

Annexation of Manipur as the 19th State of India: The Status of the Territory of Manipur in International Law since 1949

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How to cite this paper: Mangal, L. M. (2020). Annexation of Manipur as the 19th State of India: The Status of the Territory of Manipur in International Law since 1949. *Beijing Law Review*, 11, 327-357. <https://doi.org/10.4236/blr.2020.111022>

Received: February 4, 2020

Accepted: March 28, 2020

Published: March 31, 2020

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Abstract

In international law, deprivation of a people or nation of its political independence takes place through conquest or military occupation and annexation or formal integration. The incorporation of Manipur into the Union of India in 1972 characterizes the ultimate official annexation of the former by the latter. Annexation brings in political implications on the status of people of the annexed territory such as obliterating their earlier historical existence while imposing a new sense of allegiance to a foreign rule. In this context, the present article re-examines the nature of Indian occupation and subsequent annexation of Manipur. It seeks to highlight the international status of the territory of Manipur beginning 1949 by offering analytical treatment to two co-related phenomenon of occupation and annexation of a territory in international law. It is argued that the prohibition of annexation resulting from occupation is not merely concerned with normativity of international law but represents the implications on the lives of the people whose territory has been annexed. A critical review of the normative standards of international law as embodied in the Charter of the United Nations, resolutions by UN bodies, and a summary analysis of decisions of the International Court of Justice rendered in cases such as Palestine, Western Sahara, East Timor, etc. shows three distinct features in the relationship between the Union of India and Manipur—first, occupation of Manipur by India since 1949; second, annexation or formal incorporation of the territory of Manipur into Indian Union in 1972; and third, Indian State has assumed the role of an administering Power over the territory of Manipur with the implication that Manipur continues to remain an occupied territory under international law.

Keywords

Occupation, Annexation, Territory, Manipur, India, International Law

1. Introduction

On 21st January, 1972 the nation and its territory known as Manipur were formally incorporated into the Union of India as its 19th State or administrative unit through the *North-Eastern Areas (Reorganisation) Act, 1971 (NEA)*.¹ Under international law, a people and their nationhood may be deprived of its political independence or sovereignty by way of conquest or military occupation and annexation or formal integration. However, in situations of annexation, the annexed or incorporated State derives its governmental authority from the laws of the annexing State. Since the date of dissolution of the Manipur National Assembly and termination of the Government of the sovereign State of Manipur on 15th October, 1949 onwards, the Indian State has been administering the territory of Manipur under varying arrangements. It is argued that from the standards of international law and especially, international humanitarian law, the constitutional incorporation of the State of Manipur in 1972 as the 19th State or administrative unit of the Union of India through the NEA 1971 was an act that characterizes the ultimate official annexation of the former by the latter. Prolonged unlawful occupation and subsequent annexation of a territory while attracting rules of international law bring in political implications of a serious character especially on the lives of people of the annexed territory. Obliterating the sovereignty of a State through annexation by the occupying power tends to derecognize a people and their nationhood of its earlier historical existence as a politically independent entity while imposing a new sense of belongingness and allegiance to a foreign rule.

Over the years, the literature that has produced on the nature of relationship between the Union of India and State of Manipur provides a limited approach to the study on the status of the territory of Manipur in international law. Most of these works tend to overlook a vital discrimination between two co-related phenomenon of occupation and annexation of a territory. In Manipur's context, certain questions remain unanswered for instance, when did the territory of Manipur can be considered to have been occupied by India? Did occupation and annexation of Manipur take place simultaneously? What distinguishes occupation from annexation of a territory in international law? What is the status of the territory of Manipur in international law since 1949? These are research questions that require serious re-examination in order to help ascertain the status of the territory of Manipur. A brief survey of the existing works on the subject shows that it has not received serious scholarly treatment which it deserves.

Sanajaoba (1993) argued that historically Manipur's sovereign status had never been affected to the extent it is today.² The author succinctly put that in 1949

¹Preamble, Sections 3 and 9 (a) (ii) of NEA (Act 81 of 1971), entered into force on 30 December, 1971, <<https://indiankanoon.org/doc/318384/>>, see also *Constitution of India*, as on 1st April, 2019, Government of India, Ministry of Law and Justice, p. 177, <<http://legislative.gov.in/sites/default/files/COI-updated.pdf>> [both accessed: 19-01-2020].

²N. Sanajaoba (1993), *Rights of the Oppressed Nations and Peoples*, Omsons Publications, New Delhi, p 101.

India occupied Manipur however, he had not pursued a critical inquiry into the continuous legislative and administrative efforts made by the Government of India that aimed at formally incorporating the territory of Manipur. An examination into Sanajaoba's *The Genesis of Insurgency* (Sanajaoba, 2005)³ suggests at best his sensibilities to the political implication of the 1971 NEA without attributing or describing it categorically as the law that effected Indian annexation of Manipur.

Sanajaoba (2014)⁴ raised three pertinent questions on the issue of the annexation of Manipur: first, what was the political status of Manipur before it became an integral part of India on 15 October 1949?; second, whether the integration or merger of Manipur to India is right or wrong as per the existing norms and standards of international law?; and third, after the merger of Manipur to India, whether there doesn't have any scope for Manipur of regaining its pre-merger political status? While the author tried to examine and address these issues using the parameters of international law, he however, failed to treat the questions of occupation and annexation discriminatorily. He had not dealt with such issues as how and when was Manipur annexed by India formally? In another work, Sanajaoba (2004)⁵ discussed the applicability of rules of international human rights law and humanitarian law in the armed conflict that ensued following India's occupation of Manipur. While arguing the existence of an international armed conflict between India and Manipur, Sanajaoba missed an objective treatment of Manipur's case to categorically classify occupation and annexation. It can be observed that Prof. Sanajaoba passionately examined the series of events that led to the coercive integration of Manipur to Indian Union and had also successfully established that the take-over of Manipur by India was in clear violation of all established norms of international law.

Parratt (2005)⁶ had presented the way how Manipur was forcibly integrated into the Union of India against the will of the elected Government of Manipur and the Manipur National Assembly without trying to discriminate between situations of occupation or annexation. However, he questioned the morale of the UN for its failure to take notice of the forcible integration or merger of the State of Manipur while it intervened in similar cases of Hyderabad, Kashmir and Goa.

Chisti (2005)⁷ had assessed the political circumstances under which Manipur was integrated into the Union of India. He had taken into account of only the political factors such as the communist activities in Assam, Manipur due to the

³N. Sanajaoba (1991), *The Genesis of Insurgency* in N. Sanajaoba (Eds.) *Manipur: Past and Present, The Ordeals and Heritage of a Civilisation*, Vol. I, Mittal Publications, New Delhi, p. 245-90.

⁴The Problem of Annexation of Manipur, *Resolution of the National Convention on Manipur Merger Issue*, October 28-29, 1993, Imphal in Aheibam Koireng Singh and Skhudeba Sharma Hanjabam (Eds.) (2014), *Annexation of Manipur 1949*, Forward Books, New Delhi, p. 2.

⁵N. Sanajaoba (2004), *Human Rights in the New Millennium*, Manas Publications, New Delhi, p. 179.

⁶John Parratt (2005), *Wounded Land: Politics and Identity in Modern Manipur*, Mittal Publications, New Delhi, p. 120.

⁷S.M.A.W. Chisti (2005), *Political Development in Manipur: 1919-1949*, Kalpaz Publications, Delhi, p. 146-48.

influence from Burma and the rise of political insurgent movements of Nagas and Mizos for their separate independent statehood as factors responsible for the immediate take-over of Manipur by the Government of India. He failed to scientifically treat issues of occupation and annexation of the territory of Manipur by India in international law.

Somorjit (2016)⁸ while tracing the history of Manipur in modern times argued that Manipur since 1949 remain under Indian occupation. However, he failed to assess the nature of Indian occupation of Manipur and subsequent actions that would later constitute annexation in international law.

In this context, the research objective of this article is to re-examine the nature of occupation and subsequent incorporation or annexation of the territory of Manipur into the Union of India from the standards of international law and practice of the UN and States. It seeks to highlight the international status of the State of Manipur beginning 1949. The objective of this article is to scientifically discriminate the co-related phenomenon of occupation and annexation of the territory of Manipur by India since 1949. To this end, it dwells on the agreements concluded between Manipur and Government of India and assesses their implications including their legality and validity. It also analyses the issue of annexation or formal constitutional incorporation of the territory of Manipur under the Union of India by highlighting two crucial features namely, formal incorporation of the territory and extension of the laws and institutions of India. Further, it undertakes a summary analysis of similar situations of illegal territorial occupation regimes followed by annexation which took place in the twentieth century such as Palestine, East Timor and Western Sahara and draws inferences therefrom to clarify the status of the territory of Manipur in international law since 1949.

2. Research Method

For the above-mentioned purposes, the doctrinal method of research is undertaken. This include critical reviews of various primary and secondary sources of materials such as *the Government of India Act, 1935*, Memorandum on States, Treaties and Paramountcy, 1946, Cabinet Mission Plan, 1946, Indian Independence Act, 1947 and instruments which were concluded during the period 1947-1949 between the State of Manipur and Government of India, laws of the Indian Union which were extended to Manipur from 1950 onwards, Gazette notifications, State Papers and reports, periodicals, journals, case laws, etc. This exercise is carried out in the background of treaties, conventions and norms of international law as embodied in the Charter of the United Nations, resolutions by UN bodies, and decisions of international tribunals such as the International Court of Justice with a view to addressing when Indian occupation of Manipur began and when and how Manipur was ultimately annexed by the Union of India.

⁸Wangam Somorjit (2016), *Southeast Asia in General* in Wangam Somorjit (Eds.) *Manipur: The Forgotten Nation of Southeast Asia*, Waba Publications, Imphal, p. 6.

3. India's Occupation of Manipur

A “territory is considered occupied when it is actually placed under the authority of the hostile army” and it “extends only to the territory where such authority has been established and can be exercised”.⁹ The International Court of Justice stated “[W]here a State by armed force dispossesses another State from its peaceful exercise of governmental authority over territory and replaces it with its own authority, it thereby becomes the military occupant of that territory. The essence of military occupation is that it occurs where a State by force of arms extends the territorial scope of its authority into territory which is not its own ... such a situation occurs where the extension of the State’s territorial authority takes place at the expense of another State’s sovereignty over the territory which has been militarily occupied ...”¹⁰ The Court continued:

“Military occupation is not the result of a legally authorised process: it is the result of practical power involving the successful application of superior force which confers on the occupying State a degree of *de facto* control and jurisdiction without constituting a transfer of sovereignty ...”¹¹

To understand India’s occupation of Manipur, it needs to take note of the agreements that took place in 1947 and 1949 such as 1) Standstill Agreement; 2) Instrument of Accession both signed on 11th August, 1947;¹² and 3) the Merger Agreement of 21st September, 1949.¹³ All these agreements preceded the notification—Manipur Administration Order, dated 15th October, 1949¹⁴ of the Government of India by which the Government of Manipur was terminated and the Manipur National Assembly was dissolved. The occupation of Manipur by India was the result of a series of well-organised and pre-planned politics. A brief analysis of these developments is provided below.

3.1. Standstill Agreement

The basis of the Standstill Agreement (SA) was provided by the Memorandum

⁹Article 42, Fourth Hague Convention on the Laws and Customs of War on Land, opened for signature 18 October 1907 (entered into force 26 January 1910), <<https://ihl-databases.icrc.org/INTRO/195>> [accessed: 25-10-2020].

¹⁰*Legal Consequences of the Construction of a Wall in the Occupied Palestine Territory, Advisory Opinion, ICJ Reports 2004*, p. 136, para.5.53. The Court further continued, “... Its operation is essentially determined by the facts; where the facts show that ... a State’s military forces are in occupation of territory not its own, then that occupation constitutes a ‘military occupation’ for the purposes of international law”, para. 5. 53.

¹¹*Ibid*, para.5.67.

¹²<https://upload.wikimedia.org/wikipedia/commons/b/b0/Instrument_of_Accession_and_Standstill_Agreement_of_Manipur_to_Dominion_of_India.pdf> [accessed: 19-01-2020].

¹³*White Paper on Indian States, 1950*, Ministry of States, Government of India, pp.48, 232, Appendix XXXII, <<https://ia801609.us.archive.org/9/items/in.ernet.dli.2015.207474/2015.207474.White-Paper.pdf>> [accessed: 19-01-2020].

¹⁴Notification issued by M.K. Vellodi, Joint Secretary, Ministry of States, Government of India <https://archive.org/stream/in.ernet.dli.2015.125719/2015.125719.Manipur-Gazette-From-June-1949-To-February-1950_djvu.txt> [accessed: 28-01-2020].

on States, Treaties and Paramountcy, 1946¹⁵ (MOS). The purpose of SA was to maintain the status quo in the relationship as prevailed between the States¹⁶ and British India. Such arrangements were to continue in force until further agreements had been negotiated and concluded that would define the nature of relationship between States and successor Government of India. This was to “avoid administrative difficulties between the States and those likely to control the successor Government”.¹⁷ It was an arrangement before the declaration of the lapse of British Paramountcy on 15th August, 1947.

3.2. Instrument of Accession

The Instrument of Accession¹⁸ (IOA) too derives its basis from the 1946 MOS. The arrangement of the IOA¹⁹ was also provided by Section 2 (4) of Indian Independence Act (IIA), 1947. Its objective was to provide a politico-legal basis for a federal relationship between the States and successor Government of India. In case where such federal arrangements could not be established, States could enter into particular political arrangements with the successor Government of India. Under the agreement, States conferred upon the ‘Dominion’ Government of India jurisdiction to three subjects only namely defense; external affairs and communication.²⁰

The basis of relationship between the States and the Union of India was founded on the terms of the IOA. The States as per Articles 7 and 8 of the IOA are not bound in perpetuity by the agreement to maintain their ties with the future Government of India. The Union of India later on cannot transgress upon those subjects over which States did not consent under the treaty. Asserting jurisdiction beyond the three transferred or consented subjects over States is a clear breach and violation of the IOA. It amounts to violation of the fundamental rule of *pacta sunt servanda* which obliges States parties to an agreement to observe it in good faith.²¹

3.3. Merger Agreement

The Merger Agreement concluded on 21st September, 1949 between the Governor General of India and the Maharajah of Manipur at Shillong was “to provide

¹⁵*Supra* note 13, 152.

¹⁶States in this article refers to the native States which were under British Paramountcy as reflected in Paragraph 4 of the Memorandum on States, Treaties and Paramountcy, *supra* note 13.

¹⁷Successor Governments as referred to by the Cabinet Mission Memorandum dated 12 May, 1946 meant Government of either India or Pakistan, and for the purposes of this article it is used to mean the Government of India only.

¹⁸*Supra* note 13, 153.

¹⁹Section 6 of the Government of India Act, 1935,

<http://www.legislation.gov.uk/ukpga/1935/2/pdfs/ukpga_19350002_en.pdf> [accessed: 20-01-2020].

²⁰*Supra* note 13, 36, 165-172. Dominion Government means the Government of India as established under the Government of India Act, 1935, see Section 8 of the Indian Independence Act, 1947 <http://www.legislation.gov.uk/ukpga/1947/30/pdfs/ukpga_19470030_en.pdf> [accessed: 28 January 2020].

²¹Article 26, Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 332 (entered into force 27 January 1980) (“VCLT”).

for the administration of the State by or under the authority of the Dominion Government of India”.²² The agreement transferred the full and exclusive authority, jurisdiction and powers for the “governance” and “administration” over the territory known as the State of Manipur to the Government of India.

It is pertinent to recall that there were two agreements made 1) between the Governor of Assam and the Manipur State Durbar²³ and 2) Maharajah of Manipur and Governor of Assam²⁴ before the adoption or coming into force of the **Manipur State Constitution Act, 1947 (MSCA)**.²⁵ The importance of these agreements could be examined in the background of two developments: the Memorandum on States, Treaties and Paramountcy dated 12th May, 1946 and the proposals made by the Cabinet Mission Plan dated 16th May, 1946.²⁶

Of all these agreements mentioned above, IOA could be considered as defining the nature of future relationship between Manipur and Government of India in much more categorical terms. As such, there is no need to dwell in detail on the implications of the July agreements. It needs, though, mention here that similar provisions exist between the July agreements and the later IOA on the subjects intended to consent by the State of Manipur for Government of India’s jurisdiction²⁷ including the principle of non-interference in the internal affairs of the State of Manipur.²⁸ Another point worth mention is the office of the “Political Agent” or (Indian) “Residency”²⁹ or “agent to the Government of Indian Union and Union Agent”.³⁰

The Maharajah’s argument that the office of Dewan was not recognised under the Manipur State Constitution Act could be read as withdrawing or expressing reservations to further allow continuation of the office in the territory of Manipur. The ever increasing interference of the Dewan in the internal affairs of the State of Manipur in violation of the July, 1947 agreements and IOA could well

²²Article 1, Manipur Merger Agreement, 21 September, 1949, *supra* note 13.

²³Points of Agreement Reached in Discussion Between His Excellency, The Governor of Assam and the Manipur State Durbar, dated 1st July, 1947 Agreement <http://books.e-pao.net/Status_Manipur/epShowChapter.asp?src=App_3_Standstill_Agreement> [accessed: 27-02-2020].

²⁴Agreement between His Highness, The Maharajah of Manipur and The Governor of Assam, dated 2nd July, 1947 Agreement, *ibid*.

²⁵Naorem Sanajaoba (1993), Manipur State Constitution Act, 1947 in Naorem Sanajaoba (Eds.), *Manipur Treaties and Documents* (1110-1971), vol. 1, Mittal Publications, New Delhi, p. 358.

²⁶It needs to note that these agreements made on behalf of the State of Manipur under two varying terms ‘Manipur State Durbar’ and ‘Maharajah of Manipur’ with the Governor of Assam in July, 1947 were precursor to the agreements which followed namely SA and IOA of 11th August, 1947.

²⁷Articles 2 and more specifically 3, 1st July Agreement, 1947.

²⁸Article 7, 1st July Agreement, 1947 and Articles (Provisions) b and f, 2nd July Agreement, 1947.

²⁹Article 9, 1st July Agreement, 1947.

³⁰Article or Provision b, 2nd July, 1947. The Union of India under Section 188 of the Code of Criminal Procedure, 1973 recognises the office of Political Agent, see *The State v. Motab Dewan, May 12, 1955* (AIR 1956 Pat 46, 1955 (3) BLJR 420, 1956 CrLJ 99). Such a similar office also existed during British Paramountcy by the names of “Agent to the Crown Representative” and “Political Agent” under Article or Provision b, 2nd July, 1947. These offices in fact, represented a subordinate class of Diplomatic Agents or Missions of the British Imperial Government. For consent as the basis of mutual relationship amongst States, See Article 2, *Vienna Convention on Diplomatic Relations of 18 April 1961*, 500 UNTS 95.

provide the reasons for arriving at such a decision to de-recognise or terminate Dewan's office in Manipur (Parratt, 2005).³¹

The July agreements and specially that of 2nd July, 1947 were temporal in character. The latter envisaged the conclusion of "agreement or treaty between the State of Manipur and the Union Government of India in due course of time".³² This way, IOA is accounted as having superseded or replaced the legal or constitutional significance of the July agreements made between Manipur and Governor of Assam as far as the nature of future relationship between Manipur and Government of India was concerned. IOA stands as the last treaty negotiated between Manipur and Government of India in terms of its representation and procedural fairness. Correspondingly, the legality and validity of the IOA would ultimately determine the relevance or implications of the agreements made on 1st and 2nd July, 1947.

3.4. Manipur Administration Order

Manipur Administration Order, dated 15th October, 1949 issued under Notification No. 219-P in the Gazette of India terminated the popular Ministry and also dissolved the Manipur National Assembly.³³ The Dewan³⁴ turned Chief Commissioner of Manipur took-over the portfolios of the popular ministry. In fact, the 15th October Administration Order by which the administration of Manipur was transferred to the Dominion Government of India was contemplated under Article 1 of the Merger Agreement of 21st September, 1949.

The "take-over" of Manipur's administration as stipulated by the Gazette Notification, Manipur Administration Order, dated 15th October, 1949 amounts to territorial occupation of Manipur by India under international humanitarian law. Terms such as "take-over" were very much in vogue during the inter war period which indicated military invasion by a State to bring another independent sovereign State under its subjugation and occupation. The take-over of Manipur on 15th October, 1949 was plain occupation and subjugation by India aimed at or having the effect of disallowing and preventing the popularly established Government of Manipur from exercising its sovereignty over its territory. It needs mention here that the Manipur National Assembly had unanimously denounced the 21st September 1949 agreement as not binding upon the State of Manipur.³⁵ The unilateral dissolution of Manipur National Assembly on 15 October 1949 clearly testified that the Government of India disrespected the voice of the people of Manipur. The forcible dismissal of the Manipur National As-

³¹ *Supra* note 6, at p. 114.

³² Preamble, 2nd July Agreement, 1947.

³³ *Supra* note 14.

³⁴ Political officer or agent of the Government of India, see *The State v. Motab Dewan* cited in *supra* note 29.

³⁵ Resolution No. 3, *Proceedings of the 4th Sitting of the 3rd Session of the First Manipur State Legislative Assembly Assembled under the Provisions of the Manipur State Constitution Act, 1947*, published by the Manipur State Press, G-100/14-10-49

<<https://kapilarambam.blogspot.com/2016/08/manipur-merger-agreement-1949-full-text.html>> [accessed: 27-01-2020].

sembly in order to facilitate occupation by India was an act of subjugating and oppressing a people, their nationhood, political independence and sovereignty.

3.5. Two Tests of Occupation—Effective Territorial Occupation and Effective Control over the Population

In Manipur's case, both the situations—effective territorial occupation and effective control over the population coexisted beginning from 15th October 1949. The concept of effective control over a territory and a population is characterized under international humanitarian law as having three aspects: (a) the territory is actually placed under the authority of the hostile army and authority has been established and can be exercised;³⁶ (b) the State in power exercises the functions of the government in such territory;³⁷ and (c) the occupier's authority is “to the exclusion of the established government”.³⁸

When the popularly established Government of Manipur and Manipur National Assembly under the MSCA 1947 were dissolved and thus ousted from exercising its sovereign authority over its territory, the first test of “effective territorial occupation” by India was met. The Manipur State Constitution was applicable to the whole territory of the State of Manipur inclusive of hills and valley³⁹ and the Government of Manipur exercised sovereign authority over its whole territory, since it was constituted by elected members of all communities belonging to both hills and valley.⁴⁰ The ousted Manipur Government was prevented or incapacitated from exercising its sovereign authority following the military occupation by India. Later, a portion of the territory of Manipur was ceded to Myanmar (Burma) through an agreement in 1953 by India (Basanta, 2008).⁴¹ The implication is that the political independence and sovereignty of the people of Manipur was usurped or taken-over by India in 1949 resulting into permanent displacement of the legitimate sovereign authority of the occupied territory of Manipur. The subjection of the people of Manipur to various laws of the Indian Government and installation of administration following the patterns of the Indian polity was evidence that the latter had “effective control over the population”.⁴²

The administrative set up was re-organised on Indian lines. The people of Manipur were subjected to various oppressive laws of the occupying State such as 1) the Seditious Meetings (Prevention) Act, 1911; 2) the Armed Forces (Spe-

³⁶Article 42 (IV) Hague Regulation 1907, *see supra* note 8.

³⁷Article 6 of the Fourth Geneva Convention Relative to the Protection of Civilians in Time of War of 12 August 1949, 75 UNTS 287.

³⁸*United States v Wilhelm List*, Records of the United States Nuremberg War Crimes Trials: Case No. 7, July 8, 1947-February 19 1948. Washington: National Archives and Records Service, General Services Administration, 1974.

³⁹*Supra* note 25, Sections 2 and 9 (a), Manipur State Constitution Act, 1947.

⁴⁰*Ibid*, Sections 10 (d) and 17, Manipur State Constitution Act, 1947.

⁴¹Ningombam Basanta (2008), *Modernisation, Challenge and Response: A Study of the Chakpa Community of Manipur*, Akansha Publishing House, p.6.

⁴²The effective control of people implies social control and effective authority. *see* Brian Finucane, Fictitious States, Effective Control, and the Use of Force Against Non-State Actors, 30 *Berkeley Journal of International Law*, 35 (2012), p. 14.

cial Powers) Act, 1958 as amended in 1972; 3) the Punjab Security of the State Act, 1953; 4) the National Security Act, 1980; 5) the Unlawful Activities (Prevention) Act, 1967 and its amended versions of 2019, etc. India's occupation of Manipur had been in toto as stipulated under Article 42 of the Fourth Hague Convention, 1907. Article 43 of the Convention further prohibits an occupying power from imposing its own legal system in an occupied zone and or subjecting the occupied civilian population to its domestic laws.⁴³ The above-mentioned two criteria of occupation are immediately correlated with annexation of an occupied territory which will be discussed in the next main section.

3.6. The Status of Princely States (12 May, 1946-14 August, 1949)

Developments that took place between 12th May, 1946 and 14th August, 1947 are crucial in determining the politico-legal status of the States in that period of time. The assessment of their politico-juridical status becomes important in so far as it could determine their capacities to conclude treaties or agreements and their legal consequences.

The fact that IOA was concluded between States and the Dominion Government of India clearly indicates that it was an agreement made between two entities having equal juridical capacities. The impending lapse of British Paramountcy was clearly indicated by series of instruments and statements made by British authorities beginning 1946: 1) the Cabinet Mission Plan of 16th May, 1946;⁴⁴ 2) announcement made by His Majesty's Government on 20th February, 1947;⁴⁵ and 3) British Prime Minister Clement Attlee's statement of 3rd June, 1947⁴⁶ on the floor of the British Parliament and the corresponding statement to Attlee's in Britain made by Lord Mountbatten in India on the same day (Menon, 1957).⁴⁷ All of these developments or statements clearly provided the intention of the British Government that independence would be granted to British India and States.

The Cabinet Mission Plan of May 16, 1946 (CMP), which provided proposals regarding the constitutional future of India, states under Paragraph 14 amongst other things:

“... It is quite clear that with the attainment of independence by British India ... the relationship which has hitherto existed between the Rulers of the States and the British Crown will no longer be possible. Paramountcy can neither be retained by the British Crown nor transferred to the new Government ...”⁴⁸

⁴³Supra note 10, para.5.106.

⁴⁴Supra note 13, pp. 28-30.

⁴⁵India (Transfer of Power), HC Deb 03 June 1947 vol. 438 cc35, <<https://api.parliament.uk/historic-hansard/commons/1947/jun/03/india-transfer-of-power>> [accessed: 20-01-2020].

⁴⁶Ibid, at cc35-46.

⁴⁷V. P. Menon, *The Transfer of Power in India*, Orient Longman, Chennai: 1957, pp. 371-377, 510-515.

⁴⁸Supra note 13, pp. 29, 154-155.

Paragraph 14 (1), CMP contemplates that the States could confer upon the Union Government Foreign Affairs, Defence and Communications. This is further reaffirmed by Clause 4 of the same paragraph by stipulating “[T]he States will retain all subjects and powers other than those ceded to the Union”.

The political independence of the all the States was put categorically by the 1946 MOS. Paragraph 4 of the Memorandum provided: “... Such negotiations, which will be necessary whether the States desire to participate in the new Indian constitutional structure or not ...” Paragraph 5 reads: “... This means that the rights of the States which flow from their relationship to the Crown will no longer exist and that all the rights surrendered by the States to the Paramount Power will return to the States ...” Paragraph 2 provides: “... But the British Government could not, and will not, in any circumstances, transfer Paramountcy to an Indian Government”. All these paragraphs reveal that the States were politically independent and sovereign clothed with the capacities to enter into negotiations and conclude agreements with the successor Government of India. This is re-affirmed when paragraph 5 further provides “... The void will have to be filled either by the States entering into federal relationship with the successor Government or Governments in British India, or failing this, entering into particular political arrangements with it or them”.

State sovereignty necessarily brings it with the capacity to enter into negotiations and conclude agreements with legal persons. Even before the actual day of granting independence to India and the lapse of British Paramountcy over States on 15th August, 1947, all the proposals and statements referred to above which were made during May 12, 1946-June 3, 1947 cumulatively went on to confer upon States and Government of India to negotiate and enter into agreements for their future political relationship.

It may be noted that the Indian Independence Act, 1947 which was passed by the British Parliament received the assent of the British Crown on 18th July, 1947. Under the British parliamentary law making system, a bill comes into effect having the force of law on the date it receives the assent of the constitutional head of the State. Juridically, even though the Dominions of India and Pakistan were established and British suzerainty over Indian States (Princely) came to an end on 15th August, 1947 as per Sections 1 and 7 (1) (b) of the Indian Independence Act respectively, the reading that States while negotiating and entering into agreements such as IOA with the successor Governments were in fact exercising their sovereignty is indisputable.⁴⁹ This legal facticity had also been corroborated by the Indian Supreme Court decisions.⁵⁰ To negate such a position would amount to rendering all the agreements which were concluded between the Government of India and States untenable. The implication would be that

⁴⁹This view is also shared by others; see Parratt, supra note 6, p.110.

⁵⁰*Virendra Singh v. State of U.P.* (1954 AIR 447:1955 SCR 415); *The States of Saurashtra v. Memom Haji Ismai* (1959 AIR 1383: 1960 SCR (1) 537); *Sarwarlal v. States of Hyderabad* (1960 AIR 862:1960 SCR (3) 311); *State of Gujarat v. Vora Fiddali* (1964 AIR 1043: 1964 SCR (6) 461) and *Shri Ragnathrao Ganpatrao v. Union of India* (1993 AIR 1267: 1993 SCR (1) 480).

the idea of “independent India” would comprise of only the territories known as British India excluding the States. This is not to propose instantly, the legality of IOA or vice-versa but to underscore the nature of the political and legal personality of the States at the time of negotiating and concluding the agreements.

3.7. Agreements Concluded between 1947 and 1949: Issues of Legality and Validity

To begin with, two juridical facts are relevant. First, the Indian Independence Bill having received the royal assent of the British Crown on 18th July, 1947 became an Act possessing the force of law on the same day and the statements or announcements made by British authorities from 12 May, 1946 to 3 June, 1947 which laid the basis for restoration of full sovereignty and political independence to States, clothed them with the capacity to enter into negotiations and conclude agreements with the Government of India. Second, the MSCA, 1947 was adopted on 26th July, 1947 and subsequently came into force thereby establishing the Manipur National Assembly whose elections to 53 seats were held in July, 1948 and its first session was held on 18th October of the same year (Sanajaoba, 1993).⁵¹ The first juridical fact established that Manipur State Constitution Act of 26th July, 1947 was legally a valid political instrument.

The primary subject, from the above premise, concerning issues of legality and validity of the agreements concluded during 1947 and 1949 relates to the competence of the Manipur Maharajah to enter into and conclude agreements with any juridical personality or the Government of India. Both the SA and IOA were concluded on 11th August, 1947. The provisions on the status of the Manipur Maharajah to exercise executive authority are provided under the MSCA, 1947. Section 3 of the MSCA provides “all rights, authority and jurisdiction which appertained or were incidental to the Government of such territories of Manipur are exercisable by the Maharajah subject to the provisions of this Act”.

Further, Section 8 (a) provides “The Maharajah’s Prerogatives shall not, however, be taken to comprise any matter wherein the legitimate interests of the State Administration ... is involved”. Section 9 (b) of the MSCA provides that “the Maharajah of Manipur was the constitutional Head of the State”. Section 10 (a) states “... the Executive Authority of the State is delegated to and shall vest in the Council of Ministers”. Section 26 further provides that “The Law Making Authority in the State shall consist of the Maharajah in Council in collaboration with the State Assembly acting under Section 18”. Section 18 states “The State Assembly may debate all matters concerning the Government and well-being of the State ... The Assembly shall tender such advice to the Council of Ministers in any matter in which a majority of the Members present, are agreed on the advice which shall be tendered ... provided that the Maharajah may on the advice of the Council, veto debate on any matter where such course shall in the public interest be necessary.”⁵²

⁵¹Sanajaoba, *supra* note 25, pp. 314, 434.

A critical reading of the above-mentioned provisions of the MSCA relating to the powers of the Maharajah makes clear that 1) matters involving the legitimate interests of Manipur's administration was outside the scope of his prerogatives; 2) the law making authority was vested jointly upon the Maharajah and the State Assembly; 3) the advice of the Assembly to the Council of Ministers must be supported by 75% of the total members present and voting which is 40 members out of 53. The Maharajah as per Section 9 (b) was the constitutional Head of the State of Manipur. The constitutional head of a State unless explicitly provided by the Constitution or implied by conventions do not possess the plenipotentiary or full powers or the capacity to conclude agreements independently. Even if he, as the constitutional head of the State, is presumed to have possessed plenipotentiary or full powers at the time of concluding the agreement, the agreement is not legally enforceable. It needs note that a parliamentary democracy was established under the MSCA, 1947⁵³ thereby implying such agreements concluded by executive authorities either nominal or real with another State in order to create legally enforceable and binding obligations must be ratified by the legislature of the signatory State. Giving signature to an agreement and ratifying it are two different things. An agreement to which a State or its representatives had put their signatures does not automatically create legally binding obligations. To create legally binding obligations upon Manipur under the above-mentioned SA and IOA, both the agreements must have been ratified by the Manipur National Assembly. Only then, the terms of SA and IOA would have entailed legal consequences for Manipur which is found to have not been the case.

As for the Merger Agreement of 21st September, 1949 two factual issues require juridical attention—employment of threats or use of force to obtain the signature of the Manipur Maharajah and non-ratification of the said agreement by the Manipur National Assembly. The Vienna Convention on the Law of Treaties, 1969 (VCLT) which codified the customary international law on treaty making generally gives clarification on the above-mentioned two factual issues. The first issue: employment of threats or use of force to obtain the signature of the Manipur Maharajah is dealt with under Articles 51 and 52 of the VCLT. Article 51 (VCLT) states:

“The expression of a State's consent to be bound by a treaty which has been procured by the coercion of its representatives through acts or threats directed against him shall be without any legal effect”.

Article 52 (VCLT) further provides:

“A treaty is void if its conclusion has been procured by the threat or use of

⁵²The meaning of “majority of the members present” as employed in Section 18 is 75% of the State Assembly by inference from Sections 7 and 30 of the MSCA, which is more or less equivalent to the special majority contemplated under Article 368 (2) of the present day Constitution of India.

⁵³Sections 10 (a), (d), 12, 17, 18, 26, 27, 28, 30 of Manipur State Constitution Act, 1947

<https://lib.ohchr.org/HRBodies/UPR/Documents/Session1/IN/COHR_IND_UPR_S1_2008anx_Annex%20IV_Manipur%20State%20Constitution%20Act,%201947.pdf> [accessed: 28-01-2020]; see also Aheibam Koireng Singh et al. (Eds.), *Self-Determination Movement in Manipur*, Conflict and Human Rights Studies Network, Manipur, Concept Pub. New Delhi: 2015, p. 165.

force in violation of the principles of international law embodied in the Charter of the United Nations”.

The fact that the Manipur Merger Agreement of 21 September 1949 was concluded by procuring threats or use of force is illustrated by the following events: The Telegram dated 18th September, 1949 sent to VP Menon, Secretary, Ministry of States, Government of India for Sardar Patel, Deputy Prime Minister, Birla House, Bombay by Sri Prakasa, Governor of Assam reads:

“... Had discussions with His Highness of Manipur this morning. HH threatens returning to Manipur without holding any discussions or signing agreement. *HH must not under any circumstance be allowed to return to Manipur with his advisers and I have accordingly instructed police to detain here his party if they attempt to return before signing of agreement.* Please telegraph immediately repeat *immediately authority for detention of HH and advisors under Regulation III or by whatever other means you consider might be appropriate. Have already warned sub-area to be prepared for any eventuality in Manipur. Grateful for further instructions ...*” (Das, 1973).⁵⁴

It must be also noted that detention of the constitutional head of the State of Manipur and his advisors under house arrest and cutting off all means of communications at Redlanes, in Shillong by the military personnel of the Government of India was first category occupation of Manipur. Redlands Palace or Manipur Rajbari in Shillong was a territory over which the sovereign State of Manipur had jurisdiction. The code under which Manipur’s Maharajah was detained was the State Prisoners Regulation also known as the Bengal Regulation III, 1818 or Regulation III in short was a preventive detention law used for “reasons of State” and “internal commotion” by the British Indian authorities to place individuals “under personal restraint” without subjecting to any immediate judicial review.⁵⁵ The armed and military activities of the Government of India and their agencies that led to the detention of the Maharajah and his advisors under Regulation III or “whatever means appropriate” constituted *prima facie* use of force against the political independence of the State of Manipur.

Acts amounting to occupation may not necessarily be an outcome of actual fighting or war between two States. It could be the result of threat to use of force that prompted the threatened government to concede effective control over its territory to a foreign power (Benvenisti, 1993).⁵⁶ Manipur’s Maharajah was not agreeable to certain conditions of the text of the Merger Agreement and was

⁵⁴Durga Das (Eds.) (1973), *Sardar Patel’s Correspondence: 1945-50, Foreign Policy in Evolution-Constitution-Making-Political and Administrative Problems*, Vol. III, Navajivan Publishing House, Ahmedabad, p. 528. Emphasis added.

⁵⁵Sections 1 and 2, the State Prisoners Regulation, 1818, <<https://www.constitutionaltribunal.gov.mm/lawdatabase/my/download/file/fid/1583>> [accessed: 20-01-2020].

⁵⁶Eyal Benvenisti (1993), *The International Law of Occupation*, Princeton University Press, Princeton, p.3.

under apprehension of use of force against him in case he refused to sign the treaty. He requested Prakasa, the Assam Governor to allow him to go back Manipur consult with the Manipur National Assembly without which he would not be able to sign the agreement (Chisti, 2005).⁵⁷ Sensing apprehension of a possible rebellion like that of 1891 in case the Maharajah was allowed to return to Manipur without signing the agreement, the Government of India had already tightened security arrangements along the borders of Manipur (Chisti, 2005).⁵⁸ In the meantime, Patel, the Deputy Prime Minister of India asked Prakasa: "... *is there no Indian Brigadier?*" (Parratt, 2005).⁵⁹ The Maharajah afraid of the use of force by the Government of India agreed to sign the agreement (Chisti, 2005).⁶⁰

The above-mentioned circumstances that occurred in 1949 under which the constitutional head of the State of Manipur was made to sign the Merger Agreement on 21st September and the abrupt dissolution of the popularly elected Manipur National Assembly on 15th October, it was clear that there were no actual fighting or war between Manipur and India compared to as what had occurred in 1891. Armed hostilities or resistance is not the determining factor of occupation of a territory. There can be occupation even if it was not offered immediate armed resistance from the side of the occupied territory.⁶¹ The occupation of Manipur was a result of a series of threats or use of force against the constitutional head of the State and elected Government by the Government of India. Such type of occupation took place in March 1939 when Germany occupied Bohemia and Moravia through the use of threats and persecutions by its military. Manipur Merger Agreement of 21st September, 1949 is equivalent to the Munich Agreement of 29th September, 1938 which was imposed upon the Czechoslovak President, Edvard Benes to accept ceding parts of its territory, Sudetenland to Germany (Waters, 2006).⁶²

The threats or use of force against the political independence or territorial integrity of a State by another State had been forbidden by the 1928 Kellogg-Briand Pact or the Paris Treaty.⁶³ This norm had been re-codified by Article 2 (4) of the UN Charter, and consistently reaffirmed in a number of resolutions adopted by the UN General Assembly⁶⁴ and Security Council⁶⁵ and also upheld by the International Court of Justice.⁶⁶ Over the years, the prohibition of threats

⁵⁷Chisti, *supra* note 7, p. 148.

⁵⁸Ibid, p. 149.

⁵⁹Parratt, *supra* note 6, pp. 115-16. Emphasis added.

⁶⁰Chisti, *supra* note 7, p. 149.

⁶¹Common Article 2, the Four Geneva Conventions of 12 August 1949.

⁶²Waters, Timothy W., "Remembering Sudetenland: On the Legal Construction of Ethnic Cleansing" 47 Virginia Journal of International Law 1 (2006), p. 70.

⁶³Article 1, General Treaty for the Renunciation of War (Kellogg-Briand Pact), Paris of 27 August, 1928,

<<http://ijl.org/wp-content/uploads/2016/08/General-Treaty-for-the-Renunciation-of-War-Kellogg-Briand-Pact.pdf>> [accessed: 20-01-2020].

⁶⁴Resolutions 42/22, the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, 1987; 2131 (XX); 2625 (XXV).

⁶⁵Resolutions 1291 (1999); 1304 (2000); 1756 (2007); 1794 (2007).

or use of force has acquired the status of customary international law.⁶⁷ The day on which Manipur's administration was taken over by the Dominion Government of India by coercive dissolution of its National Assembly is accounted as the beginning of occupation of the former's territory by the latter. 15th October, 1949 marked the occupation of Manipur by India.

For the second issue non-ratification of the said agreement by the Manipur National Assembly, the relevant provision is laid down under Article 14 (1) (c), VCLT which provides "[T]he consent of a State to be bound by a treaty is expressed by ratification when – the representative of the State has signed the treaty subject to ratification". Clause (d) of the same provision further states "the intention of the State to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation". Article 14 (2) also provides "[T]he consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification". Article 7 (2) (a) of the VCLT provides that Heads of State are considered as representing their State for the purpose of performing all acts relating to the conclusion of a treaty.

From the above-stated legal positions, the Manipur Merger Agreement signed between the Maharajah of Manipur and the Government of India on 21st September, 1949 fail to stand the tests of legality and validity. Even if it is presumed under Article 7 (2) (a), VCLT that the Maharajah as the constitutional head of the State of Manipur had full powers to conclude a treaty by convention, the detention of the Maharajah under house arrest and cutting off all the means of communication preceding the signing of the agreement first constituted threats directed against him (Head of a State) to procure his signature as per Article 51 of the convention. Since the conclusion of the treaty of 21 September 1949 had been procured by the threat or use of force against the Manipur Maharajah it is void as per Article 52 of the VCLT.

Second, the conveyance by the Maharajah that he did not possess treaty making power or his executive authorities had been transferred to the Council of Ministers under and subject to the provisions of the MSCA, the Maharajah, at the least, could be presumed to have had the "intention" "to sign the treaty subject to ratification" or "approval" as "expressed during the negotiation" as per Article 14 (1) (d), VCLT. Since the Council of Ministers ceased to function and Manipur National Assembly stood dissolved on 15th 1949 through the Manipur Administration Order, no ratification took place on the agreement. Quite contrarily, the Manipur National Assembly resolved to denounce the Merger Agreement and its non-bindingness.⁶⁸ The month preceding the signing of Mer-

⁶⁶The International Court of Justice has described the prohibition against the use of force as a "cornerstone of the United Nations Charter", see *Democratic Republic of the Congo v. Uganda*, ICJ Reports 2005, pp. 16, 223.

⁶⁷See e.g. Skubiszewski, "Use of Force", p. 745, and L. Henkin, R. C. Pugh, O Schachter and H. Smit, *International Law: Cases and Materials*, 3rd edn, St Paul, 1993, p. 893. See also the Third US Restatement of Foreign Relations Law, St Paul, 1987, p. 27; Cot et al., and Simma, *Charter*, p. 112.

ger Agreement witnessed strong protests and resolutions from Hill and Muslim members of the Manipur Assembly.⁶⁹ The requirements of Article 14 (1) (c) and (d), VCLT have not been met. At best, it was an agreement that was imposed upon the people of Manipur by the Government of India. Thus, the Merger Agreement was null and void without any legality or validity.

4. Annexation of Manipur

The general norm of prohibition of annexation of territory is derived from Article 2 (4) of the UN Charter which forbids threats or use of force against the political independence or territorial integrity of a State. The UN had elaborated the prohibition thus: “the territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognised as legal”.⁷⁰

Annexation is an act of the occupying power of acquiring all or part of the occupied territory and incorporating in its own territory. The annexing State intends to succeed the totality of rights attributable to the sovereignty of the dismembered State in the territory annexed.⁷¹ It involves the threat or use of force as the annexing State usually occupied the territory in question to assert its sovereignty over it.⁷² Occupation even in case of a war cannot imply any right whatsoever to dispose of the occupied territory.⁷³ That is the occupying power does not have any right to deal with the occupied territory and its people in the way it wants. Occupation does not entitle the occupying power to annex or secede whole or part of the occupied territory.

The International Court of Justice clarified: “For there to be an annexation in international law the substantive requirement is that one State should conduct itself in relation to territory which is not its own in such a way as to manifest an intention to extend to that territory, on a permanent basis, all essential elements of its own State authority, to the exclusion of the authority of any other State. This may be achieved by a formal act of annexation leaving no doubt as to that intention ...”⁷⁴

In almost all the cases of occupation followed by annexation, two common

⁶⁸Resolution No. 3, *Proceedings of the 4th Sitting of the 3rd Session of the First Manipur State Legislative Assembly Assembled under the Provisions of the Manipur State Constitution Act, 1947*, published by the Manipur State Press, G-100/14-10-49

<<https://kapilarambam.blogspot.com/2016/08/manipur-merger-agreement-1949-full-text.html>> [accessed: 27-01-2020].

⁶⁹Parratt, *supra* note 6, p.115.

⁷⁰Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, UN GA Res. 2625 (XXV) 24 October 1970.

⁷¹Convention (IV) relative to the Protection of Civilians in Times of War. Geneva, 12 August 1949. Commentary of 1958, International Committee of the Red Cross,

<<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=C4712FE71392AFE1C12563CD0042C34A>> [accessed: 21-01-2020].

⁷²*Ibid.*

⁷³*Ibid.*

⁷⁴*Supra* note 10, para.5.104.

characteristics emerge: first, the formal incorporation of the occupied or annexed territory into the territory of the annexing State or Power and second, the extension of laws and institutions of the annexing State to that of the annexed territory. In some cases, these two features go hand in hand and are so intertwined sometimes making it difficult to draw a sharp distinction between the two. They have the effect of changing the status of both the territory and its people. Both the features are put to examine the annexation of the occupied territory of Manipur by the Union of India in the succeeding part.

4.1. Annexation or Formal Incorporation

After 15 August, 1947 there were three types of States out of British Indian Provinces and native States as classified by the Constituent Assembly of India: Part I States – representing formerly British Indian provinces under Governor’s rule; Part II States – formerly smaller native States that did not pose much problem in joining the Indian Union and Part III States formerly native States whose integration with India proved to be problematic either due to the desire of the rulers to exercise the option of independence or due to smaller size and numerically and geographically scattered and fragmented history (Singh, 2008).⁷⁵ Later in 1950, the States were organised under three different categories corresponding exactly to the above-mentioned characteristics under the names of Part A States, Part B States, Part C States (Singh & Kukreja, 2014).⁷⁶

Manipur was listed as a Part C State of the Union of India between 26 January 1950 and 1 November 1956.⁷⁷ By the Constitution Seventh (Amendment) Act, 1956 the *Territorial Councils Act, 1956* was enacted by which Manipur was placed as a Union Territory of India under the administration of a Chief Commissioner.⁷⁸ It needs mention here that the definition accorded to Manipur in Serial Number 19, First Schedule, Constitution of India as inserted in 1971 is a re-iteration of the above-mentioned provision of the 1956 Act. The reason why it had been stated that Manipur was a “territory which immediately before the commencement of this (Indian) Constitution was being administered as if it were a Chief Commissioner’s Province” was because the administration and governance of the State of Manipur was taken over by a Chief Commissioner under the Manipur Administration Order dated 15 October, 1949. The description of Manipur under Serial No. 19, First Schedule of the Indian Constitution does not in any case attempt to re-affirm its juridical personality as an independent and sovereign State before Indian occupation in 1949. Rather it serves to delink the independent and sovereign status of Manipur before 15 October 1949. It only confirms that the territory of Manipur existed under the administration of a

⁷⁵MP Singh, Reorganisation of States in India, *EPW*, vol. 43, No. 11 (Mar. 15-21, 2008), pp.70-75, 71.

⁷⁶Mahendra Prasad Singh and Veena Kukreja (2014), *Federalism in South Asia*, Routledge, New Delhi, p. 35.

⁷⁷States of India since 1947, <https://www.worldstatesmen.org/India_states.html> [accessed: 17-01-2020].

⁷⁸Serial No. 3, First Schedule, (II) The Union Territories, *The Territorial Councils Act, 1956*.

Chief Commissioner within the Indian legal system. Thus, the period immediately after the termination of the Government of Manipur and dissolution of the Manipur National Assembly on 15 October 1949, Manipur was placed under Part C State administered by a Chief Commissioner who was appointed by the Union Government of India.

Further, the Government of the Union Territories Act, 1963⁷⁹ which provided for establishment of Legislative Assemblies and Council of Ministers for Union Territories, continued to list Manipur as a Union Territory under Section 1 (h). The status of Manipur as a Union Territory came to an end on 20 January, 1972. By the NEA 1971, Manipur was formally established as a new State of India. Section 3 of NEA 1971, provides:

“Establishment of the State of Manipur: On and from the appointed day there shall be established a new State, to be known as the State of Manipur, comprising the territories which immediately before that day were comprised in the Union territory of Manipur”.

Section 9 (a) (ii) of the NEA 1971 further reaffirmed the administrative status of Manipur as that of a Chief Commissioner’s Province. Thus from 1950 to 1971, continuous efforts were made with regard to the administrative status of Manipur by the Union of India which indicates the intention of Indian Government to provide justification for the governance of Manipur permanently.⁸⁰ The implication is that it had sought to change the status of Manipur from an occupied territory to an annexed or incorporated territory or in the words of the Indian Union an ‘integrated’⁸¹ state. To the Government of India, the 1971 NEA could have been considered to cause settlement of the territorial status of Manipur under its municipal legal system. For this, the 1971 NEA could be accounted as the ultimate formal incorporation of Manipur into India or simply annexation. All these developments took place by suppressing and with utter disregard to the freely expressed wishes of the people of Manipur to decide their future by themselves.⁸²

⁷⁹<<http://www.lawsofindia.org/pdf/puducherry/1963/1963Pondicherry20.pdf>> [accessed: 28-01-2020].

⁸⁰Annexation can entail legal effects if the annexing State keeps the occupied area with a manifest intention of incorporating that area in its own territory, *see H. Lauterpacht (Eds.) (1953), Annual Digest and Reports of Public International Law Cases*, Butterworth & Co. Publishers, London, p. 60.

⁸¹A central criterion for integration to take place is the freely expressed wishes of the territory’s people acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage. *See Principles VIII and IX (b), UN General Assembly resolution 1541 (XV) Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 e of the Charter of 15 December, 1960.*

⁸²The Manipuris had denounced the Merger Agreement of 21 September, 1949 as without legality, *see Proceedings of the 4th Sitting of the 3rd Session of the First Manipur State Legislative Assembly Assembled under the Provisions of the Manipur State Constitution Act, 1947*, published by the Manipur State Press, G-100/14-10-49

<<https://kapilarambam.blogspot.com/2016/08/manipur-merger-agreement-1949-full-text.html>> [accessed: 27-01-2020].

4.2. Extension of Laws and Institutions

From 1950 onwards, laws of India were extended to Manipur.⁸³ Notably, Indian laws concerning civil, criminal, property, succession, etc. were also extended to Manipur.⁸⁴ Repressive legislations to which the people of Manipur have been subjected to includes 1) the Seditious Meetings (Prevention) Act, 1911; 2) the Armed Forces (Special Powers) Act, 1958 as amended in 1972; 3) the Punjab Security of the State Act, 1953; 4) the National Security Act, 1980; 5) the Unlawful Activities (Prevention) Act, 1967 and its amended version of 2019, etc.

These legislations seem to operate under the enabling environment of martial law established by Article 34 of the Constitution of India.⁸⁵ Of all these, the **Armed Forces Special Powers Act, 1958** (AFSPA) proved to be the most draconian instrument that legalizes impunity to extra-judicially execute people on mere suspicion. Section 4 (a) of AFSPA empowers the armed forces and military personnel of the Union of India to shoot to the extent of causing death on mere suspicion in a disturbed area. This law is also extended to other parts of North-eastern region⁸⁶ (Nagaland, Mizoram, Meghalaya, Arunachal Pradesh, Tripura and Assam) and also to former State of Jammu and Kashmir⁸⁷ where there are armed resistance movements against the Union of India.

The cumulative effect of all the above-mentioned legislative and administrative arrangements of the Government of India in the occupied territory of Manipur is that it has internalized the very issues of occupation and annexation by maintaining Manipur as an integral part of India. The issuance of Indian passports, driving licenses, voter identity cards and other documents to the occupied people of Manipur had the effect of changing their nationality from Manipuris to Indians. This has been a consequence of the incorporation of the territory of Manipur.⁸⁸ The implication of imposition of Indian nationality is that it carries with it the effect of extinguishing the national identity of the people of Manipur

⁸³Section 3, sub-section 2, **Union Territories (Laws) Act, 1950 (Act No. 30)** of 15 April, 1950 <<http://legislative.gov.in/sites/default/files/A1950-30.pdf>>, accessed 26-01-2020.

⁸⁴Section 3, sub-section 2A, **Union Territories (Laws) Act, 1950** as amended in 1956 (The States Reorganisation Act, 1956, No. 3705, <https://mha.gov.in/sites/default/files/The%20State%20Reorganisation%20Act%201956_270614.pdf>, accessed 26-01-2020.

⁸⁵Pannalal Dhar, *Preventive Detention under Indian Constitution*, Deep and Deep Publications, New Delhi: 1986, p. 161.

⁸⁶The **Armed Forces Special Powers Act, 1958** (11 September 1958), <<http://legislative.gov.in/sites/default/files/A1958-28.pdf>> [accessed: 24-01-2020].

⁸⁷The **Armed Forces (Jammu and Kashmir) Special Powers Act, 1990**, Act 21 of 1990 of 10 September, 1990, <https://mha.gov.in/sites/default/files/The%20Armed%20Forces%20%28Jammu%20and%20Kashmir%29%20Special%20Powers%20Act%2C%201990_0.pdf> [accessed 24-01-2020]. The former State of Jammu and Kashmir had been dismembered by bifurcating into two territorial divisions known as the Union Territory of Jammu and Kashmir and Union Territory of Ladakh, see Sections 2 (g), 3 and 4 of the **Jammu and Kashmir Reorganisation Act, 2019 (No. 34 of 2019)** entered into force on 9 August, 2019, <<http://egazette.nic.in/WriteReadData/2019/210407.pdf>> [accessed: 28-01-2020].

⁸⁸Section 7, **Citizenship Act, 1955 Act 57 of 1955 of 30 December, 1955**, <<https://www.refworld.org/docid/3ae6b57b8.html>> [accessed: 31-01-2020].

and their aspirations for an independent statehood. This is in clear violation of Article 47 of the Fourth Geneva Convention which prohibits the change in the status of the people in the occupied territory and also Article 45 of the IV Hague Regulation, 1907 which prohibits compulsion of the inhabitants of occupied territory to swear allegiance to the occupying State.

Besides, the administrative structure which has been set up in the territory of Manipur have been oppressive, bureaucratic and operates to strengthen military rule of the Union of India. Civil administration is dependent on India's military to carry out its normal functions. This is testified by the operation of AFSPA since 1958 and which continues to extend after review for every six months.⁸⁹ The case of *Extra-Judicial Execution Victim Families Association v Union of India*⁹⁰ had brought to the fore of 1528 cases of extra-judicial executions in the territory of Manipur from May, 1979 till May, 2012 carried out by Indian armed and security forces. Thus, India's occupation of the territory of Manipur in 1949 was followed by its annexation through a series of arrangements till 1972 when it was incorporated into its polity as the 19th State.⁹¹ International law prohibits acquisition of territory through threats or use of force.

Annexation amounts to an act of aggression which is forbidden by international law. The NEA 1971 which had incorporated Manipur as the 19th State or administrative unit of India stipulated in its preamble that it was "to provide for the establishment of the State of Manipur..." By this Act, Manipur was established as a new State or administrative unit of India. The "establishment of the State of Manipur" by the Indian Parliament has the political implication to imply that Manipur's historical existence as an independent State was derecognized. It has the effect of obliterating the existence of the people of Manipur and their nationhood as an independent political entity. It derecognizes Manipur's juridical personality before 1949.⁹²

5. Situations of Occupied Territories

A summary analysis of certain well-known situations of territorial occupation is

⁸⁹Notification, dated 6 January, 2020, Home Department, Government of Manipur, issued by orders and in the name of the Governor of Manipur,

<https://mha.gov.in/sites/default/files/NEdiv_AFSPAManipur_22012020.pdf> [accessed: 24-01-2020].

⁹⁰13 July, 2016, Writ Petition (Criminal) No. 129 of 2012, para.175,

<<https://indiankanoon.org/doc/83144198/>> [accessed: 24-01-2020].

⁹¹The characteristics of annexation had been described by the International Court of Justice in the Wall case: "As an international law concept, annexation and other changes of status are not necessarily instantaneous events, taking effect, for example, upon the promulgation of a proclamation of annexation: they may occur as the final outcome of a cumulation of occurrences, spread over time. In the field of expropriation of private property the notions of "creeping expropriation" or "indirect expropriation" are well-known and have been treated by arbitral tribunals as no different from direct and formal expropriation of property. There is no reason in international law to treat the taking of territory by way of de facto annexation any differently", see supra note 10, para.5.106.

⁹²Derecognition may arise as a result of a State's territorial absorption by another State such as Poland's dismemberment in the eighteenth century, see Robert J. Delahunty, *Statehood and the Third Geneva Convention*, *Virginia Journal of International Law*, Forthcoming; *U of St. Thomas Legal Studies Research Paper No. 05-06* <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=813425> [accessed: 31-01-2020].

undertaken to clarify the status of the territory of Manipur since 1949. For this, the focus is primarily placed on the political circumstances under which occupations of the territories occurred and their socio-legal implications on the people of the occupied territories and their status in international law as reflected in the decisions of the International Court of Justice.

5.1. Palestine

The State of Israel began its occupation of Palestine on 6 June, 1967, an area three times larger than its original size. It commenced with implantation of Jewish settlers since 1882 reaching its peak in the form of ethnic cleansing in 1948 (Peters & Newman, 2013).⁹³ The idea of a “Greater Israel” was itself a manifestation of the Zionist philosophy which began to gain political fervor in 1960s (Mendels, 1987).⁹⁴ The extension of laws of the State of Israel took place in 1967 by placing Jerusalem under Israeli civilian administration. The Law and Administrative Ordinance (Amendment No. 11), June 27, 1967 extended “[t]he law, jurisdiction, and administration of the State of Israel to any area of *Eretz* Israel (Palestine) designated by the Government by order”.⁹⁵ Israel’s Government passed Administrative and Judicial Order No. 1 the following day, extending Israel’s law, jurisdiction and administration to East Jerusalem (Mendels, 1987).⁹⁶ Since 1967 civil war, Israeli nationals had been allowed to enter the territories of West Bank, the Golan Heights, the Gaza Strip and Sinai freely by a regulation promulgated by the Israeli Ministry of the Interior. The Arab States interpreted these measures as an attempt to lay the groundwork for future annexation of the regions concerned (Palestine) (Gerson, 1978).⁹⁷

On June 7, 1967 the military command in the West Bank issued Proclamation No. 2 under which the Government of West Bank was assumed by the Israeli military.⁹⁸ The movement of the Court of Appeals later in 1967 from its seat in Jerusalem to Ramallah resulted in refusal of appearance of West Bank advocates. The act of Israel extending its civil jurisdiction and administration to East Jerusalem (Palestine) was immediately condemned by the international community as violative of international law and resolutions adopted by the UN Security Council. The UN had consistently accounted the presence of Israel in the West Bank since 1967 as an occupied territory, for instance Security Council Resolutions 636 (1989) referred to Israel as “the occupying power” and to the territories

⁹³Joel Peters and David Newman (Eds.) (2013), *The Routledge Handbook on the Israeli-Palestinian Conflict*, Routledge, London, pp. 17, 51, 366.

⁹⁴Doron Mendels (1987), *The Land of Israel as a Political Concept in Hasmonean Literature: Re-course to History in Second Century B. C. Claims to the Holy Land*, J.C.B. Mohr (Paul Siebeck) Tübingen, Germany, pp. 121-130.

⁹⁵<http://www.hamoked.org/images/1161970_eng.pdf> [accessed: 17-01-2020].

⁹⁶Mendels, *supra* note 94, at p.112.

⁹⁷Allan Gerson (1978), *Israel, The West Bank and International Law*, Frank Cass, New York, p. 210.

⁹⁸Concerning the Assumption of Government by the Israel Defense Forces, <<http://nolegalfrontiers.org/military-orders/mil039ed2.html?lang=en>> [accessed: 25-01-2020].

in question as “the occupied territories”.⁹⁹

5.2. East Timor

The Apodeti (Timorese Popular Democratic Association), a pro-Indonesian group which spearheaded the anti-communist movement (MAC) took the leading role in mobilizing support to integrate East Timor into Indonesia.¹⁰⁰ Indonesian full scale military intervention began on 24 September 1975. The day also marked the beginning of full Indonesian occupation of East Timor.¹⁰¹

The annexation of East Timor by Indonesia was legally formalized on 17 July 1976 when President Suharto signed a bill designating East Timor as Indonesia’s 27 Province. Subsequent decrees transformed the Provisional Government into a provincial government and restructured the administrative system of the new province along Indonesian lines.¹⁰² Indonesia’s interests in bringing East Timor under Indonesian influence was expressed as early as July 1945 by nationalist historian Muhammad Yamin’s “*Greater Indonesia*” concept echoed widely during the Sukarno era which envisaged hegemony over parts of Malaysia, the Philippines and definitely the East Timor.¹⁰³

It must be noted that on the question of East Timor the UN had rejected Indonesia’s “...claim that East Timor has been incorporated into Indonesia, inasmuch as the people of the Territory have not been able to exercise freely their right to self-determination and independence”.¹⁰⁴ This is further reaffirmed when the International Court of Justice ruled “... [T]he Territory of East Timor remains a non-self-governing territory and its people has the right to self-determination”.¹⁰⁵

5.3. Western Sahara

Consequent upon the Tripartite Madrid Accord, Spain withdrew from Western Sahara on 28 February, 1976 and Morocco and Mauritania had acquired the right to administer the territory (Geldenhuis, 2009).¹⁰⁶ Both Morocco and Mauritania had intentions to dismember and incorporate Western Sahara in their own political systems. This was achieved through the Legislative Assembly of

⁹⁹UN Security Council resolutions in similar lines includes 641 (1989), 672 (1990), 694 (1991), 762 (1992), 799 (1992) and 904 (1994); General Assembly resolution 43/21 of 3 November 1988 reiterated the same points as those mentioned to SC Res. 636 (1989) SC Res. 1322 (2000) referred to Israel as the “occupying power” and to the territories in question as those “occupied by Israel since 1967”. The UN had characterized the Israeli occupation of territories occupied since 1967 as illegal in GA Res. 32/20 (25 November 1977 and 33/29 (7 December 1978) see supra note 97.

98.

¹⁰⁰J. Stephen Hoadley, *Indonesia’s Annexation of East Timor: Political, Administrative, and Developmental Initiatives*, *Southeast Asian Affairs*, 1977, 133-142, 134.

¹⁰¹*Ibid*, at p. 136.

¹⁰²*Ibid*, at p.133-142.

¹⁰³*Supra* note 100, at p. 133.

¹⁰⁴UN GA Res. 31/53 of 1 December 1976 and 32/34 of 28 November 1977.

¹⁰⁵*East Timor (Portugal v Australia)*, *Judgment*, *ICJ Reports* 1995, p. 90, paras.31, 37.

¹⁰⁶Deon Geldenhuis (2009), *Contested States in World Politics*, Palgrave Macmillan, London, p. 193.

Western Sahara known as *djemaa*, which was used as their stalking-horse. By a vote of 65 out of 102, an extraordinary meeting, convened by Morocco, of the *djemaa* voted to ratify the 1975 tripartite Madrid Accord and also to approve the integration of Western Sahara into Morocco and Mauritania on 26 February, 1976. The assembly's decision was interpreted as the exercise of the right to self-determination of the Sahrawis by both Morocco and Mauritania.¹⁰⁷ Morocco annexed parts of Western Sahara formerly occupied by Mauritania after the latter's withdrawal in 1979. Territories and populations torn away by colonial usurpation had been reintegrated into the Moroccan State.¹⁰⁸

The Moroccan nationalists had as early as advocated the "*Greater Morocco*" concept which included the whole of Western Sahara.¹⁰⁹ Various agreements between the European Union and Morocco concerning free trade regimes, investments, exploitation of resources had been extended to the territory of Western Sahara. The case of Western Sahara under Morocco's rule has been categorised by the UN as "continued occupation" as early as 1979 (UN GA resolutions 34/37 of 21 November, 1979 and 35/19 of 11 November, 1980). The European Court of Justice arose to declare that the "territory of the Kingdom of Morocco did not encompass Western Sahara".¹¹⁰ It needs to recall that the International Court of Justice had stated that the territory of Western Sahara being not a terra nullius, there existed no tie of territorial sovereignty between Western Sahara and Morocco or Mauritania.¹¹¹ Thus the Morocco's claims of sovereignty over Western Sahara was held invalid.

6. Conclusion

In India's occupation of Manipur, the Manipur State Congress played the role of the stalking-horse similar to that of Apodeti in East Timor. India's 1971 North-Eastern Areas (Reorganisation) Act is equivalent to Indonesia's Statutory Law (Undang-Undang) no. 7 of 17 July, 1976 in so far as both the laws incorporated the territories of Manipur and East Timor into the Union of India and Indonesia respectively. Israel's Law and Administrative Ordinance (Amendment No. 11) of June 27, 1967 and the Administrative and Judicial Order No. 1 of June 28, 1967 are equivalent to *Union Territories (Laws) Act, 1950* of 15 April, 1950 and *Union Territories (Laws) Act, 1950* as amended in 1956 of India. Israel's Proclamation No. 2 on West Bank Concerning the Assumption of Government by the Israel Defense Forces is equivalent to the 1958 Armed Forces Special Powers Act of India.

The situation of Manipur from 1949 onwards has been that of an occupied territory followed by the ultimate annexation or incorporation by the Union of

¹⁰⁷ *Ibid*, at pp. 193-195.

¹⁰⁸ *Ibid*, p. 195.

¹⁰⁹ *Ibid*, p. 191.

¹¹⁰ *Council of the European Union v. Fron populaire pour la liberation de la sagaia-el-hamra et du rio de oro* (Front Polisario) and European Commission (C104/16 P, ECLI:EU:C:2016:973), Judgment of 21 December 2016, para.114, see also Polisario Tries EU Council over EU-Morocco FPA.

¹¹¹ *Western Sahara, Advisory Opinion, ICJ Reports 1975*, 16 October 1975, paras.129, 150, 162.

India in 1972. From the standards of international law and particularly under the legal order of the UN Charter and international humanitarian law, India's continued unlawful presence in Manipur represents an illegal territorial regime with intention to change the international status of the territory of Manipur as well its government system and demographic characteristics. Israel's pursuit of acquisition of the territory of Jerusalem and Palestine rendered its continued presence as an occupying Power unlawful.¹¹² In similar vein, India's pursuit of territorial acquisition renders its continued presence as an occupying State in Manipur unlawful. The Supreme Court of India in *Rev. Mons. Monteiro v. State of Goa* stated "... occupation cannot cease by a unilateral act of annexation by incorporating the territories ..."¹¹³

Incorporation of Manipur as the 19th State of India did not signal the end of Indian occupation. The amendment of the Constitution only legalizes annexation so far as India is concerned but in international law the territory remains occupied.¹¹⁴ Thus it follows that the 1971 North-Eastern Areas (Reorganisation) Act only legalizes annexation so far as India is concerned, without altering the status of the territory of Manipur which in international law continues to remain occupied. "Occupation does not come to end by annexation ... [but] continues till there is either cession of the territory or withdrawal of the occupying power from the territory ..."¹¹⁵ The Merger Agreement of 21 September, 1949 was denounced as without any legal validity.¹¹⁶ A Manipur People's Convention held in 1993 had also reiterated the same position (Singh and Sharma).¹¹⁷ In 1999 Manipuri people drew the attention of the international community to include the territory of Manipur as a non-self-governing territory under Chapter XI of Charter of the UN.¹¹⁸

The unilateral dissolution of Manipur National Assembly on 15 October 1949 clearly testified that the Government of India disrespected the voice of the people of Manipur. It was to facilitate occupation of Manipur by India and was

¹¹²*Legal Consequences of the Construction of a Wall in the Occupied Palestine Territory, Advisory Opinion, ICJ Reports 2004, p. 136, para.5.53.*

¹¹³Supreme Court Reports, 87-102 (1970).

¹¹⁴*Ibid.* See also Speech of Mr. E.D. Culver of New York In the House of Representatives, January, 1846 opposing the US annexation of Texas, 29th Congress, 1st Session, 1846, in Blair and Rives, Appendix to Congressional Globe for First Session, Twenty-Ninth Congress: Containing Speeches and Important State Papers, Washington, 1846, p. 194.

¹¹⁵Article 47, Fourth Geneva Convention Relative to the Protection of Civilians in Time of War of 12 August 1949, 75 UNTS 287. See also Dieter Fleck (Eds.) *The Handbook of The International Humanitarian Law*, Second Edition, OUP, 2008, p. 283.

¹¹⁶Proceedings of the 4th Sitting of the 3rd Session of the First Manipur State Legislative Assembly Assembled under the Provisions of the Manipur State Constitution Act, 1947, published by the Manipur State Press, G-100/14-10-49

<<https://kapilarambam.blogspot.com/2016/08/manipur-merger-agreement-1949-full-text.html>> [accessed: 27-01-2020].

¹¹⁷Aheibam Koireng Singh and Skhudeba Sharma Hanjabam (Eds.) (2014), *Annexation of Manipur 1949*, Forward Books, New Delhi, p. 131-132.

¹¹⁸Declaration on Manipur People's Solidarity with the United Nations, UN Day Rally, Imphal, 24 October, 1999, <<http://www.oocities.org/capitolhill/congress/4568/documents/rally9912.html>> [accessed: 27-01-2020].

an act of subjugating and oppressing a people, their nationhood, political independence and sovereignty. The day on which Manipur's administration was taken over by the Dominion Government of India by coercive dissolution of its National Assembly is accounted as the beginning of occupation of the former's territory by the latter. 15th October, 1949 marked the occupation of Manipur by India.

The 1971 North-Eastern Areas (Reorganisation) Act could be accounted as the instrument by which India annexed Manipur in international law. The 'establishment of the State of Manipur' by the Indian Parliament has the political implication to suggest that Manipur's historical existence as an independent State was derecognized. It has the effect of obliterating the existence of the people of Manipur and their nationhood as an independent political entity. It derecognizes Manipur's juridical personality before 1949.

The cumulative effect of all the legislative and administrative arrangements of the Government of India since 1949 in the occupied territory of Manipur is that it has internalized the very issues of occupation and annexation by maintaining Manipur as an integral part of India within the normativity of Indian municipal legal system. The imposition of Indian laws to the occupied people of Manipur had the effect of changing their nationality from Manipuris to Indians. Prolonged unlawful occupation and subsequent annexation of a territory while attracting rules of international law bring in political implications of a serious character especially on the lives of people of the annexed territory. Obliterating the sovereignty of a State through annexation by the occupying power tends to derecognize a people and their nationhood of its earlier historical existence as a politically independent entity while imposing a new sense of belongingness and allegiance to a foreign rule. The implication is that it carries with it the effect of extinguishing the national identity of the people of Manipur and their aspirations for an independent statehood. Manipur continue to remain a territory under India's occupation since 1949 notwithstanding the annexation by the latter in 1972 in international law.

Acknowledgements

The author is grateful to the comments offered by Dr. Amritha V. Shenoy, Assistant Professor, Kathmandu School of Law, Nepal and Furkan Makakmayum, Research Scholar, Department of Political Science, Manipur University, Canchipur. All errors remain mine.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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