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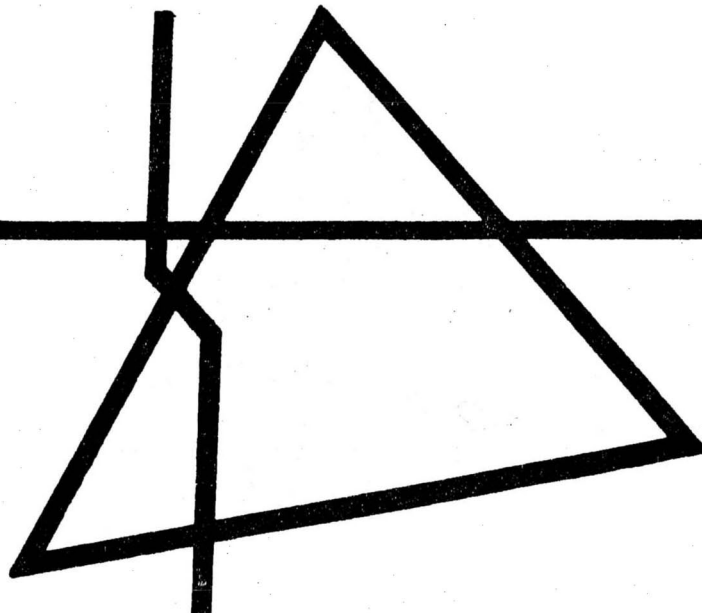
Miscellaneous Work Papers

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CONSIDERATIONS ON THE RIGHTS OF
SPAIN OVER THE CAROLINE ISLANDS

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Foreword

Students enrolled in the Pacific Islands Program of the University of Hawaii submit papers in their academic courses which, in their respective ways, represent a contribution to existing knowledge of the Pacific. They are properly classified as "work papers."

Each year the Pacific Islands Program plans to duplicate inexpensively a few of such student papers whose contents appear to justify a wider distribution than that of classroom contact. Their subjects will be as varied as is the multi-disciplinary interests of the Program and the wealth of cooperation received from the many Pacific-interested faculty members of the University.

For this paper of Ms. Patricia Bieber, the assistance of Professor Edgar C. Knowlton, Jr., of the Department of European Languages is gratefully acknowledged.

CONSIDERATIONS
ON THE RIGHTS OF SPAIN
OVER THE
CAROLINE ISLANDS

By Rafael Gracia y Parejo

Madrid
Establecimiento Tipographico
de Gregorio Juste
1885

Translation and Introduction
by Patricia Bieber

Introduction

How did Germany come to be in the Carolines in the late 1800's? What were her rights? What were her motives?

Germany was very late upon the scene as a colonial power. She had been active in the Pacific for some time on a commercial basis, making incursions into the Carolines since the 1850's. In 1869 she had acquired 3000 acres on Yap for use as a way station between Samoa and Cochin to serve as a center for her Caroline-Marshall-Marianas trade (1). She was preoccupied for a time with the Franco-Prussian War, but thereafter her interest in the area was renewed and she became a more persistent presence in the area.

This increased presence was seen by Spain as a threat to her interests in the Philippines. (Spain had laid claim to the Carolines from the time of initial discovery in the early 1500's, but had made no attempt to occupy or administer them.) As a result of Germany's renewed activity in Micronesia, in 1873 Spain demanded that all merchant ships bound for the Carolines stop in the Philippines to receive permission to trade there and to pay customs and licensing fees.

The Germans refused to comply and referred the matter to their government. An official protest was made by the German Government to Spain in 1874, in which it was joined by Great Britain in 1875. Germany made a statement of non-recognition of Spanish sovereignty, saying that Spain had never occupied the islands she was now claiming as her own (2). Germany asserted, too, that to be required to detour out of the way to the Philippines on each trip was a ridiculous expectation and

(1) W.P. Morrell, Britain in the Pacific Islands (Oxford, Clarendon, 1960), p. 267.
(2) Maria Teresa del Valle, "The Spanish-German Conflict over the Carolines."
(Unpublished Mss., Pacific Collection, University of Hawaii, 1972), p. 2.

one not likely to be honored.

The denial of both the German and English Governments to the Spanish claim was reinforced later in an application of the doctrine of the Berlin Conference of 1884, which declared as no man's land those territories not actually occupied by a colonizing country. Since Spain had not so exercised her rights of sovereignty in the Carolines, it was implied that they were open to occupation by any country.

At the time of the German and British protests, Spain remained silent to these claims. Later, this lack of response would be used against her. In Spain's defense, it must be noted that she was occupied at home with other more serious matters, political disruptions which made these incidents seem very unimportant by comparison (3). She did not remain silent, however, when the German taking of actual possession, in 1885, ignited a patriotic flame and aroused public opinion within Spain.

In the intervening period between the original protest and the physical possession of islands in the Carolines by the Germans in 1885, Spain had made plans to occupy the Carolines. In 1885, she dispatched a warship to take possession in the name of Spain. However, due to a variety of factors, the Germans preceded the Spanish ship to Yap and took formal possession a few days before it arrived.

Since Spain had advance warning of the German intentions, one might well ask how it was that she was so slow to respond to the imminent danger, and particularly how it was that she was beaten to the punch? Del Valle suggests that a change of governors in the Philippines may have been a factor, as well as the Spanish propensity for pomp and circumstances in ceremonial occasions, which contributed to slowness of preparation. Another possibility was that they were busy gathering

(3) Ibid., p. 3.

garments with which to clothe the nude bodies of the Carolinians, a project which is referred to in documents of the time (4).

Withal, Germany became busily engaged in establishing herself on Truk, Ponape, Kusaie and some lesser islands, as well as on Yap. She annexed the Marshall Islands as well, and went unopposed there. However, her endeavors in the Carolines resulted in a protest by Spain and a request for arbitration by Pope Leo XIII. The Pope became the arbiter for the Spanish-German question at the suggestion of Germany, it having been said that this was the only referee satisfactory to Spain (5). Be that as it may, only his adjudication prevented a serious international incident.

On October 22, 1885, the Pope declared for Spain. As a result of his decision, Germany and Spain signed a protocol confirming Spain's sovereignty over the Carolines including the Palaus. He ordered Spain to establish an orderly government over these islands with military presence sufficient to maintain the peace, and guarantee to Germany complete liberty to trade in the area without paying fees of any kind (6). Germany was given freedom to fish, establish settlements and coaling stations, as well. So, although Spain gained recognition as sovereign, it was a Pyrrhic victory, for she inherited all the responsibilities and attendant expenses, while Germany was afforded all the privileges without the responsibilities. Germany complied with the Pope's decree and withdrew her claims to the Carolines. In 1886, Spain sent two warships to the Carolines to raise the Spanish flag and Ponape was made the administrative center.

All this sets the scene for the translated tract, written by Rafael Gracia y Parejo, a Spanish attorney. Mr. Gracia's presentation is scholarly, if

(4) Ibid., p. 8.

(5) Op. cit., Morrell, Britain in the Pacific Islands, p. 268.

(6) U.S. Department of State, Papers Relating to the Foreign Relations of the United States, 1886 (Washington: Government Printing Office, 1887) p. 776-7.

ponderous and verbose. His legal background dominates the document, which is an apologia for the Spanish view of the controversy.

The author begins by stating the situation as viewed by a Spaniard at the time of the original German challenge. We may forgive him his excessive chauvinism by remembering the high feeling attending this incident.

Part two deals with the subject of German colonization as treated by a German professor of public law. The principal points are:

- a. All developed nations since the Phoenicians have founded colonies.
- b. Arguments in favor of colonies:
 1. Emigration of surplus population from the mother country.
 2. Commerce; the natural resources of the underdeveloped country are exchanged with the finished goods of the civilized country. "The richness of a nation is augmented in proportion to its expansion and the commerce which renders greatest benefits is the one which supports an extremely civilized nation with another country rich in natural resources but underdeveloped."
- c. How Germany is eminently qualified to be a colonial power:
 1. Industry highly developed.
 2. Businessmen throughout the world.
 3. Third largest merchant marine.
 4. Explorations.
 5. Berlin the center of high politics.
- d. There is unused space available in the world; saying that Germany's presence in the Carolines might constitute a menace is no argument. It has never impeded any other nation from founding colonies, so it will not be a consideration which Germany can seriously entertain.
- e. History of German colonization in Africa. Economic efficacy still in question, but they have established Germany as a colonial power and she intends to continue on this tack.

Until now, only commercial colonies have been founded, because tropical countries do not lend themselves to emigration. But they cannot be run by traders and merchants; need of government's open protection to keep markets open.

Part three is an exposition of the theories of famous treatists of international law of the time. Because of the nature of the discussion, it has been deleted from the translation, it being believed that the subject matter is too

legalistic for substantive help to the researcher in his study of the subject.

Dealt with are such questions as:

What constitutes "effective occupation?" What is an "uninhabited and ownerless" land? Can a country take legal possession without physical occupation? Is leaving a sign of having taken possession tantamount to possession? Does this suffice to acquire or hold exclusive ownership of a country that is not then developed? Does the right of ownership exist without the State's keeping corporeal possession?

One suspects that the author selects both his experts and his quotations from their findings so as to support his country's position. The interweaving of argument and the intricate logic employed suggests a legal brief presented before the court of public opinion.

Part four supplies an historical account of the Conference of Berlin of 1884, called at the behest of Germany who wished to resolve differences with France, occasioned by the former's recent acquisitions on the west coast of Africa, juxtaposed with French possessions. One matter to be resolved was a definition of the formalities to be observed in order for new occupations of the African coast to be considered effective. Resolutions adopted were not to be applicable to occupations made before the Conference. This constitutes a major point made by our Spanish author, because Germany used the Conference as her authority for claims in the Caroline Islands in 1885 (7).

Next we are involved in a legal discussion with regard to the rights of Spain in the matter under consideration. The author theorizes that the concept of effective occupation as a condition of acquiring dominion is a modern one, not yet an established part of international law. He cites the nonconformity of the quoted experts to substantiate his claim, and makes the point that if, indeed, international law were clear on this point, a conference would not have been

(7) del Valle, "The Spanish-German Conflict", p. 2.

called to try to clarify the issue.

Mr. Gracia closes by reiterating his argument that Spain was the first country to discover the Carolines and that a government has been maintained on Guam which has held sway over the area.

One of the most valuable portions of the tract is to be found in the appendix, which consists of translations of the correspondence between the parties to the dispute and quotations from the European press attesting to the shock and dismay of all Europe at Germany's actions.

It may be a major weakness in Mr. Gracia's argument that he first argues that Spain had prior right which preceded the Conference of Berlin, so that she was not subject to its determinations. But next he defends Spain against the charge that she fits the description of a country which does not occupy, effectively, territories which she claims. One has the feeling that the author is attempting to defend against all arguments, anticipating possible feints from any direction.

The most powerful arguments mustered in support of the Spanish position consist of a long history of accepted fact, documented again and again, that the Carolines were part of the Spanish Empire, as authenticated by Royal Decrees, Papal Bulls, geographic descriptions, expeditions, maps, censuses and the like.

The reader may find it difficult to accept or reject the author's thesis on his country's behalf without having an equal opportunity to investigate Germany's stand in like manner. Such a study must need await the translator's mastery of the German language. Until then, this political exposition of the Spanish position in the controversy serves to cast additional light on a shadowy moment in history.

What was the official posture of the United States in this controversy? There is evidence that she was looking after the interests of her citizens in private disputes, but her concerns did not include territorial designs on Micronesia. She expressed her lack of strategic interest in a communication to the

Spanish Government in 1886, in which she stated, also, that Spain's sovereignty over the Carolines had never been contested by the United States (8).

Similarly, in an exchange of correspondence between Her Majesty's representative, the Marquis of Salisbury, and the Spanish ambassador, Maurice de Bunsen, England expressed only the "desire to participate in all the advantages which may accrue to Germany from any Convention which may be concluded between that Power and Spain for the settlement of the vexed question of the right of sovereignty over the so-called Caroline and Pelew Islands." Her Majesty's Government anticipated that the Spanish Government would readily comply and in return, Her Majesty's Government would be quite disposed to recognize the sovereignty of Spain over the islands in question.

Further correspondence resulted in an agreement to these terms, with the exception of the provision of a naval base in the area, which was granted Germany. A protocol to this effect was signed 8 January 1886 (9).

In April of the same year, England and Germany reached an agreement on the extent of their spheres of influence. The Anglo-German Demarcation Line clearly left the Carolines (including Palau), along with the Marshalls, on Germany's side of the line and the Gilbert and Ellice Islands to Great Britain (10).

It is interesting to draw a parallel between events in the 1880's and the situation in Micronesia today. What would happen upon the United States ceasing "effective occupation" of the area? Would another 20th century Power move in to fill the vacuum? If given the choice, whom might Micronesia invite to serve as her mentor and underwriter with the United Nations Trusteeship terminated? It is

(8) U.S. Department of State, Papers Relating to the Foreign Relations of the United States, 1886, Washington, Government Printing Office, 1887, pp. 831-2.

(9) Great Britain, Parliament, Sessional Papers (House of Commons), 1886, volume 73, p. 167.

(10) Op. cit., Morrell, p. 259.

hard to conceive of America willingly allowing all of this to happen, but if such were to occur, one fact is manifestly plain: if Micronesia excited interest among 19th century Powers, how much more does she do so today. Given her strategic position and internal weaknesses, Micronesia's fate ultimately lies in the hands of others, as it has since the first sighting by Espinosa in 1522.

Considerations on the Rights of Spain Over the
Caroline Islands.

I. Our Purpose

For some time in the press and public, rumors have been attributing the intention of establishing a foothold in our Philippine Archipelago to the German Government, their being covetous of the natural riches of that territory and its advantageous position for commerce from the remote East and Oceania.

It is difficult to fathom the souls of others to discover secret intentions therein. But when intentions manifest themselves in outward and tangible form, then the suspicion may become reality. One discovers that even if public opinion and the remarks of the press were not based on well-founded and direct information concerning the supposed schemes, still their conclusions proved sound and a more solid base, perhaps, upon which to orient oneself toward future events, than the reports and confidential information, not always sincere and exact, about the deliberations pondered in the cabinets and chancelleries of the Great Powers.

A short time after the Franco-Prussian War, talk arose of Germany's keen desire to possess colonies. Perhaps the first desire imputed to her was the acquisition of possessions in the Philippines, by which probably the Chancellor proposed to begin brilliantly the course of his colonial triumphs, certainly hoping that his fortune there would be as propitious as in his undertakings on the Continent.

In 1875 because, it appears, a Spanish functionary had demanded that the German ship, the Coervan, pay certain fees for its commerce in the Carolines and Palaus, the German Government directed a note to the government of Spain in which it declared, on the one hand, that it did not find itself in a position to recognize our

sovereignty over these islands as the Consul of Spain in Hong-Kong had called for, as long as that sovereignty were not sanctioned by a treaty or established de facto; and, on the other hand, appeared to urge the Spanish Government to establish an administrative organization there to exercise, with respect to existing establishments, the true and effective protection of the State.

Nine years after this diplomatic remonstrance, the German Chancellor was still giving assurance that it was not the Empire's purpose to acquire colonial possessions, as the Minister of State himself, Count Hatzfeldt, assured our representative in Berlin, we do not know with what motive. It [is therefore] a matter of surprise that within a very short time Germany should begin its colonial adventures with the protectorate over the acquisitions of a German in Angra-Pequena.

Ultimately, the German minister close to the Spanish Government stated semi-officially and confidentially to our Minister of State that Germany had taken, or was thinking of taking under its protectorate, some island of the Caroline Archipelago, on the pretext, we suppose, that there exist there two commercial enterprises whose proprietors are German subjects. This has been the origin of the conflict and the first indication, we believe, that Germany was trying to contest outright, by way of a material and positive act, the sovereignty and dominion which it was clear to her that Spain had exercised since ancient times over the aforementioned archipelago, not only without conflict, but with the tacit and even expressed assent of all nations, as is proven by treaties and geographic atlases of various authorship.

Such unusual procedure and so unjustified an act on the part of a Power with whom Spain found herself on such intimate and cordial terms has surprised and made the public indignant, occasioning the energetic protests of Spain, who, united in a single spirit and animated by a singular feeling of dignity and patriotism, shows herself disposed to defend her right over her oceanic possessions and to reject

any aggression of which she might be a victim from Germany, against the demands of the community of cultured peoples and the international practice of civilized countries.

Today let us defend our right in the land first in danger of attack so that later steps, should they become necessary, will follow more easily. If today it is a question of the Carolines, let us maintain our sovereignty and our dominion there in such a way as to demonstrate what our resolution and purpose would be if tomorrow one attempted to attack the coveted Philippine Archipelago, or our African possessions, or any other territories of our legitimate domain.

We do not propose, in this brief presentation, to set forth a complete and finished brief of all the rights and reasons that militate in favor of Spain in this conflict, anguished as we are by the nation which most seemed to hold toward us an intimate and cordial friendship. Our hope, very much more modest, is reduced to expounding some evidence about the right of Spain in the Caroline Islands. If from our work it should turn out, that the act carried out or planned by Germany, far from being able to be given, by specious pretexts, the appearance of an honest action, is revealed as an act contrary, morally and legally, to the law of civilized peoples, condemned by conscience and opposed to the practices of civilized nations--that is to say, an act which deserves only the name of true plunder--our desires will be fulfilled. It is a question of knowing whether international law, a product of the evolution of reason and customs, is a fallacious and iniquitous fiction or a reality on which comforting hopes may be founded. It is a question of finding out if force, instead of serving nobly for the defense of the law, is to trample upon it brutally and support the barbaric deification of the material power of the States. One must know without doubt if the nations of Europe and America, above all the nations of the second and third rank, which up till now appeared to live tranquilly in a state of neutrality and to enjoy the guarantees

of modern international law, are victims to be sacrificed without pity to an overpowering nation attempting to enrich itself.

We will expose the antecedents of the question which appear most interesting to us. We will present without fear or hesitation, rather with the sincerity which lends a deep conviction, the theories of science on the point under consideration. We will analyze these theories according to the very deeds of the European Powers and we will point out some considerations which we judge to be pertinent, in order to corroborate our irrefutable right and perhaps to forestall objections that the German Chancellery might formulate in support of its reprehensible purposes.

And, this having been said, the reader will judge if we have achieved our desire, justified by the patriotic intention stimulating it.

II.

German Colonialization Treated by a German (1).

Colonies are merely the expression of the spirit of enterprise of strong nations, which follows an ascending spiral. One may say, further, that all peoples who have possessed the conditions of a true development, from the Phoenicians to the English of the 19th century, have founded colonies.

Under the exclusive influence of the progress of free trade, however, the advantages of colonies are denied in our time. In England, some rare partisans of the extreme school of Manchester, like Messrs. Lowe and Harrison, have presented colonies as a source of peril for Great Britain; but Germany, above all, is where an echo has been encountered among the free traders of pure race who oppose all

(1) This chapter is taken from the article entitled La Allemagne et la question coloniale, by Mr. F. Heinrich Geffcken, former resident-minister professor of public law, Revue de droit international et de legislation comparee, 1885, 114, ff.

arguments concerned with Germany's taking a position among the colonial powers. Free trade is an excellent thing, but its cause does not enjoy favor in the present moment. One may characterize as a lamentable error the return to a protective regime, which spectacle the great continental powers offer, but it is necessary to count on this disagreeable fact.

First of all, colonies offer the best field of emigration for the surplus of population from the mother country. While German emigration only serves to aggrandize other nations, England even today, for the most part practices a continual colonization; nearly half of her inhabitants go to the colonies; emigration to the United States is mainly Irish.

All of these advantages are completely appreciated in England. It is known that in equal circumstances the richness of a nation is augmented in proportion to its expansion and that the commerce which renders greatest benefits is the one that supports an extremely civilized nation with another country rich in natural resources but underdeveloped.

Then it is not probable that the future will agree with M. de Laveleye, when he says in his Elements of political economy: "The States which do not have colonies may console themselves for this lack, and those who possess them ought to hasten to lose them and this loss will even be a gain. Today there is not a colony which does not cost those who live in the mother country more than it produces for them." That a Mr. Stuart Mill, in a letter which M. de Laveleye has just published in the Belgian Review, should have counselled the small neutral states not to found colonies, and as de Laveleye, point out the dangers that would result from founding them, can be understood. For instance, in a war of Great Powers, any one of them

could take possession of such colonies. Colonial politics today demands great means in order to grant effective possession. Portugal, Holland, and Spain would inevitably lose the rest of their colonies if they were engaged in war with a great maritime power, as already they have lost so many other (colonies). . . .

If, then, colonial politics is not a thing of the past for England, and if, on the contrary, she constantly gains the greatest major advantages from her Transatlantic empire, the same motives and reasons will be applicable to Germany.

Since the beginning of their history the Germans have proved that they know how to colonize; the Hanseatic League, the occupation of Prussia and the Baltic Provinces by equestrian orders, the numerous colonies of the Saxon and Swabian peoples in Hungary, Transylvania, and Russia, demonstrate this fact. It is political and economic annihilation which followed the disastrous Thirty Years' War that has impeded Germany's taking part in the division of the New World. The Germans, both in the United States and everywhere else, find themselves, on the matter of colonization, at the same level as the English and the Americans: German industry is very well developed; you find German businessmen everywhere; they are as numerous in China, in Mexico, in New York and in Rio de Janeiro, as in the capitals of European commerce; our merchant marine is the third largest in the world; our explorations shine as first class, and Berlin has become the center of high politics (le centre de la grande politique). In the Transatlantic countries, nevertheless, the German is not esteemed other than because of his personal qualities. Since the time that Germany has had a navy, it has not been possible to mistreat her, but still she must always accommodate herself to the foreign element which dominates. If, then, the examples that others have sought to allege against colonization prove nothing, except that it is necessary to proceed in another way, it was natural that after the unification of Germany the question of whether this state of affairs should continue should be raised with increasing force, as well as the possibility

of enlarging our economic horizons by establishing a foothold in Transatlantic countries. The objection that no open space remains is inexact and has already been refuted by the facts. There is even more space in those countries than Germany could cultivate; and as to the danger of a conflict with foreign powers, it is very certain that the best way to avoid them is not to possess anything that they could take. But a similar argument has not impeded the acquisitions of any individual or nation. The necessity of abstaining from occupying places which, in Germany's hands, could appear a menace to the possessions of other powers is, then, inadmissible. England, for example, would have had the right to complain if Germany, in the peace treaty of 1871, had demanded the cession of Pondicherry. But England has neither the right nor the ability to keep Germany from occupying a free place.

Beginnings of German Colonization.

Here you have the arguments with which the defenders of German colonization responded to their adversaries.

The movement kept gaining ground and found a center in the founding of the Colonial Association in December of 1882.

.....

Until the beginning of the year 1884 the Chancellor did not apply himself in any way to the colonial question; shortly before Count Hatzfeldt, Minister of Foreign Affairs, made clear to the Spanish Minister that Germany had no thought of acquiring Transatlantic possessions. Meanwhile, it was learned that a trader from Brema, Lüderitz, had bought lands along Angra Pequena, to the north of the Cape Colony. The English newspapers joked of the wilderness which the Germans had sought in order to satisfy their colonial desires; but they listened attentively when the news was divulged that the German house had enlarged its acquisition to the point

of its being already a question of a coast of 400 kilometers and a territory of 900 square miles.

This territory is an old field of action of the Rhenish Protestant Mission, which has worked there for 40 years, investing a great deal of work and spending 500,000 francs. The Mission was not aided in any manner in its work by the Cape Government, but the latter intervened in 1876 to prevent the Boer immigrants from founding a new State in the territory in question. A certain Palgrave appeared there, hoisted an English flag, collected taxes from the Europeans, but was in no way in a position to establish a regular authority; finally, he caused to be restored the taxes paid, and the Colonial Minister, Lord Kimberley, wrote to the Governor of the Cape that the possession of Walfish Bay was of no legal value to England. The country remained then again as res nullius for 5 years and Lüderitz was within his perfect right buying lands from the chief, Hottentot Fredericks. But this being done, the jealousy of England awakened and when Lüderitz went to Capetown, Governor-General Smith tried to intimidate him, holding that a part of his dominions had been bought earlier by an Englishman. Lüderitz knew perfectly well that this was not true and he headed for Berlin, asking for the protection of the Empire. The Chancellor asked London if the English Government believed it held some legal right to claim sovereignty of that country. He knew too well that England itself had declared in 1880 that the Orange River constituted the northern border of the colony. Lord Derby did not dare to answer without consulting the Government of the Colony, asking it if it found itself ready to intrust to itself the maintenance of order in Angra Pequena and to pay the resultant cost. The colonial authorities did not show that they were ready for it and a change of government in the Cape delayed the transaction still more, while the Captain of the German gunboat, Nautilus, which had been sent to Angra Pequena, was able to convince himself that the claims of Lüderitz were perfectly in order.

Finally the Chancellor, not receiving a response from London, and his patience exhausted, ordered by telegraph on April 24th that the German Consul in the Cape announce officially that Angra Pequena remained under the protection of the Empire. Great was the effect that such a declaration caused. In the Cape protests were made against it; the Cabinet gave evasive replies, seasoned with a certain bad humor, to the demands for explanation which were addressed to it in the Parliament on this matter, until finally one had to understand that there was nothing to be done in the matter, and on the 15th of July, Lord Derby telegraphed the Governor that the Ministry was not ready to oppose the desire of the German Government to extend its protection over German subjects who had founded establishments in places where no English jurisdiction was exercised.

On the other hand, this step was saluted with enthusiasm in Germany; the declarations of Prince Bismarck in the Reichstag were received most sympathetically, and the adversaries of colonization, who tried still to combat this first step, were obliged to convince themselves that their efforts had been crushed.

A short time later, one learned of the annexation of the Camaroons, at the mouth of the Niger, where for a long time some business firms of Hamburg had possessed establishments. And in 1885 the north coast of New Guinea and the New Hebrides were occupied. In Africa a private society bought extensive land areas in the mainland of Zanzibar and received an Imperial Charter.

It is still premature to judge the material value of these Transatlantic acquisitions. There is only one certain fact, to wit: That Germany has placed herself in a number of colonial nations and cannot stop in the middle of the road. At the June 24th session of the Reichstag, the Chancellor attempted to outline the program of German colonization and rejected formally the French system of conquering countries which were esteemed advantageous, adding that colonization was the business of private parties. If the German traders or shipowners founded settle-

ments in countries not subject to the sovereign of any civilized country, the Imperial Government would grant to them its protection, but leave in their charge the administration of their possessions.

The limits of this program have already been exceeded. In an interview which the Chancellor held with the principal businessmen of Hamburg on September 25, 1884, he must have been persuaded that a colony should not be administered by individuals but that it has need of Government, of laws and of police. Besides, those businessmen declared that the settlement easily would cover costs by virtue of the establishment of a moderate tax on exports. As a consequence, the Reichstag was asked for an assignment for the Governor of the Camaroons. It was also necessary to create a small colonial army for the garrison of the same, because it will be impossible, with the regular service, to send our young soldiers to tropical regions. Other necessities will arise; these are the inevitable burdens of colonization; but they will be surpassed very much by their advantages, if not in the present, certainly in the near future.

Until now it has only been a question of commercial colonies, because tropical regions do not lend themselves to emigration. Their advantages are that they open markets to the industry of the mother country and prevent other countries from closing them off by means of protective or prohibitive tariffs, as France and Portugal do in their African colonies. These colonies will be developed better under the direct protection of the Empire since the commerce of Germany with Africa, and the islands of the Polynesian Archipelago, is already considerable and increases year by year.

Last, H. Heffcken, speaking of German colonization in diverse parts of Europe and particularly of South America, says, "The German Government has only to assure protection to the colonies that are going to form themselves (to exploit the vast regions of the Argentine Republic, Uruguay and Paraguay). With-

out doubt the said colonies will find themselves subject to a foreign sovereignty, but the political question is secondary; the principal question is that of nationality and community with the mother country on which they depend. German colonies, that is to say, countries cultivated by German effort, capital, and intelligence, will serve as markets to German industry as the English colonies are for British industry, and likewise the products of those countries will find their natural markets in Germany without any artificial protection and Germany will be the center of their economic dominions."

IV.

Conference of Berlin

On September 13, 1884, Prince Bismarck, Chancellor of the German Empire, directed a note to Baron Courcel, Ambassador of the French Republic in Berlin, reading as follows:

"After having given an account to His Majesty the Emperor and King, of the conferences we have celebrated in Varzin, I have made a resume of their content in this note, which I beg you to be kind enough to communicate to the Government of the Republic.

"The acts of occupation just recently achieved on the west coast of Africa have placed us adjacent to French colonies and settlements, for which reason we want to resolve, in agreement with the French Government, the situation which results from the acts of possession realized in these places by German commissioners. If there are among them some who might not find themselves in agreement with the laws and policy of France, we have no intention of maintaining them.

"The extension of colonial possessions is not the object of our policy. We are only trying to secure for German Commerce access to Africa through points until now independent of the domination of other European powers. The official

relations of Mr. Nachtigal and the French colonial authorities will soon clarify those areas in which a lack of precise information about recent changes might have given rise to conflict foreign to our intentions.

"For the interim I pray to Your Excellency that you convey to the French Government our satisfaction in making clear our agreement on the most important principles that, in our mutual interest, would be applied to African commerce, and ought to be recommended to other interested nations.

.....
.....

To assure the regular development of European commerce in Africa, it would be useful at the same time to arrive at an accord with regard to the formalities to be observed so that new occupations on the African coasts will be effective.

"I beg Your Excellency that he be willing to be so good as to propose to the Government of the Republic that it make clear by an exchange of notes our agreement on these questions, and that it invite the other cabinets interested in the commerce of Africa to make known their opinions in a conference to be convened for such a purpose, on the stipulations agreed to between the two powers."

In the circular addressed the 5th, 6th, and 7th of December, 1884, by Monsieur Jules Ferry, President of the Council of Ministers of the French Republic, to his Government's ministers assigned to the Governments of other powers, it was said that "after an exchange of opinions concerning West Africa, in union with Germany, we had come to recognize the desirability of an international agreement concerning the following principles:

- 1°
- 2°
- 3° Definition of the formalities which are to be observed, in order that new occupations of the African coasts be considered effective(1).

(1) Archives diplomatiques, pg. 139, Paris, 1885.

In the dispatch of November 8, 1884, addressed by Mr. Ferry to Baron Courcel, Ambassador of the French Republic in Berlin, one reads the following paragraphs with regard to the question to which paragraph 3, just transcribed, refers:

"As you know, the resolutions which the Conference may adopt on this point are not applicable to occupations made before the Conference. It is fitting to observe, nevertheless, that according to the verbal communication of the German Charge d'Affaires in Paris, the said resolutions, according to the purpose of the Imperial Government, regulate the conduct of all occupations subsequent to the date of the invitations of the Conference.

"Prince Bismarck has made this declaration officially to England and we cannot but associate ourselves with it. There remain, then, to be examined, the principles that, in our opinion, ought to prevail in this matter.

"According to the doctrine commonly admitted by the authors, a State may acquire, by the mere taking of possession, the sovereignty of territories unoccupied or belonging to savage tribes, provided this taking of possession be effective; that is to say, that it be accompanied or followed by certain acts equivalent to a principle of organization.

"The simple act of planting a flag, columns, or emblems, is not enough to create or sustain a title to the exclusive possession of a country located in said conditions.

"On our part, we have conformed with these principles in the successive formation of the settlements which we possess today on the west coast of Africa, on the rivers of South Senegal (Casamance, Nunez River, Pongo River, Mellacorea, etc.), on the coast of Benin, and in the Gabon. French taking of possession of each point we have indicated (has been by) naming a representative of the Government, with the title of resident or commander, who commands a more or less considerable armed force, finds himself invested with judicial powers analogous to those of a justice of the

peace, and generally is installed in a fortified post. The Cotonu territory, definitely ceded by Dahomey in 1878, and which until last year was only nominally connected to the colony of the Gabon, was placed, in 1883, under the authority of a special commandant charged at the same time with the ministry of our protectorate over New-Port, where he lives sometimes with an escort of sharpshooters of Senegal. Enough personnel have been placed at the disposal of M. de Brazza to take possession of the territories acquired by France in Upper Congo, and the instructions of our West African commissioner confer on him expressly the privileges of a governor of colonies.

"When in the Conference one tries to determine the conditions according to which the new occupations on the coast of Africa will be deemed to be effective, should the Government of France observe an attitude conforming with these precedents and make efforts that the policy thereby established prevail in the agreements to be adopted?

"It suffices to fix your gaze on the map of the African coast to affirm that at the present time the extent of territories free of all foreign domination is, particularly in the western part, relatively narrow.

"On the other hand, bearing in mind the development of coasts that our possessions of Senegal, Guinea, and the Gabon assure us by virtue of the new arrangements with the natives, the problem may be brought up as to whether our principal concern on the eve of the Conference ought to be to reserve for ourselves facilities in anticipation of new acquisitions. In any event, if as a consequence of the extension of our colonial dominions over certain points of the coast of Africa the opportunity is presented to us, there are reasons to believe that we shall be prepared to occupy new lands under the same conditions that have characterized our earlier occupations.

"It appears desirable from our point of view then, that the Conference come

to sanction and to make binding upon everybody the regulations which have been in effect at the formation of our colonial dominion on the west coast of Africa, and particularly that rule which relates to the direct and effective intervention of the Government in whose name the occupation is realized.

"Under this hypothesis, the conditions according to which the occupations of vacant territories on the coast of Africa should be considered henceforth effective could be expressed as follows:

"1st - Publication of taking possession, on whatever authority it might be, of the territories being dealt with, in the accustomed form of each State for the notification of official acts.

"2nd - Establishment of an official agent, a representative of the Government interested both in the foreigners and in the natives, who will dispose of the necessary elements to assure the exercise of his authority. It will not be indispensable that those elements, which consist principally of an armed force, be supplied directly by the Government of the mother country, since they could be taken from the occupied country itself if it possessed the sufficient rudiments of organization. In this case, for example, the power to authorize the protectorate would be found in the control of the native authorities already being exercised with relative regularity which could, in practice, substitute for the presence of military forces from the mother country."(1)

General Act of the Conference of Berlin

"In the name of All-powerful God, His Majesty the Emperor of Germany, King of Prussia; His Majesty the Emperor of Austria, etc., wishing to establish and order with a spirit of cordial and mutual intelligence the most favorable

(1) Archives diplomatiques, p. 144, year cited.

conditions for the development of commerce and of civilization in certain regions of Africa, etc., etc., have designated as plenipotentiaries (the names follow)

"Who, with full powers in good and just form have discussed and agreed in order:

1°.....

6° A declaration that introduces into international relations uniform rules for the occupations that in the future may take place on the coasts of the African continent. And judging that all these documents could and should be arranged in only one, they have combined them in a general act which includes the following articles:

.....

"Chapter 6. Declaration relative to the conditions which have to be satisfied in order that the new occupations on the coasts of the African continent be considered effective.

Art.34. The power that henceforth takes possession of a territory on the coast of the African continent situated outside its present possessions, or a power with no previous possessions in the area, will accompany its act with a notification addressed to the other powers appearing by signature in the present act, in order to put them in a position to assert their claims, if there is occasion.

Art. 35. The subscribing powers to the present act recognize the obligation of assuring, in the territories occupied by them on the coasts of the African continent, the presence of an authority sufficient to cause the acquired rights to be respected and, in any case, freedom of commerce and transit in the conditions stipulated."

V.

Considerations re the Right of Spain.

Effective Occupation is Not a Principle of True Law.

It is a principle generally admitted by statesmen of international law that States acquire public ownership of territories by the same means and in the same way as individuals (1), that is to say, public ownership that falls within the domain of international law is acquired by the same titles and methods as private property. This does not mean that, in determined cases, acquisition as a consequence of war is not considered admissible, a special acquisition of title that, (even in international law,) is kept where human societies have any principles of organization and live subject to some rules of police and of government. Among legal titles and methods of acquisition recognized of old by all civilized peoples is found that of original occupation and possession of nullius territories, or those inhabited only by barbaric and savage tribes, commonly an immediate consequence of colonial discoveries (discovery or recovery). This right, which derives from original discovery and consequent taking of possession in olden times, constitutes a consecrated claim equally because of time and because of historical law, whose validity does not find itself subject to the limitations by which some think the law of recent occupations should be adjusted (2), in accordance with new principles of international law. If such principles have not yet been refined to constitute a complete and systematic theory, still less can they be invoked as a general rule of positive law obligatory for the States that form the international community of cultivated nations. However, even given the

(1) Calvo, Le droit international theorique et pratique, Paris, 1880, vol. I, p. 317.

(2) Calvo, Ob. and vol. cit., p. 321.

existence of such a sound general principle dealing with old discoveries and acquisitions, exception would be based, surely, on the non-retroactivity of the juridical rules and the sanctity of the rights acquired under a previous legal regime, in accordance with today's international law which considers violent or arbitrary occupation by a Power of territories acquired of old by another State, which has possessed them quietly, peacefully, and without any interruption, to be a true outrage.

Today there is a move to subject occupation and modern possession of various territories not only to conditions that remain to be expressed, but also to a new condition that we should record here, which surely obeys the new colonial needs of countries, now all the more difficult to satisfy because of the limits to colonizing possibilities resulting from explorations and colonizations concluded by adventuring nations in past centuries (1). This condition is that no State ought to invoke today a perfect right to possess and rule over exclusively nullius territories or those occupied by barbaric or savage peoples, except in the territory they do in fact occupy. This exception, we suppose, will mean not that a State will claim for itself only the dominion that it exercises over the portion of territory in which it finds itself materially established, but that the extension will be recognized as being a geographic entity, to which the unit of sovereignty ought always correspond, one which the occupying country can reasonably defend and utilize in a future whose limit should be judiciously estimated, noting the enormous difficulties on which every colonial enterprise must count always.

We maintain, then, concerning the question to which we refer: 1^o - That the theory of effective occupation as a condition of acquiring dominion is modern and is not yet developed enough to be considered a complete and systematic doctrine.

(1) Calvo: Ob. and vol. cit., at the end of the note on p. 490.

2° - That one of the most important points that still remains to be developed is that referring to the terms of effective occupation, which are precisely those which constitute the fundamental principle of the theory. 3° - That consequently, one is not able to determine within this new theory the principle by which to assign to just and necessary rights of preference to a State that, while not having fully carried out an "effective" occupation, as defined by the doctrine, nevertheless, through rights of ownership and sovereignty, deserves such rights. 4° - That the theory we have been dealing with, (through which questions of sovereignty and territorial dominion are to be decided,) is not yet recognized as absolute international law; and 5° - That said theory has never been examined in practice except in the sense of being applied to deserted territories or those occupied by nomadic tribes or by a barbaric or savage population of a scant number of inhabitants relative to the territory they occupy, and not to relatively populated territories and those found already to be possessed justly and peacefully by another State.

That these are not arbitrary and partial affirmations is an easily demonstrated thing.

The authors have not succeeded in defining concretely what is meant by effective occupation and in reality have said that only corporalis quodam possessio is required, that is, a corporal occupation of any sort, any material act of possession accompanying the thought or intention of exercising the right of dominion, will suffice. Some demand the simple principle of organization, as Calvo in his cited work and Mr. Ferry in the dispatch of November 8, 1884, which has been transcribed; some the discovery, use, and settlement, as Mr. Phillimore in the passage which we cited above. It is certain and indubitable that neither do the authors conform in their requisites for an effective occupation, nor are their requisites defined concretely; nor has it occurred to anyone to require that all of the

country be occupied and be exploited intensively in the whole expanse over which dominion is claimed. This would have to be qualified as a monstrous absurdity as proved by the undeniable fact that no colonizing country occupies and exploits to a total extent the territories that it possesses. Complete occupation and exploitation could ill be demanded as title in order to acquire ownership since such is precisely the goal that by means of the acquisition of ownership is to be fulfilled and that is the final and remote object of all the long and very painful process of colonization, which comes about only in due time. To require anything else would be tantamount to requiring that works of a long and difficult nature should begin at their end and proceed to a happy ending and terminate at the very point and hour that they were undertaken and begun.

The same is demonstrated sufficiently eloquently by what happened in the Conference of Berlin, unless, to avoid conclusions one may draw from it, one prefers to risk the laughable absurdity of maintaining that the Cabinets of the nations of Europe participating in it were ignorant of the true nature of the questions of the program of international doctrine, or wished to seem to be so, just for the simple desire to make an example of inexplicable foolishness.

The very Prince Bismarck himself, Mr. Ferry, and all the European governments that accepted the invitation and the plan of the Conference were in agreement as to the necessity of defining the formalities that would be observed in order that new occupations on the African coasts be deemed effective.

What does this imply as to good logical principles, from whose rigorous consequences one cannot seriously escape with subterfuges of any kind? That the nations that met together at the Conference of Berlin, and especially Germany and France, to whose combined initiative that meeting of diplomats was due, took for granted and as not at all open to question that true public international law had not yet determined the requisite conditions for an occupation of a territory

to be deemed effective. If, on the contrary, they had understood that the question was resolved in the area of the true law of nations, they would not have fallen into the pitiful absurdity of declaring that it was necessary to resolve it, nor would they have held a Congress with this object, for if it were not the only thing it was concerned with, it was one of the principle points of the program and one of the basic matters of concern.

That, on the other hand, it was not intended that old acquisitions be subject to these accords, much less those that without contradiction constitute a secular authority, unknown or opposed by no one, is said clearly enough - by Prince Bismarck in the note of September 13, 1884, in referring in an explicit way, to the new occupations on the African coasts; by Mr. Ferry, in the circular of October 5, 6, and 7, to the invited Governments, and in the November 8 dispatch, insisting on the fact that the Congress agreements were not to be effective retroactively, and finally, by the same Powers that took part in it, expressing literally the same concept in Chapter VI of the Act of the adopted agreements.

Not only is it definitely stated that said accords refer only to the new acquisitions - that is to say, to those subsequent to the Congress (as denotes, to our judgment, the sense of said chapter) - but the latter was intended to legislate only with respect to possessions on the coasts of Africa; wherewith it turns out to be obvious to everyone who discusses the matter in good faith that there is not at present any certain principle of international law, recognized by the powers, that defines what one should understand as effective occupation and that is applicable to old acquisitions (although the territories dealt with on the African coasts may take root), or that can be invoked when one is dealing with territories situated in any other place on the planet (although they be of recent acquisition).

All this is to say that with respect to our possessions of Micronesia, one

cannot invoke any reason of true international law, recognized as such by civilized nations, on the effective occupation of a territory as a condition of acquiring dominion over it. Furthermore, using the words of Calvo, such discussion cannot be sustained, our possessions being already old possessions, consecrated at one and the same time by TIME AND HISTORICAL RIGHT; and, we might add, they are possessions in places about which there exists no international accord that would make applicable and obligatory the principle that the German Chancellor maintains today, at an inauspicious time and with the greatest lack of agreement.

The Carolines cannot be Considered as Deserted
Country or Inhabited by Nomadic Tribes

But let us go on to another matter.

Can it be maintained that the Spanish possessions of Micronesia are deserted countries or inhabited solely by errant or nomadic tribes or by a scanty population not subject to the sovereignty of any State recognized in the community of peoples that operates inside the orbit of international law?

Geographers are in agreement that the Caroline Islands, although numerous, have a not very considerable surface extension, and are populated. In order not to multiply the questions, we shall say only that according to the Almanach de Gotha (1), the Carolines have 22,000 inhabitants and the Palaus (or western Carolines) 18,000, having respectively a density of population of 31 and 19 inhabitants per square kilometer (2).

(1) Almanach de Gotha, 1885, p. 680.

(2) According to Gregoire in his Nouvelle Geographie Universelle, Paris, 1884, the population of the Carolines totals some 100,000 inhabitants; a figure that would give an extremely dense population (this datum we take from El Imparcial.) According to Malte-Brun, in his Geographie Universelle, Paris, 1836, Vol. V, p. 678, the population of the Palaus is 10,000 inhabitants, that of the Marianas, 6,000 and of the Carolines, 50,000. Vogel, in Le monde terrestre, nouveau precis de geographie comparee, says that the Carolines, or New Philippines, have 22,000 inhabitants according to Spanish data, which seems to refer only to the principal islands. All the geographers are in agreement in affirming that the Caroline Archipelago is heavily populated.

If we call these islands deserted or sparsely inhabited, what would we say of Brazil, which only numbers less than 2 inhabitants per square kilometer; of European Russia which has only 16 inhabitants for the same surface unit; of the English territory of Australia, which has less than 3 inhabitants for each 10 square kilometers; and of English North America (Canada) which averages only a little more than 2 inhabitants per square kilometer?

And if our Carolines are neither desert territories nor inhabited by a scant population, neither are they lands where nomadic tribes range or wander, dedicated to pasturing, without fixed settlement, developing as they pass only the spontaneous products of the land. A relatively dense population, enclosed on small islands, cannot lead the kind of life that the expanse of large continents allows.

Then it cannot be said that these islands offer those immense uninhabited wildernesses of America and Australia that could serve to sustain millions of human beings without hindrance or bias to a third party, and with obvious advantage to the country by which they might be occupied. The Carolines, neither by their surface area, which is small; nor by the density of their population, which is considerable enough; nor by their riches, which are far from abundant, can excuse, or less, justify, the aspiration of any country to divide the dominion of them with Spain. Neither could greedy foreign colonizers use this argument, which, in any case, ought to be invoked preferentially against countries like England which have most extensive territorial dominions. It is true, indeed, that then the formidable fleets of such a nation would set a healthy fear in the mind of the crafty plunderers and would assuage the lawless appetites for territorial aggrandizement that might induce others to occupy their possessions. Considering, then, our sovereignty over Spanish Micronesia from the point of view of territorial expansion that a nation can possess in a determined place, even admitting hypothetically the principle that land is a common inheritance of all men, since it is not a

question of deserted territories or those occupied only by nomadic tribes or a scant fixed population, the result is that it cannot reasonably be charged that Spain seeks to maintain an exclusive dominion over territories whose large uninhabited extent would make other States' aspiration to occupy a determined portion of them just or fair.

The practices of other nations, to which, according to Phillimore, one ought to apply the international rule relative to this point, offer so many examples of more extensive and less populated territories than the Carolines, possessed quietly and peacefully by a single country with exclusive rights of dominion, that it appears to us unnecessary to detain ourselves further on this point.

Some Considerations on the Right of Spain

We have said in the beginning that it was not our purpose to formulate an allegation in which would be condensed all the rights of law which demonstrate that Spain justly displays sovereignty and dominion over the Caroline Islands. Thus we will not point out here more than a few considerations relative to acquisition by the State of public domain, or eminent domain, as others call it, over a territory, relating this to the question we are considering.

It is a principle of law, forgotten as being too well known, that in order to acquire ownership the act of possession is necessary, without which requirement a royal right (*jus in re*) over things is not acquired. It is (well) known, too, and we have already indicated it, that the same principles apply that dominate in private law with regard to the acquisition of territories on the part of nations, save for exceptions that have no relation to this matter.

Well, then, discovery that can be compared with the invention or discovery of civil law, and the taking of possession of the thing nullius with intention of appropriating it to oneself have come to be, and continue being, the conditions

by which international ownership is acquired by way of original occupation.

Effective occupation, we have already proved - and presently we will return to this point - as a theory is incomplete, its authors having neither yet determined it with precision nor agreed upon its true conditions. As statutory and obligatory law it does not exist except with regard to the new occupations verified or to be verified on the African coast.

This being so, and it being clear that Spain was the first nation that discovered, and in whose name possession for the first time was taken of, the territories we are discussing, there exists in our favor the legal right of international law that up to today has legalized old acquisitions and even the modern ones that do not fall into the category of territories on the African coast.

Since the Caroline Islands were taken possession of in the name of Spain, it is evident that our country had the desire to acquire them and has the desire to maintain itself in possession of them. Besides taking possession, it has executed, from time to time, real acts in consonance with the right of dominion and with the intention of conserving it, among them the very significant act of Spanish marines having lowered any flag other than that of our country that they have seen hoisted on foreign buildings (1).

On the other hand, the Carolines depend directly on the Government that, since the seventeenth century, has been established on the island of Guam by the Captaincy General of the Philippines. The latter exerts its control over all our possessions in Asia and Oceania, and the Government of Guam over all Spanish Micronesia. This is enough for one to maintain in an undeniable way the possession of these lands for the purpose of international law. There is no obligatory judicial rule by virtue of which is determined the number of colonial governments

(1) We have become acquainted with this circumstance due to the news the press has published these days and which we believe completely true.

that have to be established on an archipelago to conserve the right of sovereignty and ownership. If none existed, one could object that there was no sign of authority in those possessions: if on each island a government were maintained, one could certainly not doubt the existence of a complete administrative organization. Between everything and nothing, that is to say, between the two limits and extremes that we have just pointed out, until now what international authority has drawn the dividing line? What positive rule of international law expresses the number of colonial governments that a State must maintain in the archipelagos it possesses? Does one exist at least? For there is now an authority and a center of administrative organization to confer a true universitas in the juridical concept.

The creation of other governments is a thing of prudence and convenience, that must obey the new needs of a colony, but no one will be able to maintain that it be a condition exacted by strict law, as would be necessary for an infraction to be justly adduced against Spain.

When, in the judgment of the Government of the Philippines and of Spain, in general, it has appeared suitable to create a new politico-military government peculiar and proper to the Carolines and Palaus, it has been done in such a way that now today there exist in Spanish Micronesia two centers of government, one in Guam and another in Yap. The last was created at the urgent request of the natives and of various Europeans residing in the archipelago in question, supported by consignment for this purpose in the present budgets of the Philippines (1).

Finally, and although we repeat that the agreements of the so lauded Congress of Berlin are only applicable to new occupations on the African coast, what condition has been established so that those occupations be considered effective?

(1) The governor named for the Carolines and Palaus is the distinguished sailor Sr. Capriles, of whom the press has published great praise these days. At the time these lines are being written, news of the expedition that must have taken him to Yap are being awaited.

Well, in the territories that any of the signatory or adherent powers occupies, purely and simply that one be obliged to assure the existence of an authority sufficient to make the acquired rights respected (and in any case, the liberty of commerce and passage, in the conditions stipulated) (1). In summary, this is not anything other than that expressed by Mr. Ferry in the dispatch of November 8, saying that, according to the authors, for possession to be effective, it should be accompanied or followed by certain acts equivalent to a beginning of organization, as France had designated the points she had occupied, by naming a representative of the Government who had at his disposal a more or less considerable armed force.

It is clear that the stipulation concerning the acquired rights that the authority of the colony must protect, according to Article 35 of the General Act of the Congress, refers only to attacks it may suffer in the interior from individuals or natives. To believe that what is demanded in said article is the maintenance of an army and a squadron always in readiness to defend the territory against attack by regular forces of a foreign state, beyond being an impossibility, would be an insult inflicted on the Powers. Nations that live within modern international law rest on the security that other States are not going to snatch away their dominions from them by a blow inflicted with treachery, a procedure suitable only for pirates or savages but completely foreign to the practices of the civilized world.

And by chance, can it be denied that Spain has long since established a government for all her possessions of Oceania, and that it is months since she arranged the creation of another special government of the Carolines and Palaus,

(1) That enclosed by parentheses has no analogous relation to the case that concerns us, since it refers to navigation and commerce on the Congo and the Niger, in conformity with what was agreed on concerning this point in the said Congress.

which by now should be a fact? Can it be denied that both the former and the latter have a more or less considerable armed force and that the authority of Spain till now has not suffered any damage or loss in those territories? What more can reasonably be required for one to admit nobly that the possession of Spain has been established in conformity with all the demands of the law?

A State, then, that is the first to discover and take possession of a territory, that shows in an unquestionable way its constant intention of keeping it under its dominion, that has in it a center of government which has universally and continually been reputed as owner and sovereign of the same, cannot reasonably be said to exercise merely a nominal dominion, still less to have abandoned it, unless a special a posteriori law is invented for the case in question.

Present Insufficiency of the Theory of Effective Occupation.

But although it has been said that the principle of effective occupation is only theoretical and does not constitute an obligatory juridical rule, we should analyze it, although it be briefly, and justify our assertion that even as mere theory it is defective and incomplete.

Above all, let us note that the phrase is vague and lends itself to a thousand interpretations which the authors and many others have given it. Is one to understand by this phrase that the government of the occupying nation is to maintain in all centers of population that exist in the territory in question a complete administrative and military organization?

Is it to be demanded that the whole territory be materially occupied, possessed individually and developed by the indigenous population, or by immigration from the mother country or by foreign people? Both are evident and palpable absurdities.

Let us distinguish between private occupation by individual claim and the public occupation by the State, which implies sovereignty and the domain that some call eminent. Well, then, what acts are to be those constituting that effective occupation to which international law refers, that is to say, of public occupation achieved by the State? What difference is established, if it is a fact that some difference is to be established, between the possession of territories in the interior and that of the coastline, and between both and that of islands or archipelagos? Nothing of this has been determined in theory and nobody will deny the importance of the problems raised.

But apart from this, another matter of capital interest presents itself. Let us suppose that a State demonstrate the right of sovereignty and dominion over territories that it has not succeeded in occupying effectively because of not complying with all the conditions demanded for the more or less nominal occupation that it had achieved to be considered effective. Will said territories have to be considered as vacant and nullius, ready for disposition by the first occupant?

It is clear that an affirmative response would involve not only a manifest and irritating injustice, but in addition a complete negation of international courtesy and the mutual respect and consideration that States must retain for themselves.

Let us suppose, for the purposes of this discussion and criticism, that a State may exert nominal dominion over a territory, and let us suppose likewise, that the principle that "the land is the common inheritance of all mankind" is admissible, and that it be (as it is not) a consequence of this principle that any State could aspire to the right to occupy said territory; could this right be absolute? Would not it have to be subjected to some condition? Will it not have to recognize in the first of the States in question at least a right of

priority (prior right) to dictate the terms and manner of effective occupation and national acquisition?

Such prior right would require, as an inevitable consequence, that the State aspiring to occupy a territory over which another State exercised from time past a more or less nominal ownership should notify this State of its purpose in advance and should abstain from acting for the prudent interval that should be allowed for the first owner to occupy the territory in question by virtue of the preference we have spoken of; unless, on answering the expressed notification, the notified State were to definitely indicate that it was abandoning the territory or had abandoned it earlier.

This condition and prior right is founded on the lack of equality between res nullius and the thing more or less nominally settled, but finally possessed, under title of ownership. It is founded, moreover, on the same reason that the theory of effective occupation rests on, since if the foundation of this is that there be no territories unutilized or unwatched over (or what would appear to us more logical to say, that there be no territories deprived of the effective protection of the State assuming dominion) this end is realized or is in the process of being realized from the time said State shows itself disposed to verify the occupation of the territory, filling whatever conditions the international law had determined to render it effective.

Lastly, said solution is based also on the mutual faith expressed by civilized states under the protection, and carrying out the requirements of, international law for the undeniable convenience of not offending rights of any kind, avoiding vexing questions, alleviating disputes, and, finally, for reasons of equity, that is to say, of natural justice that, in any case, are preferable for every honest conscience, to the summum jus, which, it has been said with truth, is the summa injuria.

The new doctrine, which tries to compare territories over which dominion is exercised without effective occupation with nullius territories that can be acquired by the first occupant without consideration of even one right of preference in the former owner, leads inevitably to the following consequence in private civil law, a consequence that we do not know has yet been translated into law in the German States: "Individual real property, to the degree that it is so, as soon as it is occupied and developed by any owner and notwithstanding property titles assigned in documents, real estate registry, tax lists, etc., is transferred by law to the first occupant, this even without a decent amount of time being allotted the old owner to establish himself on the property and develop it for himself." It is not possible to believe that such a crude and tyrannical principle would be accepted in Germany or anywhere else. Nevertheless, it is that which is sought to be made valid by the German Government in the field of international law, which, as it is known, recognizes the same principles as private law in regard to the method of acquiring dominion or ownership of the soil.

The Chancellor of the German Empire, Lasalle's old friend, carrying theories to an arbitrary extreme, whose direction and scope appear influenced undeniably by the objective of his plans, has invented a new socialism, international socialism, by virtue of which he declares as vacant property those very sites that it would be judicial heresy in the field of private law to term such, leaving them to the mercy of the first occupant. We do not know if Bismarck would theorize with so much freedom, trying to somehow magically pass off his hypothetical notions with regard to Germany's possession of extensive and numerous colonies as precepts of positive right.

On the solitary proposition that "land is the common inheritance of all man-kind" still less could one build the theory that is sought to be maintained. In the first place, men are not States; while men of all lands can establish

themselves freely, although individually, in a territory and develop unoccupied lands, it cannot be said that any principle is lacking therein. In the second place, one cannot accept a similar proposition without reservation, because international and private law alike, if not amended and limited by other principles, lead straight and irremissibly to communism. Logic has unavoidable demands, and it is not right to proclaim in regard to the relations of public law, principles which in private civil law are rejected as erroneous, and seen as mere propaganda, pursued at times by "men of order", and destructive of the bases on which present-day society is constituted.

The arguments employed until now by the Government and the German press are founded, then, on the absurdity of a theory that appears erroneous and inadmissible because of not having been clarified and developed yet on most essential points, and that has not and will never, in its stated terms, become a rule of obligatory law for States. On the contrary, when one is able to assure oneself that said theory has been developed into a binding law, then it will be accepted and recognized by these States as a practical principle regulatory of their acts, and then there will prevail a spirit and feeling very different from that by which the German Chancellor appears to be inspired today in the pending conflict.

Need for Colonies.

Mere appropriateness was never considered an absolute criterion of law, but since the time people have had a moderately clear notion of justice, they have set up the alterum non loedere in the rule of juridical conduct, which limits our actions with an insurmountable obstacle. Let us speak, then, of the convenience of acquiring and possessing colonies, not because it can in any way justify any kind of usurpation, but in order to put in their place and reduce to their true significance the reasons that Germany invokes today to justify in her own eyes the

legitimacy of her Transatlantic acquisitions, repeating again on our part that there is no reason, no matter how powerful it might be, that can be adduced validly in prejudice of a third party.

The needs that a country can call forth in order to seek the occupation of certain territories are: 1st. To give convenient exit to the excess of population and facilitate the settlement of the emigrants (emigration and plantation colonies). 2nd. To exercise the right of navigation and commerce to give outlet to products destined for exportation (commercial colonies). And 3rd, to establish its dominion and sovereignty in determined places for the defense of adjacent territories otherwise seriously menaced by possible plottings (military colonies). All right! If people from a State craving a territory under the sovereignty of another are allowed to establish themselves in said territory; if navigation and commerce are permitted to the ships of all nations, as is being done now today, when there remains only as an historical recollection the colonial system of the 17th century, which reserved to the mother country the monopoly of commerce with its colonies; and if the Power which claims sovereignty over it has no other possession close to the territory under consideration; no deed exists nor can be invoked to feed such a claim. A great number of German emigrants are settled in the United States, the Argentine Republic, Brazil, and other States of America. German ships maintain commerce freely with those countries, and in that way the surplus German population finds a convenient outlet, going to enlarge that of other nations scarce of inhabitants, whereby the level between the population and livelihoods tends to equalize itself between various countries, like that of liquids in connecting tubes and that of the waters in the ocean.

One may say that the settlements of European subjects in countries inhabited by barbaric tribes and encircled by countries likewise barbarous or savage who practice, for example, piracy, need the security that only the true protection of

a regular Government lends, but this argument would hold only when the State claiming sovereignty over the territory in question, either could not or would not (refusing expressly or tacitly) give protection when solicited.

Outside of the above-indicated cases of necessity, the eagerness to acquire colonial territories without respecting the rights acquired of old by another country, only denotes a badly-disguised ardor for political aggrandizement, of preponderance and of hegemony, which is not, and cannot be a legitimate and respectable national end of any State, when it seeks its means by damaging a third party.

And let it not be said, and less so by Germany, that customs tariffs may obstruct the development of foreign commerce in the colonies. The very same thing can be said of the countries of the continent, and not one has thought to declare its sovereignty and its right of dominion over its territory withered because of protective tariffs being established. If a country like China hermetically seals its ports to foreign commerce, it might be obliged to open them to the rest of the nations by means of a collective action, as Heffter says (1); but there would never be an excuse to dispossess her of her territory, and even less an excuse authorizing the exclusive action of one power for its own profit.

Germany, we say, is not the authoritative country to speak of these things, and it would be ironic that she do it arguing against Spain, who has granted her commercial benefits whose disappearance would cause no small loss to German industries. On the other hand, a country that from time past has been in the vanguard of the protective movement in the sphere of principles and which favors that movement in practice, should not grumble that France and Portugal, as a case in point, should maintain more or less elevated tariffs in their possessions on the African coast. Geffcken himself, apparently aligning himself with the reciprocity system,

(1) It does not come within our purpose to examine this proposition now.

says that although the protectionist reaction be lamentable, one has to accept it.

Moral Aspect of the Question.

Now leaving aside the questions of law, we shall conclude by saying a very few words about morality with respect to juridical relations and the politics of States.

It may happen that a subject be a creditor by just and legitimate claims over another with whom he finds himself in intimate and most cordial relations of friendship. Without taking account of the demands of this relationship, and without being able to justify his conduct by the existence of genuine and urgent needs, he may require of his debtor and friend the payment of his credit on the most difficult and pressing terms and at a time when the debtor is experiencing such terrible family misfortunes and losses of such magnitude in his fortune that they subject him to the most pitiable situation imaginable. What will public conscience say of this creditor? That, although he exercises his right, he abuses it and offers a sad example of disloyalty and perfidy. And if instead of finding himself in such a situation, with the rights of a legitimate creditor, he should try only to usurp the property of the friend whom misfortune pursued and oppressed, then he would deserve a judgment that it is difficult to find words adequate to express.

It is not enough to reject certain accusations; it is necessary that acts do not give an opportunity for them to be formulated. Individuals and governments must always conduct themselves with rectitude and good faith and when the acts and procedures that are being considered do not distinguish themselves, at least outwardly, from perfidy and from disloyalty, one must abandon them resolutely in order to avoid loss of prestige or dishonor.

The policy that puts force before right and that operates to satisfy its own

conveniences without considering the harms that are inflicted on the others, that policy has for suprema ratio the quia nominor leo, and besides involving a step backwards of perhaps 19 centuries, has the inconvenience for whoever practices it deliberately as a system, that it may turn against him at any instant. To be just and honorable depends only on will and contributes to the perpetuation of the only mode of social intercourse compatible with civilization and with regard for all interests. To be strong is the work of a multitude of circumstances that do not depend, at least for the most part, on desire. Nations like Germany, whose maritime power is insignificant, compared above all with that of France and England, which in addition are beginning now to be colonial powers, are playing with fire if they try to build force as a supreme law for their acts and as a unique sanction of their arbitrariness and ambitions. Today Europe is going through an extremely critical period, in which the slightest spark can easily be the prelude to a monstrous conflagration where the very recent maritime power of Germany may perish; perhaps even its strength on the continent may be severely damaged. In the interests of European nations everything must be watched at the present moment. Only a policy of the utmost right and great temperance can avoid the catastrophe that appears more and more imminent every day.

It is necessary not to lose sight of the fact that justice and morality are together an indispensable obligation, the true and most powerful aid to legitimate interests, as experience always demonstrates sooner or later in spite of all scepticism, and to the confusion of the blind and stupid idolators of the god Success.

While this pamphlet was in press, the first news of the expedition of the San Quintin and the Manila to the island of Yap arrived.

This news, like an electrical discharge, has shaken the body of the nation from Cadiz to the Pyrenees.

The act carried out by a German boat on Yap has no precedents in the history

of international law from the Peace of Westphalia till now.

A conquest carried out by a friendly nation without giving reason, without indeed any reason for dispute or even the slightest pretext that could be used by Germany as a casus belli against Spain; a conquest in a state of peace is an act as opposed to the law of nations as piracy in international law, which all States have an interest in punishing with the most rigorous of punishments.

In the presence of this deed we say only that a people can show itself to be all the greater, the more numerous and enormous may its misfortunes be. A circumspection as great as our determination and a determination equal to the events are the two great virtues that can save the interests, or at least the honor, of Spain.

In the presence of the national grief that afflicts the spirits and at the same time the tempers and makes them heavy, it is to be hoped that all Spaniards will fulfill their duty.

Rather than our voice, may our deeds be those that take the responsibility of saying viva España (long live Spain)!

A P P E N D I X

I

Note of March 4, 1885, addressed by Count Hatzfeldt to the Minister of Spain
(Don A. de Castro) (1).

Honorable Mr. Minister:

From reports of the German Consulate in Hong-Kong, the Imperial Government has had news that the Spanish Consul there, because of the refusal of the German merchant ship Coervan to pay customs taxes in the Palauan Islands, has announced a claim on the part of Spain to extended sovereignty and customs jurisdiction over the territory in question, the Caroline Islands, and especially the Palaus, which up to the present have been considered by the commercial world as not belonging to any civilized power, having always been visited freely by ships of Germany and of other States.

According to the general principles of the modern law of nations, the Imperial Government does not find itself in a position to recognize sovereignty over those islands as the Spanish Consul in Hong-Kong claims it, as long as that sovereignty is not sanctioned by a treaty or at least established in fact.

Besides, there is no treaty known relative to the Spanish possessions in the Pacific Ocean in which the Caroline or Palau Islands are mentioned, nor does the Consulate in Hong-Kong cite effective occupation as an argument, that is, upon an administrative installation by which Spain has indicated the control necessary to exercise her sovereignty over the Palaus.

(1) This note was published by La Nord Deutsche Allgemeine Zeitung (General Newspaper of North Germany) from which the French and Spanish newspapers took it. The German newspaper found it convenient to mutilate it, suppressing three interesting paragraphs in it, that the press has since published and that we, too, reproduce in order to complete it.

On the contrary, it is evident from affirmations worthy of total believability that the Archipelago has been visited by merchant ships of all nations for many years and without anyone's having placed obstacles, and that, with the exception of England, no power has sent warships there. Likewise, it turns out that Spanish functionaries do not exist in the Palaus or in the Carolines and that, therefore, a Spanish administration does not exist. The German Government wishes to believe that the sovereignty over the Carolines and Palaus claimed by the Spanish Consulate in Hong-Kong is done in response to a mistaken interpretation of instructions.

The Imperial Government having charged me with calling the attention of Your Excellency to this point, and, adding that it cannot recognize, for the reasons earlier expressed, that the claim of the Spanish Consul in Hong-Kong has foundation, I have the honor, in the name of my Government, to express confidence that the Spanish (Government) will find it well to order their colonial authorities and the commanders of ships stationed in the waters of said islands, as well as its consuls in East Asia and Polynesia, that they place no obstacle to direct passage of ships and to the commerce of German traders in those islands.

Receive, etc.

de Hatzfeldt

The following three paragraphs are those that complete the March 4th note:

"The Imperial Government, which for its part has paid attention to nothing except the acquisition of overseas possessions, sees with satisfaction that the other civilized states intend to subject to their power fertile territories unknown until the present, to put them in contact with civilization and the commerce of the rest of the world, and to voice no protest when a colonial power imposes taxes to subsidize the expenses occasioned by the establishment of an administrative

organization in said possessions to provide an equivalent of the protection accorded to German subjects.

"It considers, therefore, its obligation to assure to German commerce the freedom of its movements against groundless restrictions, as would happen if a colonial nation, alleging anciently valid theories, should declare, at a given moment, itself owner of an archipelago open to free traffic and in fact independent, and should attempt, basing its argument on the rights of the old theory, to draw profit from the commercial relations begun at great cost, labor, and peril by German subjects and by the factories established by the same, creating taxes for the sacrifices which have been made and for the real and effective protection of the State only they can recognize as a basis.

"Still less admissible would be the claim of closing, by a simple declaration, this territory to foreign commerce, imposing upon others visiting an archipelago that comprises more than ten islands the obligation to obtain a special authorization from some functionaries situated at a long distance and to touch at determined ports off the commerce course."

This note had no effect, so we do not know that the Spanish Government answered it or that Germany insisted on its claims or that it asked for an answer.

II

The rights of Spain against Germany - from the Spanish Society of Commercial Geography (1).

One of the principal lines of defense, although not the only one, is this: geographic unity of Micronesia. Spain possesses a province in the Pacific called

(1) From this notable document, we take the enumeration of the bases of the law of Spain, which is what is pertinent to our purpose.

Micronesia, not three called Marianas, Palaus and Carolines. If it has occupied one part of this province, it has occupied it as a representation of the whole; and if Germany should seize the Palaus or the Carolines, it would not be that she was occupying an entity which was free, but rather clipping off part of a unity endowed with government since the 17th century. The three subgroups entitled Marianas, Carolines and Palaus are a continuation one of the other to such an extreme that, for example, the last and the central Carolines are closer to the Marianas than to the more distant or easterly Carolines; and that the first Marianas are more distant from the last of their group than from some of the Carolines themselves. They constitute a well-defined unity, separated and distinct from the other island groups of the Pacific: the Philippines, Hawaii, the Hebrides, Solomons, etc.; and precisely because of this, geographers have set up the group Micronesia with the Marianas, Palaus and Carolines only, to distinguish it from the other more extensive one named Polynesia (1).

Effect and demonstration at one and the same time of that geographic unity is the constant communication in which the natives of the Carolines and those of the Marianas have been and are. The surplus of the Caroline population emigrates to the Marianas in its pirogues and establishes itself there: from 1797 to 1814 various expeditions of this kind can be counted and they have not ceased since then. In 1818 many Carolinians asked for concessions of land on the island of Saipan (in the Marianas); our government granted the land and transported them to it in State ships. We may add that a true coasting trade commerce exists, conducted by the natives, between the Carolines and the Marianas, so that those dedicated to that traffic supply knives, machetes, and other European articles to the natives of the Isle of Ruc (Truk) and others. And not only with the Marianas: they have maintained direct

(1) Editor's Note: This carries no reference to the Marshall Islands, also a recognized part of Micronesia.

relations with the Philippines, and were the source of the introduction into that archipelago of the sweet potato and the art of cultivating it.

Political unity is a consequence of the geographic unity. Spain has always thought of those archipelagos as one province. In the Spanish Atlas of Sr. Coello appears a map published in 1852 with this inscription: "Marianas, Palau and Caroline Islands." And to one province there corresponds one government. There has been one on the island of Guam since the 17th century; Micronesia was occupied by Spain then. One may ask if one authority was sufficient to consider so many hundreds of islands occupied? But who is to decide that? Until now no one has said how many leagues the action of a government in the Colonies may extend; and on the other hand universal practice is in conformity with that of Spain on this point. England does not occupy effectively even half of Australia. France has collectively in her archipelagos of the Marquesas, Tahiti, and Tuamotu - an area more extensive than ours - two or three centers of government. Spain has maintained one on Guam, because that sufficed for its needs; these have grown and she is establishing another on Yap, for the Carolines and Palaus, reducing the jurisdiction of the first to the Marianas. The Panama Canal will be opened and Spain will create a third government in the Central Carolines and the Marshall and Gilbert archipelagos, reducing the second to the Palaus or Western Carolines. Thus will the meshes of occupation successively be stretching in proportion as needs increase and the wealth increases. Intensive occupation requires time.

Now we can enumerate the bases of our right.

1st. Priority of discovery - Some foreigners have denied it, but their opinion has not prevailed. Toribio Alonso de Salazar was the one who discovered, on August 22, 1526, the first island of the Carolines, certainly in the eastern group, five years after the Marianas and the Philippines had been seen by Magellan's expedition. From that date until 1593, these archipelagos were visited, including those called

today Marshall and Gilbert, by Spanish navigators: Saavedra, Grijalbo, Alvarado, Ruy López de Villalobos, Legazpi, Isabel Bareto, widow of Mendaña, Quiros, etc., who travelled over the periphery of Micronesia and the principal islands and even in the periphery of very many of the small ones.

2nd. Taking of possession - Alvaro de Saavedra in January of 1528 and Ruy López de Villalobos in 1543 took possession of the Carolines next to Yap. Francisco Lezcar took possession in 1686 of an island that he called Caroline in honor of Carlos II, that is thought to be Yap or Ponape. The subgroup of the Marianas was taken possession of by Legazpi in 1565. They were occupied in 1668 by virtue of a Royal Decree ordering a mission established in them; Father Sanvitores baptized them in the name of the Queen who had supported the action for their effective occupation which continues uninterrupted to the present. In order that nothing be overlooked: there exists an agreement celebrated between Emperor Charles V and the King of Portugal, Papal Bulls, various Royal Decrees, etc., in which these islands are mentioned as the property of Spain, and that they are legitimate claims according to the law of nations of that time.

3rd. Geographic expeditions - During the 18th and 19th centuries diverse expeditions have been carried out, no longer with the object of discovering new islands, but to study them, establish their position and grouping, their formation, their inhabitants, their products, etc.: Egoy (1712), Maurelle (1780), Quittanao (1796), Ibargoitia (1799), Lafita (1802), Monteverde (1805), etcetera. The last was in February of the current year, directed by Mr. Butron. The studies of these and other navigators, and the labors of various missionaries likewise Spanish, have been the only ones by which Micronesia has been known by Europe until the scientific voyages around the world began in this century. The exploration of the Marshalls and Gilberts are of 1785 to 1788 and are limited to the eastern Carolines. Well, then, geographic and scientific explorations, if they do not confer rights, help to

create them. And this Germany knows well, whose geographers preceded her diplomats in Angra-Pequẽna, Biafra, Zanzibar, etc.

4th. Civilizing action exercised over the natives - In 1668, Father Sanvitores established himself in the Marianas Islands with five missionaries and 31 soldiers. There he died, murdered, but the mission endured. In 1701 the Public Treasury gave 10,000 pesos, and the Company of Jesus an equal amount, to establish missions in the Carolines. From 1710 to 1731, missionaries and soldiers, many of whom died murdered or shipwrecked, were sent there and established themselves on various islands, like those of Lonsorol (Sonsorol), Ulevi (Ulithi), and Yap. At present missions exist on the islands of Rota and Saipan and in five villages on Guam (Agaña, Agat, Inaraján, Merizo and Pago), all in the Marianas. Through the decree of the captaincy-general of the Philippines, dated last March 3rd, another mission was created for Yap Island, which is being administered by Discalced Augustinian fathers. The Spaniards deported in 1873 spread agriculture and water works, creating new villages in the Marianas. The Governor of Mindanao had ordered, as of the latest news, the acquisition of livestock to encourage cattle breeding in the new government of the Carolines.

5th. Establishment of public authorities - It has been said already that since the 17th century there has existed on the Island of Guam a center of government with authorities on various other islands dependent on it. At present it is composed of a Governor, public force (one company), captaincy of the port of Apra, administrative personnel, a garrison, and missions. The decree of last May 3rd creates another politico-military government with residence on the Island of Yap, which is to be overseen by a chief or official of the Armada with a military detachment of the army at his service. Moreover, there exists a Philippine steamship postal service sold at auction at 25,000 pesos.

6th. Will manifested by the natives to belong to Spain - This last government

has been established at the urging of the Carolinians, who last year requested it of the Captaincy-general of the Philippines, as they had already asked for it in 1881. To their petition was added that of various Europeans. Proceedings were initiated, the Overseas, State, War, and Navy ministries were informed, and the result was the creation of the government under discussion.

7th. Will of Spain to conserve the totality of the three archipelagos - (This has been) expressed constantly and without interruption since the 17th century, by all known means of statement: in her maps and charts; in her geographical and marine journals; since 1858, in her censuses and official statistics; in the annuals of the Statistical Councils and of the General Management of Hydrography; in the geography manuals that serve as text for the institutes and normal schools, which constitute, so to speak, the popular and national geography, and which while they omitted the north of Borneo for no reason, have always presented the archipelagos of the Carolines and Palaus as territories of the nation; in the debates of the Cortes (Congress), for example, the Senate session of last May 12th, the appeal of the Marquis de Casa-Jiménez; discourses of General Pavia, Overseas Minister, etc.; in the decree of the Captain-general of the Philippines, dated on March 3rd; in the budgets of the archipelago, which in their article 4 assigns a sum to defray the costs of the installation of the "politico-military government of the Caroline and Palau Islands." This last is not an isolated fact, but the end of a long series, which has a significance that does not leave room for doubt, and offers proof that must be considered decisive.

8th. Spain has need of the Palaus and the Carolines, as seaports of call on the long course of ships between the Antilles and the Philippines via the Panama Canal. She does not persist in retaining them through avarice, nor through whim of a noble of long lineage, but because she considers them a necessary condition of her future existence. It should be added that almost two-thirds of the west coast of

America, bathed by the Pacific, belongs to the Spanish race, and that for this there ought to be reserved, in the work of civilizing and colonizing Oceania, a rather greater participation than the insignificant one that Micronesia offers.

9th. Common knowledge of all these facts and the consequent implicit recognition by Europe of the sovereignty of Spain over the archipelagos, object of the dispute - This sovereignty was a fact of universal consent: witnesses, the Almanacs of Gotha, the Statesmens' Yearbook, the treaties and journals of geography in Europe, the maps and atlases, etc. The North German Gazette says that the German Government has never recognized the sovereignty of Spain over the Carolines. Neither was it necessary, the possession being of such remote origin. A centuries-old and habitual recognition exists, which is not in the diplomatic archives, but which is rather more solid than diplomatic recognition. It exists in public opinion taught in geographic literature, in primary schools where people learn the elements of reading, and in the categorical assumptions and declarations of general culture.

From where does the astonishment and indignation arise that this unprecedented offense has caused in Europe? What are the protests of the European press, if not echoes of a universal conviction? The Standard, of London, considers the act of occupation contrary to the "most rudimentary principles of international law," and refuses to believe that Bismarck authorized it; for La Liberté, it is "an act of piracy" with which Germany provokes a duel with Spain; for Le Pays, "a robbery"; for Le Temps, "a usurpation"; for Le Soir, "the triumph of brute force"; the Morning Post judges the indignation of the Spanish "legitimate"; La Patrie speaks of the "brutality of Germany policy"; and the Pall Mall Gazette says to the same purpose that Germany is "abusing her power"; Le Siecle renews the memory of Napoleon I in Bismarck; France and Le Pays encourage Spain to maintain "her rights" against Germany even by force; the Independencia Belga supports the cause of Spain without wavering. . .