which Leopold ruled the Congolese land, killing as many as 10 Million Africans.<sup>2</sup> Here we can see what could happen if we give a man ultimate powers, what had happened if there is an absence of rule of law.<sup>3</sup> We would not and could not recount the atrocities, torture, killing and sins one might say, done under the regime of Leopold II. It is not just because these list of violation are too long to paginate, but because they are too horrific to imagine, much less write. Leopold II stuffed his pockets with the profit he made from exploitation, labour, and slave trading from the “Congo Free State” as he ironically dubbed his property. Another irony is that this brutal regime of Leopold II ended when the equally guilty exploiters i.e. other European leaders, raised their concerns.

Nonetheless, Leopold II was hailed for a long time as a “*creative and colonial genius*”<sup>4</sup> who was responsible for acquiring a vast civilisation for Belgium. Belgium was, as per the norms of those times, proud of having clinched such a significant portion in the African Continent and therefore, continued to “*civilise*” Congo. The purpose which they carried out this “noble” mission can be detected from the following statement: “*The purpose of our presence on the black continent was set out by Leopold II: to open up these backward [sic] countries to European civilisation; to give to their peoples a future of emancipation, freedom and progress, having freed them from slavery, disease and destitution*”<sup>5</sup> It is clear from the statement Belgium and quite many European countries were under the mistaken impression that they were on some sort of noble mission, if anything was the case it was that most European countries wanted to colonize to exploit and plunder and ultimately to ensure their dominance at home and on the native land.

### **CONGO FREE STATE: 1908-1960**

After becoming the official colony of Belgium, unlike many other colonizers, Belgium took complete disinterest in the Congolese education and other necessities. It turned over this task to the missionaries, who were successful in giving some latent and primary education to the Congo’s population. However, in order to increase the promotion of Christianity, it was

---

<sup>2</sup> Georgina Rannard & Eve Webster, *Leopold II: Belgium 'wakes up' to its bloody colonial past*, BBC (Jun. 2020), <https://www.bbc.com/news/world-europe-53017188>.

<sup>3</sup> *Id.*

<sup>4</sup> Valérie Rosoux, *The Two Faces of Belgium in the Congo*, 1 EURO REV INTL STUDIES 16, 20 (2014).

<sup>5</sup> Brussels, Address given by Baudouin I, King of the Belgians, on the self-determination of the Belgian Congo (13 January 1959) (trans. Rosoux).

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

required that to receive higher education the person must enter into priesthood.<sup>6</sup> The Catholic mission in Congo was a dominant entity in Congo and influenced even the Belgium administration. It had already established monopoly over most of the sectors in Congo, including education and indirectly interfered in the state's affairs for their own ends. The Church was a force to be reckoned with and was allied to Belgium State as long as the state did not appear as a threat and supported the conversion and evangelization of the African Colony.<sup>7</sup>

Still comparing the violent and abusive regime of Leopold II, life was much better for the Congolese.<sup>8</sup> Not immediately because as is the rule of every good thing, the situation improved agonizingly slowly. We must not mistake this statement as something positive towards a colonial regime but by comparison the Belgium government was lot less brutal than its ruler.<sup>9</sup> The Congolese still suffered, no doubt, with selfish policies and expropriation from mining and agriculture on vacant land, with no suffrage and financial crippling. Edmund Morel, a humanitarian journalist and the founder of The Congo Reform Association, which aimed to stop the atrocities and exploitation happening in Congo. Morel observed that after Belgium's takeover, there were no more large scale atrocities in such as the likes of German killing of Herero's.<sup>10</sup> But before removing its mission from Congo, Morel also tolled a warning, announcing that "*the root of the evil [will remain] untouched . . . till the native of the Congo becomes once more owner of his land and of the produce which it yields.*"<sup>11</sup> This profound problem was not only a hurdle in the later future but also made sure that no one from the Congolese naïve populace ever got any financial stability or an opportunity to free the country in the later future.

But Freedom is the Atlas who always finds way to struggle and rise. And thus from 1955 started the rise of Congolese towards independence. One must here give credit to the

---

<sup>6</sup> American Presbyterian Congo Mission, American Presbyterian Congo Mission Bulape Station annual reports for the years 1918, 1936-1937, 1943-1944, 1954-1958, (Presbyterian Historical Society), [https://digital.history.pcusa.org/islandora/object/islandora:152100?solr\\_nav%5Bid%5D=c8ccea87c715b6841480&solr\\_nav%5Bpage%5D=0&solr\\_nav%5Boffset%5D=1#page/16/mode/1up](https://digital.history.pcusa.org/islandora/object/islandora:152100?solr_nav%5Bid%5D=c8ccea87c715b6841480&solr_nav%5Bpage%5D=0&solr_nav%5Boffset%5D=1#page/16/mode/1up).

<sup>7</sup> Kathryn Rountree, CATHOLIC MISSIONARIES IN AFRICA: THE WHITE FATHERS IN THE BELGIAN CONGO 1950-1955, LSU Master's Theses, 3278 (2009).

<sup>8</sup> MARTIN EWANS, EUROPEAN ATROCITY, AFRICAN CATASTROPHE: LEOPOLD II, THE CONGO FREE STATE AND ITS AFTERMATH 236 (2002).

<sup>9</sup> GEORGES NZONGOLA-NTALAJA, THE CONGO FROM LEOPOLD TO KABILA: A PEOPLE'S HISTORY 57 (2002).

<sup>10</sup> ADMAN HOCHSCHILD, KING LEOPOLD'S GHOST: A STORY OF GREED, TERROR, AND HEROISM IN COLONIAL AFRICA 273 (1999).

<sup>11</sup> *Id.* at 272.

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

Belgians who, unlike many of the colonizers, were considering a 30+ year plan for Congolese Freedom.<sup>12</sup> Now as the History would show us, such pro-independence attitude, however delayed, was not something one might expect by a colonizer, certainly not for a Black colony. But after all the Congolese did not had to wait for three decades to have a breath of freedom. Four years after the announcement of thirty-year plan, mass demonstrations broke out in the modern-day Kinshasa, harbingering the popular outcry to end Colonial era.<sup>13</sup> And the Belgian's Chamber of Representatives handed over its colony to its rightful owners i.e., the Congolese, without putting up much fight knowing the numerical strength of the independence movement both in Congo and at home<sup>14</sup>.

It is important to note further that the Congolese Independence was dependent on many other variables, including the international environment of the time which was hardly pro-colonial. The Belgian had not enough resources to crush the movement, not the political will to do so. The Congolese were high on the idea of independence with "*beginnings of political consciousness among them*"<sup>15</sup> Thus came into existence the Democratic Republic of Congo, whose childish crawl towards growth had just begun at the time, which was regrettably full of unfortunate developments that would keep the new-born country from achieving its goals, still restrained by King Leopold's Ghost.

### SOVEREIGNTY TRANSFER

The idea of modern sovereignty emerged from the rupture of the European political institutes in the late 16<sup>th</sup> century and its conceptualisation by Bodin.<sup>16</sup> The Treaty of Westphalia was the first time when territorial sovereignty was consecrated in text, which provided two principles, first was that the secular authority over a given territory was regarded as ultimate and independent from religious power and second was that no more eternal intervention in the realm of sovereignty jurisdiction was authorised whether religious or secular.<sup>17</sup> The idea further developed with birth of more intrinsic concepts within sovereignty, such as the notion of limited sovereignty and legal sovereignty, and with these began the modern notion of

---

<sup>12</sup> A. A. J. Van Bilsen, *Un Plan de Trente Ans pour l' Emancipation Politique de l' Afrique Belge*, 33 LE DOSSIERS DE L' ACTION SOCIAE CATHOLIQUE (1956).

<sup>13</sup> RUTH SLADE, THE BELGIAN CONGO 17 (1961).

<sup>14</sup> EWANS, *supra* note 8.

<sup>15</sup> *Id* at 243.

<sup>16</sup> Samantha Besson, *Sovereignty*, Max Planck Encyclopedias of International Law (Apr. 2011), <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1472>.

<sup>17</sup> *Id*.

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

Sovereignty. The formation of Court of International Justice and the League of Nations help cement the idea of sovereignty in the international legal field, but two key developments were most imperative for the internationalization of modern sovereignty i.e., the internationalization of popular sovereignty and the development of sovereignty beyond State.

The idea of transfer of territory was always there, whether by war or surrender. But with the conceptualization of sovereignty in international law, the change of ownership became more complex. From an international angle the basest unit is state and the space which the a state occupies in the globe is its territory, with state being the proprietor.<sup>18</sup> And such title can be contested and change hand with various methods, may it be sale or bequest, leaseholds and reversions. The wishes of the inhabitants of a territory usually holds no water at all.

However, such a vast concept leaves more than a few areas of uncertainty, with territory contested and under disputes between states.<sup>19</sup> Essentially a terrestrial land could reside in two states, first as a *Terra Nullius*<sup>20</sup> and second as *occupatio*. A *terra nullius* status means that a territory is not under the sovereignty or rule of any state, and *occupatio* refers to the method by which it could be acquired. While this position was widespread during the imperial and colonial era, it stands condemned in present times. There could, however, be different modes of acquisitions and occupations, such as Discovery, annexation etc.

In the subsequent chapter, we will analyse and critic the methods employed by Belgium to obtain and later transfer the sovereignty of Congo to its indigenous populace.

## **Chapter II: THE EFFECTS OF TRANSFERABLE SOVEREIGNTY**

For most of the Congo's history, because of the very feature of owning the sovereignty, millions of Congolese people's lives were made a living hell. It allowed Leopold to "buy" their country and profit from it. However, the end of the atrocities was also brought about by the transferability of sovereignty and Belgium's purchase of the Congo Free State. That raises the question: Can transfers of sovereignty be used to prevent oppression? Under what conditions, and with what risks?

---

<sup>18</sup> Nicaragua v US, ICJ Rep. 1986 p. 14, 111–12.

<sup>19</sup> Ziyad Ziyadzade, *Drilling for Black Gold: The Demarcation for Hydrocarbon Resources in the Caspian Sea*, 16 CHICAGO JIL 312 (2015).

<sup>20</sup> JAMES CRAWFORD, BROWNIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW 208 (9<sup>th</sup> ed. 2021).

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

## FORCED SALES OF SOVEREIGN CONTROL: WHAT ARE THE ADVANTAGES?

The very transfer of sovereignty to Belgium by King Leopold, in itself, was not a perfect solution, but it did put a stop to the mass murder. Could a similar method be used now to address similar complex cases<sup>21</sup> of disputed oppression? Each scenario is unique and complex, and no single solution will work for all of them, but when confronted with a scenario such as that in Leopold's Congo, the international world may turn to diplomacy first. If such alternative fails, economic sanctions might be the next step. When a situation is truly heinous and defies coercion, international law may allow oppressed individuals to flee, either individually as refugees or collectively in the form of a secession.<sup>22</sup>

Forced transfers of sovereignty could be another arrow in humanitarian activists' quiver. They do, in fact, combine many features of several of the conventional alternatives. They deprive tyrannical leaders of sovereign territory in the same way that secessions do. They also include a shift in who has sovereign power over a given group of people, similar to migration. However, there are two key aspects of forced sales that are worth delving into further: First, that they are forced, and second, that they are sales.

### a. The forced nature of forced sales

The sale of the Congo Free State came with a lot of wrangling over the terms,<sup>23</sup> Leopold, on the other hand, had no choice but to sell. This entitlement system is not uncommon in the law. It resonates to what scholars have termed as and called a “*liability rule*”, a privilege that can be exercised, but only at a cost set by a third party.<sup>24</sup> As per Indian law, taking an

---

<sup>21</sup> Would the world be a better place if the Kurds had the right to buy their sovereignty from Iraq and either become independent or join some other sovereign? The Uyghurs from China? The Tamils from Sri Lanka? Or in the case of India and Pakistan the issue of Kashmiris or the issue of Khalistan?

<sup>22</sup> Milena Sterio, *Self-Determination and Secession Under International Law: The Cases of Kurdistan and Catalonia*. 22 ASIL (2018),

<sup>23</sup> Refer to chapter I section I.a.

<sup>24</sup> Guido Calabresi & Douglas Melamed, *Property Rules, Liability Rules, and Inalienability: One View of the Cathedral*, 85 HARV. L. REV. 1089 (1972).

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

example: a landowner cannot refuse to give up his property for public use,<sup>25</sup> However, he is entitled to reasonable reparation as a result of his actions.<sup>26</sup>

When bargaining costs are prohibitive and property owners are hesitant to relocate assets to their appropriate uses, the laws outlined above make greater sense. And it appears nearly unavoidable in oppressive governance settings: The issues are complicated, there are several interests, and there is a high risk of inefficient holdout behaviour, among other things. Property rules correlate to injunctions as legal remedies, whereas liability rules correspond to damages. Another way to look at the issue is to think of it as reorienting international reactions away from injunctions and toward damages. This brings up the second distinguishing element of the forced sales option: the fact that it includes sales.

*b. The sale nature of forced sales*

The sales aspect is significant not for the name, but for the reality that money was used to practically buy a way out of a humanitarian crisis. It's worth mentioning that economic incentives are already used in international responses to humanitarian crises. Economic sanctions, like many diplomatic interventions, are exactly that.<sup>27</sup>

Of course, just because this solution worked once in the Congo free state's unique conditions does not imply it will work again. The unusual scenario in Congo Free State also does not give a clear "test" for when such measures should be used again. Nonetheless, it's difficult to dismiss today's possibilities. Take, for example, the Russian takeover of Crimea from Ukraine in 2014.

Ukraine's finances had been strained by the conflict with Russia, and the country was on the verge of defaulting on its external debt. The Russian state was Ukraine's largest creditor, having lent the previous government \$3 billion just months before it was ousted. Another complicating element was that the Crimean people appeared to prefer joining Russia than remaining in Ukraine. Indeed, Russia's official view was that the Crimeans opted to secede

---

<sup>25</sup> State must pay compensation at the marketplace value for such land, building or structure acquired (Inserted by Constitution, Seventeenth Amendment) Act, 1964, the same can be found in the earlier decisions when property right was a fundamental right (such as 1954 AIR 170, 1954 SCR 558, which submitted that the word "Compensation" deployed in Article 31(2) indirect full compensation, that is the market value of the property at the time of the purchase.

<sup>26</sup> *Chiranjit Lal Choudhary v. Union of India*, AIR 1967, SC 41 & 54

<sup>27</sup> Joseph Blocher & Mitu Gulati, *Competing for Refugees*, 48 COL. HUM. RTS. L. REV. 53 (2016)

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

from Ukraine in order to avoid oppression and prejudice as a result of their predominantly Russian history.<sup>28</sup>

Assume for a moment that this is correct, and that the Crimean people were treated horribly. If this is the case, the court may view Crimea's acquisition as a type of compelled sale, conceptually comparable to Belgium's acquisition, which was justified but not free. Following the annexation of Crimea, Russia filed a lawsuit against Ukraine in a British court for non-payment of debts.<sup>29</sup> If we accept the reasons presented above, one of Ukraine's reactions may have been that Russia had taken Ukrainian property (Crimea) worth far more than \$3 billion.<sup>30</sup> Even if Ukraine had no means of forcing Russia to pay, the value of Crimea could definitely be adjusted against the debt owed to Russia by Ukraine's puppet government.

Russia has now seized Crimea and has not provided any compensation. Ukraine has no realistic prospect of reclaiming control of the region. If they chose the forced sale option, they would at the very least be free of Russian debt control.

Similar issues might be raised to other current separatist movements. International law, in many circumstances, does not provide a realistic range of options. Apart from the most extreme circumstances of genocide, ethnic cleansing, or the equivalent, international law appears to be devoid of a mechanism for territories trapped in unfavourable relationships with parent sovereigns to escape and better their situation.

### **"OWNING" SOVEREIGNTY POSE A CHALLENGE**

Sovereignty isn't usually thought of as a type of property. Yet, in many respects, sovereign control shares common property features with some of the most pressing issues in

---

<sup>28</sup> Anton Moiseienko, *What Do Russian Lawyers Say About Crimea?*, OPINIO JURIS (Sept. 24, 2014, 9:51 AM), <http://opiniojuris.org/2014/09/24/guest-post-russian-lawyers-say-crimea/>

<sup>29</sup> W. Mark A. Weidemaier, *Contract Law and Ukraine's \$3 Billion Debt to Russia*, 11 CAP. MKTS. L. J. 244 (2016).

<sup>30</sup> *Ibid*; Yulia Talmazan, *Russia and Ukraine are Locked in a Legal Dispute Over Ancient Gold*, NBC NEWS, MARCH 16 (2019), <https://www.nbcnews.com/news/world/russia-ukraine-are-locked-legal-dispute-over-ancient-gold-n982606>

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

international law and relations. To take one example, the refugee situation is a result of countries exercising their right to exclude.<sup>31</sup>

However, the Congo Free State's history demonstrates the difficulties of a property-based approach to sovereignty. First and foremost, who truly "owns" sovereignty? Indeed, the Congo Free State might be seen as a forerunner of the conflict between a nation's claim to territorial integrity and a people's right to self-determination. The ownership right must ultimately lie with the people, especially in times of repression.

a. *The issue of ownership*

What makes the Congolese experience unique in terms of sovereign control is that the Congo Free State was owned by Leopold in his personal capacity: he had purchased sovereignty, and members of the recognised international community, many of whom were involved in similar agreements, went along with it.<sup>32</sup>

This type of private sovereign power for personal gain is no longer permitted under international law and practise. However, the idea that sovereignty may be owned has never been disproved. Traditional theories of international law, on the other hand, continue to see sovereignty as a state's property. The conventional norm that countries have practically unrestricted freedom to surrender sovereign territory to one another without the agreement of the affected areas is possibly the best example of this.<sup>33</sup>

Treating sovereign land as though it were state property ignores the rights and interests of the people who live there. State territorial sovereignty, on the other hand, remains a fundamental premise of international law. Indeed, reconciling self-determination with territorial sovereignty is a major difficulty for international law today.<sup>34</sup>

In the Congo, it was mostly the decline that resulted in a shift in the country's standing. The main party in interest, as was the case during the Berlin Conference, was absent from the

---

<sup>31</sup> Matthias Goldman, *The Entanglement of Sovereignty and Property in International Law: From German Southwest Africa to the Great Land Grab* (2018 draft), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3274198](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3274198)

<sup>32</sup> Steven Press, *Rogue Empires: Contracts And Conmen In Europe's Scramble For Africa* 224 (2017).

<sup>33</sup> Lassa Oppenheim, *Oppenheim's International Law* 684 (ROBERT JENNINGS & ARTHUR WATTS EDS., 9TH ED. 1992)

<sup>34</sup> Michael P. Scharf, *Earned Sovereignty: Juridical Underpinnings*, 31 DENV. J. INT'L L. & POL'Y 373, 373 (2003)

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

negotiations: the Congolese, who would eventually foot the cost. They were effectively forced to pay a price for escaping from one especially brutal European imperialist to one who promised to be less so. It's worth noting that the dissolution of the Congo Free State contains hints of what would later be considered fundamental international law concepts. In 1918, US President Woodrow Wilson said: "*peoples are not to be bartered about from sovereignty to sovereignty as if they were mere chattels and pawns in a game.*"<sup>35</sup>

Wilson's idea would become commonplace in international practise during the next few decades. The right to self-determination refers to the ability of "peoples" to choose their own national affiliation.<sup>36</sup> Self-determination has progressed from a political idea to a legal right recognised in basic legal texts such as the United Nations Charter,<sup>37</sup> it reflected and aided in the development of a fundamental shift in how people think about sovereign land and who should have power over it.

Even now, through acquisitions, long-term leases, and other transactions, voluntary transfers of land between nations are continuously modifying the geography of sovereign authority. Governments frequently sell servitudes to one another and lease land to foreign investors in ways that limit their own sovereign power, either directly or indirectly. Nations desire control over territory for a variety of reasons, including ports, military bases, farms, canals, tax money, and trade benefits.

### **CHAPTER III: TRANSFER OF SOVEREIGNTY AND CONTEMPORARY**

#### **INTERNATIONAL ISSUES**

The horror of the Congo Free State was in many ways unique not just in scale, but in terms of its legal structure. So, apart from cautionary tales, what is to be gained by studying this depressing historical episode? Our first major point has been that, despite Leopold's abuse of the mechanism, the sale of sovereign territory was not and still is not prohibited by international law. On the contrary, it was the mechanism that brought his rule to an end.

---

<sup>35</sup> *The Messages And Papers Of Woodrow Wilson* 472, 478 (ALBERT SHAW ED., 1924); CF. VATTEL,

<sup>36</sup> Sharon Korman, *The Right Of Conquest: The Acquisition Of Territory By Force In International Law And Practice* 36–37 (1996)

<sup>37</sup> U.N. Charter art. 1, ¶ 2

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

But what relevance does it have in today's world, where the right to self-determination is widely supported and substantive rules of international law prohibit the kind of crazed exploitation and murder that Leopold engaged in. In the mid-2019, the word came out that President Trump showed interest in purchasing Greenland from Denmark but the idea was rejected by the Danish P.M.<sup>38</sup>

### **PROPOSALS FOR THE UNITED STATES TO PURCHASE GREENLAND**

Greenland is a former colony with a population of about 5 million people whose living standards lag far behind those of the Danish metropole.<sup>39</sup> Assume that those 50,000 people are suffering even more as a result of their relationship with Denmark, which, rather than granting autonomy to the island, has tightened its grip and shut down any democratic responsiveness.

In that stylized scenario, in such circumstances, it is easy to imagine that "principled" objections would fall by the wayside, and the major questions would be about practicalities, such as what supermajority of Greenlanders would have been required to approve the deal, what legal standing Greenland would have within the US system, and so on. There are no simple answers to these questions, which are influenced by domestic law. The point is that they are consistent with the sale's legality. It is significant to mention that territorial sales are not limited to humanitarian reasons for the people who live on them, but can also be advantageous of uninhabited land where the nations' economic interests are at stake.

### **GERMAN-DUTCH BORDER ISSUE**

The German-Dutch border question concerns the area of the Ems - estuary on the state border between Germany and the Netherlands at the transition from the delta to the North Sea.<sup>40</sup> The history goes back to the 15<sup>th</sup> century but the issue kicked off after the end of the second

---

<sup>38</sup> Scott R. Anderson, *Why Trump Can't Buy Greenland*, *LAWFAREBLOG* (Aug. 16, 2019, 1:12 PM), <https://www.lawfareblog.com/why-trump-cant-buy-greenland>

<sup>39</sup> Rebecca Hersher, *Numbers Lie Even More Than Usual in Greenland*, *NPR* (Apr. 21, 2016), <https://www.npr.org/sections/goatsandsoda/2016/04/21/475003055/numbers-lie-even-more-than-usual-ingreenland>.

<sup>40</sup> Daniel-Erasmus Khan: *The German state borders. Legal history basics and open legal questions*. 2004, p. 421  
For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

world war, when the lands of German owners located on Dutch territory, like the rest of the German property, were transferred to the Dutch state as enemy property and some of them were sold off.

The state border for the area of the mouth of the Ems below Emden is not determined by international law. Several contracts regulate the respective competencies. The most important of these is the agreement is the Ems Dollart Treaty of April 8, 1960.<sup>41</sup> However, the question became acute again in 2011 when it came to the approval of the new offshore wind farm Riffgat off the island of Borkum.<sup>42</sup> Approved by German authorities for German waters, but perhaps located in the controversial water zones, talks with the Netherlands became topical again.

In 2013, the start of new contract negotiations was announced. The agreement was signed in 2014. As per the agreement, the border will remain ambiguous and both nations will share responsibility for the area. The State Treaty contains regulations for the economic use and management of the territorial sea.<sup>43</sup>

The agreement has important economic implications, as it has long been the site of contention between German and Dutch fisherman, as well as the 450 million euro- (\$570 million) Borkum Riffgat offshore wind farm. On the Dutch side, in Delfzijl, a coal power plant has been built which the German East Frisians say will pollute the river and the bay and hurt tourism - something they depend on.

We put forward that both the nations came together because both had something much economically important on the line, had the negotiations failed, Germany would have to wash hands from the Borkum wind farm and the same would have been in the case of Netherlands' coal power plant in Delfzijl. Though it was not explicit that the negotiations started because

---

<sup>41</sup> AGREEMENT BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE KINGDOM OF THE NETHERLANDS ON THE REGULATION OF COOPERATION IN THE MOUTH OF THE EMS (" Ems Dollart Treaty ") of April 8, 1960,

[https://www.bgbl.de/xaver/bgbl/start.xav?start=%2F%2F\\*%5B%40attr\\_id%3D%27bgbl263s0458.pdf%27%5D#\\_\\_bgbl\\_\\_%2F%2F\\*%5B%40attr\\_id%3D%27bgbl263s0458.pdf%27%5D\\_\\_1633259161573](https://www.bgbl.de/xaver/bgbl/start.xav?start=%2F%2F*%5B%40attr_id%3D%27bgbl263s0458.pdf%27%5D#__bgbl__%2F%2F*%5B%40attr_id%3D%27bgbl263s0458.pdf%27%5D__1633259161573).

<sup>42</sup> *Pragmatic solution for mutual benefit" Germany and the Netherlands sign Ems-Dollart agreement*, PRESS RELEASE, MINISTRY OF FOREIGN AFFAIRS, <https://www.auswaertiges-amt.de/de/newsroom/141024-emsdollart/266290>.

<sup>43</sup> *Supra note*, at 40.

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

both nations were worried for their investment, but it is highly likely. Here, the sale is not apparent, but both the parties agreed not to raise any legal issue with respect to the territorial disputes and decided to share the responsibility. It is further submitted that this act can be considered as compensation from both the nations to protect their economic interest.

### A SITUATION IN HONG KONG

The dispute over the Hong Kong territory has been following the two States: Britain and China since the China's defeat in the Opium Wars. After its defeat, Beijing was forced to cede Hong Kong to the United Kingdom, which Britain generously agreed to return after 99 years or so it promised. By the late 1980's the process of Handover of Hong Kong commenced with a series of negotiation and talks between Britain and China over the future of Hong Kong.

China, at the time was willing to allow some special privileges, under "*one nation two system*", to Hong Kong, in order to facilitate the employment of such concept on Taiwan and Macau. The parameters of Hong Kong's return to China were outlined in the Sino-British Joint Declaration of 1984. For fifty years, the proclamation and Hong Kong's Basic Law, the city's constitutional law, enshrine the city's "*capitalist system and way of life*"<sup>44</sup> and provide it "a high degree of autonomy," including executive, legislative, and independent judiciary powers (until 2047). Furthermore, Although Hong Kong is permitted to develop foreign connections in certain areas, such as trade, communications, tourism, and culture, Beijing retains authority over the region's diplomacy and defense. Hong Kong residents are given freedoms of the press, expression, assembly, and religion under the Basic Law<sup>45</sup>, as well as international legal protections. In practice, however, Beijing has limited some of these rights. One might say that Beijing is using evasive and under-the-table tactics to ensure that it still has control over the territory, and Beijing has been eroding Hong Kong's freedoms since the handover. Over the years, its attempts to impose more control over the city have generated enormous protests, prompting the government to tighten its grip even further. Moreover, it is notoriously well known that China has taken aggressive steps to control the media, knowledge as well as the people's thoughts through censorships and distorted information. It

---

<sup>44</sup> *One Country, Two Systems* (June 22-23, 1984), <http://en.people.cn/dengxp/vol3/text/c1210.html>.

<sup>45</sup> THE BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA, 1990.

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

seeks to create the same environment in Hong Kong before the people becomes politically self-aware to protest. In the past two years Hong Kong has seen the largest protest<sup>46</sup> over China's intrusion. People protested for months against a legislative plan backed by Beijing that would have enabled extraditions to mainland China. Many demonstrators claimed Beijing had undermined Hong Kong's liberties to the point that they believed that they are no longer beyond complete Chinese control. The Legislation<sup>47</sup>, which sparked such widespread protest, bypassed Hong Kong's legislature in order to enforce a new national security law on the city. The act basically criminalizes all forms of dissent and uses extremely wide categories for crimes including terrorism, subversion, secession, and coordination with foreign forces. It also enables Beijing to build a security force in Hong Kong and influence the appointment of judges hearing national security matters. While the territory may go back to China, it is important from the international law's viewpoint that we do not ignore the "ultimate aim" as per the Hong Kong's diminutive constitution i.e. the Basic Law, states that the ultimate aim is to elect the Chief Executive (Leader) by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.<sup>48</sup> However, Beijing has made sure that such democratic representative election would never surface.<sup>49</sup> China is further endangering the idea of an independent Hong Kong.<sup>50</sup>

## CONCLUSION

We have had a glimpse of the world history relevant with the idea of transfer of sovereignty. If one reads the accounts of Congolese crisis or more contemporary ones, one must be forced to admit that while there is the subjugation of a territory against the will of its people, there will always be a threat to sovereignty and democracy and other such noble ideas.

---

<sup>46</sup> *The Evolution of Hong Kong's Protests*, WASHINGTON POST (Sept. 2019), <https://www.washingtonpost.com/world/2019/09/27/evolution-hong-kongs-protests/>.

<sup>47</sup> *Decision of the National People's Congress on Establishing and Completing the Hong Kong's Special Administrative Region's Legal System and Implementation Mechanisms for the Preservation of National Security*, CHINA LAW TRANSLATE (May 2020), <https://www.chinalawtranslate.com/en/hknationalsecuritydecisionfinal/>.

<sup>48</sup> THE BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA, 1990.

<sup>49</sup> *Hong Kong's Democracy Debate*, BBC (Jun. 2015), <https://www.bbc.com/news/world-asia-china-27921954>.

<sup>50</sup> *Hong Kong's handover: How the UK returned it to China*, BBC (Jun. 2017), <https://www.bbc.com/news/worldasia-china-40426827>.

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

The Belgian atrocities, disguised as projects, left a visible legacy of the Congo Free State's horrors. However, the end of Leopold's reign also aided in the establishment of conceptual tenets in international law. In that regard, the impact of the Congo's acquisition and the Berlin Conference is well recognised, but so are the lessons to be learned from its forced sale.

In every case, such transfers are not necessarily exploitative or even undesirable. After all, while Leopold's acquisition of sovereign control from the Congolese set in motion the horror of the Congo Free State, it was Belgium's subsequent purchase from Leopold that brought it to an end. Of course, the latter is seldom a role model. Because the Congolese were not involved in the negotiations, they were stuck with the bill for the purchase, which they effectively had to pay once more in 1960 at the time of independence. The fundamental issue, however, was not the transfer, but the terms: the Congolese were not evaluated as rightful owners of their own land, nor were they given the authority to govern it.

A country could not be ruled by those who do not reside in the choice of the people, these false leaders may claim under the guise of transfer of sovereignty that they are the rightful owner, but ultimately the will of the people must prevail. The International Law must facilitate not in subjugation but in support of those the people wish to choose. This is the true purpose of the idea of transfer of sovereignty, not by the nations or for the nations but rather for the people themselves. It is the people, therefore, who claims the sovereignty of a territory. We have already seen that when there are nations at play people become pawn of their endless struggle for power, which violates the basic human rights of the people in the disputed territory.

Therefore, perhaps while the idea of transfer of sovereignty is a utopian ideal, it must only facilitate to protect the people from any further atrocities by nation-states.

**REFERENCES****CASES**

- Chiranjit Lal Choudhary v. Union of India*, AIR 1967, SC 41 & 5 ..... 10
- The State of West Bengal vs Mrs. Bela Banerjee, 1954 AIR 170. .... 13
- Nicaragua v US, ICJ Rep. 1986 p. 14, 111–12. .... 7

**STATUTES AND OTHER AUTHORITIES**

- Decision of the National People's Congress on Establishing and Completing the Hong Kong's Special Administrative Region's Legal System and Implementation Mechanisms for the Preservation of National Security*, CHINA LAW TRANSLATE (May 2020), ..... 17
- THE BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA, 1990. .... 16, 17
- The Messages And Papers Of Woodrow Wilson* 478 (ALBERT SHAW ED., 1924); CF. VATTEL, 13
- U.N. Charter art. 1, ¶ 2..... 13

**TREATISES**

- AGREEMENT BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE KINGDOM OF THE NETHERLANDS ON THE REGULATION OF COOPERATION IN THE MOUTH OF THE EMS (" Ems Dollart Treaty ") of April 8, 1960, ..... 15

**ARTICLES AND JOURNALS**

- American Presbyterian Congo Mission, American Presbyterian Congo Mission Bulape Station annual reports for the years 1918, 1936-1937, 1943-1944, 1954-1958, (Presbyterian Historical Society), ..... 5
- Anton Moiseienko, *What Do Russian Lawyers Say About Crimea?*, OPINIO JURIS (2014), ... 11
- Brussels, Address given by Baudouin I, King of the Belgians, on the self-determination of the Belgian Congo (13 January 1959) (trans. Rosoux)..... 5

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

<https://www.ijalr.in/>

Georgina Rannard & Eve Webster, <i>Leopold II: Belgium 'wakes up' to its bloody colonial past</i> , BBC (Jun. 2020),.....	4
Guido Calabresi & Douglas Melamed, <i>Property Rules, Liability Rules, and Inalienability: One View of the Cathedral</i> , 85 HARV. L. REV. 1089 (1972). ....	10
<i>Hong Kong's handover: How the UK returned it to China</i> , BBC (Jun. 2017).....	17
Joseph Blocher & Mitu Gulati, <i>Competing for Refugees</i> , 48 COL. RTS. L. REV. 53 (2016).....	10
Kathryn Rountree, <i>CATHOLIC MISSIONARIES IN AFRICA: THE WHITE FATHERS IN THE BELGIAN CONGO 1950-1955</i> , LSU Master's Theses, 3278 (2009). ....	5
Matthias Goldman, <i>The Entanglement of Sovereignty and Property in International Law: From German Southwest Africa to the Great Land Grab</i> (2018 draft),.....	11
Michael P. Scharf, <i>Earned Sovereignty: Juridical Underpinnings</i> , 31 DENV. J. INT'L L. & POL'Y 373, 373 (2003).....	12
Milena Sterio, <i>Self-Determination and Secession Under International Law: The Cases of Kurdistan and Catalonia</i> . 22 ASIL (2018),.....	9
<i>Pragmatic solution for mutual benefit" Germany and the Netherlands sign Ems-Dollart agreement</i> , PRESS RELEASE, MINISTRY OF FOREIGN AFFAIRS.....	15
Rebecca Hersher, <i>Numbers Lie Even More Than Usual in Greenland</i> , NPR (Apr. 21, 2016), .....	14
Samantha Besson, <i>Sovereignty</i> , Max Planck Encyclopedias of International Law (Apr. 2011), .....	7
Scott R. Anderson, <i>Why Trump Can't Buy Greenland</i> , LAWFAREBLOG (Aug. 16, 2019, 1:12 PM), .....	14
<i>The Evolution of Hong Kong's Protests</i> , WASHINGTON POST (Sept. 2019),.....	17
Valérie Rosoux, <i>The Two Faces of Belgium in the Congo</i> , 1 EURO REV INTL STUDIES 16, 20 (2014).....	4

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

<https://www.ijalr.in/>

- W. Mark A. Weidemaier, *Contract Law and Ukraine's \$3 Billion Debt to Russia*, 11 CAP. MKTS. L. J. 244 (2016)..... 11
- Yulia Talmazan, *Russia and Ukraine are Locked in a Legal Dispute Over Ancient Gold*, NBC NEWS, MARCH 16 (2019)..... 11
- Ziyad Ziyadzade, *Drilling for Black Gold: The Demarcation for Hydrocarbon Resources in the Caspian Sea*, 16 CHICAGO JIL 312 (2015)..... 7

### BOOKS AND REPORTS

- A. A. J. Van Bilsen, *Un Plan de Trente Ans pour l' Emancipation Politique de l' Afrique Belge*, 33 LE DOSSIERS DE L' ACTION SOCIAE CATHOLIQUE (1956)..... 6
- ADMAN HOCHSCHILD, *KING LEOPOLD'S GHOST: A STORY OF GREED, TERROR, AND HEROISM IN COLONIAL AFRICA* 273 (1999)..... 6
- Daniel-Erasmus Khan: *The German state borders. Legal history basics and open legal questions*. 2004, p. 421 ..... 15
- GEORGES NZONGOLA-NTALAJA, *THE CONGO FROM LEOPOLD TO KABILA: A PEOPLE'S HISTORY* 57 (2002)..... 5
- JAMES CRAWFORD, *BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 208 (9<sup>th</sup> ed. 2021)..... 7
- Lassa Oppenheim, *Oppenheim's International Law* 684 (ROBERT JENNINGS & ARTHUR WATTS EDS., 9TH ED. 1992)..... 12
- MARTIN EWANS, *EUROPEAN ATROCITY, AFRICAN CATASTROPHE: LEOPOLD II, THE CONGO FREE STATE AND ITS AFTERMATH* 236 (2002). ..... 5
- RUTH SLADE, *THE BELGIAN CONGO* 17 (1961)..... 6
- Sharon Korman, *The Right Of Conquest: The Acquisition Of Territory By Force In International Law And Practice* 36–37 (1996)..... 13

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

<https://www.ijalr.in/>

Steven Press, *Rogue Empires: Contracts And Conmen In Europe's Scramble For Africa 224 (2017)*.....12



For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

<https://www.ijalr.in/>