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THE EXCLAVE PROBLEM  
OF  
WESTERN EUROPE

by  
Honoré M. Catudal

Submitted to the  
Faculty of the School of International Service  
of The American University  
in Partial Fulfillment of  
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of  
Doctor of Philosophy  
in  
International Studies

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Date: 8/15/73

1973

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To my wife,  
editor-in-residence  
and map-maker, who  
through her faith,  
devotedness and  
indefatigable labor  
has kept a difficult  
husband happy and  
her family afloat  
through the trials  
and tribulations of  
eight years of student life.

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by Renate M. Cerdal

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## Chapter 1

### INTRODUCTION

"The possession of an uninterrupted territory is one of the principal requisites for the smooth functioning of a political entity."<sup>1</sup> Geographical cohesiveness is one of the underlying assumptions of the modern state system. Whenever there is discontinuity in territory there is cause for concern. For the lack of geographic unity tends to increase the variety of social groups and physical environments, adds to the difficulties of travel and communications and increases the length of the boundary to be guarded. At the same time, it poses severe administrative, political and legal problems.<sup>2</sup>

The problems raised by territorial fragmentation are nowhere more acute than in instances where a portion of one state, completely surrounded by another, is found to exist. For the exclave or enclave -- depending upon one's point of view -- disturbs the internal functioning of the surrounding country by, as it were, puncturing a hole in its territory and creates difficulties as well for the administering state.

---

<sup>1</sup>G.W.S. Robinson, "West Berlin: The Geography of an Exclave," Geographical Review, Vol. 43 (October, 1953), p. 540.

<sup>2</sup>Norman J. Pounds, Political Geography (New York: McGraw-Hill, 1963), p. 46. It must be pointed out, however, that geographical coherence sometimes increases heterogeneity (e.g. where ethnic groups are mixed or in pockets).

Although the existence of exclaves and enclaves is little known, they are not uncommon phenomena. In fact, there are almost twice the number of exclaves (enclaves) in the world as states. More than three-fourths are located in a small corner of Asia; only forty-one exist in Europe, and all of these are situated in the western part. One belongs to Spain and lies in the eastern Pyrenees of France. Two are located in the north and south of Switzerland and are attached to West Germany and Italy respectively. Finally, there is the conglomeration of thirty-eight Belgian and Dutch outliers around Baarle in the province of North Brabant in the Netherlands.

For the most part, these extraordinary territories are rather small, and they do not have large populations. They consist largely of single villeges and adjacent lands, farm areas and tiny garden plots. All are situated relatively near to the "motherland."

It is recognized that the very diminutiveness of these disconnected areas and their lack of strategic significance limits their military and political value. Nevertheless, they do point up the problems of territorial fragmentation and the importance of territorial continuity. Moreover, the way in which states treat them has important implications for those scholars who debate whether or not the "territorial-

ity" of the nation-state is bound to vanish.<sup>3</sup>

## THE PROBLEM

Essentially, the exclave problem may be summarized in the following way: The presence of part of one state in the territory of another gives rise to two opposing tendencies. On the one hand, the encaving country attempts to include the outlier within its economic and civil administration. On the other hand, the parent state tries to maintain normal communications with the exclave and administer it in the same way it does other contiguous portions of its territory. This struggle for control over the outlier, and the give and take involved as the two sides seek a modus vivendi is the subject of this research effort.

### Purpose of This Inquiry

The general purpose of this inquiry is to shed light on exclaves (enclaves) as a special class of phenomena in international relations. At the moment our knowledge of these unusual territories is very scanty. Despite the large number of these international curiosities, they have more

<sup>3</sup>In 1957, Professor John H. Herz published an important article entitled the "Rise and Demise of the Territorial State," which appeared in World Politics. Generally, it forecast that modern technology would lead to the demise of the nation-state as an international actor. As a result of developments in the 1960s, however, he reconsidered this position. And in 1968 he published a cogent estimate of the viability of the nation-state as an actor in an article entitled "The Territorial State Revisited: Reflections on the Future of the Nation-State," which appeared in Polity, Vol. I (Fall, 1968), pp. 12-34.

often stirred the imagination of travellers and geographers than that of serious students of international relations. This research effort strives to redress the balance and give these anomalous political areas some of the attention they deserve.

It is not the purpose of this study to try to construct a general theory of international exclaves, although we may well draw together a number of general implications for states, which might possibly form the basic framework of a rudimentary theory of exclaves and enclaves in international relations. Too often in the past students of international politics and foreign policy have tried to create impressive general theories on the basis of little or highly inflated data. As a consequence, these theories were often misleading as to the true nature of phenomena or utterly useless. On the basis of empirical research conducted solely in the West European area, this writer would not want to presume to be able to weave a valid general theory. All he can hope to accomplish is to lay the foundation for subsequent steps in that direction.

#### Hypotheses to be Tested

With these aims in mind, we are now ready to turn our attention to certain hypotheses which have been formulated. But before we go into them in detail it would be well to

dispell once and for all any mystery attached to the term "hypothesis."

Admittedly, the word is formidable, but the thing to which it pertains is one of the commonest in life. As one authority has pointed out: "Every time the mind perceives a relationship between two things it creates a hypothesis."<sup>4</sup>

Essentially, a hypothesis represents one of the most irrepressible activities of the mind: the habit of jumping to conclusions. It is "a kind of educated guess without looking into the cards."<sup>5</sup> Whether a researcher likes it or not, anytime he examines a set of data he will inevitably proceed to arrange it into a pattern. This pattern may then be isolated from the data and given as a conclusion.

The important point to remember here is that the formulation of hypotheses is one of the first and most basic steps in research. Consequently, they are to be seized when they appear and sorted out in a clear and straightforward manner. After this is done, they represent nothing more than a rough outline.

---

<sup>4</sup>Sherman Kent, Writing History (New York: Appleton Century Crofts, 1967), p. 35.

<sup>5</sup>Johan Galtung, Theory and Methods of Social Research (Oslo, Norway: Universitetsforlaget, 1967), p. 329.

The objection may be raised that the essence of scientific objectivity is scrupulously to observe and analyze a given phenomenon only as it is presented to the observer/analyst and not "to take sides." This argument is best summed up in the statement that facts "tell their own story."<sup>6</sup> But rarely, if ever, do facts speak for themselves; they usually must be interpreted to make sense.

This investigation purports to test two central hypotheses: First, that exclaves are part of a discernible trend leading to the consolidation of state territory and the absorption of foreign enclaved bodies. And second, that exclaves are basically unstable phenomena in international relations. Both of these propositions form the fundamental research orientation of this study and an attempt will be made to probe and elucidate them in systematic fashion.

### Research Questions

The exclave problem is a multifaceted one. As a result, any endeavor to analyze it must adequately take into consideration its many diverse dimensions. This writer has broken down the exclave phenomenon into six convenient aspects:

<sup>6</sup>Robert S. Lynd, Knowledge for What? (Princeton, N.J.: Princeton University Press, 1939), p. 121.

form, origin, survival, access, administration and economy. In the attempt to get a handle on the problem at large, each of these elements will be explored in depth with the aid of a carefully worded research question. These questions have been judiciously keyed to our two basic hypotheses and will guide the selection of data at a precise methodological level.

Question number one. First, we will want to know what constitutes a true exclave or enclave as the case may be. Frequently, exclaves (enclaves) are confused with other similarly related political areas, and so it is of vital importance to spell out exactly what we are talking about.

Question number two. Second, we must discover how such an anomalous geographical arrangement of territory came into existence. Specifically, we are interested in knowing whether the exclaves under study share common origins or whether they are the products of unique circumstances.

Question number three. Third, we require to know how these isolated fragments of one state situated so precariously in another have survived through today. More to the point, and in line with our second hypothesis, what are the factors which are conducive to the maintenance of the



status quo? One might well have expected that out of so many changes in the political landscape something would have been done to terminate these anomalies.

Question number four. Fourth, it is critical to know whether the exclave actually possesses a right of transit through a second state to get back and forth to the home country. For it is only across alien territory that the exclave can maintain contact with the mainland. Should it turn out that the exclave does have a legal right of access, it will be of interest to ascertain exactly for whom transit applies.

Question number five. Fifth, it is necessary that we learn something about the administration of the exclave. For the average state is only able to maintain effective control over its territory to the degree it is able to make its official organs function in every part of it. It will be of particular value to inquire here just how successful the parent country has been in overcoming the barrier of isolation to make the exclave conform with the administrative pattern on the motherland.

Question number six. Lastly, it is imperative for us to investigate the economic viability of the exclave.

In particular, are exclaves capable of standing on their own feet? Or are they dependent for support on the home state or host country? No doubt, an answer here will go far in providing us with an indication of their individual and collective futures.

### Scope of Study

This study could have taken the form of a detailed analysis of one or two exclaves, and some people might have preferred this approach. However, it is the firm belief of this writer that too often in international relations a single example (or even a pair of illustrations) is used to make a case. On the whole, scholars seem at least a little reluctant to look around for exceptions to their neat and tidy rules. As a result, we get at best only a distorted picture of the true state of international affairs.

It is not the intention of this author to perpetuate this defect in scholarly study and analysis. Consequently, the entire region of Western Europe has been selected as the field of concentration. And a serious attempt will be made to subject the forty-one complete exclaves (enclaves) situated there to thorough investigation.

While this inquiry could have focused on exclaves and enclaves generally in international relations, there appeared to be at least two good reasons for limiting its scope to the West European area. In the first place, Europe is usually considered the true home of the exclave. This is due to the fact that in the past the greatest number of outliers were to be found there. In the second place, the exclave problem is of greatest consequence in Europe. For it is there that the largest number of states is directly involved.

The focus of this research effort has been narrowed even further by eliminating from consideration those exclaves and enclaves found within the territorial waters of states. Typical examples in Africa are Chisamula and Likoma, located in Lake Nyasa. Although they are situated within the territorial waters of Portuguese Mozambique, these political areas are exclaves of Malawi. Nevertheless, as a class of phenomena, they are islands in the true sense of the word (accessible only by sea) and are unrelated to the main thrust of this investigation, which deals with "political islands" on land.<sup>7</sup>

---

<sup>7</sup>Friedrich Ratzel was one of the first persons to refer to exclaves (enclaves) as "politische Inseln". See his Politische Geographie (Munich, West Germany: F. Oldenbourg Verlag, 1897), p. 322.

## THEORETICAL FRAMEWORK

The exclave phenomenon may be analyzed from two different points of view. First, it may be examined with reference to the state to which the outlier belongs. Second, it may be looked at from the viewpoint of the country in which the disconnected territory is located. Both points of view are incorporated in this research.

### Definitions

Much of the confusion shrouding the exclave problem is not unrelated to an unclear understanding of certain fundamental terms. Therefore, it will be useful at this point to seek to clarify certain key words.

Excleves and enclaves. Technically, an exclave is part of one state, completely surrounded by the territory of another. Seen from the point of view of the country in which the outlier is physically located, it is an enclave; seen from the viewpoint of the state to which it belongs, the outlier is an exclave. Thus, the only difference between the two is one's point of view.<sup>8</sup>

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<sup>8</sup>Outside the German language one rarely encounters the term "exclave"; through usage, the word "enclave" has come to mean in English either of the two.

Home and host states. Essentially, the exclave relationship consists of ties with two different countries. On the one side, there is the state that possesses sovereignty over the outlier; it is usually called the "home state" but sometimes is referred to as the "parent state," "motherland," "central state," "possessing state" or "national state." On the other side, there is the country in which the outlier is situated or "host state" but occasionally called the "enclosing state," "enclaving state" or "surrounding state."

#### Basic Assumption

Every investigator who embarks on a project invariably predicates his work on certain basic assumptions. One of the cardinal sins of research is the failure to specify the conditions upon which a study is based. Bearing this in mind the author will now proceed to illuminate the underlying assumption upon which this inquiry rests.

Briefly stated this study assumes that it embraces all exclaves (enclaves) existing in Western Europe. This basic assumption has been verified by a systematic examination of available maps, a detailed review of the literature and many talks with responsible authorities. In fact, the precise enumeration and delineation of contemporary exclaves is one of the contributions of this inquiry.

Before this writer no one had ever accurately determined the number of exclaves and enclaves in the world. This failure was mainly due to the imprecision of most maps and the fact that some exclaves consist of several parcels of territory. At the present time the author can account statistically for the existence of 255 complete exclaves and enclaves. Of course this number does not include those de jure exclaves (such as Dadra and Nagar-Aveli, two Portuguese pieces of territory land-locked in India) that have been physically annexed by the neighboring state and consequently no longer function today as true exclaves.

### Research Design

The methodology employed in this investigation is that of comparative analysis, sometimes referred to as comparative historical analysis.<sup>9</sup> While this is not simply a "descriptive" study, it does not employ statistical or quantitative techniques of analysis. Since the exclave problem will be treated comparatively over time and across space, this approach is deemed essential.

Comparative analysis is based on the assumption that explanations rest on generalizations derived from the observation of similarities and differences in human experience. Thus

<sup>9</sup>C.E. Black, The Dynamics of Modernization (New York: Harper & Row, 1966), Chapter Two.

history is both a source of data and a record of change. It supplies the building blocks for comparative analysis.

The importance of generalizations. Generalizations (or statements of principles that summarize the marked, important relationships discovered in research) have two valuable uses. On the one hand, they serve as guides to help solve problems upon which the research is focused. On the other hand, they make a contribution to available knowledge and the development of theory.

Collection of data. The little attention devoted to exelaves in the literature has important implications for this inquiry. Basically, it means that this researcher, in gathering data, was compelled to draw heavily but judiciously from the historical record -- particularly primary sources. To supplement his written findings, the writer arranged a number of interviews with officials of the foreign and interior ministeries of parent and enclaving states. Lastly, he had to spend a year in the field (1972-1973) to make sure that his data corresponded to and was up to date with the current realities of international political life.

Pertinent data was collected in five languages. Two of these (French and German) represent the main tools of research of this investigator. Although he is not fluent in the other

three (Dutch, Italian and Spanish), he is able to read them with the aid of a dictionary.

#### ORGANIZATION OF STUDY

The body of this report is divided into eight parts besides an introductory and concluding chapter. Each chapter is addressed to a specific dimension of the general problem at hand. Taken together they represent a modest effort to present as comprehensive a picture as possible and to put the European exclave phenomenon in the proper perspective.

Beginning with Chapter Two, an attempt will be made to isolate the exclave phenomenon. At the same time an effort will be undertaken to distinguish exclaves from other related areas. Hopefully, this endeavor will give us a clearer understanding of the general problem with which we are primarily dealing.

Chapter Three provides a broad historical review of the European exclave phenomenon. By taking a brief look at some of those outliers that existed centuries ago we should acquire valuable insights into how states have handled the problem in the past. This in turn should contribute to our understanding of exclaves in the contemporary era.



Chapter Four proceeds to examine in depth selected exclave situations in the post-World-War-II period. In the desire to see how the question is treated in other parts of the world, examples will be chosen from Asia, Africa and the Middle East.

Chapter Five probes the origins of those exclaves surviving in the West European area. And it aims to discover whether they share common ancestry or whether they are the products of unique circumstances.

Chapter Six examines the historical circumstances which have allowed the European exclaves to survive down through the present. It specifically analyzes the roles played by the home and host states and the outlier itself.

Chapter Seven explores the vital access question. Here the doctrine of servitudes is scrutinized and an important World Court decision touching on the right of passage is evaluated. To determine whether the decision of the ICJ conforms with political reality, the current practice of states in Western Europe will be analyzed.

Chapter Eight deals with the administrative ties of the European exclaves. And it seeks to inquire into the extent, if any, to which the parent state makes the outlier conform with its jurisdiction.

Chapter Nine delves into the complex economic situation of the European exclaves. In particular, it attempts to determine whether exclaves are more likely to become tied economically with the motherland or the host state or whether they are capable of striking out on an independent course.

Finally, Chapter Ten tries to draw together the major findings of this research effort. In addition, it appraises the usefulness of this study. And by way of conclusion it attempts to project future trends.

## Chapter 2

### OUTLIERS

The shape of a state, we are informed by geographers,<sup>1</sup> has a great deal to do with its visibility. Theoretically, the perfect shape of a country is a circle, with the capital located at or near the middle.<sup>2</sup> Although no modern state fits this geometric ideal, France comes closer than most. One distinct advantage in such compactness has to do with shorter boundaries in relation to the area of a country. Hence its relative vulnerability is reduced.

But compact shape represents only one extreme. And for the most part the lack of compactness is the general rule. On the other extreme is the elongated state. Chile and Norway, with their greatly stretched out profile, are but two politically significant examples. Although it is widely recognized that such extreme shape has a diminishing importance today (because the means of overcoming distance and physical obstacles is usually available), elongatedness nevertheless poses problems of defense and homogeneity. In particular, travel from one part to another may involve an expensive "foreign" journey.

<sup>1</sup>See for instance Roger E. Kespersion and Julien V. Minghi (eds.), The Structure of Political Geography (Chicago: Aldine Publishing Co., 1971), p. 72.

<sup>2</sup>Samuel Van Valkenburg, Elements of Political Geography (New York: Prentice Hall, Inc., 1942), p. 110.

While compactness and elongation represent two extremes in the typology of shape, there are other forms.<sup>3</sup> Not the least of these is the shape of the outlier -- i.e. that projection of one state in another. One of the most important types of outlier is the exclave (enclave). But there are many others.

In this chapter, the writer will temporarily set aside the main object of this inquiry. Instead, he will undertake to classify and discuss those outliers that are most often confused with our topic. Hopefully, by pointing out why these areas are not true exclaves or enclaves, we should obtain a clearer comprehension of the problem with which this study is primarily concerned.

#### EXCLAVE-LIKE AREAS

In addition to the complete exclave (enclave), this author suggests four other categories for the outlier. All but category (c) comprise in every respect different degrees of territorial contiguity and non-contiguity. Briefly, they are: (a) encircled territories; (b) separated areas; (c) so-called "administrative," "ethnic" and "economic"

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<sup>3</sup>Usually, typologies of shape include such labels as "elongated," "prorupt," "compact," "perforated" and "frag-mented."

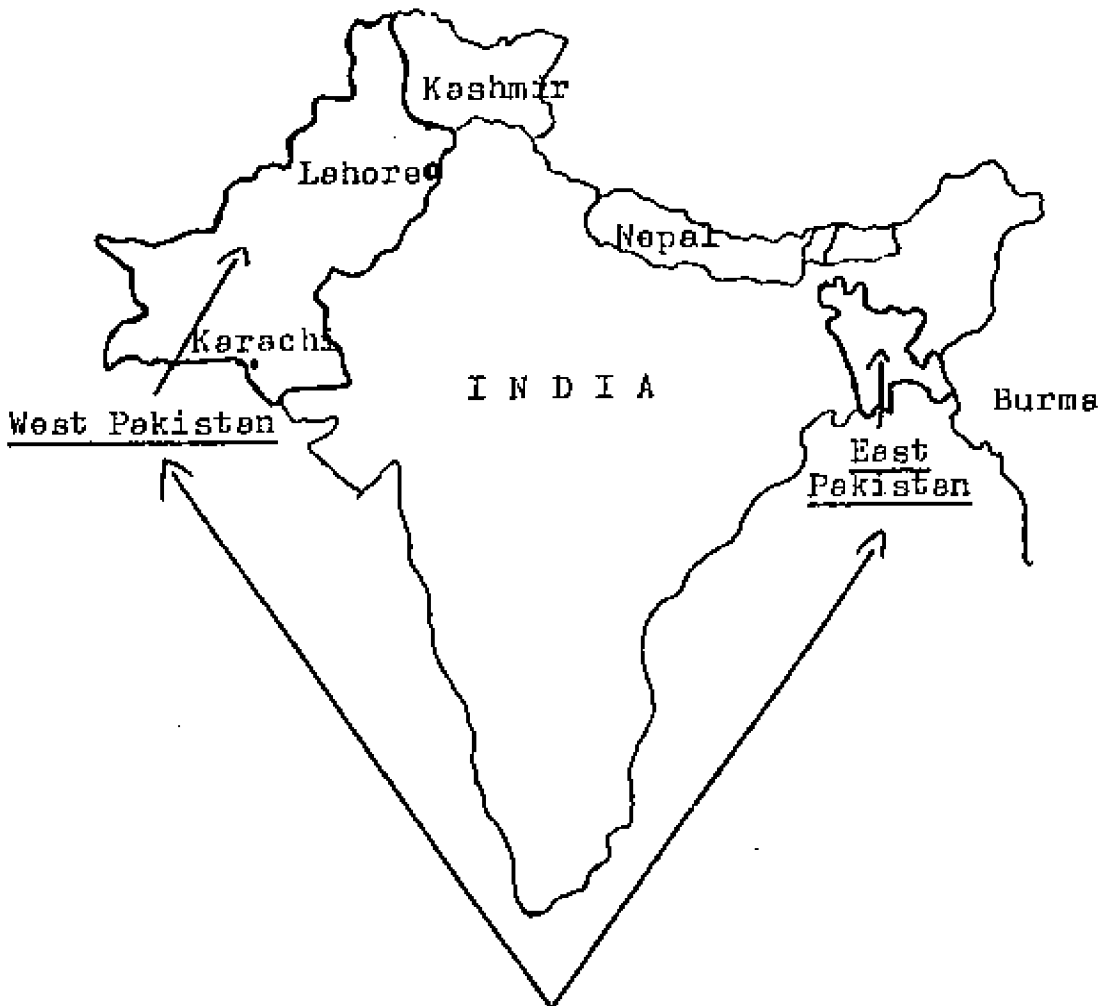
exclaves; and (d) theoretically possible enclosures. Although this typology has never before appeared in the literature, the actual areas that are discussed are generally well known.

### Encircled Territories

Those outliers to which we shall give first priority share a single common characteristic. They are all, to one degree or another, physically encircled by alien territory. Included here are (1) divided states; (2) landlocked countries; (3) so-called "enclave" states; (4) coastal territories; and (5) so-called "neutral" zones.

Divided states.<sup>4</sup> Sometimes the smaller portion of a divided state is mistaken for an exclave or enclave. Take the case of Pakistan before the 1971 war with India, which resulted in the reduction in size and prestige of that bifurcated country as well as the creation of a new state -- Bangla Desh. At that time both parts of Pakistan were separated by approximately 1,000 miles of Indian territory; and the eastern section could only be reached by sea, a distance of some 3,000 miles. Dwarfed by the world's largest

<sup>4</sup>For a useful discussion of the problems of divided states see Norman J. Pounds, Political Geography (New York: McGraw-Hill Book Co., Inc., 1963), pp. 47-48. An informative article dealing with the origins of partition is Norman J. Pounds, "History and Geography: A Perspective on Partition," Journal of International Affairs, Vol. 18 (1964), pp. 161-172.



1. Pakistan Before the 1971 War: A "Divided State"

democracy, East Pakistan was not infrequently referred to as an enclave.<sup>5</sup> But it should not be considered as such because it was not entirely surrounded by Indian territory.

In the United States a somewhat analogous situation exists in the geographical separation of Alaska from the Continental United States. Occasionally called an exclave,<sup>6</sup> the larger part of Alaska is a strategically located peninsula extending about 800 miles westward from the northwesternmost corner of North America and completely cut off by part of Canada.<sup>7</sup> Although the isolation of Alaska means that most traffic between it and the rest of the United States must go by sea, it cannot technically be termed an exclave (enclave) because it is not fully encompassed by Canadian territory.

Land-locked countries.<sup>8</sup> Often land-locked states are identified as exclaves or enclaves.<sup>9</sup> Two pertinent

<sup>5</sup>See for example "India and Pakistan: Poised for War," Time, December 6, 1971, pp. 28-35.

<sup>6</sup>Refer to Irmfried Siedentop, "Geographie der Enklaven und Exklaven," Zeitschrift für Wirtschaftsgeographie, Vol. 12 (1968), p. 12.

<sup>7</sup>For a thorough discussion of the problems posed by the geographical separation of Alaska see Kirk H. Stone, "Alaskan Problems and Potentials," Journal of Geography, Vol. 50 (May, 1951), pp. 177-189.

<sup>8</sup>For an excellent analysis of the geographic characteristics of "land-lockedness" see W. Gordon East, "The Geography of Land-locked States," Institute of British



2. Bolivia: A "Land-locked" State



illustrations of such entities bordering on several states are Switzerland and Bolivia. Although these countries are marked off on all sides by politically foreign territory, they do not fall under the terms of our definition of an exclave (enclave) because they consist of unfragmented geographic units.

So-called "enclave" states. Sometimes it is asserted that the existence of enclaves does not necessarily mean that they are also exclaves.<sup>10</sup> In this connection, the City of the Vatican and San Marino are pointed to.<sup>11</sup> Basically, the reasoning behind such a view may be summarized as follows: These states, it is said, are cases where "the territory of one state is entirely surrounded by another state."<sup>12</sup> Hence,

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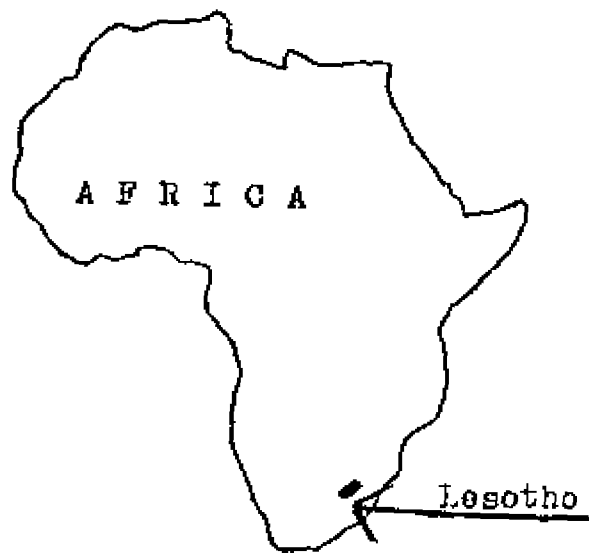
Geographers, Transactions and Papers, Vol. 28 (1960), pp. 1-22. Also interesting is Edmund H. Dele, "Some Geographical Aspects of African Land-locked States," Annals of the Association of American Geographers, Vol. 58 (September, 1968), pp. 485-505.

<sup>9</sup>See for instance Helen D. Reid, International Servitudes in Law and Practice (Chicago: University of Chicago Press, 1932), pp. 152-153. Another example is C. Smogorzewski, Poland's Access to the Sea (London, 1934), p. 216.

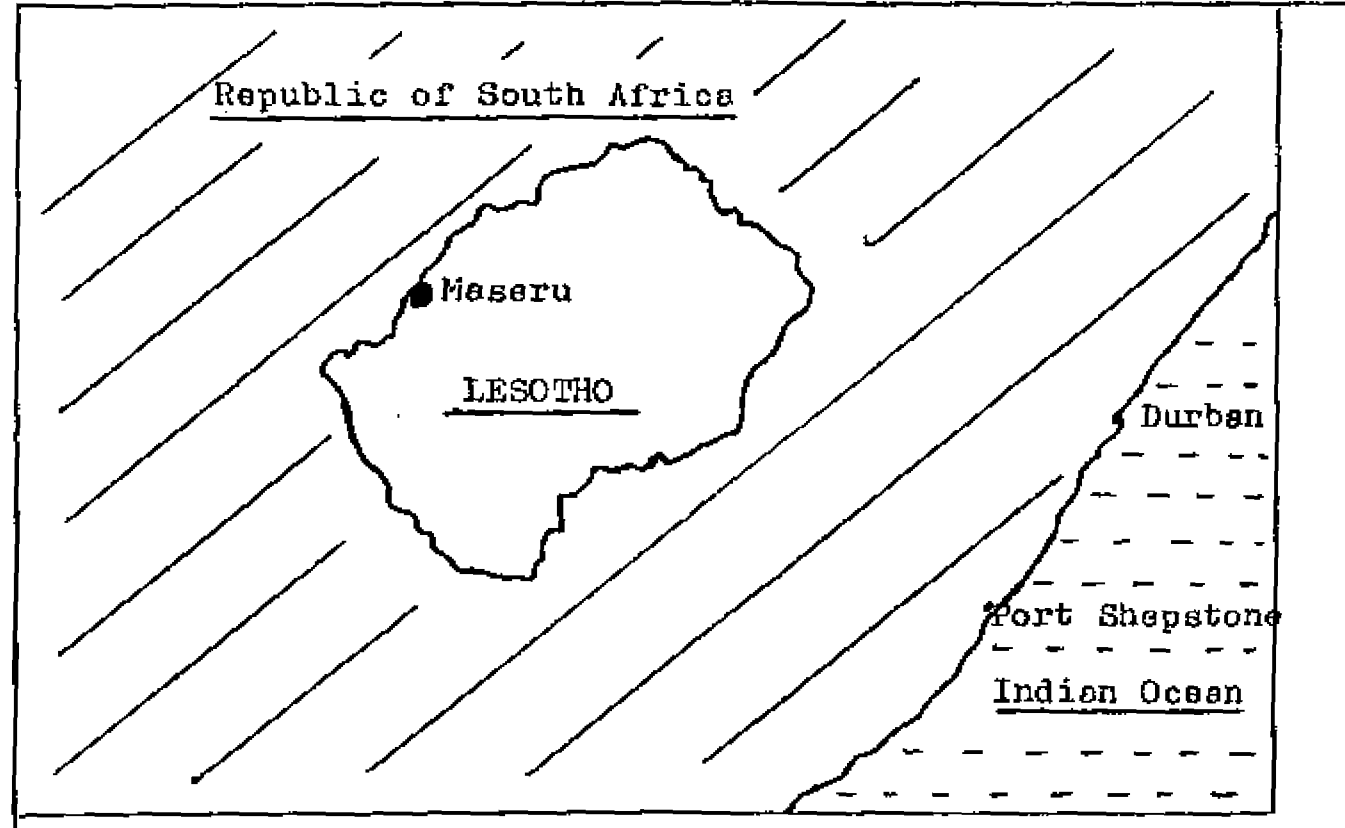
<sup>10</sup>Frank E. Kranz, International Enclaves and Rights of Passage Ph.D. Dissertation, Geneva, Switzerland: Graduate Institute of International Studies, 1961, pp. 20-21.

<sup>11</sup>Charles Calvo (ed.), Dictionnaire de droit international public et privé (Berlin: Puttkamer & Mühlbrecht, 1885), p. 291.

<sup>12</sup>Consult C. d'Olivier Ferron, "International Enclaves and the Question of State Servitudes," International and Comparative Law Quarterly, Vol. 4 (April, 1955), p. 295. Ferron goes so far as to say that countries like Nepal and Bhutan, which have the "wall" of the Himalayas obstructing their exit in every direction except in that of India, might well be considered exclaves. M. Fréngulis (ed.), Dictionnaire diplomatique (Paris: Académie diplomatique internationale, 1933), p. 807 has adopted



LESOTHO



3. Lesotho: An "Enclave" State

it is argued, they (San Marino and the Vatican) are enclaves of Italy, which is the surrounding state. But because they are not detached portions of another country they cannot be considered exclaves.

The above argument, it is submitted, is based on a false identification of enclaves (exclaves) with similarly encircled territory. Actually, it is precisely because of the unitary character of San Marino and the Vatican that they should not be seriously regarded as true exclaves or enclaves. A complete exclave (enclave) may never possess its own state personality. It is always subordinate to the country to which it belongs.

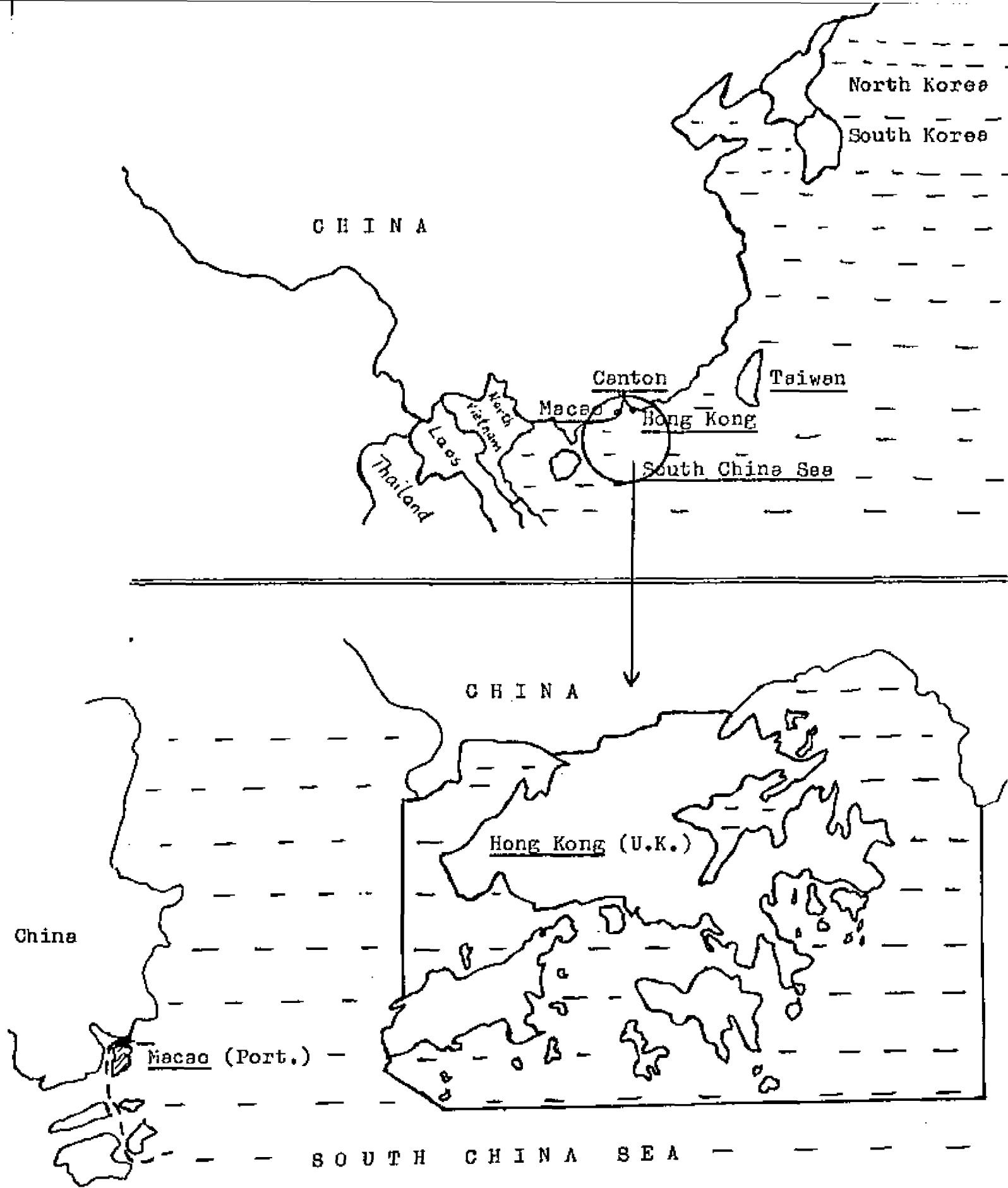
Coastal territories. Frequently, coastal areas are taken for exclaves or enclaves as the case may be.<sup>13</sup> Generally, these are of three kinds. And they consist of regions along the sea coast of one state but administered by another. In the first category are colonies. Typical cases in point are Gibraltar,<sup>14</sup> controlling the entrance to

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the following definition: "Un territoire enclavé est un territoire entièrement entouré par d'autres pays".

<sup>13</sup>See for example G.B. Adams, "Feudalism," Encyclopedia Britannica, 11th ed., Vol. 9 (Cambridge: Cambridge University Press, 1910-11), p. 369. Also pertinent is Elton Atwater, "Enclave," World Book Encyclopedia, Vol. 6 (Chicago: Field Enterprises, 1964), p. 21.

<sup>14</sup>For a penetrating look at this territory see Robert W. Chandler, "International Law and the Dispute over Gibraltar," Journal of International and Comparative Studies, Vol. 4 (Summer, 1971), pp. 79-103.



4. Hong Kong and Macao: "Coastal Territories"

the Mediterranean, and Hong Kong and Macao, both of which are located on the tip of the Chinese mainland.<sup>15</sup> In the second category are leaseholds. And a relevant example is Guantánamo Bay in Cuba.<sup>16</sup> Finally, there are those political districts that are governed as integral parts of the country claiming jurisdiction over them. Felling into this category are Ceuta and Melilla, which form part of Spanish North Africa.<sup>17</sup> An important historical illustration is East Prussia, separated from the rest of Germany by the famous Polish Corridor between 1919 and 1939.<sup>18</sup> All of these domains possess ties to a country far away. But they do not fit the exacting terms of our definition because they have their own sea coast.

<sup>15</sup>These coastal territories are examined at length in E.A. Walker, Colonies (New York: Cambridge University Press, 1944).

<sup>16</sup>The American point of view in regard to this area is contained in U.S. Department of Defense, United States Naval Base: Guantánamo Bay, Cuba, Statement of August 10, 1962.

<sup>17</sup>For details about these territories consult G.W.S. Robinson, "Ceuta and Melilla: Spain's *Plezas de Soberanía*," Geography, Vol. 43 (1958), pp. 266-269. Also useful is "Ceuta and Melilla" in The Middle East and North Africa, 15th ed. (London: Europa Publications, Ltd., 1968), pp. 627-629.

<sup>18</sup>One of the best treatments of this problem is contained in Richard Hartshorne, "The Polish Corridor," Journal of Geography, Vol. 36 (May, 1937), pp. 161-176.

So-called "neutral" zones. Occasionally, so-called "neutral" zones are described as exclaves or enclaves.<sup>19</sup> These are political entities that have been created as a result of a boundary dispute and in which contending states have equal rights. Two of the most frequently cited cases are the territories located on the northeastern boundary of Saudi Arabia in the Middle East.<sup>20</sup> But also important is the little known "neutral ground" of Gibraltar. This is an area which consists of 230 acres and is located on the isthmus that connects the British "Rock of Gibraltar" with the Spanish mainland.<sup>21</sup> Properly speaking, these political curiosities are known as "boundary condominiums." Sovereignty is shared between two or more states and territorial discontinuity is not an essential element.

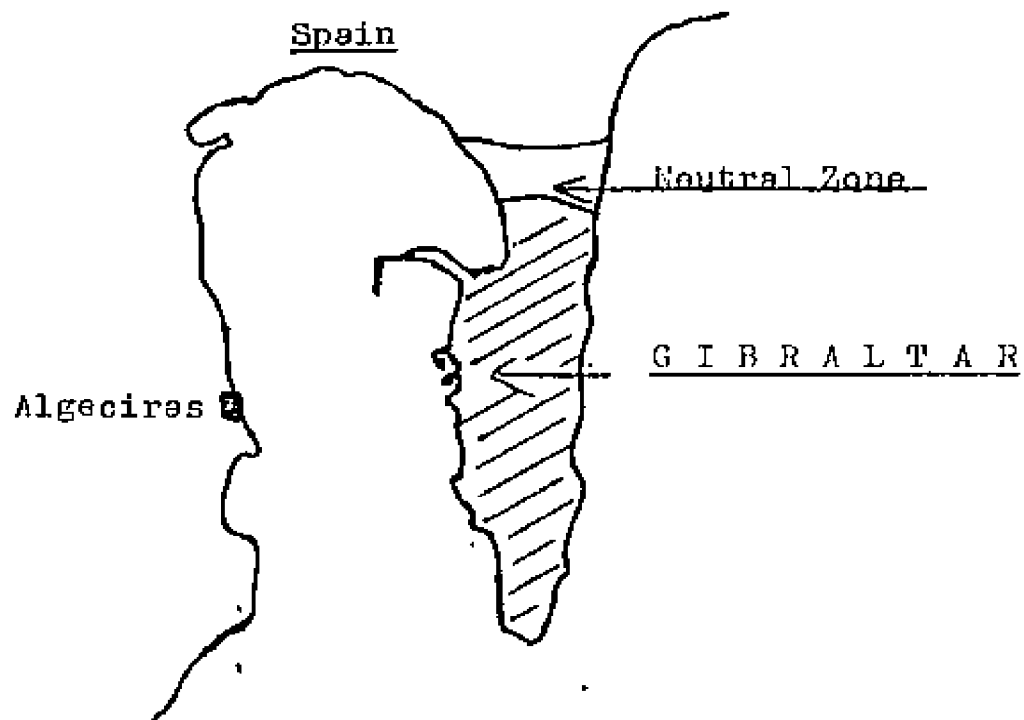
### Separated Areas

Those territories that warrant our attention next may be categorized according to the degree of their separation

<sup>19</sup>For one of the best general discussions of so-called "neutral" zones see Alexander Melamid, "The Economic Geography of Neutral Territories," Geographical Review, Vol. 45 (July, 1955), pp. 359-374.

<sup>20</sup>Refer to Norman J. Pounds (ed.), An Atlas of Middle East Affairs, rev. ed. (New York: Praeger, Inc., 1964), p. 78.

<sup>21</sup>For the British point of view on this "neutral ground" see Great Britain, Gibraltar Talks with Spain (London: H.M.S.O., 1966), p. 62. For the Spanish viewpoint see Spain, Negotiations on Gibraltar (Madrid: Ministry of Foreign Affairs, 1968), pp. 428-429.



5. Gibraltar: Neutral Zone.

from the country to which they belong politically. They embrace so-called "pene," "quasi," "virtual" and "temporary" exclaves.<sup>22</sup>

So-called "pene-exclaves". These are "parts of the territory of one country that can be approached conveniently -- in particular by wheeled traffic -- only through the territory of another country."<sup>23</sup> One author calls them "pro-ruptions".<sup>24</sup> That is, they are barely connected to the main territory, with links being so narrow or difficult that the only transportation lines lie through neighboring territory.

A typical example is Point Roberts.<sup>25</sup> Consisting of an area of 4.1 square miles and a population of some 240 permanent inhabitants (1962 est.), this tiny portion of the State of Washington is situated on the tip of a peninsular projection of Canada above the 49th parallel. Although physical connections by water with Point Roberts are entirely

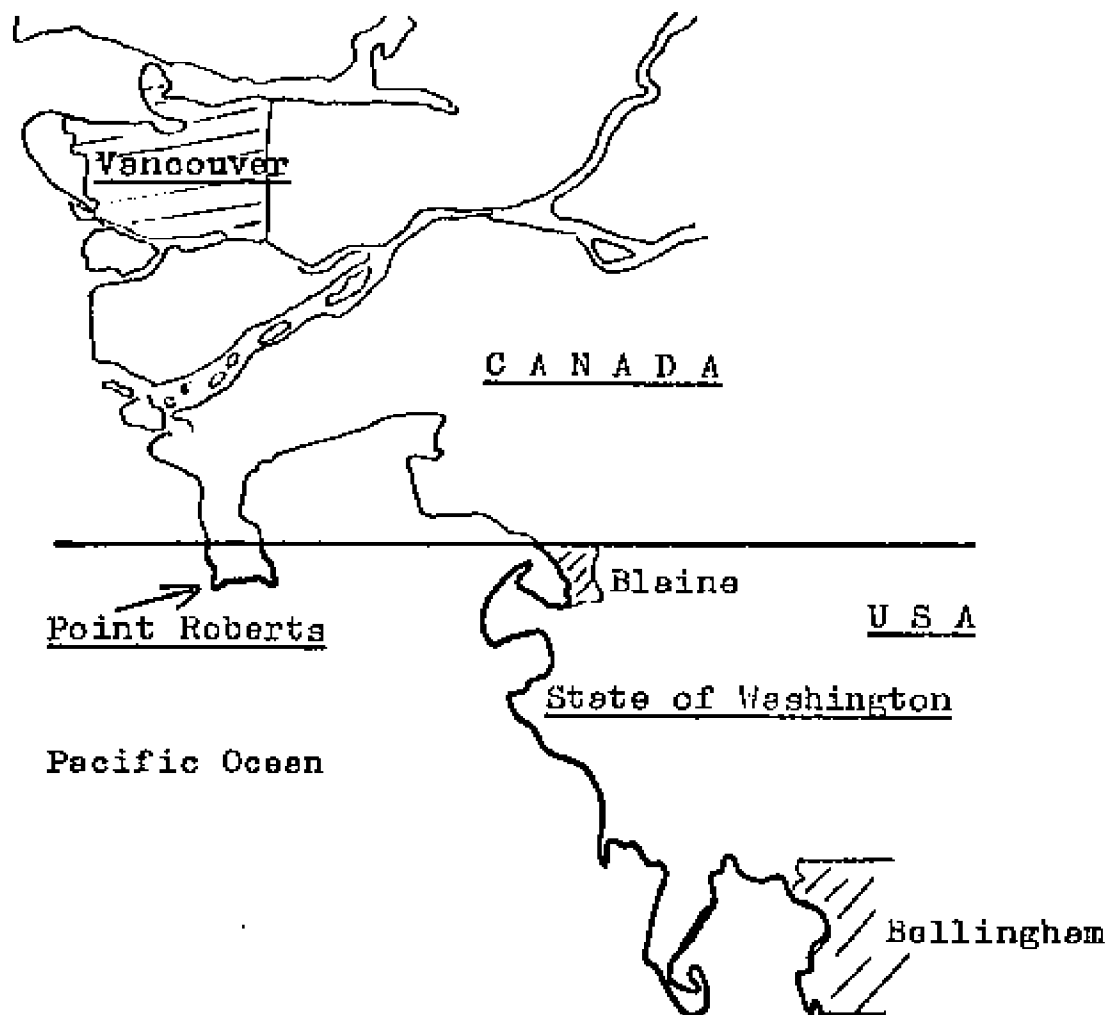
<sup>22</sup>In the main, this classification follows that outlined by Professor G.W.S. Robinson in 1959. Although his neat typology is provocative (it has little to do with true exclaves generally), it has been accepted at face value by many geographers. See for example Alexander Melamid, "Enclaves and Exclaves," in David L. Sills (ed.), International Encyclopedia of the Social Sciences, Vol. 5 (New York: The Macmillan Co. and The Free Press, 1968), pp. 60-61.

<sup>23</sup>G.W.S. Robinson, "Exclaves," Annals of the Association of American Geographers, Vol. 49 (September, 1959), pp. 283-295.

<sup>24</sup>Harm J. de Bliz, Systematic Political Geography (New York: John Wiley & Sons, 1967), p. 46.

<sup>25</sup>Another example of an American "pene-exclave" in Canada is the northern tip of Minnesota (Lake of the Woods County), which is situated above the 49th parallel.





6. Point Roberts: An American "Pene-Exclave"

within the sovereignty of the United States, land access is only possible through Canada.<sup>26</sup>

So-called "pene-exclaves"<sup>27</sup> (not true exclaves) can be found in many parts of the world. In 1952, at least eight existed in Europe.<sup>28</sup> And most of these were concentrated along the Austro-German and Irish frontiers. But due to the construction of special roads and tunnels in the meantime several of these have disappeared.<sup>29</sup>

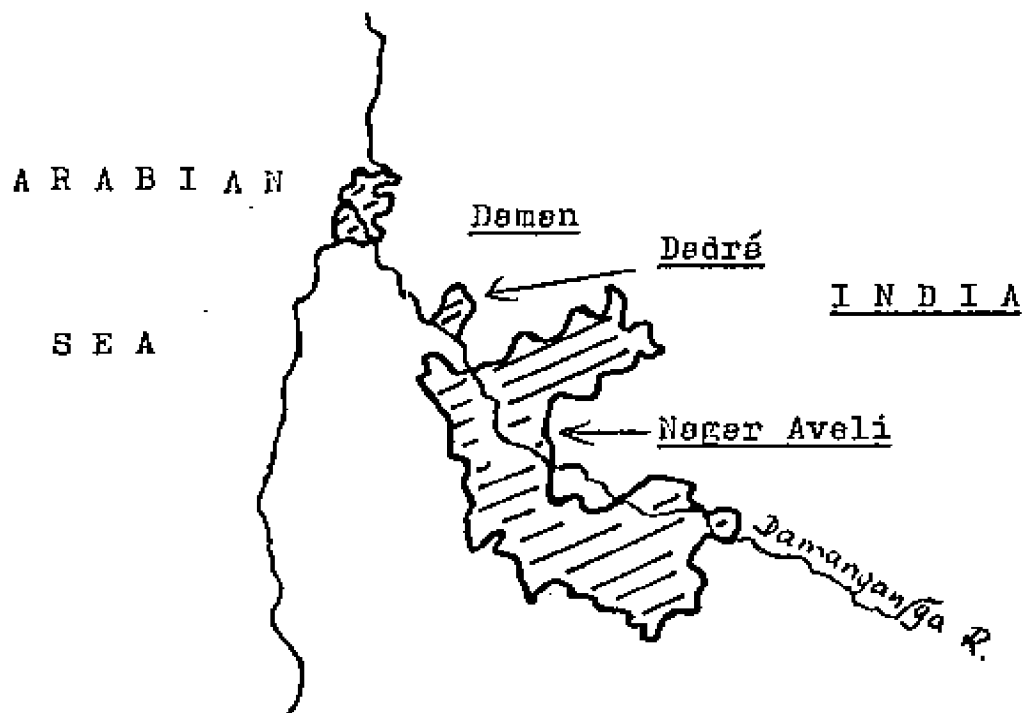
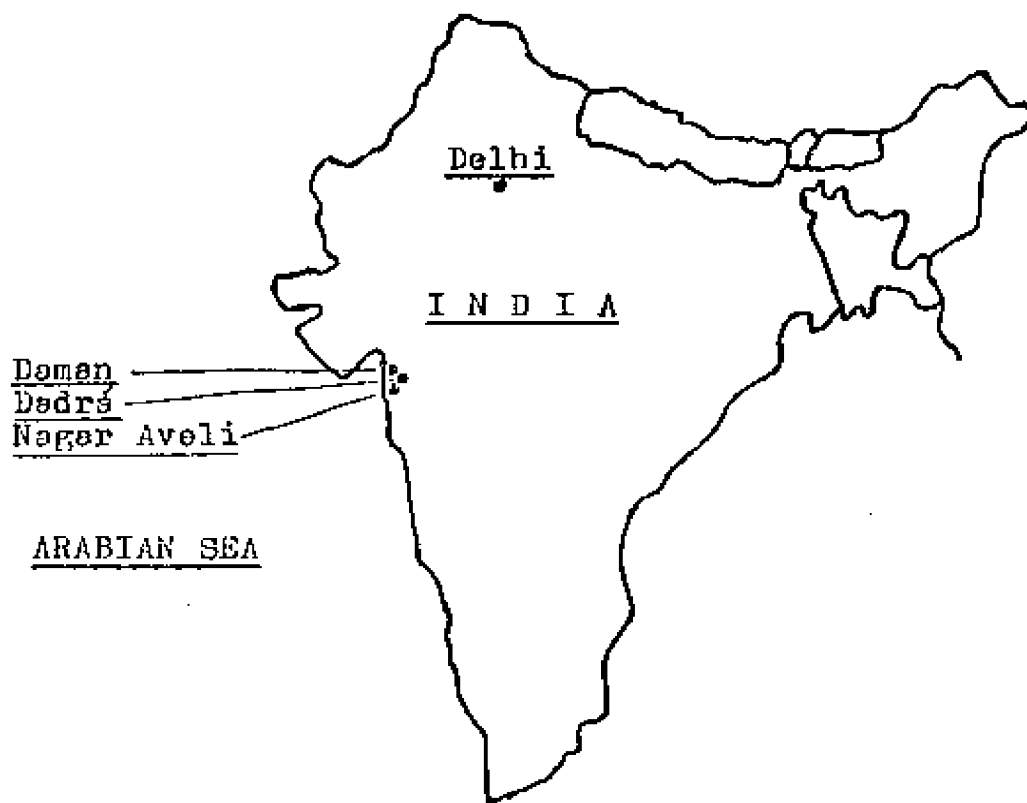
Of unusual interest are the externalities of Kleine Walsertal with a population of 4,000 (1972 est.) and Jungholz with 257 inhabitants (1972 est.). Both belong to Austria and seem on the map connected with it. But in practice they are cut off from that country by high mountains, and access is only possible via Germany. As a result of their inaccessibility from

<sup>26</sup>For details see Julian V. Minghi, "Point Roberts, Washington -- The Problem of an American Exclave," Yearbook of the Association of Pacific Coast Geographers, Vol. 24 (1962), p. 29.

<sup>27</sup>Hubert Auhagen has another name for these "pene-exclaves." He calls them "quasi-exclaves" or "half-enclaves" (Halb-Enklaven). See his Die völkerrechtliche Stellung der Enklaven und Exklaven Ph.D. Dissertation, Göttingen, West Germany: Faculty of Law, Georg-August University, 1967, pp. 28-31.

<sup>28</sup>Refer to G.W.S. Robinson, "Exclaves," Annals of the Association of American Geographers, Vol. 49 (September, 1959), p. 283.

<sup>29</sup>One of these "pene-exclaves" which have disappeared is Balderschwang, Bavaria. Until 1963, it could only be reached from Germany through Austrian territory. At that time, however, a special German Alpine roadway was constructed through the village. As a consequence, it now enjoys free surface access with the rest of the Federal Republic. See Die Zeit, No. 38, 1964, p. 25.



7. Dadrá and Nagar-Aveli: Portuguese "Quasi-Exclaves" in India

Austria, Kleine Walsertal<sup>30</sup> and Jungholz<sup>31</sup> have been incorporated in the German customs area. Following the Anschluss in 1938, the Reich annexed these two territories, a move which amounted merely to an administrative reorganization. However, the emergence of Austria as an independent state in 1945 led to the restoration of the status quo ante.<sup>32</sup>

So-called "quasi-exclaves". Those areas, which for one reason or another do not function as true exclaves today, have been termed "quasi-exclaves".<sup>33</sup> A typical example is the former Portuguese Fort Sao Jose Baptista da Ajuda, located at the City of Ouidah in what was once French West Africa. Juridically this area, exactly one hectare in size, still belongs to Portugal. But in the beginning of August 1961 the newly independent government of Dahomey, in a demonstration of nationalist sentiment, expelled Portuguese troops and set fire to the fortifications.<sup>34</sup>

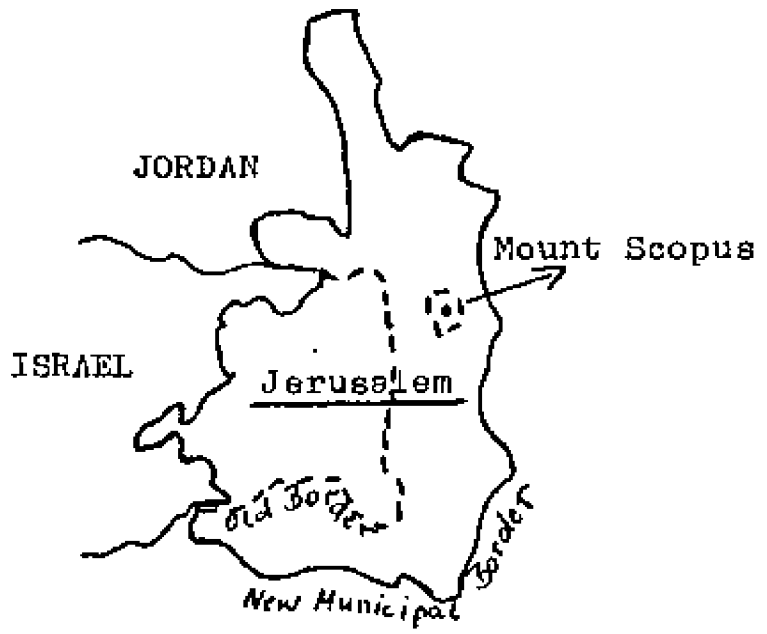
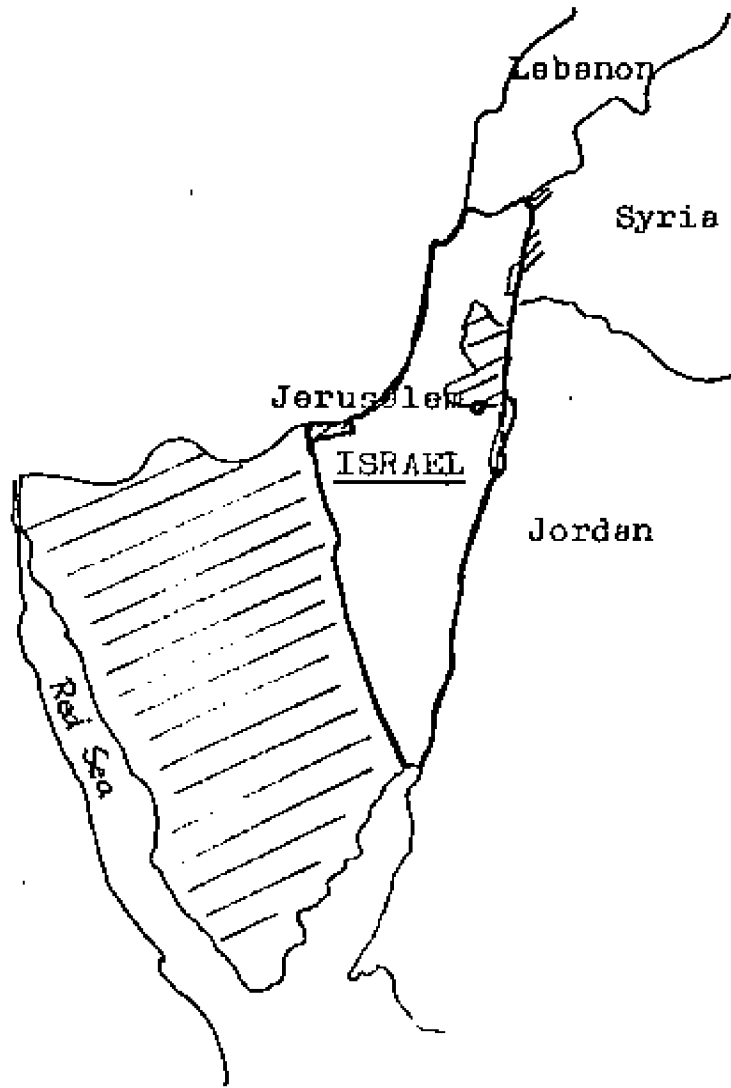
<sup>30</sup>Through a treaty in 1890, between Germany and Austria-Hungary, Kleine Walsertal became part of the German customs area. For the text of this agreement see Reichsgesetzblatt 1891, pp. 59-77.

<sup>31</sup>By a treaty, dated May 3, 1868, between Bavaria and Austria-Hungary, Jungholz was incorporated in the Bavarian customs area. For the text see Regierungsblatt für das Königreich Bayern 1868, columns 1245-1264.

<sup>32</sup>Hans Weigert et al, Principles of Political Geography (New York: Appleton-Century-Crofts, 1957), p. 62.

<sup>33</sup>See G.W.S. Robinson, "Exclaves," Annals of the Association of American Geographers, Vol. 49 (September, 1959), p. 283.

<sup>34</sup>Archiv der Gegenwart, Vol. 31 (1961), p. 9258 C.



8. Mount Scopus: An Israeli "Quasi-exclave"

Since that time Ajuda has naturally not functioned as an exclave, and Portuguese protests to the contrary, it is now administered as an integral part of the Republic of Dahomey.

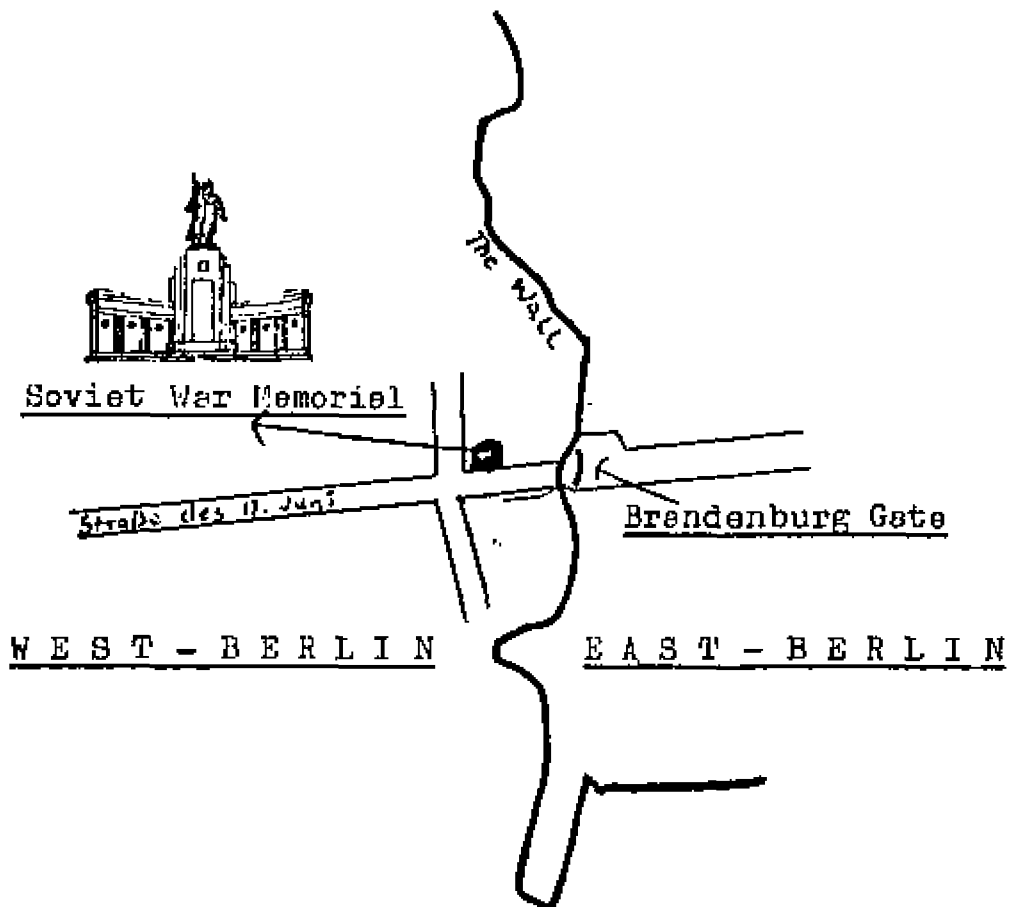
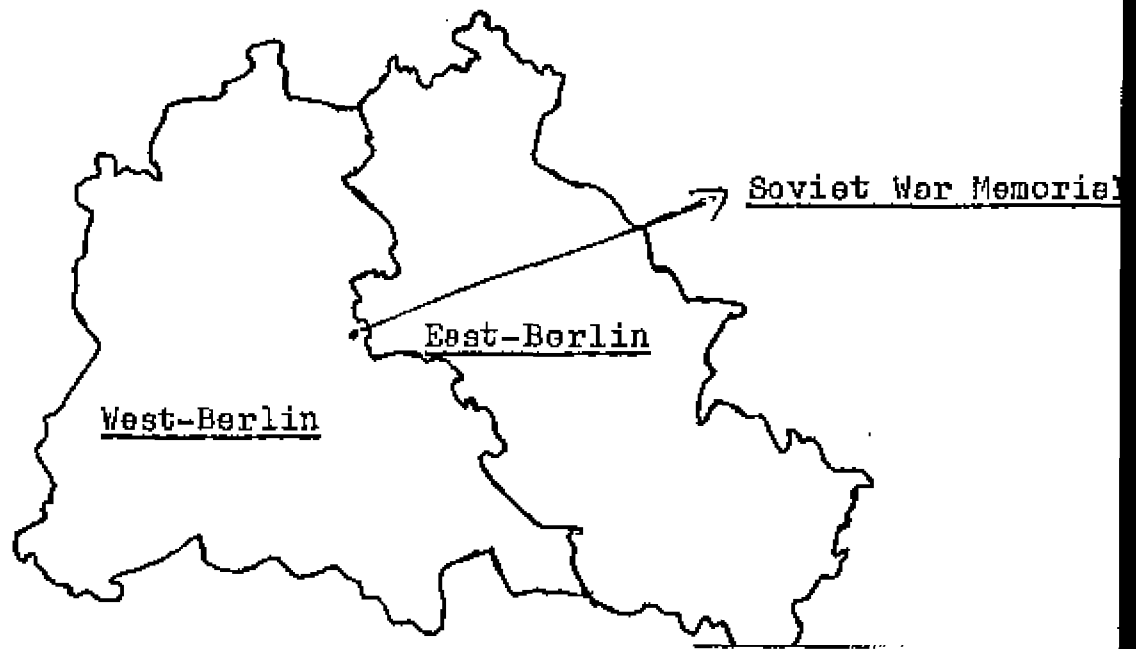
So-called "virtual exclaves". These are territories that are treated as "exclaves" of a country of which they are not legally an integral part.<sup>35</sup> Most frequently cited illustrations are embassy grounds and structures, occupied by the diplomatic representatives of a foreign power. But other political areas falling in this category include: (a) the headquarters of the United Nations in New York;<sup>36</sup> (b) certain lands and buildings in and near Rome which belong to the Vatican City State;<sup>37</sup> (c) the Swiss airport of Basel, located in France;<sup>38</sup>

<sup>35</sup>Consult G.W.S. Robinson, "Exclaves," Annals of the Association of American Geographers, Vol. 49 (September, 1959), p. 285.

<sup>36</sup>The status of the UN headquarters building in New York is examined in detail by Yuen-li Lieng, "The Question of Access to the United Nations Headquarters of Representatives of Non-Governmental Organizations in Consultative Status," pp. 434-450. Also important is C.W. Jenks, Headquarters of International Institutions: A Study of Their Location and Status (London, 1945). A case touching on the problem is Reparation for Injuries Suffered in Service of the United Nations, International Court of Justice, 1949; the Advisory Opinion is contained in I.C.J. Reports (1949), p. 174.

<sup>37</sup>The situation of these Vatican administered areas is discussed in U. Toschi, "The Vatican City State from the Standpoint of Political Geography," Geographical Review, Vol. 21 (October, 1931), pp. 529-538. Otherwise see G. Ireland, "The State of the City of the Vatican," American Journal of International Law, Vol. 27 (April, 1933), pp. 271-289. Also relevant is H. Wright, "The Status of the Vatican City," American Journal of International Law, Vol. 38 (July, 1944), pp. 452-457.

<sup>38</sup>This little known situation arose because no suitable area could be found on Swiss soil. Although France signed a treaty with Switzerland allowing it to use French territory for



9. Soviet War Memorial in West Berlin: A "Virtual" Exclave

and (d) the Soviet War Memorial in West Berlin.<sup>39</sup> In the main, these areas represent the limited exercise of jurisdiction of one state within foreign territory. Because they do not belong territorially to the countries which occupy them, they are barred from any further consideration here.

So-called "temporary exclaves". These are political districts which are created "where what was one state has been divided by an avowedly temporary or provisional line"<sup>40</sup> (e.g. an armistice line or an occupation zone which leaves "islands" of one zone within another). West Berlin and its territorial fragments are a prime example. Because of its immense size and prestige, this territory has been called "the most important exclave in the world."<sup>41</sup> Technically speaking, however, the isolated city and its discontinuous portions are not exclaves (enclaves).<sup>42</sup> They have a unique

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the airport, France retained sovereignty over the area. See Hans Weigert et al, Principles of Political Geography (New York: Appleton-Century-Crofts, 1957), p. 62.

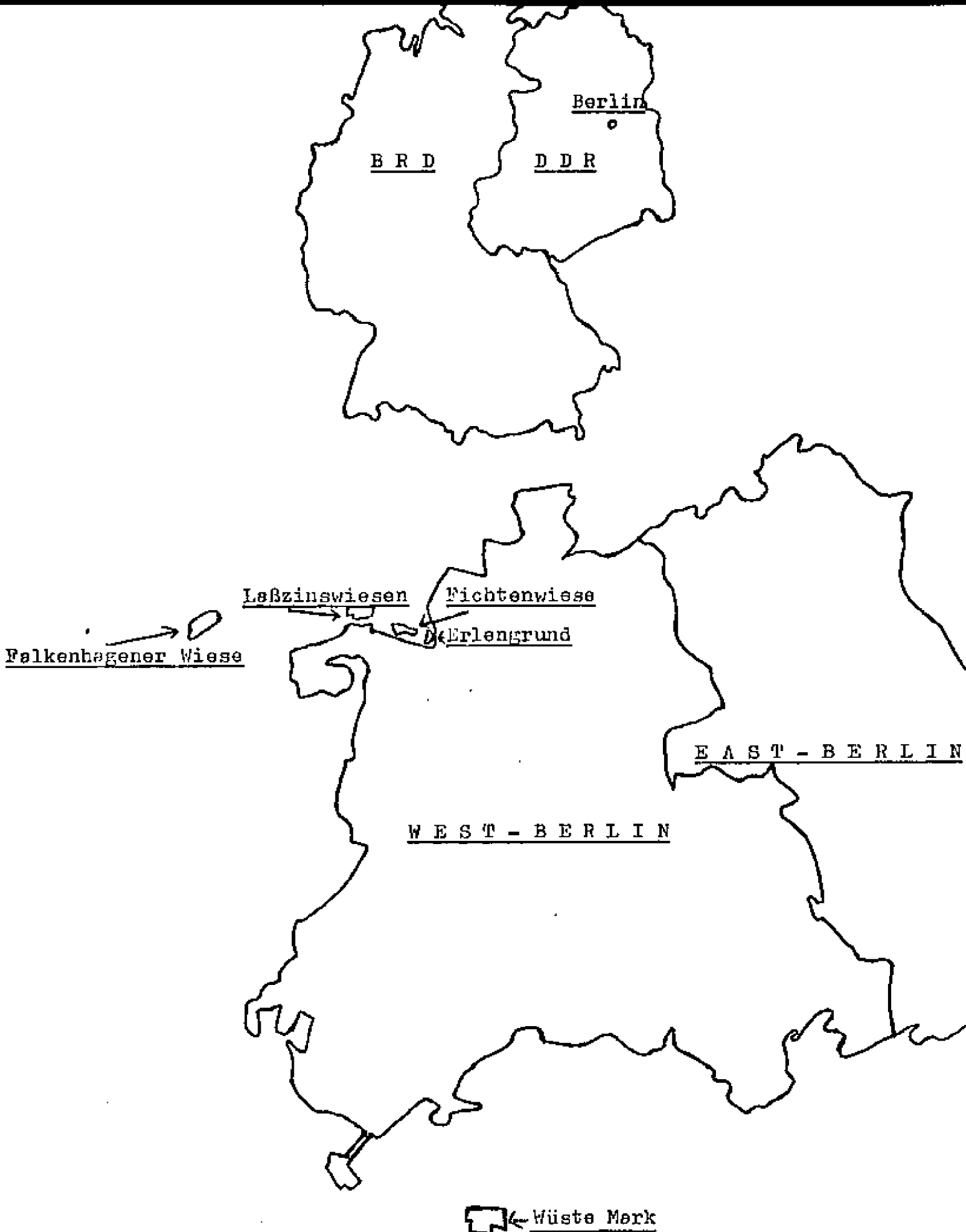
<sup>39</sup>The legal status of the Soviet War Memorial in the British Sector of Berlin is unclear. And very little has been written about it. In 1946, it was erected in the form of a gate of honor and crowned with the bronze figure of a Soviet soldier. Following the construction of the infamous wall through Berlin in 1961, British soldiers fenced it off as a retaliatory measure.

<sup>40</sup>G.W.S. Robinson, "Exclaves," Annals of the Association of American Geographers, Vol. 49 (September, 1959), p. 285.

<sup>41</sup>Ibid.

<sup>42</sup>The intemperate use of the term "exclave" by this writer in past articles when referring to West Berlin, Steinstücken or other disconnected parts of the city is to be regretted.





10. Berlin and its "Temporary" Excleves

status which, in theory at least, also embraces East Berlin and has no juridical justification except in that light.<sup>43</sup>

So-called "Administrative," "Ethnic" and "Economic Exclaves"

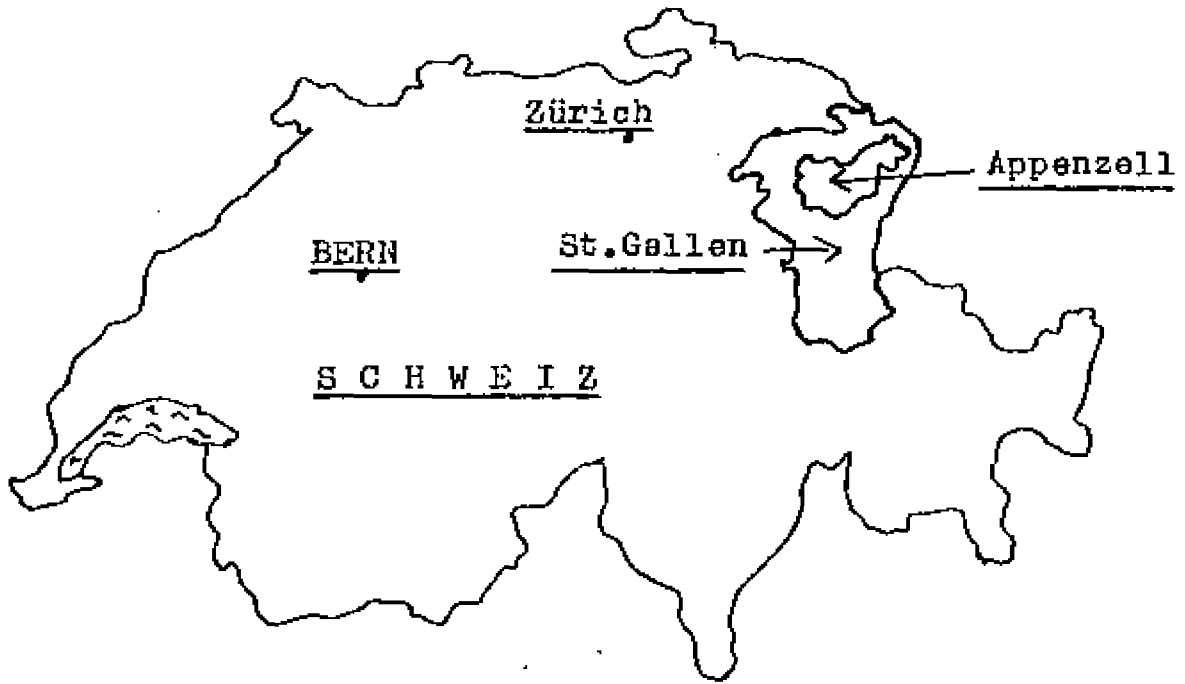
Those areas at which we shall now take a brief look are often described figuratively as exclaves and enclaves. For the most part, they embrace such diverse entities as administrative, ethnic and economic units.<sup>44</sup>

So-called "administrative exclaves". These are of several different types. On the one hand, there are those outlying portions of provinces located in federal states or other political subdivisions.<sup>45</sup> Particularly revealing in this respect is the German Land (federal state) of Braunschweig,

<sup>43</sup>East and West Berlin and their territorial fragments together form a larger legal entity: "Greater Berlin". The origin of the special status of "Greater Berlin" goes back to April 27, 1920, when it was incorporated out of eight towns, fifty-nine rural districts and twenty-seven farms. According to the agreement reached by the European Advisory Commission (EAC) on September 12, 1944, which fixed the post-war occupation zones of Germany and provided for the joint occupation and administration of the "special area of Greater Berlin," the borders of the city were defined as those which had existed in 1920. The quadripartite agreement on Berlin, which was signed by the United States, the Soviet Union, Great Britain and France on September 3, 1971, recognized this situation and re-emphasized Four-Power responsibility for Berlin. It also provided for an exchange of territory and the realignment of some boundary areas. For details see Honoré K. Catudal, Jr., "The Berlin Agreements," Geoforum, Vol. 11 (September, 1972), pp. 78-80.

<sup>44</sup>The terms "exclave" and "enclave" have also been used loosely in the fields of architecture and petrology. But such extreme usage represents a complete breakdown of terminology.

<sup>45</sup>See L. Dudley Stamp (ed.), A Glossary of Geographical Terms, 3rd ed. (New York: John Wiley & Sons, Inc., 1962), p. 176.



11. Appenzell: A Swiss "Administrative" Exclave

which was fragmented into some twenty parts until the Hitler period.<sup>46</sup> Today these so-called administrative outliers can be found in almost every region of the world. But they are particularly prevalent in India,<sup>47</sup> Germany,<sup>48</sup> Switzerland,<sup>49</sup> France,<sup>50</sup> Spain<sup>51</sup> and Great Britain.<sup>52</sup> Although these en-

<sup>46</sup>H. Weigort et al, Principles of Political Geography (New York: Appleton-Century-Crofts, Inc. 1957), p. 62.

<sup>47</sup>Before 1948 the Indian state of Baroda was split into five major and some thirty minor parts. Some of these administrative fragments still survive as disconnected portions of Bombay in the Saureshra Union.

<sup>48</sup>Through a steady process of redistricting, the Federal Republic has successfully eliminated many of its administrative outliers. But a few remain such as the area of Thedinghausen, which lies in the vicinity of Bremen but belongs to the rural district (Landkreis) of Braunschweig.

<sup>49</sup>There exist no less than twenty-three administrative outliers in Switzerland. The largest number of these (5) are to be found in the Kanton of Fribourg, of which Estavayer in the Kanton of Vaud is the largest in Switzerland. Avenches is an enclosure of Vaud in the Kanton of Fribourg. Geneva has two small outliers in Vaud: Celligny and Les Coudres. Wallenbach is the name of an enclosure of Fribourg within the Kanton of Bern. For its part, Bern has two outliers inside Fribourg. There are many more. The problems which these discontinuous cantonal parcels pose are touched upon by Max Huber, "The Intercantonal Law of Switzerland," American Journal of International Law, Vol. 3 (January, 1909), pp. 62-98.

<sup>50</sup>In France, there exist enclosures of one departement in another. These include: (a) Valréas, a portion of Vaucluse in Drôme; (b) Gardères, Luquet and Escanets, three disconnected segments of Hautes-Pyrénées in Basses-Pyrénées; and (c) Moenvres, part of Nord in Pas-de-Calais.

<sup>51</sup>In Spain, the outlier of Ademuz, which belongs to the province of Teruel, is located in the province of Valencia.

<sup>52</sup>In Britain, there is the area of Flint, belonging to Wales, situated within Cheshire (England).

closures possess a degree of similarity with complete exclaves (enclaves), they are not included under the terms of our definition because all are located within the boundaries of their native country.

Sometimes an entire administrative district enclosed by another is referred to as an enclave or exclave.<sup>53</sup> A case in point is the Swiss Kanton of Appenzell. Consisting of 161 square miles, it is shut in on all sides by the larger Kanton of St. Gallen (777 square miles). Even though this administrative enclosure existed before Switzerland became a relatively close-knit federation, it should be viewed as a purely internal arrangement.

Occasionally, in municipal law, one jurisdiction encompassed by another will be termed loosely an enclave or, still more rarely, an exclave.<sup>54</sup> But they should not in the strict sense be regarded as such if only because of their domestic nature.

The same description occurs in canon law where one church jurisdiction is enclosed in another (e.g. Queen's College, part of the province and diocese of York but situated in the city of York).

<sup>53</sup>See for example H. Weigert et al, Principles of Political Geography (New York: Appleton-Century-Crofts, 1957), p. 60.

<sup>54</sup>Consult the Grand Larousse Encyclopédique, Vol. 4 (Paris: Librairie Larousse, 1961), tit. "Enclave."

in those of Canterbury and Oxford respectively).<sup>55</sup> In this case, the outlier cannot be considered technically an exclave (enclave) because it does not invoke the jurisdiction of a territorial sovereign.

Lastly, there is that "administrative exclave" legally called the protectorate. A typical example is Basutoland before it became independent on October 4, 1966.<sup>56</sup> Now named the Kingdom of Lesotho, this territory was administered for a long time by Great Britain.<sup>57</sup> Although several authorities have maintained that it is an enclave,<sup>58</sup> it should not strictly be regarded as one because, as one author readily admits, Basutoland was never "an integral part of Great Britain."<sup>59</sup> In general, protectorates are not true exclaves or enclaves because they do not represent a territorial extension of the protecting state.

<sup>55</sup>See for instance C. d'Olivier Farran, "International Enclaves and the Question of State Servitudes," International and Comparative Law Quarterly, Vol. 4 (April, 1955), p. 294.

<sup>56</sup>See Department of State, "Kingdom of Lesotho," Background Notes (Washington, D.C.: U.S. Government Printing Office, 1968), pp. 1-4.

<sup>57</sup>For an African point of view see "Lesotho" in Africa 1968 (Paris: African Press Association, 1968), pp. 199-203.

<sup>58</sup>See for example Hubert Auhagen, Die völkerrechtliche Stellung der Enklaven und Exklaven Ph.D. Dissertation, Göttingen, West Germany: Faculty of Law, Georg-August University, 1967, pp. 23-24.

<sup>59</sup>Refer to Frank E. Krenz, International Enclaves and Rights of Passage Ph.D. Dissertation, Geneva, Switzerland: Graduate Institute of International Studies, 1961, p. 26.

So-called "ethnic exclaves". These may take the form of a concentration of one ethnic group entirely encircled by another dominant nationality.<sup>60</sup> A good example are the Italians in Trieste. For obvious reasons (mainly their lack of territoriality), they are of no particular concern to us.

So-called "economic exclaves". The term exclave (enclave) is also used loosely in economics. For instance, there is the reference to a "splinter of one economy lying inside another economy".<sup>61</sup> Accordingly, certain oil fields in Venezuela are viewed as "exclaves" of the economy of the United States. In reality, however, they must be excluded from our topic because U.S. sovereignty is not involved.

### Theoretically Possible Enclosures

Now that we have examined in some detail the most important exclave-like situations existing today, it might be well to turn to a few theoretically possible cases. These will throw light on certain aspects of the problem which heretofore have not been highlighted. In this way, any points that are still unclear will be addressed.

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<sup>60</sup>F.J. Monkhouse (ed.), A Dictionary of Geography (London: Edward Arnold Publishers, Ltd., 1965), p. 110.

<sup>61</sup>E.W. Zimmermann, World Resources and Industries, 2nd ed. (New York: Harper, 1951), p. 129.

First we shall investigate the plight of an outlier situated on an international river. We have already seen that direct access to the sea is enough to deprive an enclosure of its status as an apparent exclave (enclave). But the question remains whether access to an international river would have the same nullifying effect.<sup>62</sup>

Presumably, an essential fact about a true exclave or enclave is its lack of free surface communication without one having to pass over the territory of the enclosing state. Since an international river does not belong territorially to the state through which it runs, it follows that an enclosure tangent to it cannot be considered truly enclaved by the surrounding country. Thus, we may conclude that the presence of an international river would be enough to deprive an outlier of its apparent character as an exclave or enclave.

At present, the above described situation is merely hypothetical. No exclaves existing today are located on international rivers. But the potential for such a real-life illustration can be found in Büsingen, a West German exclave lying along the Rhine in Switzerland. Repeatedly, demands have been made from many sides for the widening of the non-navigable portion of this river between Basel and Lake

<sup>62</sup>It is clear that access to a national river would not effect the status of an apparent exclave (enclave) because such a river is located in the territory of one state and subject to its exclusive jurisdiction. See William L. Tung, International Law in an Organizing World (New York: Thomas Y. Crowell Co., 1968), p. 153.



Constance. Once construction is completed and this section of the Rhine is declared part of an international river, then Büsingen will lose its status as a true exclave.

Let us now shift our attention to the second major theoretical possibility, the enclavement of an apparent exclave (enclave) next to another in foreign territory. The question arises here whether the sharing of a common frontier with another enclosure would be enough to deprive the one of its legal status as an exclave or enclave.

No such situation is known to exist today. But by drawing on the resources of history, we can point to the papal territories of Avignon.<sup>63</sup> Although they were enclaved in France until 1791,<sup>64</sup> they also had a frontier with the principality of Orange (which remained independent until 1713).<sup>65</sup>

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<sup>63</sup>See Theodore D. Woolsey, Introduction to the Study of International Law, 6th ed., rev. by Th. S. Woolsey (New York: Charles Scribner's Sons, 1897), p. 67.

<sup>64</sup>The papal territories consisted of Comtal Venaissin and had Avignon as their capital. They became enclaved in France in 1486. At that time, the surrounding counties of Maine and Provence were bequeathed by the last of the Counts of Anjou to a cousin, King Louis XI. See Johann J. Moser, Grundsätze des Europäischen Völkerrechts in Friedenszeiten (Frankfurt a. M., 1763), p. 361.

<sup>65</sup>Although Orange was overrun by the French in 1660, it was not formally absorbed until the Treaty of Utrecht in 1713.

The answer to this puzzle calls for an application of the facts at hand. Presumably, an essential element in the character of an exclave or enclave stems from the fact that it is completely surrounded by the encloving state. If an outlier is tangent to another in the same foreign territory, it cannot technically be considered to be entirely encompassed by the encloving country. Although this analysis may appear too restrictive to some, it is necessary to establish the complete "island" character of a true exclave or enclave if we are not to confuse it with other semi-enclosed territories.

Somewhat similar to the above is the case of an enclosure belonging to one state but physically located between two or more other countries. Although no such outlier is known to exist (or have existed), this provocative situation raises the question whether the sharing of a common frontier with two or more states would be sufficient to nullify its status as a complete exclave (enclave).

Presumably, a fundamental characteristic of an exclave or enclave is that it is a portion of one state completely surrounded by another. According to the terms of our definition, every exclave is admitted to have a "home" country (i.e. one to which it belongs) and a "host" state (i.e. one in which it is located). If, however, an outlier is physically cordoned off

by two or more countries, which is the "host" state?

Again it is to be regretted that this writer must take a narrow (but hopefully not what would be construed an arbitrary) interpretation of certain facts and exclude this hypothetical case from serious consideration. But he finds it necessary to adhere strictly to the definition adopted for the purposes of this study if only to minimize confusion.

The last theoretical possibility to be explored here concerns the enclevation of an outlier in a state separated from the parent country by one or more intervening states. An historical example is the Neuenburg exclave, which lay in Switzerland. Until its incorporation by that country in 1848,<sup>66</sup> it was separated from Prussia by several intervening states.

Despite the strenuous requirements of our definition, it is not necessary that the home country be contiguous with the encleving state. Nor is the distance between the exclave (enclave) and the parent country of any theoretical importance except where it may cause additional difficulties of communication. Thus, the separation of an enclosure by one or more intervening states would not alone affect its legal status as an exclave or enclave.

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<sup>66</sup>Otto Weiner, Büdingen am Hochrhein: Die reichsdeutsche Insel in der Schweiz (Constance, W. Germany: Friedrich Stadler, 1938), p. 83.

In the foregoing, we proceeded to systematically narrow the subject matter of our study. First recognition was given to the fact that the exclave (enclave) represents but one kind of outlier in the typology of shape. Second an attempt was made to classify the different types of enclosures often confused for exclaves and enclaves. Finally, by vigorously probing their individual circumstances, we tried to learn in what particular ways these externalities differed from the main object of this inquiry.

Definitions are inherently risky; but on the basis of the preceding discussion we should be able to list now the key elements of an exclave (enclave). Essentially, the real test of an exclave or enclave is whether or not

(a) it is a part of one country

(b) completely surrounded by the territory of another state.

If any of the above basic characteristics is not present, the outlier does not correspond to the definition of an exclave (enclave) adopted by us for the purposes of this study.<sup>67</sup>

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<sup>67</sup>A brief effort was made in Chapter One to explain that correct use of the terms "exclave" and "enclave" depends on the point of reference. Throughout Chapter Two the words were used together to avoid confusion. But now that we have a good grasp of terminology, the terms will hereafter be employed interchangeably. This is purely a matter of style and not emphasis.

## Chapter 3

### HISTORY

"As an international phenomenon the enclave must be admitted to have possessed a considerable historical importance ..."<sup>1</sup> If only for this reason, it should be profitable to take a general look at the problem against the background of history. In view of the countless number of enclosures that existed in the past, no attempt will be made to describe in detail each and everyone. Instead we will try to shed some light on the overall complexity of the problem during various periods especially after 1648, which is generally regarded as the turning point in the establishment of the modern state system. Where possible special attention will be paid to enclave situations that seem typical or relevant to this study. Particularly, we will be interested in testing the hypotheses that enclaves are basically an unstable phenomenon and are part of a discernible trend leading to the consolidation of state territory and the absorption of foreign enclaved bodies. In keeping with the broader outlines of our investigation, our focus will be on Europe.

### ENCLOSURES IN THE MIDDLE AGES

The first diplomatic document known to contain the word "enclave" was the Treaty of Madrid, which was signed

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<sup>1</sup>C. d'Olivier Ferran, "International Enclaves and the Question of State Servitudes," International and Comparative Law Quarterly, Vol. II (April, 1955), p. 294.

in 1526.<sup>2</sup> But it is recognized that exclaves existed long before that date. A large number of enclosures was present in Europe during the Middle Ages. In fact, a well-known feature of feudalism is that it produced a patchwork political map.<sup>3</sup> Discontiguous holdings were tolerated then because of the decentralized nature of feudal rule and warfare.

Most of these disconnected areas consisted of counties, marks, baronies, duchies and free towns. Each was dominated by a local ruler who was always trying to enlarge his domain. Many of these settlements were virtually self-sufficient. They had to be in view of the high costs of transportation; only goods of great value and little bulk were exchanged over distances of more than a few miles. As a consequence, most of these outliers and their environs were surrounded by underdeveloped lands, cutting them off from their neighbors.<sup>4</sup>

Access at this time was not the problem it became later. Due to the diversity of landholdings -- sometimes

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<sup>2</sup>Alexander Melamid, "Enclaves and Exclaves," in David L. Sills (ed.), International Encyclopedia of the Social Sciences, Vol. 5 (New York: The Macmillan Co. & The Free Press, 1968), p. 61.

<sup>3</sup>Stephen B. Jones, "Boundary Concepts in the Setting of Place and Time," Annals of the Association of American Geographers, Vol. 49 (September, 1959), p. 247.

<sup>4</sup>G.B. Adams, "Feudalism," Encyclopedia Britannica, 11th ed. (Cambridge: Cambridge University Press, 1910-11), Vol. 10.

strung out for miles -- each local sovereign was aware that it was in his own interest to promote passage through the underdeveloped lands and between settlements. If one petty ruler were suddenly to deny transit across his territory to a neighbor, he could expect retaliation in kind.

Generally, the Middle Ages in Europe saw feudalism evolve into absolute monarchy. (To be sure, there were kings in the feudal period just as there were noblemen under the monarchies.) And with it territorial decentralization gave way gradually to the consolidation of domains.

#### THE EXCLAVE PROBLEM OF GERMANY

(1648-1871)

By the time of the Peace of Westphalia the demise of the Holy Roman Empire had progressed considerably. Not only were the feudal foundations of the Empire undermined. But the trend toward increasing decentralization resulted in greater independence for the diverse principalities which peppered the German political map of the age. Without regard for the political, religious and economic interests of their subjects, countless numbers of small potentates hopelessly intermingled their holdings. In the main, such complicated intertwining of domains was accomplished by a continual shifting of ownership either through cession, conquest, in-

heritance, marriage or treaty.<sup>5</sup>

The incredible complexity of the large number of German outliers after 1648 makes it practically impossible to tell in many cases which were truly enclaved. Frequently, the territorial rulers themselves did not know precisely how their domains were comprised. Boundaries were rarely clearly defined; exactness of limits is to be found only where special circumstances dictated precision.<sup>6</sup> Such a state of affairs is difficult to comprehend today, when the delineation of boundaries is more or less taken for granted.

A further problem with these enclosures concerns the degree to which the old German states were independent and sovereign. As members of the Heiliges Römisches Reich Deutscher Nation did they in fact possess sufficient international status for their outliers to be properly called exclaves?<sup>7</sup>

<sup>5</sup>See Irmfried Siedentop, "Geographie der Enklaven und Exklaven," Zeitschrift für Wirtschaftsgeographie, Vol. 12 (1968), p. 12.

<sup>6</sup>Norman J.G. Pounds, Political Geography (New York: McGraw-Hill Book Co., Inc., 1963), p. 60.

<sup>7</sup>The answer to this question is "probably." The Treaties of Westphalia gave full internal autonomy to the German princes. At the same time they recognized their right to enter into alliances with foreign powers (so long as they were not prejudicial to the empire).



These difficulties are touched on by some of the writers of this period. For instance, Johann J. Moser mentions in 1773 that quite a number of German states included exclaves of others as well as independent enclosures.<sup>8</sup> Moreover, Karl G. Günther, writing near the turn of the eighteenth century, maintains that these outliers are not to be looked upon as private property or Condominia. Rather they are to be seen as integral parts of the territory of a nation.<sup>9</sup>

Testimony that this chaotic situation had not changed much up to 1840 is provided by Johann L. Klüber. He writes in that year that<sup>10</sup>

... the largest portion of the territorial area of several federal states is surrounded by the territory of another single Bundesstaat; but still more numerous are the smaller territorial areas ... which are enclosed by the territory of one or more federal states.

Klüber lists a multitude of Austrian, Prussian, Saxon, Bavarian, Hannoverian, Electoral-Hessian, Brunswickian

<sup>8</sup>Johann J. Moser, Teutsches Nachbarliches Staatsrecht (Frankfurt a.M., 1773), p. 209.

<sup>9</sup>Karl G. Günther, Europäisches Völkerrecht in Friedenszeiten (Altenburg, 1792), p. 178.

<sup>10</sup>Johann L. Klüber, Öffentliches Recht des Teutschen Bundes und der Bundesstaaten (Frankfurt a.M., 1840), p. 91.

and Nassovian exclaves and enclaves. But he gives special mention to the Duchy of Anhalt and the Principality of Schwarzburg-Sonderhausen lying in the imperial Prussian territories. His examples of Prussian enclaves in the Rhineland demonstrate that at least some of these enclosures consisted of relatively large areas of considerable importance.

The significance of these outliers to Germany is expounded at length by historians of this age. According to one, the rise of Prussia in the nineteenth century and the advance towards German unification were not unrelated to the vast number of discontinuous portions of Prussian territory enclaved in the domains of other German principalities and vice versa.<sup>11</sup> Another asserts that Frederick the Great, who made Prussia a major world power, was concerned mainly with "rounding out" his territory.<sup>12</sup>

With the founding of the Deutsche Reich in 1871, the inner-German exclaves were deprived of their special international status. They now became mere administrative outliers, located within the boundaries of one country. By

<sup>11</sup>Refer to J. Ancel, "Les Frontières, Etude de Géographie Politique," Académie de Droit International, Recueil des Cours, Vol. 55 (1936), p. 207.

<sup>12</sup>See J. Ellis Barker, The Foundations of Germany (London: Smith-Elder, 1916), pp. 233-234.

the end of the First World War there were between 200 and 300 of these so-called "administrative exclaves".<sup>13</sup> At the Länderkonferenz of 1928 as many as 196 enclosures still remained to be eliminated.<sup>14</sup> But by redrawing federal boundaries at this time most were absorbed.<sup>15</sup>

Although the paucity of information about individual German exclaves after 1648 makes it difficult to speak with authority about the problem, certain facts may nevertheless be noted. In the first place, it made a great deal of difference whether a German outlier was located in a German or non-German territory. When the former situation occurred, relations were generally smooth and the source of irritation was minimal. But when the latter happened, it created a potential area of conflict.

The inner-German exclave situation was the most common so our analysis of it will take precedence here.<sup>16</sup>

<sup>13</sup>Irmfried Siedentop, Büdingen und Verenhof in der Schweiz (Frankfurt a.M.: Verlag Moritz Diesterweg, 1938), p. 18.

<sup>14</sup>A large number of these outliers were located in Thuringia: 14 Prussian and 14 Saxon to be exact. While Prussia possessed 15 enclosures in Brunswick, that state owned 27 in Prussia. Of the 71 widely-scattered holdings belonging to Prussia, the Grand Duchy of Baden held a total of 11. For a complete list consult Wirtschaft und Statistik (Berlin, 1927), p. 963.

<sup>15</sup>See "Enklave," Der Grosse Brockhaus, Vol. 5 (Leipzig: F.A. Brockhaus, 1930), p. 537.

<sup>16</sup>Those important German exclaves land-locked in non-German speaking domains will be discussed under the appropriate headings in other parts of this chapter.

As might be imagined, the union of home and host states in one Holy Roman Empire had important implications for these outliers. Essentially, it meant that a basis for cooperation already existed. Bearing this point in mind, it is not surprising to find a general toleration by the host state of the extension of "foreign" administration to the enclosure. But this relationship should not be stressed too heavily, for rivalry among local rulers was great and encroachments were not uncommon.

As far as access was concerned, it is well known that free passage was the general rule. Free transit extended not only to exclave dwellers themselves but also to foreign police and troops. In that virtually every German state at this time possessed at least one exclave, it was in the interest of each and every local sovereign not to undertake steps that would hinder free communication between the outlier and the motherland.

#### THE EXCLAVE PROBLEM OF FRANCE

(1648-1815)

The Treaties of Westphalia, which ended the Thirty Years War, were negotiated among Catholic and Protestant states at Münster and Osnebrück between 1644 and 1648. One of these, the Treaty of Münster, which was concluded on

October 24, 1648, between the Hapsburg Emperor Ferdinand III and the French King Louis XIV, created three complete exclaves belonging to the latter. These were the bishopric of Metz (and its dependencies), which was enclaved in the Duchy of Lorraine, Landau and Philipsburg, the last two enclosed in the German Empire.<sup>17</sup>

In regard to the exclave of Philipsburg, which was located on the right bank of the Rhine near Speyer, the French received the right to fortify the area. And Article 76 of the Treaty of Münster stipulated free transit to French troops whenever needed.<sup>18</sup> No special rights of passage, however, were provided for the strategic frontier fortress of Metz and Landau, the most advanced French fort in German territory.

A little over a decade later (1659), the military defeat of Spain led to the signing of the Treaty of the Pyrenees between the Most Catholic King Philippe IV and the Most Christian King Louis XIV.<sup>19</sup> As well as permanently fixing the Pyrenees Mountains as the "natural boundary"

<sup>17</sup>The text of the Treaty of Münster can be found in Fred L. Israel (ed.), Major Peace Treaties of Modern History, Vol. I (New York: McGraw-Hill Book Co., 1967), pp. 7-49.

<sup>18</sup>"Instrumenta pacis Westphalicae," in Quellen zur neueren Geschichte (Bern: Herbert Lang Verlag, 1949), p. 88.

<sup>19</sup>The Treaty of the Pyrenees was signed on November 7, 1659 and is contained in Fred L. Israel (ed.), Major Peace Treaties of Modern History, Vol. I (New York: McGraw-Hill Book Co., 1967), pp. 51-114.

between Spain and France, this convention created the Spanish exclave of Llivia (about which we will hear more later) and established three French enclaves in the Spanish Netherlands: Avesnes, Philippeville and Marienburg. These three towns constituted a ransom which Philippe IV consented to pay Louis XIV for an amnesty in favor of the Prince of Condé, who had earlier taken up arms against France. Under the terms of the Treaty of the Pyrenees, the French enclosures were not to be fortified at any time. Free communication over Spanish territory, however, was guaranteed. And unlike the Treaty of Münster (which provided for unhindered troop movements only) no distinction was made between the passage of civilians and military or paramilitary personnel.<sup>20</sup>

In 1668, France received a number of additional exclaves as a result of the Treaty of Aachen, which ended the war against the Spanish Netherlands.<sup>21</sup> These territories included Furnes, Courtrai, Audenarde, Tournai, Athe, Binche and Charleroi as well as Bergues, Armentières, Lille and Douai. Undoubtedly, since no specific provisions for these

<sup>20</sup>See in particular Articles 39, 53 and 69 of the Treaty of the Pyrenees.

<sup>21</sup>Another name for the Treaty of Aachen is the Treaty of Aix-la-Chapelle; the former is the German name while the latter is French. The Treaty was concluded on May 2, 1668 and can be found in Fred L. Israel (ed.), Major Peace Treaties of Modern History, Vol. I (New York: McGraw-Hill Book Co., 1967), pp. 121-127.

outliers were made, the French King must have assumed that relations between him and the Spanish King Charles II were now good enough to render this precaution unnecessary.

Four years later, France once again declared war on the Netherlands, thus provoking a conflict that soon embroiled five major European powers. Finally settled by the First Peace of Nijmegen in 1678,<sup>22</sup> this war led to the elimination of most French exclaves. As compensation for ceding Louis XIV Franche-Comté, the Spanish King received the enclaves of Courtrai, Audenerde, Athe, Binche and Charleroi (all acquired by France in 1668).<sup>23</sup> Apparently, these enclosures had posed some unanticipated difficulties between the two countries for the Treaty of Nijmegen states specifically that this exchange was carried out "In order to prevent the kind of difficulties from arising which the enclaves have caused since the execution of the Treaty of Aix-la-Chapelle ..."<sup>24</sup>

Eventually, only Philippeville and Marienburg remained French exclaves. But by the Treaty of Utrecht in 1713 they became Austrian possessions.<sup>25</sup>

<sup>22</sup>The First Treaty of Nijmegen (Nimeguen) was signed on September 17, 1678 and is included in Fred L. Israel, opus cit., Vol. I, pp. 129-131.

<sup>23</sup>Johann J. Moser, Teutsches Auswärtiges Staatsrecht (Leipzig, 1772), p. 366.

<sup>24</sup>Henri Vest (ed.), Les grands traités du règne de Louis XIV, Vol. II (Paris: Alphonse Picard, 1893-1899), pp. 90-91.

In 1679, a Second Peace of Nijmegen was signed.<sup>26</sup> Among other things, this accord provided for the abolition of one French exclave and the creation of two others. In return for the Philipsburg exclave (established in 1648), France received the city of Freiburg, the key to the Black Forest.<sup>27</sup> But Louis XIV did not take anything for granted this time and had the French right of passage codified.

According to Article 6 of the Treaty of Nijmegen, the route leading from Brisach to Freiburg (approximately sixteen miles) was to remain open to the King of France.<sup>28</sup> And as often as needed "free but inoffensive" passage would be granted for French soldiers, stores, etc. It was also agreed that no taxes, tariffs, duties or other transit dues would be placed on the movement of supplies necessary for the provisioning of the garrison or inhabitants of the city en route between Brisach and Freiburg. The only restriction on access was that the French were compelled to follow the most direct route to the outlier.<sup>29</sup>

<sup>25</sup>The Treaty of Utrecht was signed on April 11, 1713 and can be found in Fred. L. Israel, opus cit., Vol. I, pp. 177-239.

<sup>26</sup>The Second Treaty of Nijmegen (Nimeguen) was signed on February 5, 1679 and is included in Henri Vest, opus cit., Vol. II, pp. 100-105.

<sup>27</sup>Herbert Michaelis et al, Geschichte der Neuzeit (Rheda, W. Germany: Verlag für Wissen und Bildung, 1969), p. 303.

<sup>28</sup>Henri Vest, opus cit., Vol. II, pp. 100-105.

<sup>29</sup>Ibid., pp. 104-105.



The Second Treaty of Nijmegen also placed the town of Nancy, which was enclaved in the Duchy of Lorraine, in French hands. Under Article 14, access was guaranteed for French troops via four different routes de marche, each between one and one-half miles wide. This particular arrangement proved unsatisfactory to the Duke of Lorraine, however, and he chose to abandon his domains to the French.<sup>30</sup>

As a result of setbacks suffered in yet another war, France was forced by the Treaty of Ryswick (between Louis XIV and the Emperor Leopold I) in 1697 to cede all the territory it had acquired by the Treaties of Münster and Nijmegen.<sup>31</sup> In regard to the French exclaves, this meant the handing back of Freiburg and Nancy (both obtained in 1697). As compensation for regaining possession of Nancy, the Duke of Lorraine, now reinstated, was encouraged to present the French King with the outlier of Sarrelouis.<sup>32</sup> Named Saarlautern today, this area consisted of a single village and its fortifications and was enclaved some thirty miles from the motherland. Strangely enough, nothing was stipulated this time about French right of way or administration.

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<sup>30</sup> Frank E. Krenz, International Enclaves and Rights of Passage Ph.D. Dissertation, Geneva, Switzerland; Graduate Institute of International Studies, 1961, p. 38.

<sup>31</sup> The Treaty of Ryswick was signed on September 20, 1697 and is included in Fred L. Israel, opus cit., Vol. I, pp. 145-176.

<sup>32</sup> See Article 32 of the Treaty of Ryswick.

In 1714, the Treaty of Rastadt was concluded, thereby ending the wars of Spanish Succession (at least as they involved France).<sup>33</sup> Among other things, this convention recognized the authority of Louis XIV over Landau, which was located some fifteen miles away from France. Under Article 13 of this treaty, Landau could be fortified by the French. But again nothing specific was said about access or administration. Presumably, relations were such that no great problems were foreseen.

By 1766, Lorraine had been peacefully restored to France. Consequently, Metz (and its dependencies), which had been obtained in 1648, was no longer enclosed in foreign territory but was now made a contiguous part of the kingdom.<sup>34</sup>

The era of Napoleon (1799-1815) bore important implications for the remaining French exclaves of Philippeville, Marienburg, Landau and Sarrelouis. Essentially, it meant that they, for the greater part of this period, did not function as true exclaves. Surrounded as they were by French-occupied territory, they were not really cut off from the rest of

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<sup>33</sup>The Treaty of Rastadt was concluded on March 6, 1714 and is contained in Fred L. Israel, opus cit., Vol. I, pp. 241-260.

<sup>34</sup>Eduard Bauer, "Etude générale sur le régime des enclaves et le droit de passage depuis les traités de Westphalie," I.C.J. Pleadings, Case Concerning Right of Passage over Indian Territory (1960), Vol. II, p. 766.

France. There was no problem of access, and they were administered as if they were joined territorially with the home state.

The defeat of Napoleon in 1814 sounded the death knell of French international power for this period. It also initiated a final rounding out of French territory. For, according to the First Peace of Paris of that year,<sup>35</sup> the exclaves of Landau, Sarrelouis, Philippeville and Marienburg were made contiguous parts of France. The following year the Second Peace of Paris,<sup>36</sup> which re-established the German Confederation within its frontiers of 1790, provided for the absorption of Sarrelouis by Prussia and Landau by Bavaria.<sup>37</sup> All told, these were the last important foreign outliers situated in German domains. And they were the last exclaves owned by France.<sup>38</sup>

<sup>35</sup>The First Peace of Paris was signed on May 30, 1814 and is included in Fred L. Israel, opus cit., Vol. I, pp. 501-517.

<sup>36</sup>The Second Peace of Paris was concluded on November 20, 1815 and can be found in ibid., Vol. I, pp. 577-593.

<sup>37</sup>Hans Hess, Landau in der Pfalz (Landau, W. Germany: Schmitt, 1969), pp. 10-11.

<sup>38</sup>See Edward Hertslet, The Map of Europe by Treaty, Vol. II (London: Butterworth, 1875-1891).

As was true of our analysis of the German enclave system, the lack of detailed information about the French exclaves precludes us from drawing far-reaching conclusions about past practices. Nevertheless, certain observations may still be made. Of overriding importance it appears is the fact that unlike the establishment of the German enclaves those that belonged to France owed their existence primarily to one or the other international war or altercation. In this respect, the wars under Louis XIV have been seen as "a push toward and a consolidation of 'natural frontiers'".<sup>39</sup> While those under Napoleon involved complex military factors and "power politics".

The relatively short life of these enclosures and their small number seem to point up the acuteness of problems of administration to France. Moreover, the common resort to the specification of rights by the parent state in treaty form reinforces the suspicion that the kingdom ran into trouble frequently with the host state when it tried to extend its authority to one or the other outlier. Of course, as long as French soldiers occupied the surrounding countryside there was no problem.

As far as access to the exclaves was concerned, France seemed most concerned with obtaining special transit

<sup>39</sup>Fred L. Israel, opus cit., Vol. I, p. 117.

rights for the military. This concern may be understood better when it is realized that in those insecure times the passage of troops was a dreaded occasion. And this was true whether the soldiers belonged to friend or foe, for the approach of any army invariably led to a plundered countryside. Because no provision is known to cover the passage of civilians, merchants, etc., however, one must not assume that access was denied to them. On the contrary; the transit of these individuals did not pose the same threat to the host state, and in view of the lack of reports to the converse, it may be assumed that the passage of these people was normal and generally free of hindrance.

#### THE EXCLAVE PROBLEM OF THE NETHERLANDS (1648-1807)

The Treaties of Westphalia left the Republic of the United Netherlands in an enviable international position. After a long struggle, lasting from 1568 until 1648, the Dutch Republic had finally defeated Spain. Thanks especially to its superior naval strength and world-wide commerce, the Netherlands now became one of the most powerful nations in Europe.

Atlases of the post-Westphalia period show clearly that the exclave situation in the United Netherlands was

highly complex and not in the least bit beneficial to a great power.<sup>40</sup> One Dutch expert, commenting on the curious intermingling of territorial sovereignties at this time, has described it as one great "mosaic".<sup>41</sup>

But nowhere was the intertwining of holdings more chaotic than along the southern boundary of the Republic between 1648 and 1795. In the first place, there was a number of German outliers enclaved in Dutch domains. These included Ravenstein, Gemert and Luiksgestel.<sup>42</sup> In the second place, there were several parcels of the United Netherlands situated within the German Empire.<sup>43</sup> and a few more enclosed in the Spanish possessions to the south. Especially noteworthy of the latter were Maastricht, Venlo and Overmaasch.<sup>44</sup>

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<sup>40</sup>For one of the best atlases of the period consult Leon van der Essen (ed.), Atlas de géographie historique de la Belgique (Brussels, 1919).

<sup>41</sup>F.A. Brekelmans, De Belgische enclaves in Nederland Ph.D. Dissertation, Nijmegen, Holland: Faculty of Law, University of Nijmegen, 1965, p. 2.

<sup>42</sup>See A.A. Beekman (ed.), Geschiedkundige Atlas van Nederland ('s-Gravenhage, Holland, 1913).

<sup>43</sup>Refer to W.A. Fabricius (ed.), Geschichtlicher Atlas der Rheinprovinz.

<sup>44</sup>For details see Huibert Emmer, De grenzen van Nederland van de Wielingen tot de Rijn (Amsterdam, 1937), p. 3.

In contrast to the irregular southern frontier of the Republic, the boundary of Dutch Flanders was almost completely free of enclosures. Mainly this was because the delimitation of the border here had been left entirely up to Spain and the Netherlands, and they had tried to avoid leaving outliers of one country in the other. But they were not completely successful. Thus, we find -- among other exclaves -- Bokhoven, a splinter of Liège, and the cloister of St. Geerlech, a small Spanish enclave enclosed in Dutch Velkenburg.<sup>45</sup>

The turn of the eighteenth century marked the beginning of the end for the Dutch exclaves as well as the foreign enclaves inside the Netherlands. It was at this time (1795) that the Republic, after two centuries of independence, was invaded by the French. Renaming it the Batavian Republic, the invaders proceeded to abolish such intricate political geography. In the end, wholesale transfers of sovereignty led to the annexation of all foreign outliers in the Republic with the notable exception of Luiksgestel, a German exclave. But it too was finally eliminated in 1807 by the Treaty of Fontainebleau at the height of Napoleon's power.<sup>46</sup>

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<sup>45</sup>See for instance Frank E. Krenz, opus cit., p. 39.

<sup>46</sup>F.A. Brekelmans, opus cit., p. 4. This ruling was not upheld at the Congress of Vienna in 1814, although its validity was recognized in 1818.

Despite the rather sketchy nature of the foregoing presentation of the Dutch enclave system, a few generalizations may be attempted. First, in regard to the administration of these outliers, it does seem fairly certain that they posed more than just an inconvenience for the parties concerned. The sharp reduction in the number of exclaves between 1648 and the last half of the seventeenth century would appear to confirm this. As far as we can tell, the majority of enclosures were abolished not by means connected with warfare but by the simple and peaceful device: the territorial exchange.

Those few exclaves still in existence after 1661 appeared to enjoy relatively free contact with the home state. A typical example might be the Abbey of St. Geerlach, a Spanish area enclaved in the United Netherlands. According to an "Act of Nonprejudice" of that year between the Dutch and the Spanish, the inhabitants of this exclave, mostly women and nuns, were given the right to enter and exit their cloister without hindrance via Dutch territory.<sup>47</sup>

#### THE EXCLAVE PROBLEM OF GENEVA

(1536-1816)

The exclave problem of the old city of Geneva arose out of the religious struggle between Catholic and Protestant

<sup>47</sup>Other rights of passage were also extended. See Groot Placaet-Boek, Vol. II, pp. 2777-2778.



factions in the sixteenth century. During this period the city managed to break away from the Catholic Duke of Savoy and in 1536 establish itself as an independent republic of Protestant persuasion. Having taken over certain church lands at the time of independence, Geneva now found itself in possession of four small exclaves outside its walls.<sup>48</sup>

At first the administration of these so-called mandements did not pose a problem. Between 1536 and 1564, the same time Calvin used the republic as a base of operations for launching the reformation, Geneva and its outliers were encompassed by territory belonging to the friendly Protestant Bernese. But in 1564, the year of Calvin's death, the Treaty of Lausanne caused the Bernese Republic to restore the surrounding area to the Duke of Savoy. Unsurprisingly, this turn of events bore no good for the four mandements or Geneva itself, for that matter, which several times during the last half of the sixteenth century barely escaped blockade by the Catholic monarch.<sup>49</sup>

Geneva and its outliers remained enclosed in hostile territory throughout the seventeenth century. But two events

<sup>48</sup>Eduard Bauer, opus cit., p. 776.

<sup>49</sup>Ibid., p. 777.

took place that altered the three-cornered relationship. The first occurred in 1601, when the Duke of Savoy was forced by the Treaty of Lyon to cede the area around the mandement of Peney to France. Other than transferring sovereignty over the encleving region, however, the treaty did not radically change the situation.<sup>50</sup> The second event happened the following year. During the night of the "Escalade" in December, 1602 fighting broke out between Savoy and Geneva, which was only ended the next July by the Treaty of St. Julien. This treaty provided the basis for a durable peace between the two warring sovereigns and guaranteed free access to and from the mandements enclaved in the Savoy lands. The right of passage was unusually broad and extended to include local residents, goods traffic and officials.<sup>51</sup>

During the course of the eighteenth century Geneva proceeded to consolidate her hold on the mandements. First, in 1749, a treaty was signed with France reaffirming the status quo in the Peney exclave and guaranteeing the passage of inhabitants, goods and government officials.<sup>52</sup> Then, five years later, an agreement was reached with Sardinia over Jussy, which was enclaved in Savoyard soil. According to the

<sup>50</sup>Eduard Bauer, opus cit., p. 777.

<sup>51</sup>See Articles I, II and III of the Treaty of St. Julien, concluded between Geneva and Savoy on July 21, 1603, Genève, MDCXIII, pp. 5-6.

<sup>52</sup>Eduard Bauer, opus cit., p. 777.

terms of this accord, the itinerary to be followed by Genevois officers into Jussy was regulated and their obligations were narrowly stipulated.<sup>53</sup>

The French Revolution and its aftermath proved fatal to the mandements. In 1792, French soldiers invaded and occupied the surrounding region of Savoy. That same year the National Convention decided that this area was just what France needed to round out its territory and proceeded to annex it as the departement of Mont-Blanc.<sup>54</sup> As a result, Geneva and its outliers became completely enclosed in French territory. And due to religious and ideological differences between the two countries communications were now hazardous. Six years later, the old city and its four enclaves were physically occupied by French troops.<sup>55</sup>

With the defeat of Napoleon in 1813, the status quo ante was restored. Geneva reverted to its previous status as an independent republic. And the mandements began once more to function as true exclaves. But too much had

<sup>53</sup>Eduard Bauer, opus cit., p. 778.

<sup>54</sup>Norman J.G. Pounds, "France and 'Les Limites Naturelles' from the Seventeenth to the Twentieth Centuries," Annals of the Association of American Geographers, Vol. 44 (March, 1954), pp. 51-62.

<sup>55</sup>Herbert Michaelis et al., Geschichte der Neuzeit (Rheda, W. Germany: Verlag für Wissen und Bildung, 1969), p. 599.

happened in the meantime, particularly in terms of political integration, for this situation to long prevail. Consequently, we learn that the city and its enclosures are made integral parts of the Swiss Confederation by the Treaty of Paris the following year (1814).<sup>56</sup>

The sovereignty of Geneva over its mandements was recognized by the Congress of Vienna, which established the permanent neutrality of Switzerland in 1815. But to enable the Kanton to effectively administer the isolated territories, the Powers outlined specific rights of passage. These were fairly liberal as the illustration of Peney shows. After giving French officials prior notice, Genevois police and military were free to visit the cut-off area. There were no restrictions on civilian transit or the movement of goods.<sup>57</sup>

The next year the exclave problem was abolished altogether. According to the Treaty of Turin, signed by Sardinia and Switzerland, the old city obtained several new political districts. In that these domains provided Geneva with complete territorial contiguity, the mandements now became disenclaved.<sup>58</sup> The end of an era was at hand.

<sup>56</sup>See Article III, Paragraph 7 of the First Peace of Paris in Fred L. Israel, opus cit., Vol. I, pp. 501-517.

<sup>57</sup>Article 79 of the Declaration of the Congress of Vienna of June 9, 1815 pertains to access to Peney. Refer to Fred L. Israel, opus cit., Vol. I, pp. 555-556.

<sup>58</sup>The Treaty of Turin was signed on March 16, 1816 and can be found in Cussey de Martens (ed.), Recueil manuel et pratique de traités, Vol. III (Leipzig, 1846), pp. 244-252.

The case of Geneva's four mandements demonstrates how relations in general between home and host states can affect conditions in an exclave. When contacts between the two countries are friendly (as they were between Geneva and the surrounding Bernese Republic 1536-1564), then the outlier is rarely a source of tension. However, when cooperation is poor between the two sovereignties (as it was between Protestant Geneva and Catholic Savoy 1564-1792), then the enclosure becomes an acute issue.

The comparatively long life of the mandements may be explained by the apparent respect they commanded as exclaves. Despite frequent wars and repeated changes in the political landscape the intervening country tended not to dispute the parent state's right of passage. A study of historical documents reveals that in at least two cases (Pensy and Jussy) fairly liberal immunities were obtained by Geneva. And in view of no contradictory evidence we may assume that communication with the other two outliers continued to be possible until the end.

#### CONCLUSIONS

Enough has been written to demonstrate the historical importance of the European exclave phenomenon. Unfortunately, the paucity of information about these early

outliers did not allow us to explore their situation in detail.

It should be recalled that we set out in the beginning of this chapter to shed some light on the overall complexity of the exclave problem in European history. In view of the importance of the post-Westphalia period (1648) in the establishment of the legal equality of states, we agreed to devote most of our attention to the modern European experience. Such an analysis and the results obtained would help us to assess the hypotheses that exclaves are basically unstable phenomena and that they are part of a discernible trend leading to the consolidation of state territory and the absorption of foreign enclaved bodies.

Our findings, although severely weakened by the lack of detailed information, would seem to lend support to our "instability" and "absorption" propositions. In fact, they seem to indicate that le sort inévitable des enclaves est d'être absorbées. Generally, however, the trend towards the "rounding out" of territory was uneven. And it does not stretch back to the Middle Ages when territorial discontinuity was most common because of the decentralized nature of feudal rule.

In the main, the old European exclaves enjoyed lives of relatively short duration (although there were some notable exceptions). But this lack of stability was not due usually to

the peculiar circumstances of each embedded territory. Rather it was mostly the result of system instability, which was notorious for the post-Westphalia period (1648). At this time territorial possessions were in constant flux and exclaves were caught up in the cross-fire.

Occasionally, exclaves were liquidated peacefully. Apparently, the most important recourse in this regard was the territorial exchange. However, many outliers were also abolished through inheritance and marriage. Some were even extinguished as a royal favor.

But the role of conflict in the absorption of exclaves, particularly after 1648, cannot be overlooked. For frequently these discontinuous areas became inextricably involved in great power struggles. France probably represents the extreme case. The element of conflict appears of least significance in the inner-German situation. And for good reason. The Holy Roman Empire provided a natural framework within which opposing interests could be reconciled. But then this arrangement was unique.

Generally, as long as there was a balance of power between home and host states or when the former enjoyed a predominance of power, exclaves could be maintained. But once a shift in the power equation took place, there almost inevitably

followed a sorting out of territorial possessions, which more often than not resulted in the disenclavement of territories. In those days, the gain of territory (including exclaves) was a prize of war and its (their) loss a reparation.

Instability seems greatest in respect to the French exclaves established after the Peace of Westphalia. This was particularly true during the seventeenth and eighteenth centuries when that country pursued an openly belligerent course in international affairs. Through acts of conquest, intrigue and partition, it succeeded in enlarging its domain and extending its influence. The turning point came with the defeat of Napoleon in 1814, which initiated the "rounding out" of French territory.

The exclave problem was of greatest consequence in Germany (there were more of them). But if systemic factors were more important in the establishment and elimination of exclaves belonging to France, this did not seem true in regard to the inner-German situation where indigenous elements largely account for their instability. Most important here was the tendency of local princes to disregard the interests of their subjects and hopelessly intermingle their territories through a continuous process of cession and acquisition by marriage, inheritance, intrigue, etc. This chaotic set of circumstances contributed in no small way to the urgency of



German unification in the nineteenth century and the reduction of these anomalies.

The situation pertaining to the Netherlands after 1648 follows more or less the "instable" and "absorption" pattern observed elsewhere. Wholesale transfers of sovereignty led in succeeding centuries to the annexation of practically all foreign outliers in the Republic and those of its own located in other countries. The few enclaves that remained were systematically dispatched by French invaders at the turn of the eighteenth century.

Finally, we come to little Geneva and its four mandements which were created in 1536. Stability appears greatest here. For despite frequent upheavals and repeated changes in the political landscape, they persisted for 280 years. No doubt, close administrative ties with the home state and recognized rights of passage by the host country played a crucial role in their long life. But in the end they too succumbed to irresistible pressures. In this case, it was not war, however, but the peaceful redrawing of boundaries that resulted in their disenclavement.

## Chapter 4

### OVERVIEW

We have now had a chance to review the exclave problem as it existed in Europe during the more distant past. Unfortunately, the paucity of information about these early outliers did not permit us to draw any far-reaching conclusions other than to suggest that le sort inévitable des enclaves est d'être absorbées. Therefore, in the attempt to bridge this gap, we shall proceed to examine in more depth selected exclave situations in the contemporary post-World-War-II period.

This time our focus will not be restricted solely to Europe. Rather, in the effort to see how the question is treated elsewhere by states, examples will be picked from modern, non-Western cultures. Specifically, we will be interested in studying illustrations from Asia, Africa and the Middle East where it is known that exclaves have existed. As before, major emphasis will be placed on those enclosures that seem representative or pertinent to this inquiry. At the same time, we intend to use this opportunity to test the universalization of our two central hypotheses.

### EUROPE

The number of complete European exclaves to survive into the twentieth century is fixed at forty-two. All but

one of these still retain their enclaved status. The single exception is Verenshof, a former German outlier situated in Switzerland. As the other exclaves are the main subject of this inquiry, we shall limit our concern to it.

### Verenshof

Until it passed to Switzerland in 1967, Verenshof was but an obscure segment of the German commune Wiechs am Randen, lying near the village of Büttenhardt in the Kanton of Schaffhausen. Approximately 18 acres in area, this exclave was located about 500 yards from the German frontier. Together Verenshof comprised three farms and forest land, which were owned and inhabited entirely by some twenty Swiss nationals.<sup>1</sup>

The origin of Verenshof is not in dispute and can be traced back to the Middle Ages. During that epoch it consisted merely of a portion of cleared but uncultivated land. It received its name from the "Verena Church," to which the land originally belonged.<sup>2</sup>

Verenshof's survival has to do with lost opportunities by the City of Schaffhausen, which could easily have acquired the area in the early sixteenth century, thus rounding out its

<sup>1</sup>Personal interview with Otto Weiss, Bürgermeister of Büsingen, August, 1972.

<sup>2</sup>Franz Götz (ed.), Des Büsinger Vertragswerk (Radolfzell, W. Germany: Huggle & Meurer KG, 1968), p. 7.

territory. Twice Count Christoph I von Tengen offered to sell his domains to Schaffhausen and at a bargain price: first in 1516 and then in 1522. But for reasons that are unclear today, municipal authorities refrained from taking advantage of this propitious opportunity.<sup>3</sup> Some time afterwards the elders of Schaffhausen reversed themselves and tried repeatedly but without success to obtain control of the outlier.<sup>4</sup> As one local historian, writing in 1964, has observed: "The area was lost to Schaffhausen in the year 1522, and it remained to our time."<sup>5</sup>

<sup>3</sup>The complete story is told by Ernst Steinemann, "Der Verenshof," in Der Verenshof bei Büttenhardt (Büttenhardt, Switzerland: Community Office, 1967), p. 24.

<sup>4</sup>The boundary between Switzerland and Germany is one of the most complex in Switzerland. It does not follow the natural features of the landscape at all but runs very irregularly, bending and zig-zagging at unexpected intervals. As a result of a mutual desire to do something about this perplexing situation, many attempts have been made to straighten out the border here. Beginning in the early nineteenth century, Napoleon I undertook several steps to clear up obscure places along the frontier. But as far as Verenshof was concerned, he was unsuccessful. For its part, the Congress of Vienna reviewed the problem but was unable to arrive at a satisfactory solution. On March 1, 1839, Swiss and German officials took matters into their own hands and concluded a boundary convention. However, although this treaty trimmed down the number of irregular points along the border, it did not eliminate the Verenshof enclave mainly because Switzerland was not prepared to offer any of its territory in exchange. Further discussions were carried out in 1913 and 1914, when they were unexpectedly interrupted by the First World War. Following the conclusion of the war, talks were resumed but no agreement was reached. During the 1950s discussions were picked up once more, and after eight years of serious negotiations a treaty was finally signed on November 23, 1964. Three years later this convention went into effect. Among other things, it provided for the absorption by Switzerland of the Verenshof enclave. The trials and tribulations of these negotiations are best told in a forthcoming Ph.D. Dissertation by Rudolf E. Scherrer, done at the University of Zürich for the Department of Law and Political Science.

<sup>5</sup>Ernst Steinemann, opus cit., p. 24.

Although jurisdiction over Vereshof changed hands several times in subsequent centuries, it retained the character of an enclosure. Until 1663, it was the property of the von Tengen family. However, at that time, sovereignty was transferred to Prince von Auersperg.<sup>6</sup> Then, in 1806, when the Grand Duchy of Baden became a member of the Confederation of the Rhine, it was awarded jurisdiction over the isolated area.<sup>7</sup> Following the incorporation of Baden in the Reich in 1871, Vereshof became part of a united Germany. Finally, with the founding of the Federal Republic in 1949, and the reorganization of the German Länder three years later, the exclave was incorporated in Baden-Württemberg.

The case of Vereshof is particularly interesting if only because of the unusual problem it raised. Namely, how does a country administer an isolated part of its territory which is privately owned and inhabited entirely by foreigners? For between 1852 and 1967 the German outlier was completely under private Swiss ownership, and only Swiss citizens resided there.<sup>8</sup>

For the most part, there was little contact between Vereshof and Germany during this period. Since October 1, 1854,

<sup>6</sup>Franz Götz, opus cit., p. 7.

<sup>7</sup>Irmfried Siedentop, Büdingen und Vereshof in der Schweiz (Frankfurt a.M.: Verlag Horitz Diesterweg, 1938), p. 78.

<sup>8</sup>Hubert Auhagen, Die völkerrechtliche Stellung der Enklaven und Exklaven Ph.D. Dissertation, Göttingen, West Germany: Faculty of Law, Georg-August University, 1967, p. 20.

the exclave had been excluded from the German customs area.<sup>9</sup> And although taxes were still paid to Germany, Verenshof's chief economic ties were with Büttenhardt, the neighboring Swiss community to which residents belonged.<sup>10</sup> It was Büttenhardt that was compelled by circumstances to shoulder major administrative responsibility for Verenshof.

As might be expected, the identification of local residents was with Switzerland and not Germany. Thus, they did not call themselves "Verenshofer" as they were labeled by the German government. Rather they casually referred to themselves as "Büttenhardter" after the bordering Swiss settlement.<sup>11</sup>

Sometimes this habitation of Verenshof by foreigners had peculiar consequences.. For one thing, exclave dwellers were technically viewed by the Swiss government as belonging to that group of "overseas Swiss". This meant that they were required to register at the Swiss consulate at Freiburg, Germany even though they -- for all practical purposes -- were members of Büttenhardt.<sup>12</sup> For another, residents could

<sup>9</sup>Franz Götz, opus cit., p. 71.

<sup>10</sup>Irmfried Siedentop, opus cit., p. 85.

<sup>11</sup>Ibid., p. 91.

<sup>12</sup>Franz Götz, opus cit., p. 29.

not vote. Because they were Swiss citizens they were not able to participate in German elections. And because they were considered to be living abroad by the Swiss government they were deprived of that right locally.<sup>13</sup>

Theoretically, the German police could visit the isolated area, although in fact they rarely put in an appearance. If an arrest had to be made there, it was carried out in the following way. A representative of the surrounding jurisdiction would contact the German as well as Swiss authorities. Depending on whose territory the lawbreaker was finally apprehended, one or the other police force would make the arrest. If the individual taken into custody were German, he would be taken back across the border. Whereas if he were Swiss, he would be turned over to Kanton officials.<sup>14</sup>

Access to Vereshof was generally not a problem between Switzerland and Germany -- especially in the post-World War II period. The question arose so rarely that there was really no need to codify the rights of home and host states. Generally, the right of passage rested on local custom

<sup>13</sup>Irmfried Siedentop, opus cit., p. 90.

<sup>14</sup>Actually, this practice was not always adhered to by the Swiss. For example, at the end of the war in 1945, several German officers fled to Vereshof, hoping to escape arrest by occupation officials. Without notifying the German police, Swiss authorities moved in and apprehended the group, later turning them over to French officers. See Hubert Auhagen, opus cit., p. 73.

and the general principles of international law.<sup>15</sup>

From the above description of Verenshof, we may conclude that it was a rare case indeed and posed problems heretofore not encountered in our study. Nevertheless, these questions were minimized by the relative unimportance of the area.

#### AFRICA

The problem of exclaves seems not to have played an important role in the development of the "dark continent". In fact, only one complete exclave is known to ever have existed there. This is Ajuda, a former Portuguese fort situated in Dahomey.

#### Ajuda

Until it was taken over by the West African Republic of Dahomey in 1961, the fort of Sao Joao Baptista de Ajuda was a Portuguese exclave situated in the middle of the city Ouidah, several kilometers from the Atlantic coast. Exactly one hectare in area, the fort formed part of the Portuguese

<sup>15</sup>Because the question of access arose so infrequently, it is difficult to establish the authority of custom.



administrative district of Sao Tomé-Príncipe.<sup>16</sup> Portuguese sovereignty over the outlier was exercised by a "resident" with the rank of captain and a small contingent of troops. Other than these soldiers, there were no other inhabitants of the exclave.<sup>17</sup>

The origin of Ajuda dates back to 1680. At that time, Portugal leased the land from the reigning king in Dahomey.<sup>18</sup> Following the colonization of the surrounding countryside by the French in 1904, Dahomey was made part of French West Africa. But despite numerous attempts by France to annex the enclosure in succeeding years, Ajuda remained in Portuguese hands.<sup>19</sup>

One year after Dahomey gained its independence from France in 1960, the President of the Republic wrote the Portuguese resident of Ajuda, demanding its evacuation and surrender by July 31, 1961. But the government of Portugal remained steadfast. Consequently, on August 1 of

<sup>16</sup>Ralph von Gersdorff, Angola, Portugiesisch-Guinea, Sao Tomé und Príncipe, Kap Verde-Inseln, Spanisch-Guinea (Bonn, 1960), p. 141.

<sup>17</sup>Aide-Mémoire of the French Foreign Ministry to the Portuguese Embassy in Paris, dated May 13, 1958; in I.C.J. Pleadings (1960), Vol. II, p. 857.

<sup>18</sup>"Ajuda," Grande Enciclopédia Portuguesa e Brasileira, Vol. I (Lisbon, 1936), p. 692.

<sup>19</sup>Ibid.

that year Dahomey forces occupied the area, ejecting Portuguese soldiers and setting fire to the fortifications. The next day Portugal delivered a strong protest to the government of Dahomey, branding its occupation and destruction "unprovoked aggression".<sup>20</sup> But to no avail.

While Ajuda remained under Portuguese control, it was administered as an integral part of the home country.<sup>21</sup> The inconvenience this situation posed for the host state may be imagined. On the one hand, the exclave was outside the customs zone of Dahomey. On the other hand, Portuguese police, civil authorities and troops were free to come and go over its territory. Finally, adding insult to injury as far as Dahomey was concerned, local officials were given no say there and were kept in the dark about Portuguese activities.<sup>22</sup>

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<sup>20</sup>Archiv der Gegenwart, Vol. 31 (1961), p. 9258 C.

<sup>21</sup>The Portuguese overseas territories were officially labelled "colonies" until 1951. In that year, Portugal revised its constitution, eliminating such references as "Portuguese colonial empire" and the "Ministry of Colonies". The territories were then renamed "provinces" of Portugal. But apart from terminology little was altered. No doubt Portugal was aware of increasing anti-colonial sentiment and the commitment of the United Nations to self-government and self-determination for all peoples and effected the change to head off criticism of its traditional policy that metropolitan Portugal and the colonies constitute one "inseparable" nation. For details see Patricia Wohlgenuth, "The Portuguese Territories and the United Nations," International Conciliation, No. 545 (November, 1963), p. 9.

<sup>22</sup>Aide-Mémoire of the French Foreign Ministry to the Portuguese Embassy in Paris, dated May 13, 1958; in I.C.J. Pleadings (1960), Vol. II, p. 857.

The example of Ajuda sheds some light on the conflict between the newly emerging states of Africa and the Portuguese colonial Power. Moreover, it demonstrates how these developing countries came to consider the presence of foreign bodies within their boundaries as a flagrant violation of their cherished sovereignty.

### MIDDLE EAST

Exclaves are almost an entirely foreign phenomenon to the politics of the Middle East. Like Africa, only one is known to have existed there. This is Mount Scopus, formerly an outlier of Israel in Jordan.

#### Mount Scopus

Until the war with the Arabs in June 1967, and the subsequent annexation of large tracts of land by Israel, Mount Scopus was completely surrounded by the territory of Jordan. Comprising an area of approximately one square kilometer, Mount Scopus lay about one and a half kilometers eastward of the demarcation line at Jerusalem. In the main, the exclave included a British military cemetery, an important library and some old buildings belonging to Hebrew University.<sup>23</sup>

Mount Scopus became enclaved in Jordan as a result of the 1948-49 Arab-Israeli War. At that time the Arab nations

<sup>23</sup>"Mount Scopus," Israel: Taschenbuch und Handatlas (Jerusalem, 1964), p. 53.

refused to recognize the decision of the UN General Assembly in November 1947 to partition the British Mandated Territory of Palestine along the lines recommended by the majority of the UN Special Committee.<sup>24</sup> And they took up arms against the newly created state of Israel. When Jordan occupied part of Jerusalem in 1948, it failed to dislodge Israeli forces from Mount Scopus. Consequently, under the Armistice Agreement of April 3, 1949, Israel retained possession.<sup>25</sup>

The limits of Israel emerging from the 1948-49 War were the result of UN intervention. Originally, they were merely armistice lines. But with the passage of time they became in fact provisional boundaries -- in spite of numerous violations of the truce and border incidents.<sup>26</sup>

<sup>24</sup>Nine different partition plans may be found in the following official reports and publications:

(a) Palestine Royal Commission Report, Map 8, Cmd. 5479, H.M.S.O., 1937;

(b) Palestine Partition Commission Report, Maps 7, 8, 9 and 10, Cmd. 5854, H.M.S.O., 1938;

(c) Proposals for the Future of Palestine, Cmd. 7044, H.M.S.O., 1947; and

(d) Report to the General Assembly by the United Nations Special Committee on Palestine, H.M.S.O., 1947.

<sup>25</sup>UN Office of Public Information, UN Monthly Chronicle, Vol. 8, No. 9 (October, 1971), p. 8.

<sup>26</sup>The legal position is complicated by the fact that in order not to recognize the existence of Israel no Arab state ever declared war on Israel. For details see C.G. Smith, "The Boundaries and Population Problems of Israel," Geography, Vol. 37 (July, 1952), p. 153.

Several times in the intervening years the UN Secretary General tried to obtain Israeli agreement to boundary realignment. The idea was to get Israel to give up all claims to Mount Scopus. In return, Jordan was to surrender the territory around Latrun. This area lay some 16 miles from Jerusalem and formed a kind of territorial isthmus in Israel. But despite the backing of the United States, which hoped to avoid the dangers of another conflict, no settlement was reached. Apparently, the failure to arrive at a satisfactory solution was due to continuing tense relations between home and host countries and the fact that Mount Scopus was not recognized by Jordan as legally belonging to Israel.<sup>27</sup>

Israeli administration of Mount Scopus in the intervening years was severely hampered by Jordan's refusal to implement the understanding for ensuring access to the installations on Mount Scopus and the resumption of their normal activities. According to the Armistice Agreement, Israel was given the right to supply the exclave by military convoy every two weeks.<sup>28</sup> To keep order in the exclave, Israeli police were supposed to be able to accompany these relief missions.<sup>29</sup> However, as long as Mt. Scopus remained

<sup>27</sup>Der Spiegel, No. 17 (1965), p. 25.

<sup>28</sup>UN Department of Public Information, Background Paper No. 47 (April 20, 1949), p. 28.

<sup>29</sup>UN Office of Public Information, UN Yearbook (1957), p. 38.

enclaved, convoy duty was considered "risky business" and interruptions were not infrequent.<sup>30</sup>

The disenclavement of Mount Scopus in the 1967 Arab-Israeli War represents a rare example in modern times of a home state using force to solve an important exclave problem. Of course, the liberation of the outlier was not an isolated event but must be seen in the larger context of the Six-Day War. As a result of an Israeli victory, Mount Scopus -- as well as the surrounding area -- was physically incorporated in Israel.

#### ASIA

The existence of highly involved enclave situations is a peculiar feature of Asian society. For nowhere else in modern times has such intricate political geography occurred on the scale it exists in this part of the world. Especially important here are those exclaves situated in India (West Bengal) and what was until recently East Pakistan (now Bangla Dosh).

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<sup>30</sup>Personal interview with former convoy member.

### The India-Pakistan Exclave Problem

At the time of the historic partitioning of the Indian Empire in 1947, the British left a large number of outliers indisputably enclaved in the newly created states of India and Pakistan. In the main, these enclosures consisted of 130 splinters of Indian territory in East Pakistan and 95 parcels of Pakistani territory in India.<sup>31</sup> Altogether the Indian exclaves measured 20,957.07 acres (or 32,745 square miles) and had a population of some 13,000. While the Pakistani outliers in India embraced exactly 12,289.37 acres (or 19,202 square miles) and contained a population of about 11,000.<sup>32</sup> As if this intermingling of jurisdictions were not confusing enough, some exclaves were located within other enclaves.<sup>33</sup>

The origin of these exclaves is unclear, and it is not known how long they existed before the British took over the Indian subcontinent.<sup>34</sup> According to one authority, there

<sup>31</sup>R. Banerjee, "An Account of Enclaves -- Origins and Development." This important article is included as an appendix to a larger work and was furnished this writer by the Indian Embassy in Washington, D.C. without any mention of where or when it was published. This author suspects that it is an appendage to the Nehru-Noon Agreement, concluded between India and Pakistan in September 1958. This treaty, which never went into effect, provided for the exchange of exclaves.

<sup>32</sup>Ibid.

<sup>33</sup>Three Indian exclaves were to be found inside Pakistani enclaves in India and twenty-one Pakistani exclaves inside Indian enclaves in Pakistan.

"were some anomalous enclaves resulting from the now almost forgotten war between rulers of Bengal."<sup>35</sup> By the end of this conflict, soldiers of the Maharaja of Cooch Behar and his opponent, a vassal of the Mugul Emperor in Delhi, had penetrated deep inside each other's territory. Since the peace treaty ending the war was drawn up in such a way as to safeguard the honor of both parties and its terms did not call for mutual withdrawal, these occupied areas became outliers.<sup>36</sup>

Apparently, this situation prevailed throughout the period of British rule when the princely states were autonomous. Consequently, most of these exclaves were still there in 1947, when Cooch Behar became part of the Indian Republic and the eastern portion of Bengal was incorporated in East Pakistan.<sup>37</sup>

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<sup>34</sup>Whether the native states had sufficient international status during the British period for these outliers to be considered true exclaves is unclear. But it would seem that they did. For instance, in the case of Statham v. Statham (1912), it was decided that the princely states of India possessed enough sovereignty to be immune from the jurisdiction of British courts.

<sup>35</sup>Pradyumna P. Karan, "The India-Pakistan Enclave Problem," Professional Geographer, Vol. 18 (January, 1966), p. 23.

<sup>36</sup>Ibid.

<sup>37</sup>Following the British decision to partition the Indian Empire, two boundary commissions were appointed for Bengal and the Punjab on June 30, 1947. The Bengal commission consisted of two Hindu judges and two Moslems and held its first public meeting in Calcutta on July 16. Despite the efforts of this body, however, the conflicting claims of the Indian National Congress



The administration of Indian and Pakistan enclosures was greatly complicated by several factors between 1947 and 1971 (when Bangla Desh was created out of East Pakistan). For one thing, unstable rivers caused constant changes in the geophysical configurations of the tracts of land.<sup>38</sup> This state of constant fluctuation led inevitably to territorial encroachments by one sovereign on the other. Then there was the lack of accurate boundary demarcation between the two countries, which made it virtually impossible to tell always what areas belonged to Pakistan and what ones to India.<sup>39</sup> Finally, there was the turbulent political relationship between the two states. Taken together, these elements precluded either Pakistan or India from effectively extending its administration over those outliers that belonged to it.

In the beginning, access was not a major problem. According to the Indo-Pakistani agreement of 1950, exclave dwellers as well as outsiders enjoyed free access over intervening foreign territory. But then, on October 15, 1952,

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and the Muslim League could not be reconciled on seven major questions. As a result, two separate reports were prepared, and an award was made by the British chairman Sir Cyril Radcliffe on August 12, just three days before the states of Pakistan and India were created. Refer to P.P. Karan, opus cit.

<sup>38</sup>In at least one instance an unpredictable change in the course of a river resulted in the disappearance of an exclave. This occurred in regard to Dakurthat Dakinirkuthi, an outlier in Cooch Behar which could not be located since 1882, when it is said to have been diluviated by a sudden dereliction of the Torsa River. See R. Benerjee, opus cit.

<sup>39</sup>Ibid.

Pakistan discontinued the free transit arrangement and unilaterally introduced a passport-cum visa system of travel. Thereafter, local residents were required to show their passports and special transit visas at each coming and going.<sup>40</sup> Government and customs officials as well as police and troop units of the two hostile states were absolutely barred from entering the exclaves. This point was publicly demonstrated in March 1965, when rioting broke out in Dahagram, a tiny exclave cut off from East Pakistan by a narrow strip of Indian territory. Pakistan dispatched police to the area, but India resisted and refused to permit them to pass.<sup>41</sup>

Over time, the demographic complexion of the exclaves underwent substantial changes. An important factor in this respect was extensive population migration. And as the experience of the Dahagram exclave shows, such alteration could have explosive consequences. Trouble in this Pakistani outlier began not over Hindu-Moslem differences but over those between the original inhabitants and immigrants from other parts of East Pakistan.<sup>42</sup>

Conditions in the exclaves were alleviated somewhat by the tolerance of border guards on both sides of the demarce-

<sup>40</sup>P.P. Karan, opus cit., p. 24.

<sup>41</sup>India News, March 26, 1965.

<sup>42</sup>Ibid.

tion line. Generally, they acquiesced in the face of "illegal" movements of Hindus and Moslems, who were forced by circumstances to pass through unfriendly lines in order to be able to trade in the customary market places.<sup>43</sup>

The question of exchanging those troublesome areas was raised on several occasions in the past, but no decisive action was ever taken. In the early 1930s, the issue was brought up by the government of Bengal. However, after provoking strong local opposition, the proposal was finally dropped.<sup>44</sup> The number of exclaves was reduced somewhat in 1952, when eight Indian outliers were amalgamated with the partitioned District of Jalpaiguri (India). At this time, three Pakistani exclaves enclosed in the Indian territories also became disenclaved.<sup>45</sup>

The most promising attempt to work out a satisfactory solution to the problem was the Nehru-Noon Agreement of September 1958. Under it, the prime ministers of India and Pakistan agreed in principle to the transfer of enclaves "without claim to compensation for extra areas going to Pakistan."<sup>46</sup>

<sup>43</sup>P.P. Karan, opus cit.

<sup>44</sup>R. Benerjee, opus cit.

<sup>45</sup>Ibid.

<sup>46</sup>Ibid.

But because there was a difference of opinion about the legality of transferring Indian territory without a constitutional amendment, the President of India referred the matter to the Indian Supreme Court. There it was decided that a constitutional amendment was indeed necessary, and so in 1960 the Indian constitution was altered accordingly. By this time, however, relations between the two countries had deteriorated, and Pakistan was now unwilling to implement the trade.<sup>47</sup> As a result of this impasse, 122 splinters of India continued to lie in Pakistan and 92 particles of Pakistan remained in India.

Historically, the India-Pakistan exclave problem should not be viewed in a vacuum. Rather it should be superimposed on the basic emotional hostility that exists between the two states, one largely Moslem and the other, predominantly Hindu. The partition of British India in 1947 gave full expression to this mutual fear and distrust. And it resulted in numerous clashes between these countries, culminating in the December 1971 war. From our perspective it is clear that as long as there was no fundamental change in the attitudes of the people in these states, the chance for a successful resolution of the exclave question was small.

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<sup>47</sup>Personal communication, Indian Embassy in Washington, D.C. to this writer. The Pakistan Embassy refused to comment on the matter.

One of the unexpected side effects of the last war has been the shifting of the exclave issue to another jurisdiction. With the creation of Bangla Desh out of a truncated Pakistan, the problem rests now with its leaders and those of India. As relations between these states are generally very close, one may expect to see a boundary settlement in the near future.

### CONCLUSIONS

The intended aim of this chapter has been to examine more closely selected exclave situations in the contemporary post-World War II period. Because exclaves have been known to exist in Asia, Africa and the Middle East our focus was to be mainly on these regions. By concentrating our efforts on these parts of the world, we expected to gain some idea how states outside Europe have handled the problem. Last but not least we hoped to learn whether or not the "instability" and "absorption" themes perceived in the old European experience also applied to other areas of the world.

Perhaps the most striking implication of our study of exclaves in other milieus is the degree to which each outlier is sui generis. For every enclosure that was investigated displayed unique characteristics which could only be understood properly when seen against the background of the

local culture. This is probably no more true than in the case of the Indo-Pakistani exclave issue, which cannot be viewed apart from conflicting religious differences.

The very uniqueness of each outlier scrutinized makes the formulation of generalizations particularly hazardous. Yet one cannot ignore the way in which the evidence uncovered tends to support our original propositions. Of particular clarity is the observation that exclaves found in different parts seem all part of a discernible trend leading to the consolidation of state territory and the absorption of foreign enclaved bodies.

As far as the instability of exclaves is concerned, undoubtedly the most unstable examples encountered were those in Asia and the Middle East. These sprang from ceasefires; territory occupied by opposing forces between the lines was left to mature over time into complete exclaves. While the India-Pakistan exclaves were the subject of an agreement (which subsequently fell through), providing for the exchange of territory, Mount Scopus was physically annexed by the home state in a general war with the host country.

Likewise, but for somewhat different reasons, the only known complete exclave to exist in Africa represented in the long run an untenable situation. It took the form of a Portuguese fort landlocked in Dahomey and was established in the usual

colonial pattern laid down by the European Powers in the search for bases in the sixteenth and seventeenth centuries.<sup>48</sup> As such, Ajuda fell victim to a growing anti-colonial sentiment among the newly emerging nations of the "third world" in the post-World War II period. Essentially, this wave of anti-Western feeling considered the presence of all foreign bodies as grotesque remnants and reminders of the deeper wounds that imperialism had inflicted on the developing countries and came to view their continued existence as a flagrant violation of territorial sovereignty.

Of those exclaves studied, only Vereshof arose out of a relatively stable, "natural" setting. But its lack of administrative ties to the home state combined with its completely private ownership by citizens of the host country made its survival as a German outlier unimportant to the mainland. As a result, its absorption by Switzerland seemed only to be a matter of time. And when it was finally exchanged in 1967, there was no outcry.

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<sup>48</sup>The colonial pattern emerged in the following way: During the sixteenth and seventeenth centuries Portuguese and French traders were in desperate need of permanent places where they could load and unload their goods. As a consequence, they constructed bases along the coast of the Asian mainland. At first, these trading posts consisted merely of a few houses, offices and storage facilities. But then, after these unprotected buildings were broken into repeatedly, a pretext existed for introducing small contingents of foreign troops. Soon thereafter, Portuguese and French forts sprung up in their places.

## Chapter 5

### ORIGINS

By way of summarizing our progress to date and to put our research in the proper perspective, one would be well advised to stress the direction our findings have taken. In the first place, our investigation of the old European exclaves and those situated in other parts of the world would appear to bear out our initial suspicion that exclaves are basically unstable phenomena and are part of a trend leading to the consolidation of state territory and the absorption of foreign enclaved bodies. In fact, past experience seems to suggest that it is almost inevitable that exclaves will be absorbed. Unfortunately, the paucity of available information did not permit us to comment extensively on the different factors contributing to this trend. In general, it appeared that systemic variables outweighed indigenous elements (although there were some notable exceptions) in explicating the rise and fall of these discontinuous areas.

Having said this, it is now proposed that we proceed to study in depth that shrunken band of exclaves still surviving in Europe. In that the problem is particularly complicated and multifaceted, it will be dissected dimension by dimension. Most importantly, the forty-one exclaves will be examined in respect to origins, survival, access, administration and economy. By analyzing them in this way, we can expect to gain valuable



insights into the phenomena and discern the operation of factors touching on their stability or instability as the case may be. Hopefully, our findings will then put us in a position to predict whether or not the European exclaves are likely to become extinct.

## INTRODUCTION

Before we embark on an investigation of the origins of those exclaves still surviving in Europe it might be well to take a few minutes to first recall their general situation. Such a review will help to sharpen our focus and aid in putting the problem in the proper political-geographical perspective.

### Llivia

This is a small Spanish tract of land, which lies in the departement of Pyrénées-Orientales in the eastern Pyrenees of France. All told, the exclave possesses an area of 12.87 square kilometers, in which approximately 886 citizens (1972 est.) are settled. Located on the Cerdagne (Cerdanya in Catalan) plain, Llivia is situated about twenty kilometers east of the ministate Andorra. Its communications with Spain are guaranteed by the existence of a so-called "chemin neutre" (neutral road), which traverses an intervening strip of French territory 1.8 kilometers wide.

### Büdingen

This small parcel of West Germany is located in the Kanton of Schaffhausen in northern Switzerland. It is situated on the right bank of the Rhine River and has an area of 7.62 square kilometers. The population of the exclave totals 914 (1973 est.), of whom some twenty percent are Swiss nationals. Ground access to Büdingen from the mainland is possible via two roadways, both of which lead through an intervening strip of Swiss territory between 700 and 1500 meters wide.

### Campione d'Italia

This is a popular holiday resort and is situated on the east bank of Lake Lugano in the Kanton of Tessin in southern Switzerland. It is a relatively tiny area, occupying only 2.6 square kilometers. Altogether its population counts some 2,200 inhabitants (1973 est.), approximately thirty percent of whom are foreigners. The short roadway linking Campione with the central state lies across some 700 meters of Swiss territory.

### The Baarle Ex- and Enclaves

These scattered territories of various sizes and shapes comprise an extremely complicated intermingling of Belgian and Dutch jurisdictions. Although most map makers greatly simplify the situation by portraying only one tiny exclave of Belgium in Holland, there are in fact thirty-eight outliers altogether. Twenty-five are Belgian exclaves in the

Netherlands, while eleven form Dutch enclosures in the Belgian exclaves; two are Dutch enclaves in Belgium proper. Most of these isolated plots of land are situated close together in the village of Baarle in the province of North Brabant in Holland. Those that belong to Belgium form the commune of Baarle-Duc and those that belong to the Netherlands, the commune of Baarle-Nassau. Together these ex- and enclaves consist of 7.25 square kilometers and have a population, totalling some 7,800 (1973 est.).

#### ORIGINS

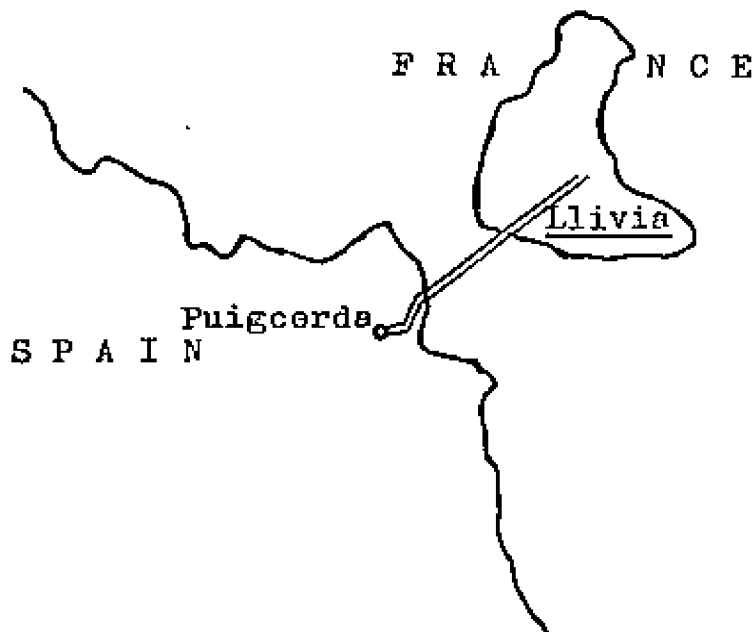
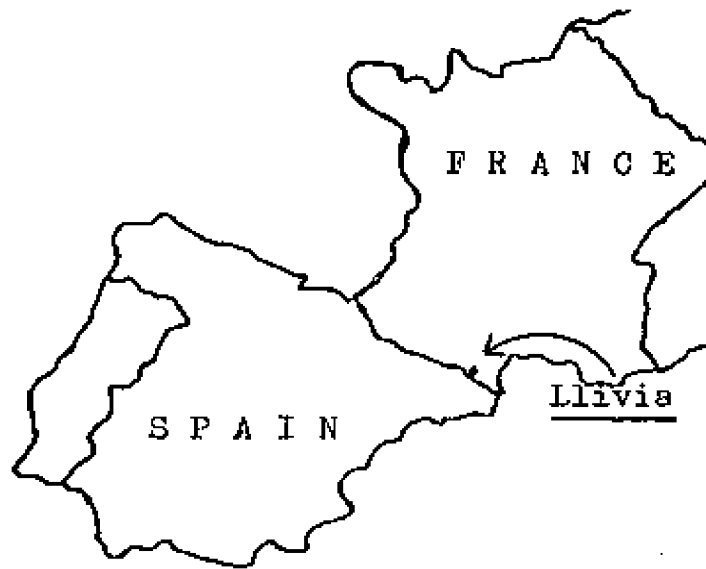
Now that we have a general notion of each exclave situation firmly in mind, we can begin to track down their origins. In keeping with the larger aim of this study, it is expected that knowledge gained about how these enclosures sprang up would shed light on factors contributing to their stability or instability as the case may be.

#### Llivia

Founded by the Romans, the ancient Julia Livia was the capital city of the province of Carthago Juliae, situated in the heart of the Pyrenees Mountains.<sup>1</sup> Throughout subsequent

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<sup>1</sup>M. Delcor, "Livia, ancienne capitale de la Cerdagne," in A.E. Griffé, Mélanges (Toulouse, France, 1972), p. 171.



12. Llívia: A Spanish Exclave in France

centuries it changed hands many times, being sometimes French and other times Spanish.<sup>2</sup> Its present status as an exclave is the result of the carelessly drawn Treaty of the Pyrenees in 1659.<sup>3</sup>

The Treaty of the Pyrenees was signed by France and Spain on November 7, 1659. Its purpose is summed up in Article 42, which reads: "The Pyrenees Mountains, which in ancient times divided Gaul and Spain, shall also in the future be the division between the same two kingdoms."

Among other things, this convention allotted the northern Cerdagne to France. This area was described in the text as comprising thirty-three "villages".<sup>4</sup> These were ceded to Louis XIV to enable him to link his territories in Conflent with those in Val Carol.<sup>5</sup>

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<sup>2</sup>Personal communication, French Press and Information Service in New York to this writer.

<sup>3</sup>For the text of the Treaty of the Pyrenees see Fred L. Israel (ed.), Major Peace Treaties of Modern History, Vol. I (New York: McGraw-Hill Book Co., 1967), pp. 51-114.

<sup>4</sup>Henri Vast (ed.), Collection de textes pour servir à l'étude et à l'enseignement de l'histoire: Les grands traités du règne de Louis XIV, Vol. I (Paris: Alphonse Picard, 1893-1899), pp. 123-124.

<sup>5</sup>G.W.S. Robinson, "Exclaves," Annals of the Association of American Geographers, Vol. 49 (September, 1959), p. 288.

Through a twist of fate Livia was not included among those "villages" mentioned in the accord. Having served as the ancient capital of the Cerdagne, it had acquired the special status of a town (villa) rather than that of a village (pueblo).<sup>6</sup> As a consequence, the town remained with Spain.

### Büdingen

The community of Büdingen grew out of a German settlement, founded around 500 A.D.<sup>7</sup> The first written mention of the area, called "Bosings," was in 1090.<sup>8</sup> Until 1465, it was under the domination of the Counts of Nellenburg. At that time, however, it became a vassalage of the Austrian Habsburgs.<sup>9</sup>

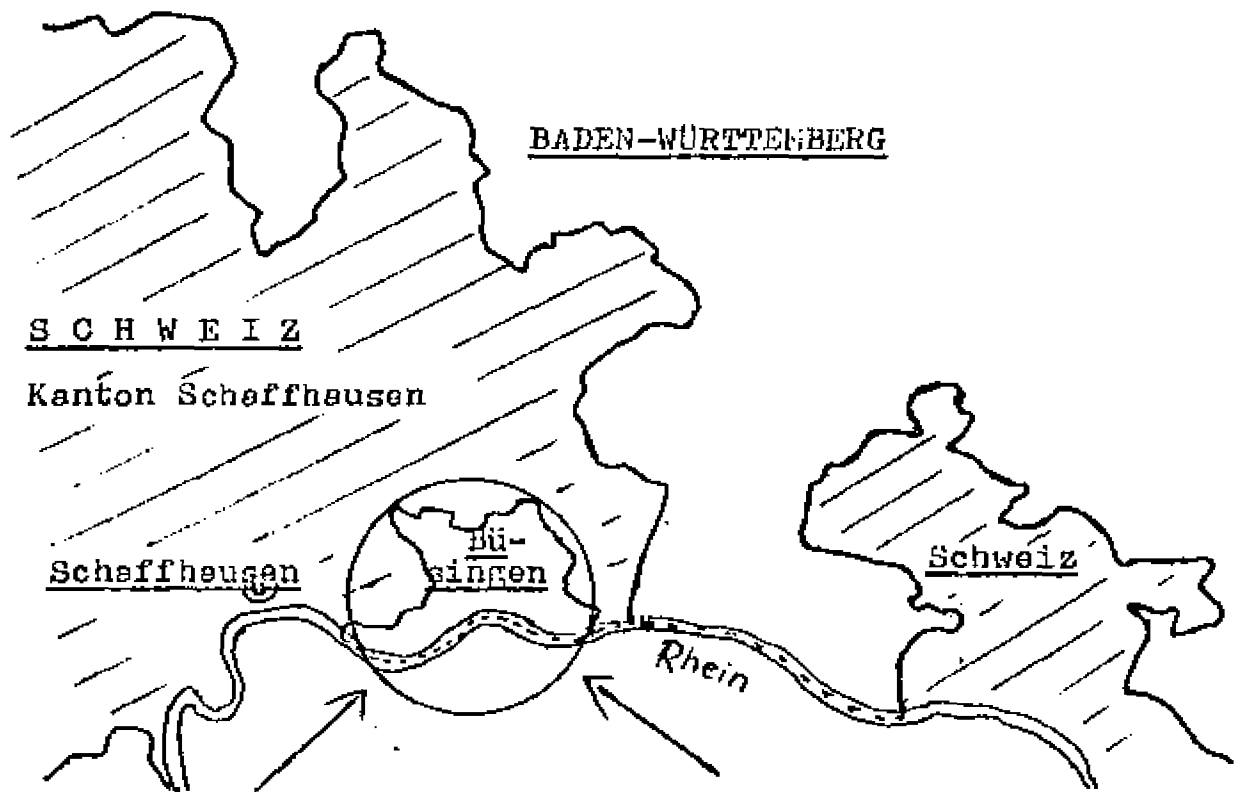
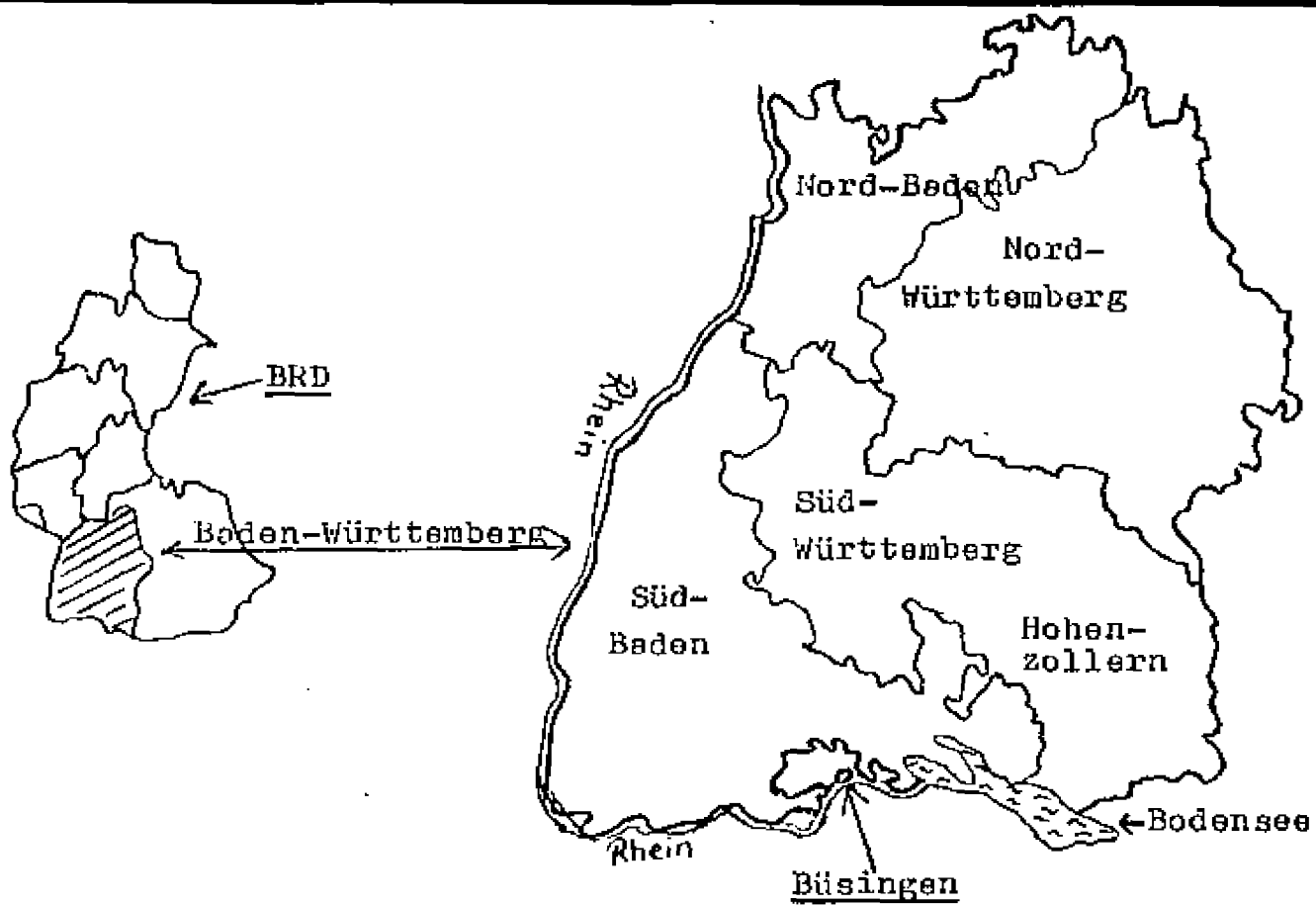
In 1535, King Ferdinand I invested the patrician family Im Thurn of Schaffhausen with Büdingen which held it in feudal tenure.<sup>10</sup> The Im Thurn family retained control over the area through the nineteenth century, although the city of Schaffhausen temporarily acquired jurisdiction through purchase of a mortgage from Austria in 1651.<sup>11</sup> If it had not been for an unfortunate

<sup>6</sup>For an excellent discussion of this point with reference to documents in French and Spanish archives see Josep Senabre, El Tractat dels Pirineus (Barcelona, Spain: Editorial Barcino, 1960), pp. 88-90.

<sup>7</sup>Franz Götz (ed.), Das Büdinger Vertragswerk (Redolfzell, Switzerland: Huggle & Neurer KG, 1968), p. 8.

<sup>8</sup>Nellenburger Akten No. 9, 1080-1092 in the Staatsarchiv of the city of Schaffhausen.

<sup>9</sup>Irmfried Siedentop, Büdingen und Verenshof in der Schweiz (Frankfurt a.M.: Verlag Moritz Diesterweg, 1938), p. 39.



13. Büsingen: A German Exclave in Switzerland

incident in the late seventeenth century, Büsingen -- like the surrounding Hegau region -- would have eventually become incorporated by the city of Schaffhausen.

The complete incorporation of Büsingen by Schaffhausen did not take place because of the so-called "first Büsingen affair".<sup>12</sup> This controversy arose in 1694 over the bailiff Eberhard Im Thurn, who was accused of offending the Reformed Religion and subsequently incarcerated by the Council of Schaffhausen. Taken aback by this apparent violation of feudal and territorial rights, the Habsburg Emperor Leopold I demanded immediate retribution and the release of the prisoner. When the Council refused to rescind its charge, the Emperor withdrew Büsingen from the city's jurisdiction in 1698. It has remained apart ever since.

### Campione d'Italia

The origin of this outlier can be traced back to Roman times, although it is known that the area was inhabited long before then.<sup>13</sup> According to one authority, Rome chose the place

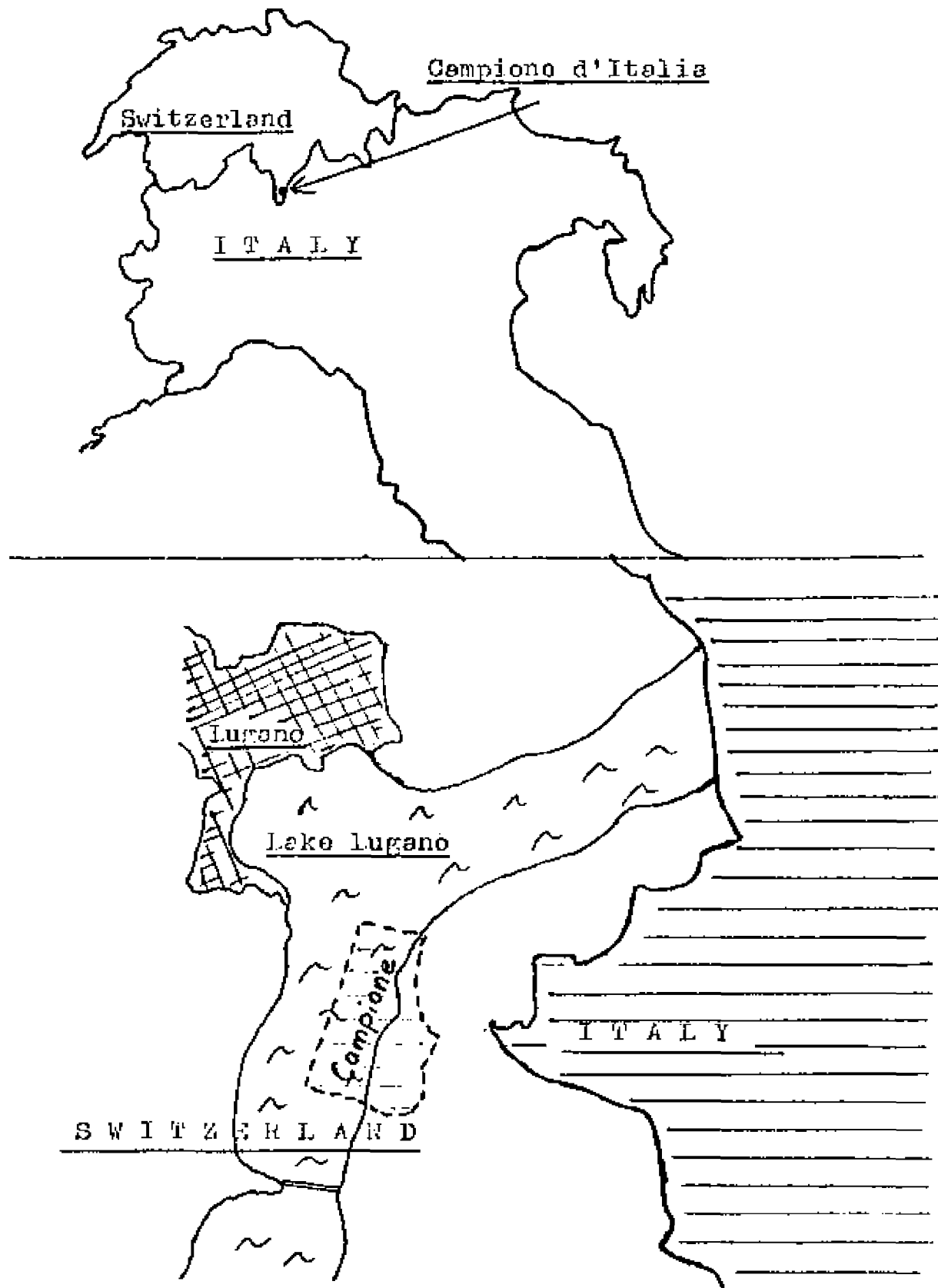
<sup>10</sup> Franz Götz, opus cit., p. 8.

<sup>11</sup> Otto Weiner, Büsingen am Hochrhein: Die reichsdeutsche Insel in der Schweiz (Konstanz, W. Germany: Friedrich Stedler, 1938), p. 27.

<sup>12</sup> This incident is described very well by Otto Weiner, opus cit., pp. 46-74.

<sup>13</sup> Mariuccia Belloni Zecchinelli, Campione d'Italia (Como, Italy: Casa Editrice Pietro Cairoli, 1968), p. 19.





14. Campione d'Italia: An Italian Exclave in Switzerland

as the site of a major defense installation because of its natural fortifications: on three sides it is surrounded by mountains and on the fourth it is protected by the sea.<sup>14</sup> The strategic position which the territory enjoyed also made it an important stopover along the trade routes.<sup>15</sup>

During the Roman period Campione was included in the municipality of Como. After the spread of Christianity and the reorganization of the region into ecclesiastical districts it became part of the diocese of Como. Towards the middle of the fifth century A.D., when the dioceses were subdivided into parishes, Campione was not included in one of these but was incorporated in neighboring territory, probably that of Lugano.<sup>16</sup>

For our purposes, the decisive event in the early history of Campione occurred in 777 A.D. At this time the village and its lands were presented by the Lord of Campione to the Archbishop of Milan.<sup>17</sup> Through succeeding centuries the area remained under church jurisdiction and was able to escape annexation by Switzerland.

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<sup>14</sup>Giovanni Cenato, Campione d'Italia in der Geschichte und in der Kunst (Como, Italy: Grafica Centonze, undated), not paginated.

<sup>15</sup>Mariuccia B. Zecchinelli, opus cit., p. 20.

<sup>16</sup>Ibid.

<sup>17</sup>Luigi Pedreschi, "L'exclave italiano in terra svizzera di Campione d'Italia," Revista Geografica Italiana, Vol. 64 (March, 1957), p. 26.

### The Bearle Ex- and Enclaves

It is not known exactly how far back in history the village of Bearle existed. One authority traces its origins back to 54 B.C.<sup>18</sup> However, the first written mention of the town was in 992 A.D.<sup>19</sup> At this time the Countess Hilsondis left her property of Strijen, to which Bearle belonged by act of foundation, to the Abbey of Thorn.<sup>20</sup>

The peculiar intertwining of two separate jurisdictions took place towards the close of the twelfth century. At that time Godfrey of Schoten, Lord of Breda, was in possession of the castle of Breda and the landed estates to the south of it. This land was the subject of dispute between him and the Duke of Brabant, however.<sup>21</sup> Presumably Godfrey, not able to make a fight of it, was forced to cede the land to the Duke in the 1190s. Once he had done this the Duke magnanimously returned the land to him, only this time as a feudal estate.<sup>22</sup> Godfrey greeted this gesture by renouncing his claims and recognizing

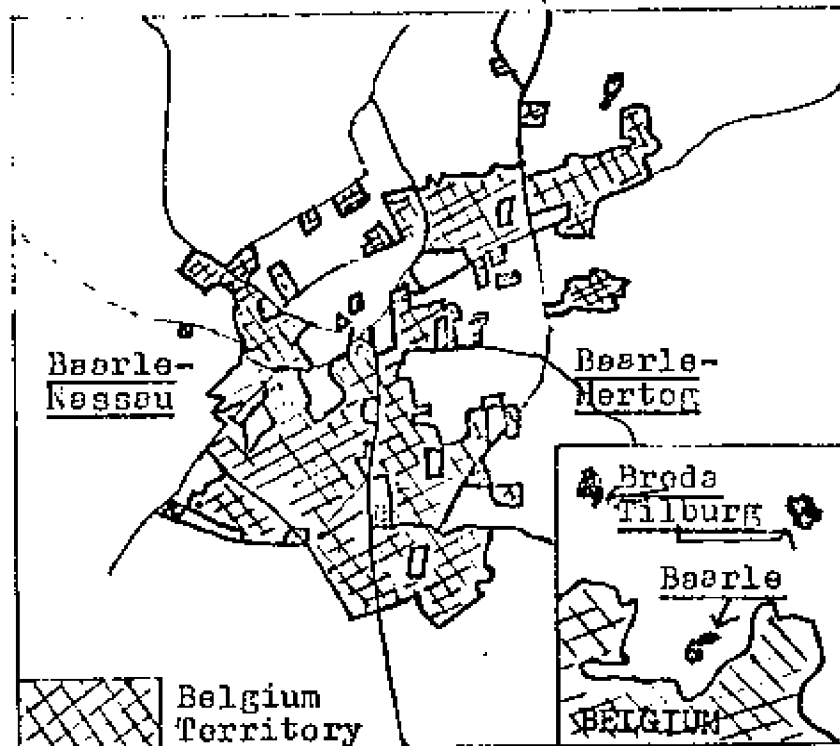
<sup>18</sup>De geschiedenis van Bearle-Nassau-Hertog. This curious source contains no author, publisher, date of publication and is not paginated. It was obtained in Bearle-Nassau during the summer of 1972.

<sup>19</sup>A village by the name of "Berloris," which may be the same, was first recorded in 821 A.D. See A. Carnoy, Origines des noms des communes de Belgique (Louvain, Belgium, 1948), p. 37.

<sup>20</sup>M.F. Ferwerda, "De enclaves in Bearle-Nassau," Geodesia, Vol. I (October, 1959), p. 23.

<sup>21</sup>C. Kramer, "Bearle-Nassau en Bearle-Hertog," Brabants Heem, Vol. I (1949), p. 44.

<sup>22</sup>Vermissen Angele, De Belgische enclaves in Nederland Licentie thesis, Antwerp, Holland: Handelshogeschool, 1972, p. 7.



15. The Baarle Ex- and Enclaves

the rights of the Duke. Grateful for this recognition, the Duke proceeded to enlarge the feudal estate with vast woods and fens, which Godfrey had never possessed before. He made, however, a reservation from this grant of certain parcels of land held of him by unfree tenure.<sup>23</sup> In this way, these scattered holdings never became part of the lordship of Breda. And from this time on it was possible to make a distinction between those areas of Baarle belonging to Nassau (now the Netherlands) and those parts of Baarle belonging to Duc (now Belgium).

#### CONCLUSIONS

The purported aim of this chapter was to trace the beginnings of those enclaves surviving in Europe. This was recognized as representing an important dimension of the problem at large. In keeping with the larger design of this research effort, we hoped to gain through careful study of the individual circumstances that gave rise to these outliers insights into the question of stability.

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<sup>23</sup>This complicated story is pieced together best by F.A. Brekelmans, De Belgische enclaves in Nederland Ph.D. Dissertation, Nijmegen, Holland: Faculty of Law, University of Nijmegen, 1965, pp. 24-47.

So far as we were able to tell, the exclaves do not appear to have common origins. Each is the product of individual circumstances. Thirty-nine are of feudal origin (Campione, Beerle-Duc and Beerle-Nesseu); and two have beginnings in the modern, post-Westphalia period (Büdingen and Llivia). The first to emerge as an outlier was Campione, in the eighth century. The last was Büdingen, which became isolated in the late seventeenth century.

Interestingly enough, only one exclave was created by accident. And that was Llivia -- through oversight in a treaty. All the others were brought into existence by specific acts; one was presented as a gift (Campione); another came to be enclaved out of a fit of pique; finally, the intertwining of the two Beerles resulted from a feudal quarrel.

That factors unique to each locale seem to account satisfactorily for their origins has important implications for our study. Essentially, it would seem to suggest that contrary to the historical exclaves surveyed earlier stability or instability may be predicated on indigenous as opposed to systemic factors. Bearing this point in mind, let us now attempt to discover how they managed to escape incorporation down through the ages.

## Chapter 6

### SURVIVAL

We have just had the opportunity to explore the origins of the present European exclaves. But perhaps more remarkable than their early existence as outliers is their survival. For one might have expected that out of so many changes in the political landscape something would have been done to terminate these anomalies.

### PURPOSE OF THIS INQUIRY

Because the existence of so many exclaves in Europe today seems to contradict an apparent trend toward the consolidation of state territory, it will be of interest in this chapter to undertake a rigorous investigation of their persistence. In this connection and corresponding to our second hypothesis, we will attempt on the basis of our empirical findings to determine those factors which are conducive to the maintenance of the status quo. The nature of this inquiry will lead us to focus particularly on the roles played by the home and host states and outlier itself.

#### Llivia

As one may recall, this Spanish territory became enclaved in France in 1659 due to defective wording in the Treaty of the Pyrenees. At that time thirty-three so-called

"villages," comprising northern Cerdanya, were ceded to France to link her territories in Conflent with those in Val Carol. Though lying between the two, Llivia was not included because it held the special status of a town (ville).

It is important to note that the error in the treaty was first brought to the attention of Spanish authorities by residents of Llivia.<sup>1</sup> Apparently, being keenly patriotic, they wanted to remain Spanish nationals.

When Spanish officials pointed out the discrepancy to the French, they refused to believe it. Only later, after consulting the written record, were they persuaded that a mistake had indeed been made.<sup>2</sup> Consequently, they set down for more discussions with Spanish representatives, and in 1660 worked out a complementary boundary convention.<sup>3</sup>

In essence, this treaty represented a compromise. Most importantly, France recognized the status of Llivia as an outlier of Spain. It also provided for the necessary passage

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<sup>1</sup>Hubert Aubagen, Die völkerrechtliche Stellung der Enklaven und Exklaven Ph.D. Dissertation, Göttingen, West Germany: Faculty of Law, Georg-August University, 1967, p. 22.

<sup>2</sup>Correspondance politique (Spain), Vol. 39, p. 344; Archive du Ministère des Affaires Etrangères, Paris, France.

<sup>3</sup>For the text of this treaty see Henri Vast (ed.), Collection de textes pour servir à l'étude et à l'enseignement de l'histoire: Les grands traités du règne Louis XIV, Vol. I (Paris: Alphonse Picard, 1893-1899), pp. 123-124.



of persons and goods between Spain and the outlier. But in exchange for those concessions France made Spain promise never to fortify the area.

The conclusion of a special treaty in regard to Llivia, outlining the responsibilities of France and Spain, helps but does not entirely explain the persistence of the exclave through so many changes of régime between 1660 and 1866. For instance, in 1701, when the absolutist Spanish crown passed to a French prince, it would have been logical for him to terminate the status of the exclave in favor of his grandfather Louis XIV. Or during the French Revolution, when almost all other foreign enclaves were incorporated in France, it would not have been out of character for the Spanish enclosure to have suffered the same fate. Nevertheless, even when Napoleon conquered Spain and placed his brother on the Spanish throne, the status of Llivia remained unaffected.<sup>4</sup>

On various occasions since then, attempts have been made by the French government to negotiate an end to the anomalous situation of a Spanish outlier within French boundaries. One time the French were prepared to surrender to Spain their co-suzerainty over Andorra in exchange for the

<sup>4</sup>C. d'Olivior Ferran, "International Enclaves and the Question of State Servitudes," International and Comparative Law Quarterly, Vol. 4 (April, 1955), p. 299.

territory. But nothing ever came of this proposal mainly due to the outcry of enraged citizens of Llivia. According to Spanish sources,<sup>5</sup> local inhabitants are ardently patriotic. And when they heard about French efforts to incorporate them, they petitioned the Prince-Bishop of Urgel (formerly Spanish co-suzerain of Andorra). Re-affirming their loyalty to Spain, they pointed out to the Bishop that abolishment of a mere feudal right of suzerainty was not equitable exchange for the loss of actual dominium.<sup>6</sup>

On May 26, 1866, a Franco-Spanish treaty of delimitation was signed, reaffirming the status of Llivia.<sup>7</sup> According to the terms of this convention, the exclave was described geographically, recognized as belonging to Spain and given broad rights of access. By a final treaty in 1868, the exact boundary of the outlier was fixed once and for all.<sup>8</sup>

<sup>5</sup>In response to an inquiry by this writer, the Spanish Ministry of Information and Tourism sent him an undated report describing Llivia from the Spanish viewpoint.

<sup>6</sup>Ibid.

<sup>7</sup>For the text of this treaty see J. Basdevant (ed.), Traité et Conventions en vigueur entre la France et les Puissances étrangères, Vol. II (Paris, 1919), pp. 82-90.

<sup>8</sup>The text of this treaty is included in ibid., pp. 94-115.

## Büdingen

It should be remembered that Büdingen would have passed under the jurisdiction of the city of Schaffhausen if the normal course of events had prevailed. But as it were the Habsburg Emperor withdrew the area from the city in 1698 because of the high-handed manner in which he had been treated during the "first Büdingen affair," and it has remained apart ever since.

The exclave could easily have been returned to Schaffhausen in 1723, when the Habsburgs sold their suzerainty over the Hegau to the city. But out of annoyance over the treatment they had received twenty-five to thirty years earlier by Schaffhausen, the Habsburgs purposefully excluded Büdingen from the transaction.<sup>9</sup> The area was left enclosed to serve as eternal warning: the city should never forget that iustitia regnorum fundamentum.<sup>10</sup>

Many efforts were made subsequently by Schaffhausen to win Büdingen back -- all to no avail. In 1770, when Austria sold its rights over two neighboring communities to Zürich, the territory became truly enclaved in Switzerland.<sup>11</sup>

<sup>9</sup> Irmfried Siedentop, Büdingen und Verenaufhof in der Schweiz (Frankfurt a.M.: Verlag Moritz Diesterweg, 1938), p. 41.

<sup>10</sup> Ottobert L. Brintzinger, "Beiträge zur Geschichte der Exklave Büdingen," Hegau, Vol. 5 (1958), p. 42.

<sup>11</sup> Franz Götz (ed.), Das Büdingen Vertragswerk (Radolfzell, Switzerland: Huggle & Meurer KG, 1968), p. 9.

One of the most serious threats to the survival of the exclave was posed by the French Revolution and its aftermath. For this upheaval led in 1794 to the occupation of Büsingen and the surrounding countryside by French troops. And instead of freedom and equality, the quartering of troops was introduced, a burden which caused much hardship for exclave dwellers.<sup>12</sup>

But the worse was still to come as the area was turned into a fierce battlefield. First, in April 1799, the Austrians -- after a bloody skirmish -- drove out the French and proceeded to set up camp there. Then, in September of that year, they were replaced by retreating Russian troops, allies who had just suffered defeat at the hands of the French in Zürich. Proving that occupation by allied soldiers could be as bad, if not worse, than that by the enemy, the Russians indiscriminately plundered the countryside in search of provisions. Finally, in May 1800, the French attacked across the Rhine and succeeded in routing allied forces and re-capturing the region. Ten months later (February 1801), a peace was signed, ending hostilities.<sup>13</sup>

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<sup>12</sup>Max Bolli, "Die Enklave Büsingen," Geographica Helvetica, Vol. 4 (1954), pp. 235-236.

<sup>13</sup>One of the most detailed accounts of this rather confusing period is provided by Otto Weiner, Büsingen am Hochrhein: Die reichsdeutsche Insel in der Schweiz (Konstanz, West Germany: Friedrich Stedler, 1938), pp. 75-80.

As Napoleon I began to bring a "new order" to Europe, Swiss leaders in Schaffhausen believed that the time was now ripe to seek the incorporation of Büsingen. In this connection, several memoranda were dispatched to Paris. But instead of finding their wishes fulfilled, city elders were informed that the Peace Conference of Pressburg had transferred the exclave to the German Duchy of Württemberg in 1805.<sup>14</sup> Five years later, Büsingen was put under the jurisdiction of the Grand Duchy of Baden.<sup>15</sup>

If discouraged, city leaders did not appear to show it. For during the Congress of Vienna (1814-15), it was decided to speak up once again on this issue. Consequently, the Mayor of Zürich, who sat in on the meetings in Vienna, was given the responsibility to present their case before the European gathering. According to a Mémoire issued by a city official, he was to stress the close economic ties of Büsingen to Schaffhausen.<sup>16</sup> But because the Zürich representative was annoyed with the city

<sup>14</sup>Wilhelm F. Oberer, Die staats- und völkerrechtlichen Besonderheiten der deutschen Enklave Büsingen in der Schweiz Ph.D. Dissertation, Tübingen, West Germany: Faculty of Law, University of Tübingen, 1955, p. 8.

<sup>15</sup>Hans Becker, Die Rechtsverhältnisse an der Schweizergrenze: Ein Beitrag zum nachbarlichen Völkerrecht Ph.D. Dissertation, Zürich, Switzerland: Faculty of Law, University of Zürich, 1931, p. 24.

<sup>16</sup>Quoted in Hans Werner, "Die letzten Gebietsveränderungen des Kantons Schaffhausen und die Bereinigung seiner Landesgrenze von 1839," Schaffhausen Beiträge zur vaterländischen Geschichte, Vol. 14 (1937).

elders he did not press their case at the Conference.<sup>17</sup> In this way, still another good opportunity was lost which might have radically changed the fate of this isolated community.

During the period 1848-49, when revolutions flared up all over Europe, an incident occurred with regard to the exclave that could well have touched off a general European war. In July 1849, a "revolt" took place in Büsingen, and authorities in Baden (to which Büsingen then belonged), wanting to crush it, ordered the steamship "Helvetia" with some 170 Hessian troops aboard to sail down the Rhine and dock in the rebellious village. Following instructions, the Hessians proceeded to arrest three rebels in the outlier and were preparing to set sail with one prisoner when they were suddenly surrounded by Swiss soldiers. The Swiss, who in the meantime had been informed of this violation of their neutrality, refused to allow the Germans to depart until they acknowledged their mistake.<sup>18</sup>

The "second Büsingen affair" set off a flurry of diplomatic negotiations between the parties and led to the

<sup>17</sup>Max Bolli, opus cit., p. 236.

<sup>18</sup>This incident is best recounted by Otto Weiner, opus cit., pp. 81-9.

mobilization of Swiss and German forces. A military report of the time to Bern estimated opposing German troop strength at 30,000 men. To meet this threat, the Swiss government put its entire federal armed forces on alert and called up 24,000 reinforcements.<sup>19</sup>

In the end, the so-called "second Büsingen affair" was resolved peacefully. The Germans, after asserting that the Swiss must somehow afford the government of Baden "the opportunity to exercise its sovereignty over Büsingen," agreed to make a statement conceding that they had had no intention of violating Swiss territory. For their part, the Swiss consented to the release of the Hessian contingent, but this time it would have to return home over land with a choice of two routes de marche.<sup>20</sup>

In the year 1871, Büsingen, along with the Duchy of Baden, became part of the German Reich.<sup>21</sup> On the surface, it does not seem that such integration was widely approved by exclave dwellers. For from this time on we are confronted with

<sup>19</sup>Otto Weiner, opus cit., p. 83.

<sup>20</sup>Irmfried Siedentop, opus cit., pp. 45-6.

<sup>21</sup>Hubert Auhagen, opus cit., p. 19.

a most unusual situation: repeated attempts by the majority of the citizens of Büsingen to become incorporated in Switzerland.

In the main, early efforts were primarily concerned with economic integration. (The first recorded attempt to seek an Anschluss with the host state took place in the 1880s.)<sup>22</sup> But later on serious agitation was begun for political integration as well.

The drive for incorporation in Switzerland was particularly intense during the inter-war period. First, in November 1918, inhabitants pressed Swiss authorities to take up their case with the new government in Germany. The idea was to offer the motherland an equivalent amount of Swiss territory for the exclave.<sup>23</sup> Whatever the reason, whether the appropriate host territory to be exchanged could not be agreed upon or whether, as one expert suggests, the proposed swap was considered "inopportune,"<sup>24</sup> no decisive action was taken at this time. Second, in 1924, exclave dwellers, it

<sup>22</sup> Wilhelm F. Oberer, opus cit., p. 3.

<sup>23</sup> Franz Götz, opus cit., p. 37.

<sup>24</sup> Frank E. Krenz, International Enclaves and Rights of Passage Ph.D. Dissertation, Geneva, Switzerland: Graduate Institute of International Studies, 1961, p. 56.



appears, tried to take matters into their own hands by using force to sever connections with Germany. But their demonstration only led to an influx of police from the Weimar Republic.<sup>25</sup> A final request for political integration was made by residents in 1931, but the question was shelved by Berlin.<sup>26</sup>

Shortly after World War II exclave dwellers agitated once more for incorporation in the host country. Although authorities in Schaffhausen sided openly with the citizenry of Büsingen, members of the federal parliament could not be persuaded to take up their case. In the view of the Bundesrat an Anschluss could only occur through a treaty concluded with a completely sovereign and independent Germany. Since that state was under Four-Power occupation, negotiations with it were out of the question.<sup>27</sup> For their part, German leaders believed that many political and legal problems still had to be overcome before thoughts of an exchange could be seriously entertained.<sup>28</sup>

<sup>25</sup>Wilhelm F. Oberer, opus cit., p. 3.

<sup>26</sup>Notes prepared by the Indian Embassy in Bonn for the case of Portugal vs. India before the I.C.J., dated September 12, 1956. These notes represent a valuable source but have not been published.

<sup>27</sup>The most comprehensive treatment of attempts at incorporation is contained in Philipp Daum, Die Exklave Büsingen von 1939-1964 (Büdingen/Singen, West Germany: J.A. Kugler, 1964), pp. 25-30.

<sup>28</sup>Franz Götz, opus cit., p. 37.

As it turned out during the ensuing Cold War period, inhabitants thought less and less of disenclavement. Instead they began searching for ways to improve their situation. Of primary concern to them in this respect was getting Germany and Switzerland to sign a state treaty, which would resolve once and for all inherent economic, political and legal problems, especially the vital issue of access.<sup>29</sup>

### Campione d'Italia

It may be recalled that the territory now known as Campione was presented by its lord to the Archbishop of Milan in 777 A.D. Seven years later, when the archbishop founded the famous monastery near the Church of St. Ambrose (after which the monastery was named), he presented it with the outlier.<sup>30</sup>

Campione would still have remained property of the archbishop had not an ecclesiastical power struggle broken out between him and the insubordinate Abbot of St. Ambrose Monastery. For reasons that are not entirely clear today, the abbot and the monks of St. Ambrose decided to break away from control of the archbishop in 873. Subsequently, they put

<sup>29</sup>Ottobert L. Brantzinger, Untersuchungen über die rechtliche Stellung der deutschen Exklave Büsingen im Kanton Schaffhausen unter besonderer Berücksichtigung der verkehrs- und zollrechtlichen Fragen Ph.D. Dissertation, Basel, Switzerland: Faculty of Law, University of Basel, 1957, p. 14.

<sup>30</sup>Meriuccia B. Zecchinelli, Campione d'Italia (Como, Italy: Casa Editrice Pietro Cairoli, 1968), p. 23.

themselves and their monastery under the protection of Emperor Louis II. In order to counter claims by the archbishop to possessions of the monastery (such as Campione), they deliberately falsified documents to make it look as if they had received their lands from Carl the Great. In the end, this dispute was not settled on the battlefield but in court and the abbot and monks won.<sup>31</sup>

Through the Middle Ages the Abbot of St. Ambrose Monastery exercised in theory temporal as well as spiritual authority over Campione.<sup>32</sup> But in fact the religious fief was oriented to a large degree towards Lugano, the region (now Swiss) in which it was located.<sup>33</sup> Generally, ties were so close at this time that the area, for all practical purposes, was considered as comprising the bailiwick of Lugano.<sup>34</sup> In the words of one authority: "Whenever the rules of Campione were silent, the laws of Lugano were consulted."<sup>35</sup>

<sup>31</sup> Mariuccia B. Zecchinelli, opus cit., pp. 23-6.

<sup>32</sup> Luigi Pedreschi, "L'exclave italienne in terra svizzera di Campione d'Italia," Revista Geografica Italiana, Vol. 64 (March, 1957), p. 27.

<sup>33</sup> "Campione" in Dictionnaire historique et bibliographique de la Suisse, Vol. II (Neuchâtel, 1924), p. 395.

<sup>34</sup> C. Trezzini, "Campione" in Historisch-Biographisches Lexikon der Schweiz, Vol. II (Neuenburg, Switzerland: P. Attinger, 1924), p. 482.

<sup>35</sup> Hans Becker, opus cit., p. 58.

Despite the frequent upheavals and power struggles of this period, Campione remained enclosed. In the main, this was due to the respect it commended as being under the jurisdiction of the Church.<sup>36</sup> For instance, during the twelfth century, the Abbot of St. Ambrose Monastery was compelled to defend a precarious neutrality in the brutal war between the rulers of Milan and Como. But despite his obvious military powerlessness all his possessions, including Campione, were left untouched.<sup>37</sup> As a result of this respect by outsiders, the feudal rights of the abbot over Campione were allowed to mature during the Middle Ages into those of a territorial sovereign.<sup>38</sup>

Although Campione managed to remain pretty much aloof from the conflicts that were waged in the Middle Ages, its luck could not last forever. Thus, it should come as no surprise to learn that area residents took up arms in the beginning of the sixteenth century on the side of the Swiss against the French in a struggle for the Lugano fortress. During this conflict the local citizenry was charged with paying a heavy war tax by the twelve Swiss Kantons.<sup>39</sup>

<sup>36</sup>Giovanni Cenozato, Campione d'Italia in der Geschichte und in der Kunst (Como, Italy: Grafica Centonze, undated), not paginated.

<sup>37</sup>Ibid.

<sup>38</sup>Ibid.

<sup>39</sup>C. Trezzini, opus cit.

During the same century Campione became enclaved in Switzerland as it is today. Through an exchange of territory in 1512 the Swiss obtained possession of the region comprising the present-day Kanton of Tessin.<sup>40</sup> At first little notice was paid to the outlier of Milan enclaved in Swiss territory. Then, in the year 1542, the provincial governor of Lugano attempted to exercise authority in the exclave. This encroachment on church jurisdiction was immediately protested by the Spanish governor in Milan. And in the end, the Swiss were forced to recognize the sovereignty of the Abbot of St. Ambrose Monastery over Campione.<sup>41</sup>

As a result of an "acte formell," dating from the year 1683, the citizens of Campione were not regarded as enemies in Lugano.<sup>42</sup> To the contrary. They were exempt from Lugano customs and could own and inherit property in that region. At the same time, the enclosure came not under Lombardy law but was ruled according to cantonal law. Finally, area inhabitants were taxed just like those in Lugano, and commerce between the two was completely free.<sup>43</sup>

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<sup>40</sup>Giovanni Cenzato, opus cit.

<sup>41</sup>Rolf de Sury, Le condizioni di frontiere del Lago di Lugano Ph.D. Dissertation, Fribourg, Switzerland; Faculty of Law, University of Fribourg, 1942, p. 31.

<sup>42</sup>Hans Becker, opus cit., p. 21.

<sup>43</sup>Ibid.

According to the agreement reached at Campoformio in 1797, Napoleon received Lombardy, formerly part of Austria. In that Campione was mentioned as one of the territories to be incorporated, it was annexed to the Cisalpine Republic and duly occupied by the French.<sup>44</sup> The Kantons were not happy with this situation and claimed the exclave as well. But a local referendum settled the matter. By a vote of 37 to 33 exclave dwellers opted to remain with the Cisalpine Republic.<sup>45</sup>

By the turn of the eighteenth century Swiss authorities had still not reconciled themselves to Campione's predicament. They scanned reports on the status of the isolated village and sought to determine the precise nature of its ties to Lugano. In this connection, a detailed study was prepared by the Foreign Ministry, which proposed an exchange of territory between Switzerland and the Cisalpine Republic leading to the incorporation of the exclave in the host state.<sup>46</sup> For reasons that are not apparent today, nothing ever came of this suggestion.<sup>47</sup>

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<sup>44</sup>Giovanni Cenato, opus cit.

<sup>45</sup>Hans Becker, opus cit., p. 21.

<sup>46</sup>Report of the Swiss Foreign Ministry, September 2, 1800, Aktenemmlung aus der Zeit der Helvetischen Republik, Vol. VI, p. 335.

<sup>47</sup>Gustavo Graffine (ed.), Documenti relativi al confine fra il Cantone Ticino e il Regno d'Italia (Lugano, Switzerland: incarico del Consiglio federale svizzero, 1929), p. 10.

Following the collapse of the Napoleonic Empire the Swiss tried once again to gain control over Campione. At the Congress of Vienna the Swiss delegation was instructed to do everything in its power to achieve this end.<sup>48</sup> But despite the best efforts of the able Swiss diplomat Pictet de Rochement the isolated village was transferred to the Kingdom of Lombardy, one of the former states of the Italian peninsula now reconstituted under the dominance of Austria.<sup>49</sup>

Swiss attempts to annex Campione were not entirely one-sided as the following historical incident makes clear. When the movement for the unification of Italy led in 1848 to a revolt against Austria in Lombardy, the inhabitants of Campione pleaded for Anschluss with Switzerland. But after initial success the rebellion was stamped out and the hopes of the populace were dashed.<sup>50</sup>

However, the spirit of risorgimento could not be surpassed for very long. Following the defeat of Austria by

<sup>48</sup>For details see Abschiede Repertorium 1814-1848, Vol. II, pp. 1100 and 1108.

<sup>49</sup>Angelo Bianchi, Campione d'Italia nel diritto nazionale e internazionale Ph.D. Dissertation, Basel, Switzerland: Faculty of Law, University of Basel, 1945, pp. 29-30.

<sup>50</sup>Mariuccia B. Zecchinelli, opus cit., p. 46

the Kingdom of Sardinia, aided by France, in 1859 and the liberation of Lombardy, Campione was incorporated in the new Kingdom of Italy.<sup>51</sup>

With the exclave now firmly in Italian hands, the time seemed ripe for a boundary settlement with Switzerland. After determining for themselves that it was not possible to obtain the exclave, Swiss officials agreed to talks with Italian diplomats and the establishment of a joint boundary commission. Out of these negotiations emerged on October 5, 1861 a mutually acceptable convention.<sup>52</sup>

Besides laying down the boundaries of Campione proper in great detail, this treaty provided for the cession of San Martino to Switzerland. Up to now this territorial fragment had belonged to the outlier, although it was situated on the opposite shore of Lake Lugano. According to the agreement it was turned over to the host state along with jurisdiction over the moiety of the intervening lake. This was done in order to eliminate the problem of interdicting Swiss jurisdiction on the lake.<sup>53</sup>

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<sup>51</sup>C. Trezzini, opus cit., p. 482.

<sup>52</sup>For the English text of this accord see Edward Hertslet, The Map of Europe by Treaty, Vol. II (London: Butterworth, 1875-1891), pp. 1481-1497.

<sup>53</sup>Hans Becker, opus cit., p. 22.



The incorporation of Campione in Italy bore important implications for the future of the detached town. Essentially, it meant that the fate of the two became intertwined, and that henceforth the little community came to share Italian fortunes as well as misfortunes. Thus, in World War I, the exclave with a population of 510 souls was forced to recruit 94 soldiers for the Italian cause, 15 of whom lost their lives in the conflict.<sup>54</sup> But Campione, taking advantage of its seclusion, has not always toed the line. For instance, during World War II, when Mussolini set up his puppet "Repubblica Sociale Italiana" in northern Italy after the Armistice of 1943, area residents refused to acknowledge his authority.<sup>55</sup>

#### The Bearer Ex- and Enclaves

As it should be recalled, the curious intermingling of jurisdictions between Belgium and the Netherlands is of feudal origin. Due to some highly involved medieval infighting in the twelfth century, the Duke of Brabant transferred to the Lord of Breda a certain amount of territory to the south of Bearer (a town situated today in the province of Northern Brabant in Holland). The Duke, however, reserved for himself specific tracts of land held in unfree tenure by others. In this way, these scattered holdings never became part of the

<sup>54</sup>Giovanni Cenato, opus cit.

<sup>55</sup>Mariuccia B. Zecchinelli, opus cit., pp. 50-51.

seigniorage of Breda. This development also explains how the Belgian community enclaved in Holland got its name. Baerle-Duc (or Baerle-Hertog as it is called in Flemish) was part of those areas that remained "under the Duke" (Baarle-onder-den Hertoge).

Ownership of the Baerle enclosures changed hands over succeeding centuries. First, Baerle-Duc was merged in 1397 with the seigniorage of Turnhout, which was under the dominance of the Dukes of Brabant.<sup>56</sup> Then, in 1403, those outliers of Baerle that had previously fallen to the Lord of Breda were transferred to the van Nassau family.<sup>57</sup> This later event accounts for the name given to the Dutch community in which the Belgian territories are now enclaved: Baerle-Nassau.

The family of Nassau, from which the appellation of the Dutch exclaves is derived, was destined to become the liberator of the Netherlands in the sixteenth century. Led by William the Orange, the Dutch revolted from harsh Spanish rule in 1568. Under the Union of Utrecht in 1579, the seven northern provinces became the Republic of the United Netherlands.<sup>58</sup>

<sup>56</sup>F.A. Brekelmans, De Belgische onclaves in Nederland Ph.D. Dissertation, Nijmegen, Holland: Faculty of Law, University of Nijmegen, 1965, p. 52.

<sup>57</sup>H. Blink, "Baerle-Nassau en Baerle-Hertog," Vragen van den Dag Maandschrift voor Nederland en Koloniën, Vol. 30 (1915), p. 970.

<sup>58</sup>Herbert Michselis et al, Geschichte der Neuzeit (Rheda, West Germany: Verlag für Wissen und Bildung, 1969), pp. 200-201.

At this time the Duchy of Brabant was partitioned between the United Netherlands (the forerunner of the present Kingdom of the Netherlands) and the Spanish Netherlands (the nucleus of the present Kingdom of Belgium). The lordship of Turnhout, in which Baerle-Duc was included, went to the Spaniards, while that of Breda, in which Baerle-Wessau fell, was given to the United Netherlands. "Hence," as a knowledgeable writer has pointed out, "the two Baarles found themselves on either side of a true international frontier, almost an 'iron curtain,' as it was also the frontier between the Reformed Religion and that of Rome."<sup>59</sup>

The bifurcation of Baerle into two separate sovereign jurisdictions was confirmed by the Peace of Münster in 1648. Extreme religious differences between the Spanish Netherlands (staunchly Catholic) and the Dutch Republic (strongly Protestant) and the very active role played by a local curé help explain why. At this time the principle cuius regio eius religio was taken for granted. And the pastor of the local church in Baerle-Duc, one Father Herdegom, feared that if the outliers ceased to exist his parish would be dissolved and his flock exposed to the "persuasions" of "Reformist-minded" Protestant authorities. Therefore, he put up a fierce resistance.<sup>60</sup>

<sup>59</sup>C. d'Olivier Ferran, "International Enclaves and the Question of State Servitudes," International and Comparative Law Quarterly, Vol. 4 (April, 1955), p. 302.

<sup>60</sup>The story of Father van Herdegom's resistance to incorporation in the Dutch Republic is best told by J.P.H. van den Broek, Bijdragen tot de Geschiedenis van Boerle (Tilburg, Holland: W. Bergmans, 1947), pp. 38-57.

Eventually, Father Herdegom won the support of the Baroness of Turnout, a lady of great personal influence in The Hague at the time. Through her intervention, the "savior of the enclaves," as the priest has affectionately come to be called by local inhabitants, was able to retain his parish and keep the two Bearles apart.<sup>61</sup>

Even though Bearle was divided into two legally distinct communities by Spanish and Dutch sovereigns in 1648, this state of affairs was in no way accepted by the Church or national circles.<sup>62</sup> Consequently, a desperate verbal battle was waged between the parishes of Bearle-Duc (then belonging to Spain) and Bearle-Nassau (then part of the Dutch Republic) over Church property. This struggle continued unabated despite the signing of the Treaty of Utrecht in 1713, which led to the replacement of Spanish sovereignty over the Southern Netherlands by Austria.<sup>63</sup>

In 1785, an attempt was made to eliminate this "hornet's nest". According to Article 13 of the Treaty of Fontainebleau,

<sup>61</sup>Frons van der Ferrer, Historische Schets van Bearle-Hertog ('s-Gravenhage, Holland, u.d.), p. 7.

<sup>62</sup>M.P. Ferwerda, "De enclaves in Bearle-Nassau," Geodesia, Maandblad van het Nederlands Genootschap voor Landmeetkunde, Vol. I (October, 1959), p. 24.

<sup>63</sup>Frank E. Krenz, opus cit., p. 47.

concluded between the United Netherlands and the Austrian-occupied Southern Netherlands on November 8 of that year, a joint commission was established to "reconnoître les anciennes limites du Brabant." As a result of their field work, a plan was drawn up for a territorial exchange. This proposal, which was made known on August 7, 1789, provided for the cession of Baerle-Duc to the Dutch Republic in exchange for two of its border territories: Cestelree and Ulicoten.<sup>64</sup>

But while the Dutch Republic attached considerable importance to the acquisition of the Austrian outliers, exclave inhabitants were resolutely opposed to such an arrangement. Just as in 1648 fear of being put under a Calvinist régime was uppermost in their minds. In the end, local residents had their way.<sup>65</sup>

Several times since then there have been obvious opportunities for one ruler or another to terminate the status of these ex- and enclaves. The first chance occurred during Napoleon's occupation of the two Netherlands, beginning in 1795. Under the reign of Louis Bonaparte the situation of Catholics in Holland was improved considerably, and thus the raison d'être

<sup>64</sup>See Projet d'un traité de limite entre le Brabant Autrichien et Hollandois, Letters of Baron Van der Borch, General State Archives, Brussels, Belgium.

<sup>65</sup>Versmissen Angele, De Belgische enclaves in Nederland Licentie thesis, Antwerp, Holland: Handelshogeschool, 1972, p. 74.

of the outliers was now removed. Although many other foreign and domestic exclaves disappeared during this period, however, those around Baarle remained tenaciously embedded.

The second opportunity presented itself during the short time when the two Netherlands were reunited under the Dutch crown (1815-1830). In 1826, a proposal was made to delimitate the boundaries between the two interwoven communes of Baarle.<sup>66</sup> According to a minute of delimitation, drawn up on September 10 of that year, a continuous boundary was formally proposed for Baarle-Nessau resulting in the abolition of enclaves within its territory with compensation in land. But eventually this idea had to be abandoned because the Mayor of Baarle-Duc refused to go along.<sup>67</sup>

The third occasion took place after the Southern Netherlands withdrew from the Union in 1830 to form the Kingdom of Belgium. At this time the question arose of drawing common limits between Baarle-Duc and Baarle-Nessau. But details about the exchange of territory could not be agreed upon. Consequently, the intermingling of territory was maintained.<sup>68</sup>

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<sup>66</sup>A copy of the proposed boundary realignment is contained in I.C.J. Pleadings (1959), Case Concerning Sovereignty over certain Frontier Land (Belgium/Netherlands), pp. 121-122.

<sup>67</sup>I.C.J. Reports (1959), Case Concerning Sovereignty over certain Frontier Land, Judgment of June 20, 1959, p. 213.

<sup>68</sup>Ibid., p. 253.

Due to irreconcilable differences the treaty of division of November 15, 1831, between Holland and the new state of Belgium, included no reference to either Baerle-Duc or Baerle-Nassau. It merely mentioned the different provinces that were to make up the two kingdoms. Since the outliers in and around Baerle were not specifically mentioned, those areas previously belonging to the Province of Antwerp became part of Belgium and those attached earlier to the Province of Noord Brabant became part of Holland.<sup>69</sup>

In a surprise move, the King of the Netherlands subsequently refused to abide by the treaty of separation. As a consequence, Belgium and Holland entered into prolonged negotiations in London. These ended in April 19, 1839 with the ratification of a mutually acceptable convention.<sup>70</sup> Essentially, it served to confirm the state of affairs that had been determined in 1831. In this way, Baerle-Duc remained Belgian and Baerle-Nassau, Dutch.

According to the Treaty of London, which sanctioned the separation of Belgium from the Netherlands, a mixed boundary commission was set up to fix the frontiers of the two states. It was understood that particular attention would be given to

<sup>69</sup>For the text of the treaty of separation see E.G. Legemans (ed.), Recueil des Traités et Conventions conclus par le Royaume des Pays-Bas avec les puissances étrangères depuis 1813 jusqu'à nos jours, Vol. I (Le Haye, Belgium, 1858), pp. iii-vi.

<sup>70</sup>The text of this accord is contained in ibid., Vol. I.

cleaning up their boundaries through exchange and compensation.<sup>71</sup> But when the mixed commission came in the course of its work to the sectors of the commune of Bearle-Nasseu and Bearle-Duc, it encountered "serious and special difficulties in continuing the frontier line which it had until then been able to draw."<sup>72</sup> Acting on instructions which they had received from Brussels, the Belgian commissioners rejected on September 4, 1841 a possible resolution of the exclevo problem which was to be effected by an exchange of territory.<sup>73</sup> Instead, they agreed to a treaty, signed on November 5, 1842 (effective February 5, 1843), that would preserve the status quo "with regard to the villages of Bearle-Nasseu (Netherlands) and Bearle-Duc (Belgium) and with regard to the ways crossing them."<sup>74</sup>

In another boundary convention, completed on August 8, 1843 (ratifications of which were exchanged on October 3, 1843), this status quo was reaffirmed.<sup>75</sup> These treaties and a

<sup>71</sup>Frank E. Kronz, opus cit., p. 48.

<sup>72</sup>I.C.J. Reports (1959), p. 235.

<sup>73</sup>Ibid., p. 214.

<sup>74</sup>Translation of Article 14 of the Treaty of November 5, 1842. The complete text is reproduced by E.G. Lagemans, opus cit., Vol. III.

<sup>75</sup>See especially Article 90 contained in Marjorie M. Whiteman (ed.), Digest of International Law, Vol. III (Washington, D.C.: U.S. Government Printing Office, 1964), p. 627.



controversial Communal Minute of November 29, 1836<sup>76</sup> are the only documents governing the relations between Holland and Belgium with respect to the Baarles today. Although two special treaties were drawn up in the late nineteenth century (not to eliminate the problem but to simplify it),<sup>77</sup> they were revoked

<sup>76</sup>This minute, which was signed on March 22, 1841 by the local representatives of Baarle-Duc and Baarle-Nassau, was the subject of dispute between Holland and Belgium in the Case Concerning Sovereignty over certain Frontier Land (1959) before the International Court of Justice. Its history and importance may be briefly summarized as follows: Beginning in 1836, the mayors of the two Baarles attempted to establish the exact boundaries of their respective communities. (The separation of Belgium from the Netherlands had made it imperative to draw up a record sorting out the ownership of the scattered and interlocking plots of land for tax purposes.) After a careful check of the survey register, the list of plots, the property registers and reception of testimony from the oldest inhabitants, all differences of opinion were finally settled in 1839 with the consent of the owners. Two years later, on March 22, 1841, the document was signed by both sides. This minute was subsequently used in 1843 as the basis for the drafting of a so-called "descriptive minute," which was annexed to the boundary convention signed on August 8 of that year. However, although the descriptive minute purported to transcribe word for word the communal minute, noting the plots comprising Baarle-Duc and Baarle-Nassau, a mistake occurred. Contrary to Section A of the communal minute, the descriptive minute provided that plot numbers 78 to 90 inclusive and numbers 93 to 111 inclusive belonged to Baarle-Nassau, whereas numbers 91 and 92 belonged to Baarle-Duc. In holding that sovereignty over plots 91 and 92 belonged to it, Belgium relied on the descriptive minute. By way of contrast, the Netherlands interpreted the status quo provision of the treaty of August 8, 1843 as upholding the text of the communal minute, which did not exclude numbers 91 and 92 from her sovereignty. The matter was complicated by several factors, not the least of which was the inability of Belgium to produce its copy of the communal minute of 1841. In the end, it was decided by 10 votes to 4 that sovereignty over the two disputed plots of land belonged to Belgium.

As a secondary issue, it should perhaps be mentioned that the case might never have been placed before the World Court had not the ambiguity of ownership and jurisdiction led an enterprising individual to erect a casino in the disputed area which, due to the hesitation of each side to exercise sovereignty there

by the Dutch before ratification could be accomplished.<sup>78</sup>

The Baerle ex- and enclaves escaped incorporation through two major conflagrations of the twentieth century. During World War I the outliers of Baerle-Duc held the distinction of being the sole Belgian territory not occupied by German forces. But this was only because the Netherlands was successful in preserving its status as a neutral and forbade the passage of German troops over its territory.<sup>79</sup> During the Second World War German soldiers overran and occupied both countries, but this situation did not affect the legal status of the enclosures, which was generally respected by the Nazis. For instance, since the Belgian head of state had surrendered, Baerle-Duc was subjected to German civil administration; in that Holland's had not capitulated, Baerle-Nassau was ruled by a military government.<sup>80</sup>

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for fear of offending the other claimant, had become a "no man's land." Since casinos are forbidden in Holland, the gambling establishment did a lucrative business and inevitably became the source of acute tensions.

<sup>77</sup>These were the convention of July 11, 1892, which concerned the frontiers between the Baerles, and the declaration of December 21, 1892. The former contained some provisions -- especially Article VI -- pertaining to nationality in the case of inhabitants of land ceded during the process of consolidation of outliers. E.G. Lagemans, opus cit., Vol. 11.

<sup>78</sup>The Dutch government withdrew these treaties by letter on September 17, 1897.

<sup>79</sup>Pierre Roton, "Les enclaves," Annuaire français de droit international, Vol. 4 (1958), p. 191.

<sup>80</sup>C. d'Olivier Farran, opus cit., p. 303.

## CONCLUSIONS

We set out in the beginning of this chapter to examine in detail the question how it was possible for the exclaves under study to escape incorporation for so long. In particular, we were interested in revealing the kinds of factors that were conducive to the maintenance of the status quo. It was agreed at the onset that our primary concern would be with the roles played by the outlier, the motherland and the enclosing country. But this narrowing of our focus was not intended to exclude an analysis of larger, systemic factors as they were observed to impinge on the particular situation.

From our findings it would seem that the survival of exclaves in Western Europe was tied in a general sense to the acquiescence of three parties: the parent state, the neighbor and the exclave itself. Seemingly, the home country exercised the greatest influence in preserving things as they were. After all, although none of the five national states concerned functioned with appreciably less efficiency because a minute fraction of its jurisdiction lay embedded in the territory of another, part of their dominium and thus their sovereignty was symbolically at stake.

The principal threat to the survival of the enclosures, as the record seems to indicate, came from the surrounding state, which was not at all pleased with a situation that left a hole punctured in its territory. Take for example Swiss efforts at incorporation. For centuries that country strove to gain control of Büsingen and Campione. But because the host state was not prepared to use force to alter geographical circumstances, no disenclavement was effected.

While the encaving country is usually in a better position to agitate for change, exclave dwellers have occasionally done so. Again Campione and Büsingen may be used as illustrations. In 1848, the former pleaded for Anschluss with neighboring Switzerland. But this effort took place during a period of rebellion in the home state and so it was apparently not taken seriously. The demands of Büsingen's citizens for absorption in Switzerland were more intense, especially during the inter-war period in the twentieth century. But evidently the Swiss were reluctant to accept their offer for fear that what had been taken from a weaker neighbor might well be reclaimed by a stronger one.

We cannot say, however, that the desire of exclave dwellers to become part of the neighbor was a prevalent wish. The inhabitants of Ilivia, for instance, are extremely patriotic. And it was their very love of country that thwarted French attempts to annex them.

Having established the importance of the role of acquiescence à droite in the historical persistence of the present European exclaves, it will be of interest now to turn to a discussion of those factors in the contemporary situation which should help us predict whether or not they are headed for extinction. Of particular relevance here is a detailed analysis of access provisions as well as a study of administrative and economic arrangements.

## Chapter 7

### ACCESS

The survival of so many exclaves today poses a number of complex problems for the states directly involved. Probably no more acute is the controversial issue concerning the right of passage over foreign territory. For it is only across the territory of a neighboring country that the exclave can maintain communication with the mainland.

Due to the importance of access to exclaves it will be appropriate in this chapter to focus attention on this particular problem. The major question which we propose to consider is whether or not the European exclaves possess an actual right of transit through a second state, enabling them to remain in contact with the home country. If it is shown that such a right of way does exist, we shall next want to determine to what categories of travel it pertains.

To deal with these questions, it is proposed to divide this chapter into three major parts. First, an inquiry will be made into the doctrine of state servitudes in international law. This step is deemed necessary in view of their apparent analogous character. Second, the important Right of Passage Case (1960) before the International Court of Justice will be thoroughly examined. This case represents the only

dispute over access to exclaves to come before an international tribunal and hence serves as a valuable legal precedent as well as a source of much factual information about the problem in general. Finally, existing state practice in Europe will be reviewed in detail, allowing us to compare juridical decisions with political reality. Hopefully, insights gained by this systematic analysis of the access issue will shed light on factors contributing to the stability or instability of the exclaves.

#### DOCTRINE OF STATE SERVIDITUDES

The right of passage that exclaves appear to enjoy is sometimes referred to as a state servitude. But is access between the outlier and the parent country really a servitude? In fact, do servitudes exist at all in international law? These questions are relevant to our topic but are not easily answered because they are shrouded with a great deal of legal prejudice. As one authority points out: "There is hardly any other concept or doctrine in international law which has suffered such contemptuous criticism and blunt rejection and at the same time enjoyed such unsubstantiated approval and wanton praise."<sup>1</sup>

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<sup>1</sup>F.A. Vóli, Servitudes of International Law (London: P.S. King & Son, 1958), p. 43.

Much of the uncertainty on this matter can be attributed to the decision rendered in the North Atlantic Coast Fisheries Case between the United States and Great Britain. For in 1910, the Tribunal of the Permanent Court of Arbitration rejected outright the doctrine of international servitudes.<sup>2</sup> Briefly, this case concerned the right that Americans enjoyed regarding certain fisheries off the coast of Newfoundland under a treaty of 1818. The U.S. argued in this case that the treaty had created a servitude in its favor, and that the right was a derogation from British sovereignty over the island, and consequently Britain had no independent right to regulate the fisheries. The tribunal refused to recognize the American contention on the grounds that this right was not a sovereign one but merely an economic right, and that there was nothing in the treaty to show that the two governments had intended it to be anything else.

As a result of this case, international lawyers have been hard put to substantiate claims that servitudes do in fact exist. The analysis offered by James Brierly goes to the heart of the matter.<sup>3</sup> He demonstrates that in Roman

<sup>2</sup>Herbert W. Briggs, The Law of Nations, 2nd ed. (New York: Appleton-Century-Crofts, 1952), pp. 284-288.

<sup>3</sup>James L. Brierly, The Law of Nations (Oxford: Clarendon Press, 1955), pp. 190-194.



law the owner of a piece of land (praedium dominans) enjoyed the right over land which belonged to another (praedium serviens) not in any personal capacity but in his capacity as owner of the land. This right, he maintains, was a right in rem and was exercisable not only against a particular owner of the servient tenement but against his successor in title as well. Moreover, this right not only applied to a particular owner of the dominant tenement but also to any successors to him in title.

According to Brierly, it is common matter today for a state to acquire rights of one kind or another over the territory of another. But the right, for example, of a country to have a military base or free port facilities is ordinarily a right in personam like any other treaty-created right, and it is not what might be construed an international servitude. As Brierly so clearly shows, the real test "of an international servitude can only be, on the analogy of private law, that the right should be one that will survive a change in the sovereignty of either of the two states concerned in the transaction."<sup>4</sup>

#### THE RIGHT OF PASSAGE CASE

Since the settlement of the Fisheries dispute in 1910, a dispute has come before the World Court which touches on

<sup>4</sup>James L. Brierly, opus cit., p. 191.

the question of international servitudes more positively. This is the not so well known but equally important Right of Passage Case. In that it represents the most recent case to date dealing with this problem, it is worth a detailed examination.

#### Facts of the Case

This dispute between Portugal and India was referred to the International Court of Justice through formal application, filed by the former on December 22, 1955.<sup>5</sup> It concerned an alleged right of transit which Portugal claimed to have between its colony of Daman (Damao), situated on the west coast of the Indian subcontinent, and the exclaves of Dadra and Nagar-Aveli, as well as between the outliers themselves.<sup>6</sup>

Both of these discontinuous areas are located inland, completely surrounded by Indian territory. They are connected nevertheless to littoral Daman by a roadway, some twenty miles long which passes across an intervening strip of Indian territory. The two exclaves, about 200 square miles in area, are of little economic value to local inhabitants, numbering some

<sup>5</sup>I.C.J. Reports (1960), Case Concerning Right of Passage over Indian Territory, p. 6.

<sup>6</sup>Pradyumna F. Keren, "A Free Access to Colonial Enclaves," Annals of the Association of American Geographers, Vol. 50 (June, 1960), p. 188.

40,000 in 1960 and most of whom are Hindus.<sup>7</sup>

Since partition, India repeatedly claimed these territories, but the Portuguese remained adamant and refused to cede them.<sup>8</sup> This deadlock led eventually to the imposition of transit restrictions on the Portuguese by India. And it climaxed in 1954 with the ouster of colonial administrators by anti-Portuguese groups, which set up their own government in the exclaves. Initially, India diligently avoided taking any steps to incorporate the now "independent" areas even though the local population had allegedly beseeched her for protection and inclusion in the Indian Union.<sup>9</sup>

#### Main Issues and Decisions

Portugal's main contention was that she had acquired sovereignty over the disputed territories and access to them by virtue of the Treaty of Poona in 1779.<sup>10</sup> India, on the other hand, maintained that in fact this treaty only gave Portugal

<sup>7</sup>Pradyumna P. Karan, opus cit., p 188.

<sup>8</sup>The departure of the British in 1947 left French and Portuguese possessions in an untenable position. For India felt that these territorial "islands" formed part of the Union and must be soon integrated with it. The following statement by Prime Minister Nehru, made at his press conference in October, 1952, more or less sums up the general and unflinchable attitude of the host state on the question throughout this period:

"It is inevitable, as we have said before, that these foreign pockets in the heart of India must become part of the Indian Union. We have patiently waited for settlement by negotiation and we still hope to settle this matter in this way. but it must be clearly understood that we cannot tolerate foreign establishments in India ..."

As a result of these demands, France decided to surrender

certain revocable fiscal rights over the outliers and that actual sovereignty had been retained by the Maratha state.<sup>11</sup> The Court found that indeed the Portuguese had been provided a revenue tenure, but that this situation had changed radically with the establishment of British sovereignty. Under the British<sup>12</sup>

The exclusive authority of the Portuguese over the villages was never brought into question. Thus Portuguese sovereignty over the villages was recognized by implication and was subsequently tacitly recognized by India. As a consequence, the villages comprised in the Maratha grant acquired the character of Portuguese enclaves within Indian territory.

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her colonial possessions (consisting of five settlements: Pondicherry, Mahe, Karaikal and Yanam with a total area of 196 square miles and a population in 1948 of 362,046 residents) to India between 1950 and 1954. See J.G. Kundra, Indian Foreign Policy, 1947-1954 (Bombay: Vera & Co., 1955), pp. 220-221.

<sup>9</sup>Pradyumna P. Karan, opus cit., p. 189.

<sup>10</sup>I.C.J. Pleadings (1960), Case Concerning Right of Passage over Indian Territory, Vol. I, pp. 34-44.

<sup>11</sup>T.O. Thomas, The Right of Passage over Indian Territory (Holland: A.W. Sythoff-Leyden, 1959), p. 35.

<sup>12</sup>I.C.J. Reports (1960), Case Concerning Right of Passage over Indian Territory, p. 39.

Portugal's second major contention involved the right of passage to the exclaves. She asserted here that she possessed a right of transit across Indian territory to get back and forth from Daman to Dadrá and Nagar-Aveli in order to ensure communications between the two detached areas and transit of personnel and goods.<sup>13</sup> At first Portugal claimed an unqualified right of passage, but then to make her position more tenable she modified it alleging now that she possessed an international right of transit without immunity from the jurisdiction of India. To substantiate her claim, Portugal based it not only on treaties but also on general international custom and general principles of international law.<sup>14</sup> India's position basically was simply an intricate denial of Portuguese allegations.<sup>15</sup>

The Court, in deciding this issue, distinguished between (a) the passage of private persons, civil officials and goods in general; and (b) the passage of armed police, troops, arms and ammunition. As far as the former was concerned, evidence before the Court showed that during the British and post-British period, "the passage of private

<sup>13</sup>P.P. Karan, opus cit., p. 189.

<sup>14</sup>J.H.W. Verzijl, The Jurisprudence of the World Court (Holland: A.W. Sythoff-Leyden, 1906), p. 397.

<sup>15</sup>P.P. Karan, opus cit., p. 189.

persons and civil officials was not subject to any restrictions, beyond routine control ..."<sup>16</sup> Thus it was concluded in an 11 to 4 decision that Portugal had in fact a right of passage across Indian territory for these persons and goods in general based on local custom.<sup>17</sup> With regard to the passage of military personnel, police, arms and ammunition, however, this was an entirely different matter. The record indicated that until 1878 the passage of armed soldiers and armed police had been regulated on the basis of reciprocity and not right. After 1878 prior permission by British (later Indian) authorities was always necessary. In the case of the movement of arms and ammunition a license was required.<sup>18</sup> On the basis of this information the Court decided in a close vote of 8 to 7 that no right of passage existed for armed units or munitions.

Having determined that the right of passage did exist for Portugal (at least until 1954), the Court turned its attention to the question whether or not India had acted contrary to her obligations by denying passage to persons from the Portuguese exclaves since 1954. India argued that

<sup>16</sup>I.C.J. Reports (1960), Case Concerning Right of Passage over Indian Territory, p. 40.

<sup>17</sup>Hubert Aubegon, Die völkerrechtliche Stellung der Enklaven und Exklaven Ph.D. Dissertation, Göttingen, West Germany: Faculty of Law, Georg-August University, 1967, p. 117.

<sup>18</sup>I.C.J. Reports (1960), p. 41.

she could not have permitted even the passage of private persons and civil officials from Daman to the territories because that would have made her a party to the suppression of a genuine nationalist revolt.<sup>19</sup> Portugal disagreed on the grounds that the insurrection was inspired by foreign, namely Indian, elements.<sup>20</sup>

The Court attached great significance to the tension that had arisen in the intermediate Indian territory, and so by 9 votes to 6 was<sup>21</sup>

unable to hold that India's refusal of passage to the proposed delegation and its refusal of visas to Portuguese nationals of European origin and of native Indian Portuguese in the employ of the Portuguese Government was action contrary to its obligation resulting from Portugal's right of passage ... The Court is of the view that India's refusal of passage in those cases was, in the circumstances, covered by its power of regulation and control of the right of passage of Portugal.

The outcome of the case was mainly this: Although the Court had ruled that Portugal acquired sovereignty over

<sup>19</sup>I.C.J. Reports (1960), p. 45.

<sup>20</sup>P.P. Keren, opus cit., p. 189.

<sup>21</sup>I.C.J. Reports (1960), p. 45.

the two exclaves by general acceptance over the decades, and at the same time had a right of access to them, this right was a limited one. It was subject to the control of the Indian government and was restricted to the passage of private persons, civil officers and goods in general.

The decision(s) of the Court have been attacked by commentators on a number of grounds. First, there is the controversy over the division of Portugal's claim concerning the existence of a right of passage in general into two separate questions, one relating to "civil" and the other to "military" passage. According to ex-president Besdevont, the Court had not been asked to rule upon the existence of a right of passage in respect to any categories of transit; the right was indivisible.<sup>22</sup>

Secondly, and no doubt the most highly contested issue of the case was the question of the legal situation in respect to the passage of military units and munitions. The dubiousness of the majority's decision is borne out by the extremely narrow vote of 8 to 7. The "majority" argued that the record showed that "military" passage was not a matter of right but required the acquisition of prior authorization. However, Judge Wellington Koo, in a dissenting

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<sup>22</sup>J.H.W. Verzifl, opus cit., p. 392.



opinion, made the point that since there was not a single instance in the evidence before the Court that Portugal had been turned down in her request for the passage of military units and munitions throughout the 130 years of British rule in India, whereas, on the contrary, the prohibition of transit was enforced at various times for such ordinary goods as salt, rice, liquor, etc., the right of "military" passage was more marked than, for example, the passage of ordinary goods.<sup>23</sup>

Thirdly, the criticism was voiced that the Court should not have ignored completely general customary law or the general principles of law in dealing with the case, but it should have taken them into consideration. In this regard, ample material had been submitted to the Court for review. Of particular importance were the studies undertaken by Professors Edouard Bauer of the University of Neuchâtel, concerning treaties dealing with enclaved areas, and Max Rheinstein of the University of Chicago, involving clauses in civil codes which dealt with enclosed plots of land. In his treatise Professor Bauer concluded that the right of passage, such as that claimed by Portugal

is included in every enclave. This right may take a contractual form, but its existence does not, properly speaking, depend upon the drawing up of a contract or the conclusion of a treaty. By the very fact of giving legal recognition to the

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<sup>23</sup>J.H.W. Verzijl, opus cit., p. 392

existence of an enclave, the surrounding State assumes the obligation to allow it to subsist, that is to say, to allow it to communicate freely with the exterior by way of its territory.<sup>24</sup>

Professor Rheinstejn concluded in his elaborate study that out of 61 systems of domestic law studied by him 59 maintained that if a piece of land is given to a person to own, there is the implication that whoever gives him that ownership also gives him -- where necessary -- the right to cross other lands to get back and forth to his property. To do otherwise is to derogate from the grant of ownership. On this basis, Professor Rheinstejn urged that a general principle be incorporated in international law to the effect that in all cases of exclaves, independently of treaty, the right of free access is ipso facto created by law.<sup>25</sup>

Finally, there is the charge against the "icy silence" of the Court in regard to the lawfulness or unlawfulness of India's connivance in 1954 to overthrow Portuguese authority in the exclaves, and the obligation of India under international law to assist Portugal in restoring or at least to acquiesce in Portuguese efforts to

<sup>24</sup>I.C.J. Pleadings (1960), Annex 25, p. 165.

<sup>25</sup>I.C.J. Pleadings (1960), Annex 20, pp. 714-727.

restore her lawful authority over them. As a result of the Court's refusal to take a stand in this matter, the status of the two outliers was left in abeyance.<sup>26</sup> No doubt encouraged by this turn of events, India in December 1960, scarcely eight months after the Court had rendered its judgment, forcibly annexed the remaining Portuguese territories of Goa, Daman and Diu.<sup>27</sup>

### Conclusion of the Writer

In this view the judgment of the Court left much to be desired from the perspective of positive law. The Court's rulings on the right of access and the right to prevent access are both contradictory and vague. Moreover, it is to be regretted that a ruling on the status of exclaves under international law based on general principle was not given by the Court. Nevertheless, despite all these shortcomings, the Court's judgment must be looked upon as an important precedent whose significance reaches far beyond one small corner of Asia.

### THE EUROPEAN PRACTICE

In order to determine whether or not the decision of the Court conforms with legal political reality, it will be

<sup>26</sup>p.P. Karsen, opus cit., p. 190.

<sup>27</sup>Quincy Wright, "The Goa Incident," American Journal of International Law, Vol. 56 (1962), p. 617.

useful to examine the right of passage as it exists with respect to those exclaves surviving in Europe today. As a matter of convenience, the right of transit will be broken down as it applies to (a) private persons; (b) civil officials; (c) goods in general; (d) customs officers; (e) police; and (f) soldiers. These are all instances in which intercourse between different parts of a state is usually considered a normal attribute of its unitary nature.

### Llivia

The sole ground access to Llivia from Spain is safeguarded by the existence of a so-called "neutral road" (chemin neutre). Popularly called the "Spanish" or "international" road, this thoroughfare consists of an asphalt country lane, approximately 1,600 meters long and 8 meters wide. Jurisdiction over this French-built roadway is completely in the hands of the host state, and it alone regulates access.

Passage of private persons. The right of free and unhindered transit for those individuals is guaranteed by the treaties of 1660 and 1866.<sup>28</sup> The relevant article (21)

<sup>28</sup>The right of passage to Llivia and the specification of a particular route was established by the Treaty of Llivia, dated November 12, 1660. Its text is reproduced by Henri Vest (ed.), Collection de textes pour servir à l'étude et à l'enseignement de l'histoire: Les grands traités du règne Louis XIV (Paris: Alphonse Picard, 1895-1899), Vol. I.

The right of access to Llivia was confirmed by the Treaty of Delimitation, dated May 26, 1866. For its text see J. Basdevant (ed.), Traité et Conventions en vigueur entre la France et les Puissances étrangères (Paris, 1919), Vol. II.

from the latter accord is applicable today and reads as follows:<sup>29</sup>

Conforming to the convention of November 12, 1660 the usage of roads crossing the enclave Llivia and the territory of Puycerda is free and no tolls may be charged of French citizens in transit between one village and another in the French Cerdagne and engaged in farming, trade or other activities necessary for subsistence. The same freedom and rights apply equally to Spanish nationals in transit over French territory between Llivia and Puycerda via the direct roadway connecting the two villages ...

Passage of civil officials. The right of transit for Spanish civil authorities rests on the fore mentioned conventions of 1660 and 1860. They are allowed to visit the isolated area unhindered and free from all French control.<sup>30</sup>

Passage of goods in general. The circulation of ordinary Spanish goods between Llivia and the mainland is permitted without restriction. And French customs refrains from levying duties of any kind. This right is based on the relevant treaty texts.<sup>31</sup>

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<sup>29</sup>British Foreign Office, British and Foreign State Papers, 1865-1866, Vol. 56 (London, 1871), p. 127. The passage quoted in the text has been translated by the writer.

<sup>30</sup>This practice was confirmed by a note of the French Foreign Minister to the Portuguese Ambassador in Paris, dated May 18, 1956. See I.C.J. Pleadings (1960), Case Concerning Right of Passage over Indian Territory, Vol. 1, p. 756.

<sup>31</sup>This practice was also verified in ibid.

Passage of customs officers. The customs function in the exclave is usually performed by Spanish police (carabineros). Details regarding the right of access of these persons are discussed next.

Passage of police. No provision for the free transit of police is contained in the pertinent treaties between France and Spain. But there is nothing in these accords to warrant the interpretation that since their unimpeded passage is not expressly mentioned this should be taken as reason to deny them access.<sup>32</sup> As a practical matter, the French government has not viewed their movement as an infringement of its sovereignty. Consequently, Spanish police, in uniform and under arms, pass freely along the chemin neutre whenever necessary.<sup>33</sup>

Passage of soldiers. As far as the passage of military personnel is concerned, this is a delicate issue.

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<sup>32</sup>This interpretation was made by Professor Guggenheim in his support for India in the Right of Passage Case. Refer to the Verbatim Record, C.R. 59/55, October 12, 1959, p. 41.

<sup>33</sup>There seems to be no agreement on the number of Spanish police that may pass at any one time. Frank E. Krenz cites a conversation with a French frontier official who said that no more than six armed men could pass. This official, however, was not able to quote any reliable authority for this limitation. See Frank E. Krenz, International Enclaves and Rights of Passage Ph.D. Dissertation, Geneva, Switzerland: Graduate Institute of International Studies, 1961, p. 137.

Although no specific mention is made in the treaties of 1660 and 1866 of a right of transit for the Spanish Army, France appears to have no objection to Spanish forces using the Puycerda-Llivia accessway.<sup>34</sup> At the end of World War II, for instance, some hundred soldiers are reported to have been quartered in the cut-off areas.<sup>35</sup> But the crucial question would appear to be the number of troops and the frequency of movements involved. It is doubtful that France would stand for the militarization of the outlior particularly since the Treaty of Llivia expressly prohibits the fortification of the enclave.

To sum up, it may be stated that the freedom of access to Llivia is very broad. While unrestricted transit is guaranteed by treaty only in reference to private persons, civil authorities and goods in general, it does appear that in actual fact local police and soldiers also enjoy communication with the detached area unfettered by French controls. From the point of view of international law one may conclude that a right of passage has been established for all categories except the Spanish military, about the movement of which we have insufficient information.

<sup>34</sup>Pierre Rston, "Les enclaves," Annuaire français de droit international, Vol. 4 (1958), p. 192.

<sup>35</sup>Frank R. Krenz, opus cit., p. 137.

## Büdingen

Ground access to Büdingen from West Germany is possible by two different routes. The first and most direct connection is the Büdingen-Dörflingen/Loog-Gailingen roadway, which runs almost parallel to the Rhine River. The second and more winding way is the Büdingen-Neudörflingen-Kandegg thoroughfare. Both of those accessways comprise modern, two-lane highways and traverse a strip of intervening Swiss territory between 750 and 1,500 meters wide.

Passage of private persons. The right of free transit is laid down in the so-called "Büdingen State Treaty." This convention, which was signed on November 23, 1964, entered into force on October 4, 1967. The relevant article (16) reads as follows:<sup>36</sup>

- (1) A document for crossing the boundary is not necessary for German and Swiss citizens in transit between Büdingen and Switzerland. A border clearance is not necessary.
- (2) The right to make a police check remains unaffected.

From the way this article is written, it would seem that the right of unhindered movement is not extended to all nationalities but is restricted to persons of German and Swiss citizenship.

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<sup>36</sup>Franz Götz (ed.), Das Büdingen Vertragswerk (Radolfzell, Switzerland: Huggelo & Meurer KG, 1968), p. 119. This passage has been translated by the author.



Passage of civil officials. The right of access for these individuals has never been called into question.<sup>37</sup> Present practice rests on long-standing custom and a specific treaty guarantee. According to Article 32 of the 1967 treaty between the Federal Republic and Switzerland which spelled out the situation, German civil officials, who have duty obligations to fulfill in the exclave are permitted to visit the isolated area either singly or in groups not exceeding ten persons at any time upon the presentation of a valid service identification card (Dienstausweis). In proceeding to Büsingen, they are free to choose between the connection Büsingen-Neudörflingen-Randegg and the route Büsingen-Dörflingen/Loog-Gailingen. While in transit between the mainland and the outlier, German officials may take with them all necessary service equipment but must refrain from exercising their authority on Swiss soil and are obliged not to linger.<sup>38</sup>

Passage of goods in general. The circulation of merchandise to and from Büsingen is in principle subject to Swiss duties, tariffs and taxes.<sup>39</sup> However, certain kinds

<sup>37</sup>See Annex 23 to the Observations and Conclusions of the Portuguese government in the Right of Passage Case.

<sup>38</sup>Franz Götz, opus cit., pp. 125-126.

<sup>39</sup>Ibid., p. 83.

of goods are immune from Swiss customs control. In the main, these include the following: (a) merchandise which is indispensable to German personnel who have official duties in the exclave; (b) office material and (c) teaching materials for the public school.

Passage of customs officers. Free transit for German customs personnel is provided by Article 32 of the Treaty of Bisingen. Generally, they are able to make regular visits to the exclave in the same way as civil officials except that they are subject to two further restrictions. No more than ten uniformed and armed officers may pass at the same time along a given route and not more than three uniformed officials per hundred inhabitants may congregate there. Since there are approximately 914 local residents today, this means in effect that no more than twenty-seven uniformed customs authorities may be present in the German outlier on the same occasion.

Passage of police. The right of German policemen to make patrol visits to Bisingen is partly of customary origin, although it has now been confirmed by treaty. According to Article 32 of the 1967 German-Swiss treaty, these officials follow the same procedures as other uniformed personnel. Should the occasion arise where an officer is called upon to apprehend a non-Swiss citizen in the town, provision has been made for him to do so and transport the

arrested party back to the Federal Republic.<sup>40</sup>

Passage of soldiers. The question of German military movements to and from Büsingen was for a long time a sensitive issue and even sometimes a source of tension between home and host states. The sensitivity of the Swiss on this matter was clearly demonstrated in 1849, during the so-called "second Büsingen affair," when German forces were dispatched to put down a revolt in the exclave and quickly found themselves surrounded by angry Swiss soldiers, who refused to allow them to return to the mainland.<sup>41</sup> Following the end of World War II the problem arose once again as French occupation troops attempted to take possession of the enclave. Although the Swiss were particularly concerned lest their traditional neutrality be violated, they did not on the other hand want to see the village escape Allied occupation and become a refuge for Nazi war criminals or other redoubtable characters. Eventually, after protracted negotiations between the two sides, the so-called "Bern Agreement" was concluded on November 3, 1945. According to the terms of this agreement, up to ten French soldiers, armed and in uniform, received special permission to visit the cut-off territory on a regular basis.<sup>42</sup> With the creation of the German Federal Republic in

<sup>40</sup> Franz Götz, opus cit., p. 125.

<sup>41</sup> For details see pages 101-102.

<sup>42</sup> The text of the "Bern Agreement" has never been published in full. A copy of this record is, however, on file at the Mayor's office in Büsingen and can be read there.

1949, however, the "Berner Vereinbarung" became obsolete,<sup>43</sup> and once more access rights for the German military were in dispute.

As a result of the Büsingen treaty, which came into force in 1967, the question of military transit was settled in the affirmative. Although this agreement does not mention specifically the passage of "troops," it is understood by both sides that their freedom of movement is covered by Article 32. This provision is very broad and affords free and unhindered access to German officials in general. Specifically, it mentions the right of passage for "uniformed" and "armed" authorities, which also is the same for the German police.

By way of summary, it seems clear that freedom of transit to and from Büsingen is extremely liberal. All categories of access are covered by treaty guarantee, so there is no need to maintain the authority of custom. While only the coming and going of enclave inhabitants is entirely free and unrestricted, one may also assert under international law the existence of a right of communication for German civil officials,

<sup>43</sup>Wilhelm F. Oberer, Die staats- und völkerrechtlichen Besonderheiten der deutschen Enklave Büsingen in der Schweiz Ph.D. Dissertation, Tübingen, West Germany, Faculty of Law, University of Tübingen, 1955, p. 28.

customs officers, police and soldiers. Such a right of transit is, of course, subject to the limitations outlined earlier.

### Campione d'Italia

Campione can be reached from the Italian mainland either directly -- across Lake Lugano -- or more indirectly -- overland. In the first case, a regular public shipping service, which docks at the exclave, provides the necessary water connection. In the second instance, a modern, two-lane roadway, passing over Swiss territory for less than half a mile, forges the vital link by land. Access procedures differ according to which route is chosen.

Passage of private persons. Civilian traffic in and out of Campione is unimpeded and rests on long-standing customary practice.<sup>44</sup> Ground access is regulated by general frontier crossing procedures.<sup>45</sup> Anyone entering or departing the exclave must possess the proper identification papers (e.g. passport or frontier card), although only one check is exercised at present -- at the main Swiss-Italian frontier crossing point. As far as approach by water is concerned, boat travellers are not subject to controls of any kind.

<sup>44</sup>See Angelo Bianchi, Campione d'Italia nel diritto nazionale e internazionale Ph.D. Dissertation, Basel, Switzerland: Faculty of Law, University of Basel, 1945, pp. 112-118.

<sup>45</sup>Giovanni Cenato, Campione d'Italia in der Geschichte und in der Kunst (Como, Italy: Grafica Centonze, n.d.), not paginated.

This is a practice that has existed since time immemorial.<sup>46</sup> And it long antedates the Convention on Navigation, which was concluded between Switzerland and Italy on October 22, 1923 (entering into force on November 5, 1927).<sup>47</sup> In general, this agreement provides for freedom of navigation on lakes Maggiore and Lugano (on the bank of which Campione is perched). But Article 2 specifically mentions the exclave and reaffirms the status quo in regard to access.<sup>48</sup>

Passage of civil officials. With respect to the transit of these administrative personnel, it is by long-standing practice unobstructed.<sup>49</sup> As was true of civilian traffic to and from Campione, access overland for Italian civil authorities is monitored by one frontier check in each direction, whereas movement across the Swiss lakes is completely unfettered.

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<sup>46</sup>Hubert Auhagen, opus cit., p. 66.

<sup>47</sup>The text of this treaty is reproduced in the Swiss document series entitled Recueil Systematique des Lois et Ordonnances, 1848-1947, Vol. 13 (Bern: Federal Chancellery, 1949), pp. 349-354.

<sup>48</sup>Ibid., p. 349.

<sup>49</sup>This state of affairs is verified by the Note du Département politique fédéral suisse à la Legation du Portugal à Berne, dated June 5, 1956. See Annex 23 to the Observations and Conclusions of the Portuguese Government in the Right of Passage Case.

Passage of goods in general. The circulation of merchandise between Campione and the Italian mainland is in principle not free since the outlier is treated as if it were part of the Swiss customs area.<sup>50</sup> Although no specific agreement has been signed to this effect, Italy is considered to have accepted this relationship.<sup>51</sup> Thus, most goods transported from that country to Campione are subject to Swiss customs charges, just as articles moving from the enclave to the motherland are liable to its duties on foreign merchandise.<sup>52</sup>

Passage of customs officers. The situation with regard to access for these personnel is unclear. While Italian customs officials are categorically denied overland transit to Campione, they usually seem to be able to reach the enclave by boat.<sup>53</sup> Apparently, this practice is tolerated by the Swiss in view of the Treaty of 1923, which opened lakes Maggiore and Lugano to relatively free navigation. The existence of a customary right of passage is, however, doubtful.

<sup>50</sup>Hans Bocker, Die Rechtsverhältnisse an der Schweizer-grenze: Ein Beitrag zum nachbarlichen Völkerrecht Ph.D. Dissertation, Zürich, Switzerland: Faculty of Law and Political Science, University of Zürich, 1931, p. 22.

<sup>51</sup>See for instance Luigi Pedreschi, "L'exclave italiano in terra svizzera di Campione d'Italia," Revista Geografica Italiana, Vol. 64 (March, 1957), p. 40.

<sup>52</sup>Certain goods (e.g. office supplies for enclave officials) are exempt from all duties in transit between Italy and Campione. There are also exceptions for goods (e.g. ceramic products) moving in the other direction. For details see Hubert Auhagen, opus cit., pp. 37-38.

<sup>53</sup>Confirmed by personal on-the-spot observation.

During the negotiation of the Treaty on Navigation, Italian diplomats attempted to obtain Swiss recognition of an actual right to transport customs officers across Swiss territorial waters from one part of Italy to the other. By implication, this would have given Italian customs officials the necessary authority to visit Campione also. But the Italians were not successful.<sup>54</sup>

Passage of police. Italian police do not possess a right of overland passage to Campione. Such communication is expressly prohibited by the Swiss government.<sup>55</sup>

But access by water is an entirely different matter. Here the 1923 Treaty on Navigation comes into play, although it is known that Italian police were in the habit of visiting the area long before this time.<sup>56</sup> With respect to Article 2 of this convention, police officials are able to go to the exclave as ordinary passengers on the regular public shipping service that plies the Swiss lakes. Such freedom of movement by boat is, however, not unrestricted. For one thing, groups of six or more have to give prior notice to Swiss authorities

<sup>54</sup>Rolf de Sury, Le condizioni di frontiera del Lago di Lugano Ph.D. Dissertation, Fribourg, Switzerland; Faculty of Law, University of Fribourg, 1942, pp. 35-37.

<sup>55</sup>Refer to Note du Département politique fédéral suisse à la Legation du Portugal à Berne, dated June 5, 1956, in the Right of Passage Case.

<sup>56</sup>Frank E. Krenz, opus cit., p. 131.



before they embark. And for another, although arms and munitions may be brought on board, these must be turned over to the Swiss en route.<sup>57</sup> In exceptional cases, Italian police boats may dock in Campione, having obtained prior authorization from competent Swiss officials.<sup>58</sup>

Passage of soldiers. The movement of troops between Campione and the home state is strictly forbidden by the Swiss. This restriction applies to ground access as well as to traffic across the water.<sup>59</sup>

From the foregoing, it must be clear that transit to Campione must be evaluated in terms of ground access and water travel. In the first instance, communication seems quite limited; only private persons and civil officials appear to enjoy unhampered contact with Italy. In the second case, passage appears relatively free; only Italian soldiers are categorically banned from going to the exclave. Under international law a right of access to Campione may be said to exist through treaty or local usage in regard to the following

<sup>57</sup>Giovanni Cenquete, opus cit.

<sup>58</sup>I.C.J. Pleadings, Case Concerning Right of Passage over Indian Territory (1960), Vol. I., p. 760.

<sup>59</sup>Hans Becker, opus cit., p. 23.

categories of travel. On the ground, these include the freedom of movement of private persons and civil authorities; whereas on the water, these embrace all of the forementioned and, with certain restrictions, the transit of police.

#### The Saarle Ex- and Enclaves

Access to these widely dispersed Belgian and Dutch territories is not a simple matter. And a distinction must be made between transit to the twenty-five Belgian parcels of land in Holland (Saarle-Duc) and passage into the thirteen Dutch outliers isolated in Belgian territory (Saarle-Nassau). For only in the former case does a specific link with the home country exist. This is the so-called "concessionary" road, maintained and regulated by the Netherlands. Approximately five meters wide, this thoroughfare consists of an undivided strip of asphalt, traversing some five kilometers of Dutch territory to the south.

As regards transit to and from the Dutch exclaves of Saarle-Nassau, a further distinction must be made between contact with those eleven Dutch outliers situated inside Belgian enclosures in Holland and those two isolated fragments of the Netherlands lying in Belgium proper. In the first instance, it is practically impossible for Belgian authorities to regulate access due to the fantastic complexity of interlocking Belgian and Dutch domains. While in the second, traffic

can be identified and processed through the normal frontier control points.

Passage of private persons. Civilian traffic between Buarle-Duc and the mainland over Dutch soil is completely free. Theoretically, the Netherlands reserves a legal right to check this movement across the frontier, and there is a control point set up at the main entrance to the accessway from Belgium proper. But in actual practice the flow of traffic passes practically uncontrolled. Exclave dwellers, foreigners residing in the Belgian exclaves and even those domiciled elsewhere are usually permitted to cross the frontier at this point without the barest of formalities -- a check of identification.<sup>60</sup>

It is sometimes argued that communication between these territories and the home country is governed by treaty provision.<sup>61</sup> And in this connection Article 14 of the boundary convention, concluded between Belgium and Holland on November 5, 1842, is cited:<sup>62</sup>

The status quo shall be maintained both with regard to the villages of Buarle-Nassau (Netherlands) and Buarle-Duc (Belgium) and with regard to the roads crossing them.

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<sup>60</sup>Confirmed by personal observation, August, 1972.

<sup>61</sup>This was the argument raised by India in the Right of Passage Case. See Preliminary Objections of the Government of India, April 1957, Vol. I, p. 70 and Counter-Memorial of the Government of India, March 1958, Vol. I, p. 127.

Actually, however, as at least one authority has pointed out, "this text does not create a right," but merely "recognizes the existence of a certain situation with respect to passage, without even attempting to regulate it."<sup>63</sup> At the same time, the article does not really provide a specific right of access with the home state. It only refers vaguely to communication within the villages of Baarle-Duc and Baarle-Nassau themselves.

At present, the free transit of civilians between the main body of Belgium and the twenty-five exclaves comprising Baarle-Duc rests on local custom and certain municipal regulations adopted unilaterally by the Netherlands during this century. In the main, they pertain to routine frontier travel and seek to facilitate the movement of authorized persons across the frontier. As far as Baarle-Duc is concerned, one provides it with a frontier post at the main Belgium/Dutch boundary, stipulating only that traffic to the outliers must pass through this control.<sup>64</sup> Another dispenses with the usual restrictions imposed on foreigners

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<sup>62</sup>This treaty, known as the Convention des Limites of 1842, is reproduced by E.G. Lagemans (ed.), Recueil des Traites et Conventions conclus par le Royaume des Pays-Bas avec les puissances etrangeres depuis 1648 jusqu'à nos jours, Vol. III (Le Haye, 1898), pp. 5-29. Article 14 of this text has been translated by the author.

<sup>63</sup>Frank E. Krenz, opus cit., p. 101.

<sup>64</sup>Dutch Frontier Ordinance of September 12, 1944, published in Staatscourant, No. 8 (1944). This decree was amended in 1946 by the Frontier Ordinance no. 156, Staatscourant, No. 13 (January, 1946).

crossing into Belgium.<sup>65</sup> In no case do these ordinances curtail communication with the mainland.

In regard to the passage of private persons into the thirteen enclaves of Baarle-Nassau over intervening Belgian territory, this is unrestricted. The present situation is rooted in customary practice, stretching back to the fifteenth century.<sup>66</sup>

Passage of civil officials. The transit of Belgian civil authorities across the Netherlands into Baarle-Duc is not a treaty-given right. But according to a position paper, prepared by the Dutch Foreign Ministry for Portugal in the Right of Passage Case, "The administrative practice of the Netherlands is not to interfere in any way with (their) circulation ..."<sup>67</sup> Consequently, a customary right of access may be asserted for civilian authorities, proceeding to the enclaves of Baarle-Duc in the line of duty.

As concerns the right of way of Dutch civil officers over Belgian soil to get back and forth to Baarle-Nassau, this

<sup>65</sup>Dutch Frontier Ordinance of 1946, published in Staatscourant, No. 13 (January, 1946).

<sup>66</sup>Confirmed in Note du Ministère des Affaires étrangères et du Commerce extérieur de Belgique à l'Ambassade du Portugal à Bruxelles, dated July 3, 1956. See I.C.J. Pleadings (1960), Vol. I, p. 761.

<sup>67</sup>See Note du Ministère des Affaires étrangères des Pays-Bas à la Légation du Portugal à La Haye, dated May 4, 1956 in I.C.J. Pleadings (1960), Vol. I, p. 755.

is based on long-standing local usage.<sup>68</sup>

Passage of goods in general. The movement of merchandise coming from the main territory of Belgium to Bourle-Duc is generally free and exempt from Dutch tariffs and customs duties. The same is true of Belgian goods circulating among the individual Belgian exclaves themselves. This practice is in conformity with old-established custom.<sup>69</sup>

The free transit of Belgian merchandise across the territory of the Netherlands is, however, permitted only in so far as higher Dutch interests are not threatened. This point was clearly illustrated during World War I in the so-called "Radio Station Affair." This curious case arose in 1915, when Belgian officials installed a radio transmitter in their enclaves, at that time embedded in neutral Dutch domains. Upon taking note of this disturbing development, the government of Holland decided to take measures barring the transport over its soil of materials necessary to run the station. Dutch authorities shut off the Belgian exclaves with a wire fence and posted guards around them. The Dutch justified this action on the grounds that the presence of a foreign radio installation on its soil, presumably used as a base of operations for Belgian

<sup>68</sup>Refer to Note du Ministère des Affaires étrangères et du Commerce extérieur de Belgique à l'Ambassade du Portugal à Bruxelles, dated July 3, 1956 in I.C.J. Pleadings (1960), Vol. I, p. 761.

<sup>69</sup>For confirmation see Pierre Haton, opus cit., p. 189.

forces, was contrary to its obligations as a neutral.<sup>70</sup>

In respect to the ontry of Dutch products into the outliers making up Beerle-Nasseu, this takes place without hindrence, and no taxes are levied against them. The present arrangement is customary and can be traced back to the fifteenth century.<sup>71</sup>

Passage of customs officers. Belgian customs personnel are allowed to pay regular visits to the enclaved areas of Beerle-Duc. They are even authorized to bring their weapons with them when crossing the Dutch frontier. This state of affairs is the product of local usage and has been formally recognized by Holland.<sup>72</sup>

With regard to the transit of Dutch customs officials over Belgian territory, these persons may go back and forth to the Beerle-Nasseu exclaves without impediment. The existing situation is customary in nature and has endured for centuries.<sup>73</sup>

<sup>70</sup>This story is best told by Paul Goldschmidt, Beerle-Duc: Histoire d'une Station Radio-télégraphique, 1915-1918 (Herdruk, Belgium, 1946).

<sup>71</sup>Consult Note du Ministère des Affaires étrangères et du Commerce extérieur de Belgique à l'Ambassade du Portugal à Bruxelles, dated July 3, 1956 in I.C.J. Pleadings (1960), Vol. I, p. 761.

<sup>72</sup>See Note du Ministère des Affaires étrangères des Pays-Bas à la Légation du Portugal à La Haye, dated May 4, 1956 in I.C.J. Pleadings (1960), Vol. I, p. 755.

<sup>73</sup>Verified officially in note du Ministère des Affaires étrangères des Pays-Bas à la Légation du Portugal à La Haye, dated May 4, 1956 in I.C.J. Pleadings (1960), Vol. I, p. 761.

Passage of police. The communication of Belgian police between the parent state and the enclaves forming the community of Baerle-Duc is not expressly provided for by treaty. Nevertheless, on the basis of long-established practice, they are permitted unhampered travel over Dutch territory at each coming and going. Moreover, as was true of Belgian customs personnel, they are free to circulate while under arms.<sup>74</sup>

Dutch police are likewise empowered to traverse Belgian territory when crossing into the outliers of Baerle-Nessau.<sup>75</sup>

Passage of soldiers. Although Belgian troops do not possess a legal right to get to the enclaved community of Baerle-Duc, it is known that they have visited the fragmented village on more than one occasion.<sup>76</sup> Generally, however, only individuals have succeeded in making the trip undetected. And this has occurred in the relaxed atmosphere that governs the

<sup>74</sup>Verified officially by the Note du Ministère des Affaires étrangères des Pays-Bas à la Légation du Portugal à La Haye, dated May 4, 1956 in I.C.J. Pleadings (1960), Vol. I, p. 755.

<sup>75</sup>Note du Ministère des Affaires étrangères et du Commerce extérieur de Belgique à l'Ambassade du Portugal à Bruxelles, dated July 3, 1956 in I.C.J. Pleadings (1960), Vol. 1, p. 761.

<sup>76</sup>Before Belgium and Holland capitulated to invading Nazi forces in 1940, the Dutch allowed Belgian troops to be stationed in Baerle-Duc.



processing of frontier traffic into the Saarles. Should large numbers of Belgian soldiers or military units try to take advantage of this situation and proceed to cross the frontier, no doubt they would cause an international incident.

During World War I, when Belgium was partially occupied by forces of the Central Powers, German troops attempted to go to Saarle-Duc. But the Dutch, who had mobilized their forces along the frontier, refused to grant them passage. The government of the Netherlands backed up its military position with the argument that it could not sit back and allow its neutral status to be violated, which German military passage was alleged to entail.<sup>77</sup>

Just as in the case regarding the movement of Belgian troops to Saarle-Duc through Holland, there are no specific legal provisions for Dutch military access to Saarle-Messeu over Belgian territory. But in view of the near impossibility of regulating traffic crossing the invisible international frontier in the Saarles, it is not unreasonable to suppose that there have been isolated instances of the trespassing of Dutch soldiers.<sup>78</sup>

<sup>77</sup>See Pierre Raton, opus cit., p. 284.

<sup>78</sup>The writer is not aware of any specific incident.

The above analysis would seem to suggest that contact with the Barle ex- and enclaves is fairly broad and uninterrupted despite the lack of formal agreement between Belgium and Holland. While passage must be seen as governed basically by local usage, certain aspects of travel have been verified or regulated by tacit accord of the parties or the unchallenged unilateral action of one. From the viewpoint of international law the existence of a right of transit to Barle-Duc and Barlo-Hessou is apparent in every category except the movement of soldiers.

#### CONCLUSIONS

The general purpose of this chapter, as outlined at the beginning, was to shed light on the problem of access to exclaves. More specifically, our aim was to determine whether or not an actual right of passage over intervening foreign territory does exist in Western Europe and if it exists for whom. This twofold objective was to be realized through (a) an analysis of the question of state servitudes; (b) a comprehensive review of the Right of Passage Case; and (c) a thorough investigation of actual state practice in Europe. In keeping with the larger theme of this study, it was hoped that such a systematic treatment of the crucial access issue would put the general question of exclave stability in a different perspective.

Our study of the actual practice of countries suggests that there is great cogency in the argument that the possessing state has a right to get to its exclave(s) across alien territory. In fact, these isolated territories can only continue to function through the granting of the necessary facilities, so that all exclaves are servitudes.

It is to be regretted that the ICJ in the Right of Passage Case left undecided the question whether or not in the absence of actual agreement there is a right of transit. It found that existing practice in individual circumstances was the appropriate guide, and that it was unnecessary to resort to general international law. However, the lesson of the case, as one authority shows, is that while "free access means in fact limited access ... the fact remains that even though the territorial State has a discretion to regulate and authorize the exercise of rights these nonetheless remain rights."<sup>79</sup>

On the basis of evidence gathered through our inquiry of the European situation, it is submitted that the right of passage is normally recognized either by express treaty guarantees or, if no such treaty has been concluded, by local usage. With respect to the former, it has been observed that the right

<sup>79</sup>D.P. O'Connell, International Law, Vol. I (London: Stevens & Sons, 1965), p. 612.

of communication is by no means absolute, being usually regulated by the enclosing country.

A right of transit appears incontrovertible in the case of private persons. Twice (Büdingen and Llivia) it is confirmed by treaty and three times (Campione and the Baarles) it is the product of old established custom. Whatever checks are exercised over this traffic do not impinge on this fundamental right of way.

As for the access of civil authorities, it seems conclusive that these individuals enjoy the necessary passage. Where specific treaty provisions are lacking, host states have usually tolerated this practice for so long that a customary right of travel may be asserted in behalf of the national state.

The diversity of the situation regarding the circulation of goods defies sweeping generalization. In two instances (Büdingen and Campione) "customs fences" have been erected around the outliers so that normal goods traffic is not free but subject to levy. The Baarle ex- and enclaves possess a right based on long-standing practice, whereas only Llivia has obtained an iron-clad treaty guarantee.

With respect to the entry and exit of customs officers, present arrangements differ from area to area. Büdingen stands

alone in its treaty-governed situation. In Llivia, the police perform the customs function. While the transit of customs personnel to Campione is banned overland, those persons do not seem to have any trouble reaching the isolated community by water. Finally, local usage must be taken as the guide in regard to the Bearles.

The passage of armed police is tolerated in every case but is closely circumscribed. Except for Büsingen, which is covered by written agreement, access is rooted in local custom. It is submitted that a general right of communication thus exists for police visiting the exclave in the line of duty.

As far as the critical circulation of armed soldiers is concerned, present practice is pretty much in conformity. No customary right of transit exists and in only one instance (Bülingen) is limited access provided by treaty. By and large enclosing states have striven mightily to exempt their territory from all foreign troop movements.

To sum up, then, all the evidence before us points in one indisputable direction: to a general right of passage into exclaves. While this access is by no means absolute, the West European experience shows that at least the ordinary resident, civil official and solitary police officer making his round of duty enjoy free, if not unregulated, transit.

Such a generally accepted right of transit has important implications for exclave stability. On the one hand, it represents a crucial accommodation by home and host states in favor of the former. A potentially explosive situation is defused and a basis for harmonious relations is established. On the other hand, the right of access becomes merged with the right of the exclave to continue to exist. In this way a certain legitimacy is bestowed on the outlier.

## Chapter 8

### ADMINISTRATION

In our analysis of the access question in the last chapter we inevitably touched on certain aspects of the administrative relationship between parent state and exclave. It is now proposed to subject these ties to closer scrutiny.

The average state is only able to administer its territory effectively to the degree it can make its official organs function in every part of it. In fact, this capacity to enforce its will in the territory is one of the most important requisites for the maintenance of sovereignty over it. Anytime effective control is absent secession is a real possibility.

Exclaves are by definition integral parts of state territory. And so it is not surprising that the mainland should be zealous in its efforts to extend its administration to the outlier. Yet its peculiar circumstances pose a difficult problem. Hence it will be of particular value here to inquire just how successful the home country has been in overcoming the barrier of isolation to make the exclave conform with the administrative pattern of the motherland. In keeping with the broader outline of this study, it is

expected that such an investigation will impart additional information about the stability or instability of exclave.

### Llivia

This little exclave of 886 inhabitants is frequently described by guide books as a "Spanish village in France." But in actuality the 12.87 kilometer square outlier consists of a small built-up area, adjacent farmlands and scattered homes. Administratively, it is part of the Spanish province of Gerone.<sup>1</sup>

The chief administrative officer for Llivia is the local "mayor." He is not an elected official, however, but merely a Spanish bureaucrat appointed by authorities in Gerone. His office is rather modest and is situated in the center of the town, near the pharmacy, which claims to be the oldest in Europe.<sup>2</sup> The burgomaster is assisted in his day-to-day tasks by a tiny staff, consisting of a deputy who is also caretaker of the archives and a secretary.

The mayor and his assistants prefer to speak Spanish but are fluent in French. Like local shopkeepers, restaurant owners and other proprietors, they must be bilingual to handle business efficiently. By way of contrast

<sup>1</sup>José B. Gros, Villa de Llivia (Llivia, August, 1972), p. 1.

<sup>2</sup>Anon., Villa de Llivia (n.p., 1968), p. 1.



(and cementing the bond of Llivia with Spain) the ordinary people speak only Spanish.<sup>3</sup>

For the most part, the administration of the exclave conforms closely with the home state. Thus Spanish laws and regulations apply there, exclave dwellers are subject to conscription and taxes are paid to the national country. By the same token the administration of justice is entirely Spanish; in civil cases authorities in Puigcerdá (the nearest point on the mainland) have jurisdiction, in religious matters the Bishop of Lérida.<sup>4</sup>

Llivia has its own police station. Years ago a precedent was set for regular visits by Spanish law enforcement officers. And because of French acquiescence in the matter these were followed by the establishment of a small precinct. Today the cut-off town boasts a peace-keeping force of eight to ten men, who also serve as customs officials and frontier guards.<sup>5</sup>

The postal and telephone systems in Llivia are administered by the parent state. The mail is brought in

<sup>3</sup>Personal interview with Llivia's deputy mayor, August, 1972.

<sup>4</sup>Ibid.

<sup>5</sup>Frank E. Krenz, International Enclaves and Rights of Passage Ph.D. Dissertation, Geneva, Switzerland: Graduate Institute of International Studies, 1961, p. 137.

several times a week by special courier and communications wires stretch across intervening French territory, linking the isolated community with the motherland. There is no telegraph facility in Llivia.<sup>6</sup>

Most other public services are provided by the home country but some are not. Hence, while the outlier draws water and electricity from Puigcerdá (where almost all local shopping is done), it maintains its own sewage disposal system.<sup>7</sup>

As might be expected, there are no hospitalization facilities in Llivia and educational opportunities are limited. Consequently, sick persons must travel to the mainland for the proper care while three small public schools with a combined enrollment of sixty-eight pupils (1970) provide primary education.<sup>8</sup>

The transport situation in the exclave is uncomplicated. Most residents get around on foot, although those that commute usually own bicycles or scooters. Only a few inhabitants are rich enough to afford modern vehicular transportation. (In 1970, just thirteen vehicles were registered.) The

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<sup>6</sup>Private communication, Spanish Embassy in Bonn to writer, May 18, 1973.

<sup>7</sup>Ibid.

<sup>8</sup>Ibid.

detached hamlet does have its own public bus line, however, the connection Llívia-Puigcerdà. No trains stop in the exclave and the closest rail link is in Puigcerdà.<sup>9</sup>

Generally, France has not interfered with these administrative ties between parent state and outlier. But there have been several minor clashes in connection with the Spanish Civil War and World War II. Between February, 1946 and February, 1948 France closed down the frontier with Spain and traffic to Llívia was closely regulated. Today one of France's major concerns in regard to the enclaved area is to see that Spanish officials do not attempt to fortify it.<sup>10</sup>

### Büdingen

This little German territory consists of a single village and its adjacent lands. It is situated on the right bank of the Rhine River and borders on the Kantons of Schaffhausen, Thurgau and Zürich. Comprising exactly 7.62 square kilometers and with a population of 914 at present, it forms part of the district of Konstanz in Baden-Württemberg and is under the immediate jurisdiction of the city of Singen.

At present the administrative ties of the exclave are governed by the "Büdingen Staatsvertrag," concluded be-

<sup>9</sup>Private communication, Spanish Embassy in Bonn to writer, May 18, 1973.

<sup>10</sup>The Treaty of 1660 between France and Spain specifically forbids the fortification of Llívia.

tween the Federal Republic and Switzerland in 1967. Essentially, this accord reaffirms Germany's sovereign rights over the enclosure but carefully circumscribes its administrative relations with the home state.

According to this convention, Swiss laws and regulations are valid in Büsingen except in special circumstances where those of Germany apply.<sup>11</sup> This provision represents a major concession by the Federal Republic over past practice. For before 1967 German laws and ordinances were generally in force in the enclave, although certain regulations of the host country were followed voluntarily.<sup>12</sup>

The consequences of this arrangement are not restricted to the domestic sphere. Thus, Büsingen, although it is politically part of Germany, is included (like Switzerland) in the European Free Trade Area and not the Common Market.<sup>13</sup>

The administration of justice in Büsingen used to be exclusively in German hands. But now jurisdiction is shared

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<sup>11</sup>Article 2 of the Treaty of Büsingen, signed by Switzerland and the Federal Republic on November 23, 1964 and ratified on July 19, 1967. In Franz Götz (ed.), Das Büsinger Vertragswerk (Radolfzell, Switzerland: Huggle & Neurer AG, 1968), pp. 113-115.

<sup>12</sup>Hubert Auhegen, Die völkerrechtliche Stellung der Enklaven und Exklaven Ph.D. Dissertation, Göttingen, West Germany: Faculty of Law, Georg-August University, 1967, p. 45.

<sup>13</sup>See Franz Götz, opus cit., p. 45.

by home and host states. Importantly, the Swiss government may now prosecute German nationals in its courts for offenses committed against its laws having validity in the exclave. However, punishment must not violate the basic rights of an individual as guaranteed by the German Constitution and the Declaration on Human Rights.<sup>14</sup>

In principle, the Treaty of Büsingen stipulates that the isolated German village is to be treated in the same way as any other Swiss Community. Thus area inhabitants may not be discriminated against by the encloving country and are given the same legal rights and privileges as ordinary Swiss citizens.<sup>15</sup>

With certain exceptions, taxes are paid to the Federal Republic. This rule, however, does not interfere with the right of the Swiss to levy duties on ordinary goods in transit between Büsingen and the motherland.<sup>16</sup>

Despite the remoteness of the exclave, German residents are free to participate in federal and state (Land) elections held in the parent state. The following chart pro-

<sup>14</sup>Article 15 of the Treaty of Büsingen. In Franz Götz, opus cit., pp. 118-119.

<sup>15</sup>Article 2 of the Treaty of Büsingen, ibid., pp. 113-115.

<sup>16</sup>Article 2, ibid. Exemptions are listed in detail in Article 5, ibid., pp. 115-116.

vides us with a general picture of voter-turnout trends in various elections between 1920 and 1972.<sup>17</sup>

I. ELECTORAL PARTICIPATION IN BÜSINGEN  
(1920-1972)

YEAR	ELECTIONS	ELECTORAL PARTICIPATION in %
1920	REICHSTAG	39.1
1933	REICHSTAG	85.5
1947	LANDTAG	13.5
1949	BUNDESTAG	8.8
1953	BUNDESTAG	32.4
1956	LANDTAG	21.7
1960	LANDTAG	13.7
1964	LANDTAG	36.2
1968	LANDTAG	47.9
1969	BUNDESTAG	77.8
1972	BUNDESTAG	84.8
1972	LANDTAG	53.8

From the above table it seems clear that long-term electoral participation is substantially greater in federal than state elections. The major exception is the first Bundestagwahl (1949), in which voter turnout was so poor as to be characterized as an "election boycott" (Wahlstreik).<sup>18</sup> With

<sup>17</sup>This table was prepared especially for this writer by the Statistisches Landesamt Baden-Württemberg, May, 1973.

<sup>18</sup>Philipp Deum, Die Exklave Büsingen von 1939-1964 (Büsingens/Singen, West Germany: J.A. Kugler, 1964), p. 55.

the exception of the 1960 state election, voter turnout on the sub-national level has increased steadily in the post-World War II period. The same is true on the federal level with a considerable jump being made from 1949 to 1953. In general, these results would appear to indicate an increasing interest in political developments in the home state.

As far as duty in the German armed forces is concerned, exclave dwellers (like their compatriots on the mainland) are subject to conscription. (Of course, this regulation does not apply to that portion of the population which is comprised of foreign nationals residing in Büsingen.) During World War I 43 men who were called upon to serve perished in the holocaust. Some 66 area residents lost their lives for their country in the Second World War. As these figures clearly show,<sup>19</sup> inhabitants have paid a high price in blood just because their houses stand on territory belonging to Germany rather than on ground belonging to surrounding Switzerland.

Unlike Llivia, there is no police station in Büsingen. Nevertheless, German law enforcement officers may visit the exclave in line of duty. In accordance with the 1967 treaty between Germany and Switzerland, their number is strictly limited.

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<sup>19</sup>These figures have been taken from the records of the Mayor of Büsingen.

Community postal, telephone and telegraph services are provided for and are housed in one room of an old apartment building in the middle of the exclave. All facilities are German operated, although payment is made in Swiss francs. Area residents, sending letters to the parent state, use German stamps and pay the usual fees for domestic delivery. On the other hand, letters addressed to places in neighboring Switzerland go as foreign mail and are charged accordingly. The transportation function is performed by officials from the host country, who regularly dispatch mail to Schaffhausen, where it is sent by train across the frontier.<sup>20</sup>

Büdingen draws water, gas and electricity from near-by Schaffhausen, where most local people do their shopping. It is also there that the closest railroad station is located and where exclave dwellers receive medical care. Public transportation is provided likewise by Swiss bus and steamship lines.<sup>21</sup>

Although the opportunity to pursue higher education does not exist in Büdingen, inhabitants are free to attend universities in both home and host states on an equal basis.

<sup>20</sup>Personal interview with postal official in Büdingen, August, 1972.

<sup>21</sup>Ottobert L. Brintzinger, Untersuchungen über die rechtliche Stellung der deutschen Exklave Büdingen im Kanton Schaffhausen unter besonderer Berücksichtigung der verkehrs- und zollrechtlichen Fragen Ph.D. Dissertation, Basel, Switzerland: Faculty of Law, University of Basel, 1957, p. 12.



Primary and secondary education is consolidated in one school in the exclave.<sup>22</sup>

Like Llivis, the chief administrative officer in Büsingen is the so-called "Bürgermeister." Not really a mayor at all, he is an employee of the Singen administration, situated on the mainland about nine miles away. His office is centrally located and can be found in one of the most modern buildings in the exclave. To help him conduct the daily business of the isolated community, he is aided by a modest staff, most of whom hold other jobs.<sup>23</sup>

Traditionally, the Oberhaupt has played an active role in the delicate if not complex three-cornered relationship involving the outlier. So much so that local citizens take great pride in pointing out his "foreign policy" role. Although area citizens tend to exaggerate his importance, there is no question but that he exercises unique influence.

An historical flashback will serve to illustrate the power and independence of his office. Immediately after World War II the local mayor was determined to sever all ties with the motherland and "reunify" the village with Schaffhausen.

<sup>22</sup>Philipp Daum, opus cit., pp. 48-49.

<sup>23</sup>Personal interview with the mayor of Büsingen, August, 1972.

To accomplish this end Bürgermeister Hugo undertook legal action on July 16, 1945 to bring his case before the World Court. For various reasons, however, his initiative failed. Apparently undaunted, Hugo proceeded to act as if the exclave no longer belonged to Germany even going so far as to blot out German markings on street signs leading to the detached area. Hugo's aberrant behavior eventually proved too much for officials to bear in Konstanz, and French occupation authorities were requested to remove this cantankerous official from office. This act was performed with dispatch on September 20, 1945.<sup>24</sup>

#### Campione d'Italie

This tiny resort spot comprises an area of approximately one square mile and has about 2,200 permanent inhabitants at present. Situated on the shore opposite the Swiss community of Lugano, Campione possesses a small stretch of water up to the middle of the lake. Jurisdictionally, the enclosure is part of the Italian province of Como.

The administration of this "political island" is headed by a local mayor. But here again this magistrate is not an elected official; rather he is merely an employee, appointed by authorities in Como. The mayor is aided by a small staff, composed mainly of local people. His office is

<sup>24</sup>This tale is recounted authoritatively in Philipp Daum, opus cit., pp. 26-27.

attractive and is situated in a modern building across from the dock. His duties are such that they bring him in constant contact with Swiss officials, with whom he maintains good relations.<sup>25</sup>

Campione has its own police station. It is composed of nine men (Carabinieri) and an officer. Essentially, their presence is symbolic, although they are empowered to make arrests and transport law breakers back to Italy.<sup>26</sup>

Although the outlier is politically Italian, local postal services are run by the Swiss. In the main, this means that correspondence destined for addresses in the parent country must travel as foreign mail at the appropriate rates. By way of contrast, letters and parcels to be delivered to places in the host state are sent as domestic mail at ordinary rates. All transactions are made in the Swiss currency.<sup>27</sup>

Today Italian postage stamps are used exclusively in Campione, although between 1944 and 1952 the locality issued its own stamps in the Swiss currency. This arrangement originated during the Second World War when the exclave was left more or less to shift for itself. At that time Italian

<sup>25</sup>Personal interview with local official, August, 1972.

<sup>26</sup>Giovanni Cenato, Campione d'Italia in der Geschichte und in der Kunst (Como, Italy: Grafica Centonze, undated), not paginated.

<sup>27</sup>Mariuccia B. Zecchinelli, Campione d'Italia (Como, Italy: Casa Editrice Pietro Cairoli, 1968), p. 15.

stamps were unobtainable, and the Italian currency was of little importance to the local economy.<sup>28</sup>

Unlike Büsingen, Switzerland is charged with operating Campione's telephone and telegraph facilities. Consequently, calls to the mainland are subject to foreign rates, while those placed to areas in the neighboring state are billed at normal rates. The one exception is the direct telephone line to Como, which the mayor possesses. Calls via this communications link are charged according to prevailing domestic rates in Italy.<sup>29</sup>

Most utility services in the exclave are not provided by the national country but by the encaving state. Thus Campione obtains electricity from Lugano but draws water from its own spring and Lake Lugano.<sup>30</sup>

In general, the administration of justice is Italian, but Campione must respect Swiss tariff legislation. Because there is neither a court nor jail in the outlier, proceedings are initiated and completed in Como.<sup>31</sup>

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<sup>28</sup>G.W.S. Robinson, "Exclaves," Annals of the Association of American Geographers, Vol. 49 (September, 1959), p. 291.

<sup>29</sup>Hubert Aubagon, opus cit., p. 49.

<sup>30</sup>Meriuccia B. Zocchinelli, opus cit., p. 15.

<sup>31</sup>Personal interview with local official, August, 1972.

As a rule, direct taxes are paid to Italy, while indirect taxes go to Switzerland. This is a customary arrangement and has to do with the treatment of Campione as Swiss customs territory.<sup>32</sup>

Like those citizens situated on the mainland, exclave dwellers of Italian nationality have the right to vote in federal and state elections. And according to a representative of the local mayor, voter turnout is extraordinarily high. Since 1945, electoral participation (those eligible to vote) has vacillated between 94 and 98 per cent.<sup>33</sup> Such a high rate of voter participation would seem to be an important indicator of citizen identification with the home country.

Local inhabitants serve in the Italian armed forces and are subject to the draft. During World War I the hamlet was compelled to recruit 94 soldiers for the Italian cause, 15 of whom lost their lives in the conflict.<sup>34</sup> Between 1940 and 1945 a small group of residents were called up to serve on the Russian front and in the Albanian campaign. To serve as a reminder of Campione's bloody tribute, a monu-

<sup>32</sup>Frank E. Krenz, opus cit., p. 60.

<sup>33</sup>Private communication, office of the mayor to this writer, May 23, 1973. Unfortunately, no detailed electoral information could be obtained.

<sup>34</sup>Giovanni Cenozo, Campione d'Italia in der Geschichte und in der Kunst (Como, Italy: Grafica Centonze, undated), not paginated.

ment has been erected in the exclave.

There is no provision for higher education in Campione, although primary and secondary education may be pursued there. Facilities for advanced education are located in Lugano and Como.

Finally, the last aspect of administration to be discussed, is the public transportation system. On the whole buses provide the major means of getting back and forth to Italy. But the regular public shipping service, which enables most inhabitants to do their shopping in Lugano, cannot be overlooked. Both means of transport are provided by the Swiss.

#### The Baarle Ex- and Enclaves

The situation of thirty-eight scattered parcels of Belgian and Dutch territory around Baarle is often termed "a hopeless business" by outsiders. Although these outliers legally form two distinct communities of Baarle-Duc (1973 population est.: 2,600) and Baarle-Nassau (1973 population est.: 5,200), they are strongly entangled: the village square is Dutch except for the Belgian inn; a few paces from there is the Belgian church and town hall. The "mayor" of Baarle-Duc cannot go from his house to work without crossing over Dutch territory.

Only the house placques indicate that one has crossed an international frontier. Each bears a street number and flag of the country on whose soil the building rests. All Dutch dwellings have their numbers set against a background of three horizontal bands -- red, white and blue from top to bottom, whereas all Belgian houses have theirs painted on a surface consisting of three vertical bands -- black, yellow and red from left to right.

Many Belgian houses stand adjacent to Dutch homes on the same street. Since each commune has its own street plan, the house number 33 (Belgian) may be found next to number 1 (Dutch).

In other instances a building may lie across the territory of two different countries. When this happens, it has two separate house designations. Usually, the creation of such a situation is deliberate, and the owner has an eye cocked for smuggling opportunities.

In a café in the center of town the boundary runs straight up the middle of the billiard table. It is estimated that the multicolored balls on the baize table roll back and forth between Belgium and Holland several thousand times a day.

In one farmhouse on the outskirts of Baerle the dividing line runs through the front door. When the mother

leaves her bedroom to cross the hall to prepare breakfast in the kitchen, she not only leaves her husband but moves to another country. Hugo Grotius was a distinguished guest here, and his picture hangs on the wall. According to occupants, he fled Dutch authorities in the seventeenth century and came to live and study in this house. He naturally took up residence in the Belgian half where he was immune from Dutch jurisdiction.

As one might imagine, the complex intermingling of territory poses an administrative headache for both Holland and Belgium. The village of Baarle-Nassau stands today in the Dutch province of Noord Brabant, a few kilometers from the Belgian frontier. The Belgian enclaves form a separate community within it, officially called Baarle-Duc (or Baarle-Hertog as it is referred to in Flemish). Although villagers coexist, interpenetrate and behave generally as members of one homogeneous community, they are still technically subject to the laws and conveniences of either Belgium or the Netherlands, depending upon which nationality, choice or accident has given them.

The result is a completely schizophrenic community with two names and a double identity. There are two town halls, two churches, two police forces and two post offices. Area citizens are even subject to different military service provisions and separate income-tax rates. Appropriately, one



journalist has called the double village "Splitsville."

The two town halls in Baarle are headed by different "mayors." Baarle-Nassau is run by a Dutch civil official, while the commune of Baarle-Duc is administered by a Belgian magistrate. In the first case he is appointed by authorities in Noord-Brabant. In the second, he is elected directly by exclave inhabitants.<sup>35</sup>

Each burgomaster has his own council and administrative staff. But the Dutch mayor has by far the largest number of personnel; about twenty-four. There are only some three or four people assisting the Belgian mayor. As a practical matter, there is a great deal of cooperation between the two administrations. During the last world war, for example, the Dutch town hall was destroyed and so the mayor of Baarle-Nassau was invited to move his office temporarily into the Belgian one.<sup>36</sup>

The two mayors possess considerable autonomy in their duties. Much more so than similar officials elsewhere. According to exclave dwellers, they are like "kings within their own realms." The reason for this independence must be obvious: Authorities in the foreign offices of Brussels and The Hague want to play down the frequent jurisdictional

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<sup>35</sup>Personal interview with local official, August, 1972.

<sup>36</sup>See C. d'Olivier Farran, "International Enclaves and the Question of State Servitudes," International and Comparative Law Quarterly, Vol. 4 (April, 1955), p. 300.

disputes as much as possible in order to maintain the friendly relationship which has sprung up between historically religious foes.<sup>37</sup>

As might be expected, local inhabitants belong to two separate voting districts. Belgian exclave dwellers cast their votes every four years for members of the Chamber of Representatives, traditionally the most important of the two chambers of parliament in Brussels. On the other hand, Dutch residents vote for members of the Second Chamber (or lower house) of the States General (parliament) in the Netherlands. Although no statistics are available for electoral participation in Baarle-Duc, those which we have about Baarle-Nessau show that the local voter turnout is quite high, ranging from 98% to 100% in the last three parliamentary elections.<sup>38</sup>

As we mentioned earlier, there are two distinct police detachments in Baarle. Their size is small and they are characterized by a great deal of flexibility. Needless to say, if they attempted to enforce the law strictly, they would run themselves ragged, alienating the population in the process. As things are, they tend to look the other way in face of minor legal transgressions. This mood is perhaps best captured by

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<sup>37</sup>Personal interview with Dutch foreign office representative, August, 1972.

<sup>38</sup>Baarle-Nessau, Sociologisch Rapport Baarle-Nessau/Hertog (April, 1972), p. 53.

the former mayor of Bearle-Nassau when he says: "It is difficult to take everything seriously." And "it would be absurd if we had to stick exactly to the letter of the law."<sup>39</sup>

The administration of justice in Bearle depends on what territory is involved. Half of the village is in the province of Antwerp and subject to Belgian law, while the other half is in that of Noord Brabant and under Dutch law.

Some of the legal problems posed by the double community can be readily appreciated. The ordinary traffic accident, for instance, has all the potential of being ballooned out of proportion, because almost every street in Bearle traverses two state jurisdictions. Frequently, one doesn't know which country (or both!) has authority in the matter. Consequently, a lengthy investigation sometimes becomes necessary before proceedings can be brought against one of the drivers. Since Belgian traffic laws are much more lax than Dutch ordinances, the distinction is important. Finally, by the time it is determined which country is directly involved, it may be necessary to initiate the cumbersome process of extradition if the driver at fault is unwilling to make a court appearance in another jurisdiction from which he lives.

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<sup>39</sup>Robert Leigh, "Splitville," an undated article with no date or place of publication.

The exclaves are a nuisance to administrators in another way. Because Baarle-Nassau is growing by leaps and bounds, Dutch town planners would like to build through the Belgian outliers. Legally, however, they cannot unless they first receive special permission from Brussels. In view of the difficulty of acquiring Belgian approval and pressing domestic needs, Dutch officials have disregarded Belgian sovereignty at least in one recent case and gone ahead anyway with the construction of a road through an enclaved area.<sup>40</sup>

Due to a loophole in Dutch law Baarle is a haven for youthful draft dodgers. Although both Belgium and the Netherlands may call up citizens to serve in their armed forces, there is an important difference. In the former country, every eligible national is subject to the draft no matter where he resides. But in the latter citizens living abroad are usually exempt. Taking advantage of this situation, many younger Dutch males have established a permanent residence in the Belgian half of the village and thus avoided military service altogether.<sup>41</sup>

To which state do exclave dwellers pay taxes? In theory, the inhabitants of Baarle-Nassau pay them to Holland

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<sup>40</sup>Information supplied this writer by a former Dutch exclave official, August, 1972.

<sup>41</sup>"Divided Village," Holland Herald (1970), Vol. 5, No. 10, p. 34.

while residents of Beerle-Duc pay them to Belgium. Since Dutch taxes are among the highest in Europe, however, there is no small incentive for people living in two jurisdictions to take advantage of their situation. In general, taxes are fairly well shared between the two countries.<sup>42</sup>

If a person enters one of the two post offices in Beerle, that individual is subject to Belgian postal regulations; if the other, Dutch. Mailboxes belonging to both countries can be found dispersed throughout the dual community, and the local population must be careful to use the right stamps in the appropriate letter boxes.

In the spirit of cooperation that distinguished this divided village, Dutch and Belgian postal officials cooperate with each other. Thus a Dutch mail carrier sometimes helps out a Belgian counterpart by delivering a letter for him in the former's district. Back in 1970 postal authorities of the two jurisdictions, in the attempt to raise money for the town, got together on the 100th anniversary of the first postal delivery by balloon and jointly cancelled a limited number of commemorative cards.<sup>43</sup> The project was such a huge success that other joint ventures are being planned.

<sup>42</sup>"Divided Village," Holland Herald (1970), Vol. 5, No. 10, p. 33.

<sup>43</sup>The Belgian mayor presented this author with one of these valuable commemorative on a visit to Beerle in August, 1972.

As is true of practically every other aspect of administration in Baarle, local telephone facilities are duplicated. In the hamlet one may place a "local" call to either Belgium (at one of its telephone booths) or the Netherlands (at one of its stalls). Generally, Belgian rates are less expensive. No doubt this fact explains why residents who have a choice (because their house is located across both Belgian and Dutch soil) prefer to have a Belgian connection.

The one utility that all exclave dwellers share is the water supply. And this belongs to the Dutch. However, in the attempt to strike a balance, Belgian authorities recently erected a water purification plant to serve both municipalities.<sup>44</sup>

Public transportation is not a problem. Each country provides a regularly scheduled bus service. Inhabitants are free to choose between the two and either currency is accepted.<sup>45</sup>

At one time there were two train stations in the local community. But now no trains stop there. On the one hand, the Baarle-Nassau Station was located in the middle of the town and belonged to Holland. On the other, the Baarle-

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<sup>44</sup>Information given this writer in Baarle, August, 1972.

<sup>45</sup>Ibid.

Hertog Station was situated at the nearest point on the true frontier of the exclaves, the boundary line running through the refreshment room. For a long time it has simply not been profitable to have a train stop in the locality and so today the stations lie abandoned.<sup>46</sup>

Two years ago, plans were drafted for the construction of an international (BENELUX) airport in Baarle. But eree citizens protested vigorously. They argued that such an airfield would take up too much space and spell disaster for many of the exclaves (upon which the tourist trade rests). In the end, the inhabitants got their way and so the airport is now being built elsewhere.<sup>47</sup>

Separate but equal, words that have an uneasy ring in the United States, have a special meaning for local school children who attend segregated institutions. Although pupils are technically free to attend classes at either educational facility, usually -- unless a great distance is involved -- area boys and girls go to their respective public school. University attendance, however, is another matter. Children of both nationalities tend to matriculate at Dutch universities, which are nearer.<sup>48</sup>

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<sup>46</sup>Several times the tribunal at Breda has held sittings on the Dutch side of Baarle-Hertog Grenzstation to interrogate witnesses not willing to leave Belgium. See C. d'Olivier Farran, opus cit., pp. 299-300.

<sup>47</sup>Ons Weekblad (Baarle-Nassau), September 24, 1971.

<sup>48</sup>Information supplied the author in Baarle, August, 1972.

Like Belgium, Baerle is predominantly Roman Catholic. (This is in sharp contrast to Holland, which is about evenly divided between Catholics and Protestants.) Thus it is not strange to find that both churches in the dual municipality are run by priests. One is under the jurisdiction of the Belgian Archbishop of Malines, while the other is subordinate to the Dutch Bishop of Breda. Residents are free to visit either.<sup>49</sup>

As one might suspect, there is much intermarriage in Baerle. But because nationality under Belgian and Dutch law depends on the citizenship of the father and not the place of birth, confusion is kept to a minimum. One could easily imagine the consequences were the reverse true: children born in one room of a house would acquire Belgian nationality, while a boy or girl born in another would be a Dutch citizen. The intricate legal situation might never be reconciled in some cases.

Apparently, local ties hold a stronger attraction for exclave dwellers than allegiance to the home state. According to the former Belgian mayor of Baerle-Duc Jules Loots: "We don't really look upon ourselves as either Belgians or Dutchmen. We are all Baerleneers."<sup>50</sup>

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<sup>49</sup>Information given this writer in Baerle, August, 1972.

<sup>50</sup>Robert Leigh, opus cit.



## CONCLUSIONS

The intended object of this chapter has been to examine in detail the administrative relationship between home state and exclave. In particular, we were interested in investigating the extent of success of the motherland in making the outlier conform with its administrative pattern. It was expected that such an inquiry would cast more light on the question of stability.

It has been demonstrated that despite the barrier of separation administrative ties between the possessing country and the exclave are quite close. In fact, although the exclave has shown a degree of autonomy in some areas, it seems that the national state has gone out of its way to meet the administrative needs of the outlier. The most extreme example of this policy can be seen at Baarle; there practically every public service and every branch of administration is duplicated right down to letter boxes in the streets. This has all taken place because the surrounding country tends to tolerate (if not facilitate) the exercise of civil authority by the parent.

The chief link between the home state and the outlier is the local "mayor." Not usually an elected representative, he is the chief administrative officer of the area. And his authority is considerable. For in his limited

"foreign policy" role he is charged with delicately balancing the interests of three parties.

To help him handle routine problems, each burgo-master has an able and willing staff at his disposal. For the most part, his circle of advisers is small, barely a handful; the major exception is the mayor of Basle-Nessau who has some twenty-four assistants. It is normal for many of these personnel to be composed of exclave dwellers.

As a rule, the long arm of the law extends to the enclaved territory. Thus local residents are not only subject to the laws and ordinances of the parent country but its administration of justice as well. The major exception is Büsingen, where inhabitants possess the same legal rights and immunities as ordinary Swiss citizens and may be tried in Swiss courts. Due to the relatively small size of the exclaves, jails and courts are not found in them but on the mainland.

All the exclaves have their own police force. Generally, they are token in number, however, not exceeding ten men. Büsingen, which is allowed up to twenty-seven men at the present time is the only deviation from this rule. In every case, law enforcement officials are empowered to make arrests and otherwise maintain law and order.

The administrative bond is not so strong when it comes to the collection of taxes. Although direct taxes are always paid to the national state, indirect taxes are another matter. In at least two instances (Büdingen and Campione, which are located inside the Swiss customs fence) local people pay them to the neighbor.

Every enclave but one enjoys its own postal, telephone and telegraph services, although arrangements differ according to locality. The single exception is Livia, which has its own postal and telephone systems but lacks telegraph facilities.

Remoteness seems to pose a special problem for the home state in regard to the administration of utility services. For it provides them in only one case (Livia). In every other instance, gas, electricity, etc. are supplied without interruption by the surrounding country.

Public transportation is entirely supervised by the parent state except for those exclaves situated in Switzerland. In this respect, the bus appears to be the most important means of getting back and forth; all exclaves maintain a regularly scheduled line. But Büdingen and Campione are the only ones also to enjoy a public shipping service.

Last but not least we discover that all the outliers possess their own public schools. Generally, these facilities provide area children with the opportunity to pursue both primary and secondary education. But for higher education exclave dwellers must go to the home state, although in certain cases they are treated on an equal basis in universities of the host country.

From the foregoing we have discerned that the administrative relationship between parent and exclave is indeed a close one. Undoubtedly, our most startling finding, however, is the degree to which the host state facilitates these ties. In one way or another, it has assisted the national state to alleviate hardship caused by isolation and to make living conditions "as normal as possible" for area inhabitants.

The fact that the exclave is so closely tied to the mainland in the area of administration leads us to draw several important conclusions in regard to its stability. First, it may be said that this easy relationship provides a useful framework in which the inevitable administrative problems posed by geographical isolation may be overcome. This in turn tends to greatly reduce potential areas of friction with the host state, which is punctured by the outlier. Second, because the organs of the possessing state are made to function in the detached area, law and order can be maintained. As a result, the exclaves are marked by the ab-

sence of domestic civil conflict and violent behavior, potential disrupting factors. Finally, close administrative ties strengthen the physical security of the outlier. The territory becomes closely identified with the national state and any attempt to alter the status quo must take its military capability into serious consideration.

## Chapter 9

### ECONOMY

As we have seen, it is impossible to consider the administration of the exclave without at the same time discussing its general economic situation. For exclaves are part of a sovereign state, which is a political, juridical as well as an economic unit.

Theoretically, by virtue of its extreme geographical position, the exclave is faced with three major alternatives in the economic sphere: (a) it can choose to pursue ties with the mainland and hope that the neighboring country will acquiesce; (b) it can opt for economic assimilation with the host state; or (c) it can attempt to strike out on an independent course. The first choice has all the advantages of conformity, while the second alternative dispenses with obstacles posed by distance. The last possibility is without doubt the most risky; for it involves a degree of defiance of parent and surrounding countries that neither is likely to tolerate from such a puny jurisdiction.

Bearing these three possible orientations in mind, it is now proposed that we undertake a systematic and comprehensive investigation of the economy of exclaves. Particularly, we propose to examine each outlier in terms of such

relevant elements as types of income producing activity over time, economic growth and prosperity indicators and population trends. It is felt that a thorough inquiry into the economic viability of exclaves would prove to be most revealing in determining their individual and collective futures.

### Llivia

Traditionally, the economic life of this small Spanish exclave in France has been oriented toward the mainland, which was predominantly a poor agricultural country. Consequently, the peseta is the official currency there, and Llivia remains outside the Common Market. Fortunately for the little community, however, these close economic ties did not entangle the exclave in the devastation wrought on the mainland by the Spanish Civil War.

For years the economy of Llivia was rather uncomplicated and revolved around typical farming activities of the region. Thus summer grazing in the meadows that dot the beautiful Cerdagne plain was important. And the growing of crops in the vales was a major local activity. The climate was especially conducive to this quiet pastoral life as it is sunny and dry in the summer and cold in the winter, when it snows heavily.

Another important traditional income producing pursuit involves the operation of a quaint spe station. A favorite with French visitors in particular, it has been maintained for several centuries.<sup>1</sup>

Some old guide books describe Llivia as a "favorite haunt of smugglers." But if once an important industry in the exclave, it is no longer a big business. Increased Franco-Spanish cooperation and regular patrolling of the boundary have seen to this.<sup>2</sup>

Today Spain and the exclave are experiencing rapid and unparalleled economic growth. As a result the economic structures of both are changing drastically. The same is true in neighboring France, which is in the process of eliminating its industrial backwardness and moving to the forefront of advanced technical nations.

Like that on the mainland, a good part of Llivia's new found prosperity comes from the popularity of the detached territory as a tourist haven. The beauty of the area, plus its easy accessibility and relative inexpensiveness, have turned what was once a sleeping farming community into a blooming vacation paradise.

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<sup>1</sup>Frank E. Krenz, International Enclaves and Rights of Passage Ph.D. Dissertation, Geneva, Switzerland: Graduate Institute of International Studies, 1961, p. 66.

<sup>2</sup>Information obtained by this writer in Llivia, August, 1972.



Though there are still a few parts of the exclave that are poor, the better life is quite noticeable. Particularly indicative of recent prosperity are such tokens as luxury stores and booming traffic. Although no hard data is available, there are clear signs that a goodly portion of shoppers come from surrounding France. Thus, for instance, the shop names are bilingual and the French currency is accepted on an equal basis with the Spanish. The French come in by car or on foot to buy every type of commodity that sells cheaper in Spain.

Llivia's change of life is perhaps most evident in the housing industry, which is flourishing. But this rapidly expanding sector of the economy is not able to keep abreast of current demand. Therefore, many private persons are making available one or more rooms -- or even entire farmhouses -- for rent to outsiders.<sup>3</sup>

One of the most radical changes in the exclave's skyline has been the erection of a modern, soaring hotel. Built just five years ago, the "Hotel Llivia" maintains plush, first class accommodations including a fancy swimming pool and well swept tennis courts. According to the Spanish owner, this hotel is booked solid with tourists during the summer months and does a steady business in winter, putting up

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<sup>3</sup>Information obtained in Llivia, August, 1972.

skiers. About 95% of its clientele is Spanish.

The local tourist boom and the accompanying rise in the standard of living are products of a major change in government policy. For a long time, it was Spanish practice to play down the isolated area. But as the Franco regime came to realize the importance of tourism to the national economy, it decided in the 1960s to open Llivia to developers.<sup>4</sup>

As might be expected, the increased well being of exclave dwellers is reflected in recent population statistics.

## II. POPULATION GROWTH IN LLIVIA<sup>5</sup> (1920-1972)

YEAR	PERMANENT RESIDENTS
1920	877
1930	743
1940	723
1950	755
1960	755
1970	856
1972	886

<sup>4</sup>Personal interview with owner of "Hotel Llivia," August, 1972.

<sup>5</sup>Private communication, Spanish Embassy in Bonn to writer, May 18, 1973.

Thus, while real population growth was almost insignificant between 1930 and 1960, it took a big jump in the decade thereafter. From the last year (1972) for which we have data, this trend appears to be continuing into the 1970s.

The economic outlook for Llivia is bright as the exclave is expected to achieve continued economic growth. Although local people will face certain problems (e.g. inflation) from too rapid a switch from a predominantly agricultural economy to a service oriented society, these will be balanced by a substantial increase in personal income, which should benefit the community as a whole.

### Büdingen

While Llivia is tied economically to the home state, this little known German outlier in Switzerland has followed the opposite line of development and has become economically assimilated with the host country. Consequently, the exclave falls behind the neighbor's customs fence and the Swiss franc alone is used there. This extraordinary situation makes Büdingen the only German community to be included in the European Free Trade Association rather than the Common Market.

But Büdingen has not always enjoyed such close economic relations with Switzerland. For a long time it existed

in what one authority has described as "a kind of insecure international limbo."<sup>6</sup> Although politically part of Germany, its remoteness and difficult access to market towns in the parent country defied repeated attempts by the German government to re-orient its economy away from nearby Schaffhausen.

Büdingen's anomalous plight in the nineteenth and early twentieth century caused exclave dwellers considerable economic hardship. Beginning in 1835, the isolated territory was purposely excluded from the German customs area.<sup>7</sup> As a result, local inhabitants could not export goods free of duty to the mainland. Nor were their products accepted duty free in the surrounding state.

From this time on area residents were only able to survive economically with the help of variable and uncertain Swiss customs concessions. The first breakthrough easing their predicament came in July 1852, when a treaty between Switzerland and the Grand Duchy of Baden was concluded on reciprocal freedom of tariffs.<sup>8</sup> This accord had the effect of abolishing all duties on merchandise in transit to local German or Swiss villages. In 1891, there was a general rise

<sup>6</sup>G.W.S. Robinson, "Exclaves," Annals of the Association of American Geographers, Vol. 49 (September, 1959), p. 292.

<sup>7</sup>See Wilhelm F. Oberer, Die staats- und völkerrechtlichen Besonderheiten der deutschen Enklave Büdingen in der Schweiz Ph.D. Dissertation, Tübingen, West Germany: Faculty of Law, University of Tübingen, 1955, p. 31.

<sup>8</sup>The text of this treaty is reproduced in the Swiss document series entitled Recueil Systematique des Lois et Ordonnances, 1848-1947, Vol. 12 (Bern: Federal Chancellery, 1949).

of Swiss tariffs but special allowances were subsequently made for Büsingen.<sup>9</sup> Then, four years later (September, 1895), a convention was concluded which, among other things, provided for the relaxation of tariffs on certain exclave goods destined for the host state.<sup>10</sup> Despite these notable improvements in local trade, however, a highly desirable general commercial treaty regulating the problem in a more equitable way did not materialize.

Following the First World War Büsingen was driven more and more into the arms of Schaffhausen. But this had both its advantages and disadvantages. On the plus side, the city, seeing that a defeated and economically weakened Kaiserrreich was unable to continue to meet local needs, took over the provisioning of the outlier in 1919.<sup>11</sup> On the negative side, area citizens were still considered foreigners and during the crisis-ridden 1930s were the first ones to be thrown out of work.<sup>12</sup>

If most inhabitants suffered unduly from being caught in the middle during the depression, which swept

<sup>9</sup>Ottobert L. Brintzinger, Untersuchungen über die rechtliche Stellung der deutschen Exklave Büsingen im Kanton Schaffhausen unter besonderer Berücksichtigung der verkehrsg- und zollrechtlichen Fragen Ph.D. Dissertation, Basel, Switzerland: Faculty of Law, University of Basel, 1957, p. 40

<sup>10</sup>Refer to the Swiss document series entitled Recueil Systematique des Lois et Ordonnances, 1848-1947, Vol. 12 (Bern: Federal Chancellery, 1949), p. 683.

<sup>11</sup>Theodor Spiess, Büsingen und seine Verhältnisse (Schaffhausen: Zollkreisdirektion, 1945), p. 23.

through Europe like a hurricane, a few were able to exploit a situation which allowed merchandise from all over the world to enter duty free. In this connection, the local experience regarding the sale of gas is particularly illustrative. No fewer than five gas stations sprung up in the hamlet at this time, offering petrol at prices that undercut those in home and host states by 30 to 50 per cent.<sup>13</sup>

Following World II efforts were doubled to resolve Büsingen's anomalous economic position. Since the cut-off territory now came under the jurisdiction of French occupation officials, they were the ones to begin extensive negotiations with the Swiss. As a result of these talks, an agreement was finally hammered out in November, 1945. Under its terms, the exclave was given certain customs favors and the enclosing country was charged with supplying it with food.<sup>14</sup>

Rather than providing a comprehensive answer for the problems of the detached community, however, the Berner Vereinbarung represented merely an interim solution. Now the two sides were faced with settling the question on a permanent

<sup>12</sup>Philipp Daum, Die Exklave Büsingen von 1939-1964 (Büdingen/Singen, West Germany: J.A. Kugler, 1964), p. 12.

<sup>13</sup>Rudolf Eugen Scherrer, Der Zollanschluss der deutschen Enklave Büsingen an die Schweiz Ph.D. Dissertation, Zürich, Switzerland: Faculty of Law and Political Science, University of Zürich, 1973, p. 37.

<sup>14</sup>The text of this treaty has never been published in its entirety. A copy is contained in the files of the mayor of Büsingen and may be read there.

basis. For various reasons annexation was not feasible, so economic union with Switzerland was decided upon. Thus, with the approval of French occupation authorities and administrative officials in Scheffhausen, the customs cordon around Büsingen was dramatically raised on January 1, 1947.<sup>15</sup>

Twenty years later (1967) the economic union of the outlier with Switzerland was reaffirmed by a now fully sovereign West Germany in the Treaty of Büsingen. In the main, this convention symbolized the long-awaited general commercial treaty regulating the enclave's economic status.<sup>16</sup> Importantly, it stipulated (among other things) that Swiss customs regulations are to be applied locally and only its currency is to be valid there. As a result of this accord, Büsingen's annexation to Switzerland, which earlier seemed to be dictated by economic needs, is no longer a major concern.

Historically, agriculture has been of utmost importance to the local economy. In this respect, crop raising and animal husbandry are of particular significance. But land use

<sup>15</sup>See Frank E. Krenz, opus cit., p. 58.

<sup>16</sup>For the text of this treaty consult Franz Götz (ed.), Das Büsinger Vertragswerk (Radolfzell, Switzerland: Huggie & Meurer KG, 1968), pp. 113-132.

has always depended on the customs policy of Switzerland. Thus high Swiss duties virtually wiped out the wine growing business, which until the middle of the last century dominated local economic life. In 1895, heavy duties were imposed on the movement of grain and arable acreage consequently declined, though much arable land was turned over to potatoes. When potatoes became dutiable in 1914, enclave dwellers were compelled to develop their grassland and rely on a stock raising economy.<sup>17</sup>

### III. CHANGES IN LAND USE IN BÜSINGEN<sup>18</sup> (1884-1952)

CROP	1884	1952
	%	%
CORN & LEGUME	53.1	56.1
ROOT CROPS	22.6	23.4
GREEN FODDER	23.6	18.7
HEMP	0.5	
FLAX	0.2	
VEGETABLES		0.9
RAPE		0.9

N.B. Arable land (1884) 100% = 365 hectares  
Arable land (1952) 100% = 277 hectares

<sup>17</sup>Max Bolli, "Die Enklave Büsingen," Geographica Helvetica, Vol. 9 (1954), pp. 257-259.

<sup>18</sup>Ibid., p. 258.



Agriculture, if once a dominating influence in local economic life, is of continued but diminishing importance. For instance, it employed some 45% of the labor force before World War II.<sup>19</sup> But now it accounts only for approximately 20%.<sup>20</sup> This situation contrasts sharply with that of the parent state, in which approximately 11% of the work force (1970 est.) is engaged in farm production and the neighbor, where some 8.8% are in agriculture.

IV. EMPLOYMENT OF LABOR FORCE IN BÜSINGEN,  
WEST GERMANY AND SWITZERLAND  
(1970 EST.)<sup>21</sup>

EMPLOYMENT	BÜSINGEN	W. GERMANY	SWITZERLAND
	%	%	%
AGRICULTURE	20	11	8.8
INDUSTRY	60	52	52.
SERVICES & COMMERCE	20	...	39.2

<sup>19</sup>Irmfried Siedentop, Büdingen und Verenshof in der Schweiz (Frankfurt a.M.: Moritz Diesterweg Verlag, 1938), p. 49.

<sup>20</sup>Franz Götz, opus cit., p. 74.

<sup>21</sup>The figures for Büdingen have been taken from Franz Götz, ibid., p. 74, whereas those for West Germany and Switzerland come from Laurence Urdang (ed.), The Official Associated Press Almanac 1973 (New York: Almanac Publishing Co., Inc., 1973), p. 680 and 769.

Büdingen does not possess its own industry. Although Germany tried three times in the 1930s to develop this sector of the economy, every attempt foundered because of unfavorable conditions, created by its geographical seclusion. Most significant in this regard were high transport costs, an adverse shipping situation, Swiss customs policy and prohibitive costs of production.<sup>22</sup> As a result, most exclave dwellers have sought employment in industrialized Schaffhausen.

V. NUMBER OF COMMUTERS IN BÜDINGEN  
(1874-1950)

YEAR	COMMUTERS
1874 <sup>23</sup>	93
1900 <sup>24</sup>	100
1932 <sup>25</sup>	230
1950 <sup>26</sup>	240

<sup>22</sup>Rudolf E. Scherrer, opus cit., p. 36.

<sup>23</sup>Data source: Max Bolli, opus cit., p. 293.

<sup>24</sup>Data source: Statistisches Landesamt Baden-Württemberg, May, 1973.

<sup>25</sup>Data source: Max Bolli, opus cit., p. 293.

<sup>26</sup>Data source: Statistisches Landesamt Baden-Württemberg, May, 1973.

The lack of industry in Büsingen makes it a kind of anomaly vis-à-vis home and host states. For both the Federal Republic and Switzerland are highly industrialized nations with about 52% (1970 est.) of their labor supply funneled into industry.

Besides farming and industry, which presently account for 80% of the work force in the exclave, various small businesses engage some 10%. Important here are the grocery store, cafe, restaurant and gas station, which do a steady business. Still another 10% of area wage owners are self-employed (e.g. the doctor and dentist). These figures compare favorably with percentages in Germany and Switzerland.

Although trade statistics are hard to come by, it is known that practically all of Büsingen's "exports" go to Schaffhausen.<sup>27</sup> There are several reasons for this. On the one hand, there is the high cost of transportation to the mainland. On the other, there is the fact that the exclave is incorporated in the Swiss economy. Likewise Swiss "imports" into Büsingen far exceed those of Germany.

That Büsingen does not offer great economic opportunity is reflected in its population curve. Although the

<sup>27</sup>Franz Götz, opus cit., p. 74.

number of permanent inhabitants more than doubled in the first half of the nineteenth century, this twofold increase was followed in the second half by a dramatic downward trend. During the 1930s the number of residents began to climb slightly, but this upward tendency was brought to a sudden halt by the Second World War, which claimed the lives of 66 local people. Since that time the population curve has proceeded to stagnate or drop sharply downward.

VI. POPULATION TREND IN BÜSINGEN<sup>28</sup>  
(1813-1972)

YEAR	PERMANENT RESIDENTS
1813	400
1852	836
1875	732
1905	774
1919	778
1925	815
1933	936
1939	957
1946	910
1950	936
1956	849
1961	841
1963	906
1972	914

<sup>28</sup>Data source: Statistisches Landesamt Baden-Württemberg, May, 1973.

As one might suspect, the overwhelming majority of area inhabitants are German citizens. But an unusually large percentage (about 15%) consists of persons with Swiss nationality. Most of these "foreigners" work in Schaffhausen and are friends or relatives of exclave dwellers.<sup>29</sup> As the following chart shows, the number of these outsiders taking up a permanent residence in the exclave increased steadily until 1964, when for the first time there was a sharp drop off.

VII. NUMBER OF SWISS CITIZENS IN BÜSINGEN<sup>30</sup>  
(1864-1964)

YEAR	SWISS CITIZENS
1864	20
1871	27
1900	48
1910	65
1946	123
1952	145
1964	122

<sup>29</sup>Ottobert L. Brintzinger, opus cit., p. 10.

<sup>30</sup>Data source: Philipp Deum, opus cit., p. 42. N.B. These figures do not include those residents who possess dual German and Swiss citizenship.

As the example of Büsingen clearly demonstrates, there are certain advantages in the economic assimilation of an enclave by the surrounding state. Above all, the positive economic measures of the neighbor (crop bounties, trade schools etc.) are extended to the isolated area, and it is allowed to function "normally." Finally, there is a special bonus involved if the host country happens to be a nation which has a harmonious and prosperous economy.

#### Campione d'Italia

Like Büsingen, this tiny Italian exclave possesses very close economic ties with Switzerland. But by way of contrast, its general economic orientation towards the neighbor has never been the subject of a formal treaty.<sup>31</sup>

Already in 1855 difficulties arose over customs regulations. However, although both Italian and Swiss authorities made various suggestions to resolve the matter, no binding agreement was concluded. Instead, the two sides were content to let customary practice prevail and maintain the status quo. The only serious attempt to alter this scheme by Italy was made by the Fascists. But it failed miserably.<sup>32</sup>

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<sup>31</sup>That the exclave is indisputably part of Swiss customs territory is evidenced by a footnote appended to Article 1 of the Swiss Postzollordnung (Blumenstein and Gassman, Die schweizerische Zollgesetzgebung, 1927).

<sup>32</sup>See G.W.S. Robinson, opus cit., p. 292.

Campione's de facto economic union with Switzerland bears important ramifications for enclave dwellers. Essentially, it means that the little community falls behind the customs fence of the neighbor and outside that of the home state. And although the Italian currency circulates to a limited degree among local inhabitants, the Swiss franc enjoys general use.<sup>33</sup>

But also noteworthy is access to the neighboring market. The enclave lies so close to Lugano that area residents rely almost exclusively on it for shopping and the sale of produce. And because Campione is not able to support all its inhabitants from the resources of its territory, many must go to work there.<sup>34</sup>

Like the mainland, Campione is poorly endowed by nature, although it enjoys a pleasant climate. Much of the area is unsuited to farming because of the mountainous terrain. And there are no significant mineral deposits there.

Traditionally, the local population earned a modest living from low-level farming and fishing activities.<sup>35</sup> But

<sup>33</sup>Private communication, Office of the Mayor of Campione to writer, May 23, 1973.

<sup>34</sup>Luigi Pedreschi, "L'exclave italiano in terra svizzera di Campione d'Italia," Revista Geografica Italiana, Vol. 64 (March, 1957), p. 39.

<sup>35</sup>Giovanni Cenato, Campione d'Italia in der Geschichte und in der Kunst (Como, Italy: Grafica Centonze, undated), not paginated.

this is no longer true as the exclave now has its own "industry." A local factory produces artistic ceramics and, besides area people, employs highly-skilled artisans from Lombardy. These ceramic products have acquired international fame and are exported to countries all over the world.<sup>36</sup>

VIII. EMPLOYMENT OF LABOR FORCE IN CAMPIONE,  
ITALY AND SWITZERLAND  
(1970 EST.)<sup>37</sup>

EMPLOYMENT	CAMPIONE	ITALY	SWITZERLAND
	%	%	%
AGRICULTURE		21	8.8
INDUSTRY		40	52
SERVICES & COMMERCE	90		39.2
OTHER	10		

<sup>36</sup> Mariuccia B. Zecchinelli, Campione d'Italia (Como, Italy: Casa Editrice Pietro Cairoli, 1968), pp. 14-15.

<sup>37</sup> The figures for Campione were provided by the office of the mayor, whereas those for Italy and Switzerland come from Laurence Urdang, opus cit., p. 700 and p. 769.



Without question, however, the principal source of income in Campione is derived from "Il Casino." Founded in 1933, this expensive gambling house employs a substantial portion of local wage earners (between 200 and 250 in 1957).<sup>38</sup> And with its gay dance hall and fine restaurant is a major center of attraction in the Lugano region. Since gambling is strictly forbidden in surrounding Switzerland, it is popular with Swiss citizens and tourists alike.

This gambling institution has put a strain on normally cordial relations with the host country. When it was first opened with the obvious intention of circumventing the Swiss ban, Switzerland quickly reacted by cordoning off the entire area from the outside world. And no visitors were allowed in until a less defiant posture was subsequently adopted.<sup>39</sup> According to a compromise worked out by Swiss and Italian officials, Swiss citizens are today denied access to the main table and must gamble in a separate room, where stakes may not exceed five Swiss francs.<sup>40</sup>

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<sup>38</sup>Luigi Pedreschi, opus cit., p. 35.

<sup>39</sup>In 1917, an earlier attempt was made to open a casino in Campione but the Swiss government eventually persuaded Italian authorities to close it down. See C. Trezzini, "Campione," Historisch-Biographisches Lexikon der Schweiz, Vol. II (Neuenburg, Switzerland: F. Attinger, 1924), p. 482.

<sup>40</sup>Pierre Raton, "Les Enclaves," Annuaire Francais de Droit International, Vol. 4 (1958), p. 190.

Taxes accruing to Campione from this casino have made it possible to modernize the exclave. And as a consequence, several modern hotels have been built including the majestic "Grand Hotel Campione d'Italia," completed in 1956.<sup>41</sup> All these improvements have contributed in no small way to the tourist boom that has struck the outlier and have helped to transform it into a famous holiday resort.

IX. POPULATION GROWTH IN CAMPIONE<sup>42</sup>  
(1900-1973)

YEAR	PERMANENT RESIDENTS
1900	460
1910	550
1920	590
1930	640
1940	900
1950	1020
1960	1530
1970	1970
1973	2200

<sup>41</sup>Giovanni Cenato, opus cit.

<sup>42</sup>Data source: Office of the mayor of Campione, May 23, 1973.

Campione's increasing prosperity is pretty well reflected in its population curve, which since the beginning of this century has been rising constantly. Until 1930, this increase was moderate.. But then during the next decade, when the casino was opened, it shot up almost 30%. The demands made by the mother country on the outlier during World War II would seem to account for a considerably reduced pace in the 1940s. Since the exclave was modernized in the 1950s, population growth has jumped by leaps and bounds, with the largest proportional jump taking place in the last three years.

Today about 2,200 persons have a permanent address in Campione. Approximately 30% of these individuals are of foreign nationality. Quite surprisingly, the overwhelming majority are not Swiss but German.<sup>43</sup>

In the main, Campione's spectacular economic expansion in the last quarter of a century has been matched by similar dynamic growth in the home state. But in stark contrast to Italy, which since 1971 has been suffering from growing pains, the local economy is continuing to develop at a rapid rate.

As far as economic diversity is concerned, both parties have undergone incredible transformation. Although

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<sup>43</sup>Private communication, office of the mayor of Campione to this writer, May 23, 1973.

there are still basically two Italys: a relatively affluent industrialized north and a depressed and largely rural south, a major shift to industry from agriculture, which occupied about half of the labor force before the war, has taken place. In Campione, farming, which played a key role in local economic life before World War II, has been abandoned completely for the service industry.

Generally speaking, tourism has been extremely important to Campione and Italy. But while the tourist trade represents a major source of foreign exchange to the latter, the whole economic life of the former depends almost entirely on this sector.

Although the exclave has shared similar economic success as the mainland, it has been spared many of its debilitating economic problems. Thus unemployment, which has long been one of Italy's principal problems, has rarely troubled exclave dwellers.<sup>44</sup> And crippling strikes, which have so often been a sign of economic instability in the parent country, have not occurred. For the most part, Campione has its close ties with Switzerland, a towering example of overfull employment and a place where strikes are virtually unknown, to thank for this.

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<sup>44</sup>During the 1930s, when many foreigners were thrown out of work in Switzerland, area people remained relatively unaffected because of the opening at this time of the casino.

### The Baarle Ex- and Enclaves

As we have just seen, the particular conditions of economic life in exclaves may arise from either a special relationship with the parent state or economic assimilation by the host country. However, the thirty-eight Belgian and Dutch outliers around Baarle seem to fall into an intermediate category. This is because they form one village and exclave dwellers interact accordingly.

At one time local economic life was centered on agriculture. But like both Belgium and Holland the role of this sector of the economy is of considerably diminished importance today.

There are several reasons for this. In the first place, although individual plots are farmed intensively, the extensive intermingling of two jurisdictions severely hampers efficient crop production. In the second place, local residents have discovered that they can obtain a greater profit by selling their farms to real estate developers. Partially due to their smuggling potential, enclaved areas are highly desirable for homes and business establishments.<sup>45</sup>

The startling shift away from agriculture in Baarle can be readily seen from Dutch economic statistics. Twenty-five

<sup>45</sup>Information given this writer in Baarle, August, 1972.

years ago some 60% of the labor supply of Baarle-Nassau derived an income from tilling the soil. By 1960, this percentage had dropped to 47%. Two years ago (1971), it stood at 34.5%.<sup>46</sup>

X. EMPLOYMENT OF LABOR FORCE IN BAARLE-DUC AND BAARLE NASSAU  
(1961 EST.)<sup>47</sup>

EMPLOYMENT	BAARLE-DUC	BAARLE-NASSAU
	%	%
AGRICULTURE	26	47
INDUSTRY	42	24
OTHER	32	29

XI. EMPLOYMENT OF LABOR FORCE IN BAARLE-NASSAU, BELGIUM AND HOLLAND  
(1971 EST.)<sup>48</sup>

EMPLOYMENT	BAARLE-NASSAU	BELGIUM	HOLLAND
	%	%	%
AGRICULTURE	34	6	7
INDUSTRY	31	34	39
OTHER	35	60	54

<sup>46</sup>These figures have been extracted from a social and economic report prepared by officials in Baarle and dated April, 1972. Hereafter this report is cited as Sociologisch Rapport Baarle-Nassau/Hertog.

<sup>47</sup>Ibid.

<sup>48</sup>Ibid.

In striking contrast to other parts of Belgium and the Netherlands, there is no great industry in Baarle. And what textile and leather manufacturing goes on, is of limited economic significance. Although no recent statistics for Baarle-Duc are available, 31% of the working population of Baarle-Nessau were thus employed in 1971. Because so few positions exist in local industry, many inhabitants are forced to commute back and forth between home and host states. Some even seek jobs as far away as West Germany.<sup>49</sup>

Approximately 35% of the local labor supply is composed of various small groups. These include people engaged in publishing, administration, shops and other modest business enterprises.<sup>50</sup>

Despite the fact that Baarle functions more or less as a single community, its two separate orientations are of no small economic importance. For one thing, exclave dwellers are put in the envious position of being able to pick and choose between the two. This incredible situation has become a remarkable source of profit to area residents.

For example, Dutch cigarettes are currently more expensive than Belgian. There are just 5,200 inhabitants of

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<sup>49</sup>Sociologisch Rapport Baarle-Nessau/Hertog.

<sup>50</sup>Ibid.

Baarle-Nassau entitled to buy cigarettes at Belgian prices, yet it so happens that in one ordinary year they seemed to have consumed more than 100 million.<sup>51</sup> With this exorbitant demand, almost every shop and bar on Belgian territory stocks cigarettes nowadays while Dutch shopkeepers hardly sell them.

Obviously, local people are not the only ones to take advantage of this unique arrangement. Citizens from miles around regularly flock to Baarle to do their shopping. On weekends, when unusually large numbers of outsiders pour into town, the streets are filled with Dutch housewives who are on the outlook for every kind of commodity that sells cheaper in Belgium than Holland. During the days when the Dutch still had rationing, special buses made runs from all over the country to the double town where Belgian goods could be purchased on a ration-free basis.<sup>52</sup>

The development of tourism has become the prime source of revenue in Baarle. However, it is not entirely clear which is the greater drawing card: the craziness of the place or the shopping advantages. In any case, the exclaves are fast becoming a tourist highspot, with some 40-50,000 visitors converging on them each month.<sup>53</sup>

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<sup>51</sup>Robert Leigh, "Splitville," an undated article with no date or place of publication.

<sup>52</sup>C. d'Olivier Ferron, "International Enclaves and the Question of State Servitudes," International and Comparative Law Quarterly, Vol. 4 (April, 1955), p. 300.

<sup>53</sup>Estimate given this author by Baarle tourist official, August, 1972.



Needless to say, locals of both nationalities have not been slow to capitalize on the tourist boom. Main street is lined with shops, well stocked with diverse wares, attractive cafés and two good hotels -- naturally, a Belgian and Dutch one. There is even a convenient snackbar and restaurant situated in the downtown area. Appropriately called "Restaurant Enclave," it is built on a Belgian outlier.

Baarle-Duc and Baarle-Nassau belong respectively to Belgium and Dutch customs territory. But as a result of a series of agreements signed on February 3, 1958 establishing the Benelux Economic Union no duties are levied on goods circulating between parts of the village.<sup>54</sup> No doubt, this practice is a good thing, for a wandering boundary line makes it practically impossible to control either incoming or outgoing traffic.

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<sup>54</sup>In a convention drawn up in London in 1944, the Belgian and Dutch governments agreed to adopt a common customs policy after the war. In 1946, a council was established to integrate the different tariff systems, a difficult task since Belgian and Luxembourg tariffs were relatively high and specific, while Dutch rates were low and levied on an ad-valorem basis. A compromise was reached which had the effect of substantially increasing Dutch rates. This agreement formed the basis of the Benelux Union of Belgium, the Netherlands and Luxembourg, which went into effect on January 1, 1948. While it provided a common tariff against outside states, however, it did not result in free internal trade. Thus varying excise taxes remained which were collected when goods passed from one country to another. Complete economic union, which was originally planned for 1950, was not achieved until 1958, when the treaties establishing the Benelux Economic Union were signed. They went into effect on November 1, 1960 and are to run for fifty years.

The fact that there are no border control points in Baerle might lead one to suppose that the double community is a smuggler's paradise. In fact, smuggling is not as important as it once was. This is because the contrast between Belgian and Dutch merchandise is no longer so great, and it is now legal for exclave residents to buy from both sources.<sup>55</sup>

To be sure, the clandestine exchange of goods is still carried out. And almost all inhabitants are active in one way or another. But although no statistics are readily available local officials attribute most smuggling activities to small-scale backyard dealings. And unless there is flagrant provocation the police tend to look the other way.<sup>56</sup>

Gambling is another economic pursuit that has been exploited with a fair degree of success. The opportunity to turn a profit arises out of the discrepancy between Belgian and Dutch laws. In the former state, games of chance are subject to a tax, whereas in the latter they are strictly forbidden.<sup>57</sup>

Undoubtedly, the most notorious attempt to exploit this situation involved the erection of a casino in the exclave

<sup>55</sup>Information supplied this writer in Baerle, August, 1972.

<sup>56</sup>Ibid.

<sup>57</sup>La Métropole (Belgium), May 25, 1957.

of Zondereygen. This enclaved territory was the subject of a thorny dispute between Belgium and the Netherlands in the 1950s. Due to the hesitation of either country to exercise jurisdiction there for fear of offending the other, Zondereygen became sort of a "no man's land." Eventually, tensions caused by the presence of a gambling house led both states to submit their quarrel to the International Court of Justice.<sup>58</sup>

Baarle's increasing prosperity is reflected to a large degree in its population curve, which has climbed steadily since 1900. The following tables portray this growth as it pertains to the Belgian (Baarle-Duc) and Dutch (Baarle-Nassau) outliers.

XII. POPULATION GROWTH IN BAARLE-DUC  
(1900-1973)<sup>59</sup>

YEAR	PERMANENT RESIDENTS
1900	1028
1910	1221
1920	1308
1930	1534
1940	1580
1950	1799
1960	2020
1970	2158
1973	2600

<sup>58</sup>For details refer to page 129.

<sup>59</sup>Data source: Office of the mayor of Baarle-Duc.

As the above table would seem to indicate, substantial population growth took place in the Belgian out-liers between 1900 and 1930. But although this upward trend continued during the economic crises of the 1930s, it was curtailed somewhat. From 1940 to 1960 the number of exclave dwellers again skyrocketed but then tapered off in 1970. The biggest real increase in population growth has apparently come in the last three years when there was a gain of some 25%.

### XIII. POPULATION GROWTH IN BAARLE-NASSAU

(1900-1973)<sup>60</sup>

YEAR	PERMANENT RESIDENTS
1900	2190
1910	2500
1920	2828
1930	3267
1940	3818
1950	4349
1960	4507
1970	5066
1973	5200

<sup>60</sup>Data source: Office of mayor of Baarle-Nassau.

From the preceding table, it would appear that total population growth for Baarle-Nassau in the twentieth century is exactly twice that of Baarle-Duc. At the same time it indicates a more rapid upward surge for the Dutch community during the period 1900 and 1950. Although the number of local inhabitants has been growing at about equal pace in the Belgian and Dutch exclaves in the last quarter of a century, Baarle-Nassau's increase for the first part of the 1970s is less than half that of Baarle-Duc.

XIV. NATIONALITY OF THE POPULATIONS OF  
BAARLE-DUC AND BAARLE-NASSAU  
(1961)<sup>61</sup>

NATIONALITY	BAARLE-DUC	BAARLE-NASSAU
	%	%
BELGIAN	69	9.5
DUTCH	31	90
OTHER		0.5

As one might suspect, the overwhelming majority of exclave dwellers is composed of citizens of the home state. This is most striking in the case of Baarle-Nassau where

<sup>61</sup>Data source: Sociologisch Rapport Baarle-Nassau/Hertog.

approximately 90% of the population is composed of Dutch nationals (as contrasted to 69% in Bæarle-Duc which is made up of Belgian citizens). Not surprisingly (given the tax advantages), the percentage of Belgian residents living on Dutch territory (9.5%) is far below that of Dutch inhabitants residing in the Belgian outliers (34%). In both the Belgian and Dutch exclaves, however, the number of nationals belonging to third states is negligible.

From our study of economic life in Bæarle, we have seen that the unusual intermingling of Belgian and Dutch territory there presents problems particular to its unique situation. Nevertheless, the experience of the dual community provides a useful illustration how exclaves may retain close ties with the motherland while at the same time offering residents a choice between two economies.

#### CONCLUSIONS

In the beginning of this chapter we set out to inquire into the general economic plight of those exclaves under study. Particularly, we were interested in discovering the orientation they had taken: whether they had become tied economically with the possessing state, assimilated with the economy of the surrounding nation or had tried to strike out on an independent economic course. In keeping with our main

thesis it was felt that such an investigation would be especially important in determining their economic viability and hence their individual and collective futures.

The findings of this inquiry appear to indicate that it is normal for exclaves to be treated as integral parts of the economy of the parent state. Thus they are provisioned by the home country, belong to its customs territory and its currency is official.

But some exclaves have followed the opposite line of development, becoming closely assimilated with the surrounding country. Two notable examples are Büsingen and Campione, which fall behind the Swiss customs fence. Remoteness and difficult access to markets in the national state have driven them into the arms of the neighbor. And Germany and Italy have never been successful in re-orienting their economy.

Felling between these extremes are the Basle ex- and enclaves. Though they are supplied from Belgium and Holland respectively, area residents buy retail from either source and both currencies are allowed to circulate freely.

Whatever economic orientation exclaves have taken, they partake in diverse income producing activities. Often these practices differ radically from those engaged in on the

mainland. But in each case they have adopted them to remedy disadvantages stemming from encirclement.

Traditionally, the major form of economic activity has centered around agriculture. In this respect, crop raising and animal husbandry were popular pursuits. However, farming is now of diminishing importance.

Surprisingly industry has not taken up the slack. True many inhabitants are employed in neighboring industrial centers. But contrary to the situation in the home state industry plays no great role in the economic life of the exclave.

Most of the exclaves derive a considerable portion of their revenue from the tourist trade. Two lie in regions particularly noted for their beauty, and consequently have a compelling natural attractiveness. Campione is situated on wonderfully picturesque Lake Lugano, while Livina lies in a splendid valley in the fastness of the Pyrenees. But even those outliers that are located in unexciting environments have managed to exploit their political uniqueness. The Berle ex- and enclaves, which consistently attract large numbers of tourists, are a good example of this. The only exclave that has failed to capitalize on its tourist potential is Büsingen.



Gambling has generally not been exploited by exclaves. The major exceptions are Campione and Bearle-Duc. In the former instance, a luxurious casino is the center of attraction, whereas in the latter games of chance provide the fragmented community with a regular income from licenses.

Finally, with the exception of Büsingen and Campione, which are oriented towards the enclosing state, all the exclaves profit from smuggling opportunities. Although no statistical data are available, local officials believe that most of this clandestine activity is conducted on a small scale. Talks with exclave dwellers seem to confirm this view.

What implications do our findings hold for exclave stability? Just this. The once acute economic problems posed by isolation have been resolved to such an extent that annexation by the host state is no longer the subject of serious consideration. Nowhere is evidence of this clearer than in the case of Büsingen, which for years existed in a kind of insecure economic limbo, completely dependent on the help of variable and uncertain Swiss customs concessions. During this period of uncertainty the incidence of instability was high as various proposals were banded back and forth to terminate this unprofitable situation. Now that a treaty has been signed, however, providing for economic union with the host country all desire to disenclave the area appears to

have died down.

Apart from the remedying of local problems created by encirclement, there is one other forceful economic reason for the maintenance of the status quo. Specifically, area residents, with the exception of Büsingen, have been able to capitalize on their extreme geographical location, which was once a distinct liability, and transform it into a source of immense profit through tourist promotion. If only for this consideration, the individual and collective futures of the European exclaves seem secure -- at least for the short term.

## Chapter 10

### CONCLUSION

As it may be recalled, the general purpose of this research effort was to shed light on exclaves as a special class of phenomena in international relations. Because these discontinuous areas are little known and have been largely ignored in the literature, this study may be seen as an attempt to redress the balance and give exclaves some of the attention they deserve. In this respect, our investigation represents a modest, pioneering effort and is subject to all the shortcomings inherent therein.

It was felt that our general aim could best be realized through a detailed analysis of the forty-one exclaves surviving in Western Europe. After all, the largest number of states is directly involved there.

Our framework of analysis was a relatively simple one. Very broadly, we sought to map and analyze empirical relationships that would highlight similarities and differences among the European exclaves. At a precise methodological level we were concerned specifically with an inquiry into their form, origin, survival, access, administration and economy. For these represent the major dimensions of the problem.

Throughout our research we were guided by two central hypotheses. Namely, that exclaves are part of a discernible trend leading to the consolidation of state territory and the absorption of foreign enclaved bodies. And that they are basically unstable phenomena in international relations. Both of these propositions formed the fundamental research orientation of this study and an attempt was made to probe and elucidate them in systematic fashion.

Such a comprehensive treatment of exclaves is of value on several grounds. For one thing, it contributes to our scanty knowledge of an important international problem. For another, it points up the difficulties posed by territorial fragmentation and illuminates the importance of territorial continuity in the modern state system. Finally, it offers significant insights into the frequently debated question whether or not the "territoriality" of the nation-state is bound to vanish.

#### SUMMARY OF FINDINGS

The shape of a state, we are told by geographers, has a great deal to do with its viability. The same is true of geographical cohesiveness, which is one of the underlying assumptions of the contemporary world system. Whenever there is discontinuity in territory, there is cause for concern. For the lack of geographical unity tends to increase the variety of social groups and physical environments, adds to the difficulties of travel and communications and increases the length of the boundary to be guarded. At the same time, it poses severe administrative, economic and political problems.

The problems raised by territorial fragmentation are nowhere more obvious than in instances where a true exclave (or enclave) is found to exist. For the outlier disturbs the internal functioning of the surrounding state by, as it were, puncturing a hole in its territory and creates difficulties for the administering country

Although exclaves (enclaves) are not uncommon phenomena, there is a great deal of confusion about them. Frequently, difficulty is encountered because exclaves or enclaves are confused with other related discontinuous territories. Technically, an exclave is part of one state, completely surrounded by the territory of another. Seen from the point of view of the country in which the outlier is physically located, it is an enclave; whereas seen from the viewpoint of the state to which it belongs, the enclosure is an exclave. Thus the only difference between the two is one's point of view.

The first diplomatic document known to contain the word "enclave" was the Treaty of Madrid, which was signed in 1526. But it is known that exclaves existed long before that time.

The greatest number of exclaves was present in Europe during the Middle Ages. In fact, a well-known feature

of feudalism is that it produced a "patchwork" political map. Discontinuous holdings were tolerated then because of the decentralized nature of feudal rule and warfare.

Most of these disconnected areas consisted of counties, marks, baronies, duchies, bishoprics and free towns. Each was dominated by a local ruler who either by war, marriage, inheritance or purchase was always striving to enlarge his domain. Many of these settlements were virtually self-sufficient. They had to be because the cost of transportation was so high; only goods of considerable value and little bulk were exchanged over distances of more than a few miles. As a consequence, most of these territories and their environs were surrounded by underdeveloped lands, cutting them off from their neighbors.

Access at this time was not the problem it became later. Due to the diversity of landholdings, sometimes strung out for miles, each local sovereign was aware that it was in his own interest to promote passage through the underdeveloped lands and between settlements. For if one petty ruler were suddenly to deny transit across his territory to his neighbor's, he could expect certain retaliation in kind.

In the period following the Peace of Westphalia (1648), which is generally regarded as the turning point in the estab-

lishment of the contemporary state system, territorial discontinuity was most marked in Germany, although it also existed in France, the Netherlands and Geneva. During the nineteenth century the rise of Prussia and the advance towards German unification were not unconnected with the large number of outlying portions of Prussian territory enclaved in the territory of other German principalities and vice versa. In this respect, Frederick the Great, who made Prussia a major world power, was concerned primarily with "rounding out" his territory.

During and after the crusades, exclaves existed in the eastern Mediterranean region. Presumably, they could be found elsewhere as well. Frequently, they were established along the coasts of Africa and Asia by imperial powers in search of new markets.

The penetration of India is a classic example of how the exclave pattern was established. Western bases were originally constructed along the coast of the subcontinent in the sixteenth and seventeenth centuries because Portuguese and French traders were in desperate need of permanent places where they could load and unload goods. At first, these trading posts consisted merely of a few houses, offices and storage facilities. But then, after these unprotected buildings were repeatedly broken into, a pretext existed for introducing

small contingents of foreign troops into these areas. Soon thereafter, Portuguese and French forts sprung up in their place, and it was not long before Westerners were expanding their control over the surrounding country.

With the rise of a strong national state system, states tended to consider the presence of all foreign bodies within their boundaries as a flagrant violation of their sovereignty. The newly emerging countries of Asia and Africa were unusually zealous in this regard. To a large degree this was because these isolated territories served as unpleasant reminders of colonial yoke. As a result, many such areas were physically annexed by the host state.

In Europe, territorial consolidation was virtually complete in all countries but Germany by the end of the Congress of Vienna. Although some exclaves were liquidated peacefully, apparently the most important factor in their extinction was the role of conflict, particularly after the Peace of Westphalia. For frequently these discontinuous territories became inextricably involved in great power struggles. France, which openly pursued a belligerent course in international relations after 1648, probably represents the extreme case. Through various acts of conquest, intrigue and partition, it succeeded in "rounding out" its territory. The element of conflict seems least important in the inner-German situation because the Holy Roman Empire provided a natural framework within which opposing interests could be reconciled.



Our investigation of the old European exclaves and those situated in other parts of the world would appear to bear out our initial suspicion that exclaves are basically unstable phenomena and are part of a discernible trend leading to the consolidation of state territory and the absorption of foreign enclaved bodies. Unfortunately, the lack of detailed information about these outliers did not permit us to comment extensively on different factors contributing to this trend. In general, it appears that systemic variables outweighed indigenous factors in explicating their rise and fall.

If exclaves were once unstable phenomena, this no longer seems to hold true in regard to that shrunken band still surviving in Europe. New factors are in operation, and they must be taken into account. Altogether, there are forty-one exclaves, and all of these are situated in the western part. In essence, they can be reduced to four problem areas:

#### Llivia

This is a small Spanish tract of land, which lies in the departement of Pyrénées-Orientales in the eastern Pyrenees of France. All told, the exclave possesses an area of 12.87

square kilometers, in which approximately 886 citizens are settled. Located on the Cerdagne (Cerdanya in Catalan) plain, Llivia is situated about twenty kilometers east of Andorra. Its communications with Spain are guaranteed by the existence of a so-called "chemin neutre" (neutral road), which traverses an intervening strip of French territory 1.8 kilometers wide.

#### Büdingen

This small parcel of West Germany is located in the Kanton of Schaffhausen in northern Switzerland. It is situated on the right bank of the Rhine River and has an area of 7.62 square kilometers. The population of the enclave totals 914 at present, of whom some twenty percent are Swiss nationals. Büdingen is joined with the mainland by a roadway, which leads through a strip of Swiss territory approximately 700 meters wide.

#### Campione d'Italia

This is a famous holiday resort, which is situated on the east bank of Lake Lugano in the Kanton of Tessin in southern Switzerland. It is a relatively tiny area, occupying exactly 2.6 square kilometers. Altogether, its population counts some 2,200 persons, approximately thirty percent of whom are foreigners. The short roadway, linking Campione with the central state, lies across some 700 meters of Swiss territory.

### The Baarlo Ex- and Enclaves

These scattered territories of various sizes and shapes comprise an extremely complicated, if little known, intermingling of Belgian and Dutch jurisdictions. Although most map makers greatly simplify the situation by portraying only one tiny exclave of Belgium in Holland, there are in fact thirty-eight outliers altogether. Twenty-five are Belgian exclaves in the Netherlands, while eleven form Dutch enclosures in the Belgian exclaves; two are Dutch enclaves in Belgium proper. Most of these isolated plots of land are situated close together in the village of Baarle in the province of North Brabant in Holland. Those that belong to Belgium form the commune of Baarle-Duc and those that belong to the Netherlands, the commune of Baarle-Nassau. Together these ex- and enclaves consist of 7.25 square kilometers and have a population, totalling 7,800.

So far as we were able to tell the European exclaves do not have common origins. Each is the product of individual circumstances. Thirty-nine are of feudal origin (Campione, Baarle-Duc and Baarle-Nassau); and two have beginnings in the modern, post-Westphalia period (Büdingen and Llivia). The first to emerge as an outlier was Campione, in the eighth century. The last was Büdingen, which became isolated in the late seventeenth century.

Interestingly enough, only one exclave was created by accident. And that was Llivia -- through an oversight in a

treaty. All the others were brought into existence by specific acts; one was presented as a gift (Campione); another came to be enclaved out of a fit of pique; finally, the intertwining of the two Baarles resulted from a feudal quarrel.

But perhaps more remarkable than their early existence is their survival through the present. For one might well have expected that out of so many changes in the political landscape something would have been done to terminate these enclaves. As things were, they survived because of the acquiescence of three parties: the parent state, the neighbor and the enclave itself.

Without doubt, the home country exercised the greatest influence in preserving the status quo. After all, although it did not function with appreciably less efficiency because a minute fraction of its jurisdiction lay detached in the territory of another, part of its domain and thus its sovereignty was symbolically at stake.

The principal threat to the survival of the enclave came from the surrounding state, which was not at all pleased with a situation that left a hole punctured in its territory. Take for example Swiss efforts at incorporation. For centuries that country strove to gain control of Büsingen and Campione. But because the host state was not prepared to use force, no disenclavement was effected.

While the enclaving country is usually in a better position to agitate for change, exclave dwellers have occasionally done so. Again Campione and Büsingen may be used as illustrations. In 1848, the former pleaded for Anschluss with Switzerland. But this effort took place during a period of rebellion in the home state and so it was not taken seriously. The demands for absorption by Switzerland were more intense in Büsingen -- especially during the inter-war period. But evidently the Swiss were reluctant to accept any annexation proposal out of fear that what had been taken from a weaker neighbor might well be reclaimed by a stronger one.

The desire of exclave dwellers to become part of the host state, however, does not seem to have been prevalent. In fact, it was the exception. The case of Llivia may be cited in this connection. Area residents are very patriotic. And it was their very love of country that thwarted repeated French attempts to annex the exclave.

The survival of so many exclaves today poses a number of complex problems for the countries directly involved. Probably no more acute is the controversial issue concerning the right of passage over foreign territory. For it is only across the territory of a neighbor that the exclave can maintain communication with the motherland.

It is to be regretted that the ICJ in the Right of Passage Case (1960) left undecided the question whether or not in the absence of actual agreement there is a right of transit. It found that existing practice in individual circumstances was the appropriate guide, and that it was unnecessary to resort to general international law. However, the lesson of the case is that while free access means in fact limited access a right of access nonetheless remains.

Although the ICJ decision left a lot to be desired, our study of the European situation shows that the right of passage is normally recognized by states either by express treaty guarantees or, if there is no such treaty, by local usage. With respect to the former, it has been observed that the right of communication is by no means absolute, being usually regulated by the encloving country.

A right of transit appears incontrovertible in the case of private persons. Twice (Büdingen and Llívia) it is confirmed by treaty and three times (Campione and the Barles) it is the product of old established custom. Whatever checks are exercised over this traffic do not impinge on this fundamental right of way.

As for access of civil authorities, it seems conclusive that these persons enjoy the necessary passage. Where

specific treaty provisions are lacking, host states have usually tolerated this practice for so long that a customary right of travel may be asserted in behalf of the national state.

The diversity of the situation regarding the circulation of goods defies sweeping generalization. In two instances (Büdingen and Campione) "customs fences" have been erected around the outliers so that normal goods traffic is not free but subject to levy. The Bearle ex- and enclaves possess a right based on long-standing practice, whereas only Llivia has an iron-clad treaty guarantee.

With respect to the entry and exit of customs officers, present arrangements differ from area to area. Büdingen stands alone in its treaty-governed situation. In Llivia, the police perform the customs function. While the transit of customs personnel to Campione is banned overland, these persons do not seem to have any trouble reaching the isolated community by water. Finally, local usage must be taken as the guide in regard to the Bearles.

The passage of armed police is tolerated in every case but is closely circumscribed. Except for Büdingen, which is covered by written agreement, access is rooted in local custom. It is submitted that a general right of communication

thus exists for police visiting exclaves in line of duty.

As far as the critical question regarding the circulation of armed soldiers is concerned, present practice is pretty much in conformity. No customary right of transit exists and in only one instance (Büdingen) is limited access provided by treaty. By and large enclosing states have striven mightily to exempt their territory from all foreign troop movements.

To sum up, then, all the evidence before us points in one indisputable direction: to a general right of passage into exclaves. While this access is by no means absolute, the Western European experience shows that at least the ordinary resident, civil official and solitary police officer making his round of duty enjoy free, if not unregulated access.

Such a generally accepted right of transit has important implications for exclave stability. On the one hand, it represents a crucial accommodation by home and host states in favor of the former. A potentially explosive situation is defused and a basis for harmonious relations is established. On the other hand, the right of access becomes merged with the right of the exclave to continue to exist. In this way, a certain amount of legitimacy is bestowed on the discontinuous territory.



Despite the barrier of separation, administrative ties between the possessing state and the exclave are usually quite close. In fact, although the outlier has shown a degree of autonomy in some areas, it seems that the central state has gone out of its way to meet the administrative needs of the outlier and make it conform with the administrative pattern of the mainland. The most extreme example of this policy can be seen at Saarle; there practically every public service and every branch of administration is duplicated right down to letter boxes in the streets. This has all taken place because the surrounding country tends to tolerate (if not facilitate) the exercise of civil authority by the parent.

The chief link between the home state and outlier is the local mayor. Not usually an elected representative, he is the chief administrative officer of the area. And his authority is considerable. For in his limited "foreign policy" role he is charged with delicately balancing the interests of three parties.

To help him handle routine problems, each burgomaster has a professional staff at his disposal. For the most part, his circle of advisers is small, barely a handful. The major exception is the Mayor of Saarle-Nassau, who has some twenty-four assistants. It is normal for many of these personnel to be composed of exclave dwellers.

As a rule local residents are subject to the laws and ordinances of the national state as well as its administration of justice. The major exception is Büsingen, where inhabitants possess the same legal rights and immunities as ordinary Swiss citizens and may be tried in Swiss courts. Due to the relatively small size of these territories, jails and courts are not found in them but on the mainland.

All the exclaves have their own police force. Generally, they are token in number, however, not exceeding ten officials. Büsingen, which is allowed up to twenty-seven men at present, is the only deviation from this rule. In every case, law enforcement officials are empowered to make arrests and otherwise maintain law and order.

The administrative bond is not so strong when it comes to the collection of taxes. Although direct taxes are always paid to the mother country, indirect taxes are another matter. In at least two instances (Büsingen and Campione), local people pay them to the neighbor.

Every enclave but one enjoys its own postal, telephone and telegraph services, although arrangements differ according to locality. The single exception is Llivia, which has its own postal and telephone systems but lacks telegraph facilities.

Remoteness seems to pose a special problem for the home state in regard to the administration of utility services. For it provides them in only one case (Llivia). In every other instance, gas, electricity, etc. is supplied without interruption by the surrounding country.

Public transportation is entirely supervised by the parent state except for those exclaves situated behind the Swiss customs fence. In this respect, the bus appears to represent the most important means of getting back and forth; all exclaves maintain a regularly scheduled line. But Büsingen and Campione are the only ones which also enjoy a public shipping service.

Further, we discover that all the outliers possess their own public schools. Generally, these facilities provide area children with the opportunity to pursue both primary and secondary education. However, for higher education, exclave dwellers must go to the home state, although in certain cases they may matriculate at a university in the host state where they are treated on an equal basis.

The fact that the exclave is usually tied closely with the mainland has important ramifications for status quo maintenance. First, this easy relationship provides a useful framework in which the inevitable administrative problems posed by

difficult geographical circumstances may be overcome. This in turn leads to greatly reduced potential areas of conflict with the host state, which is punctured by the outlier.

Second, because the organs of the possessing country are made to function in the detached area, law and order may be maintained. This capacity to enforce its will in the territory is one of the most important requisites for the maintenance of sovereignty over it. Anytime effective control is absent secession is a real possibility.

Finally, close administrative ties strengthen the physical security of the exclave. The territory becomes closely identified with the national state and any attempt by the neighbor to alter the status quo must take its military capability into serious consideration.

Theoretically, the exclave is faced with three major alternatives in the economic sphere: (a) it can choose to pursue ties with the mainland and hope that the neighbor will acquiesce; (b) it can opt for economic assimilation with the host state; or (c) it can attempt to strike out on an independent course. The first choice has all the advantages of conformity, while the second alternative dispenses with obstacles posed by distance. The last possibility is without doubt the most risky; for it involves a degree of defiance of parent

and surrounding countries that neither is likely to tolerate from such a puny jurisdiction.

Our investigation indicates that it is normal for exclaves to be treated as integral parts of the economy of the home state. Thus they are provisioned by it, belong to its customs territory and its currency is official.

But some exclaves have followed the opposite line of development, becoming closely assimilated with the enclosing country. Two notable examples are Büsingen and Campione, which fall behind the Swiss customs fence. Remoteness and difficult access to markets in the national state have driven them into the arms of the neighbor. And Germany and Italy have never been successful in re-orienting their economy.

Falling between these extremes are the Baarle ex- and enclaves. Though they are supplied from Belgium and Holland respectively, area residents buy retail from either source and both currencies are allowed to circulate freely.

Whatever economic orientation exclaves have taken, they partake in diverse income producing activities. Often these practices differ radically from those engaged in on the mainland. But in each case they have adopted them to remedy disadvantages stemming from encirclement.

Traditionally, the major form of economic activity has centered around agriculture. In this respect, crop raising and animal husbandry were popular pursuits. However, farming is now of diminishing importance.

Surprisingly, industry has not taken up the slack. True many inhabitants are employed in neighboring industrial centers. But contrary to the situation in the home state, industry plays no great role in the economic life of the exclave.

Most of the exclaves derive a considerable portion of their revenue from the tourist trade. Two lie in regions particularly noted for their beauty, and consequently have a compelling natural attractiveness. Campione is situated on wonderfully picturesque Lake Lugano, while Llivia lies in a splendid valley in the Pyrenees. But even those outliers that are located in unexciting environments have managed to exploit their political uniqueness. The Baarle ex- and enclaves, which consistently attract large numbers of tourists, are a good example of this. The only exclave that has failed to capitalize on its tourist potential is Büsingen.

Gambling has generally not been exploited by exclaves. The major exceptions are Campione and Baarle-Duc. In the former instance, a luxurious casino is the center of attraction,

whereas in the latter games of chance provide the fragmented community with a regular income from licenses.

Finally, with the exception of Büsingen and Campione, which are oriented toward the enclaving state, all the exclaves profit from smuggling opportunities. Although no statistical data is available, local officials believe that most of this clandestine activity is conducted on a small scale. Talks with exclave dwellers seem to confirm this view.

What implications does the local economic situation hold for exclave stability? Just this. The once acute economic problems posed by isolation have been resolved to such an extent that annexation by the host state is no longer the subject of serious consideration. Nowhere is this more evident than in the case of Büsingen, which for years existed in a kind of insecure economic limbo, completely dependent on the help of variable and uncertain Swiss customs concessions. During this period of uncertainty the incidence of instability was high as various proposals were banded back and forth for the termination of this unprofitable situation. Now that a treaty has been signed, however, providing for economic union with the host country all desire to disenclave the area seems to have died down.

## OUTLOOK FOR THE FUTURE

As we have seen from our historical research, there is evidence lending support to our contention that exclaves are basically unstable phenomena and are part of a discernible trend leading to the consolidation of state territory and the absorption of foreign enclaved bodies. Nevertheless, support for these hypotheses must be qualified to the extent that the lack of detailed information prevented us from analyzing these phenomena more rigorously.

Further, if these propositions were once descriptive of political reality, they no longer seem to apply to those exclaves presently embedded in Western Europe. There are several reasons of a systemic and indigenous character for this.

In the first category, the degree of instability of the historical European exclaves appears related to general instability of the times. Most important here is the fact that war was then an accepted and legal means of policy fulfillment and sovereignty was personal. These two factors accounted for frequent, if not radical, changes in the political landscape. Today, the situation is quite different. Peace prevails and has for the last twenty-eight years in Western Europe. Moreover,



the concept of sovereignty has evolved to such an extent that it is now largely associated with the independence of states.

Other exogenous factors relating to enclave stability include the increasing respect for national boundaries which has occurred in Europe since the end of World War II. Generally, recognition of the territorial status quo has taken place in the context of intensifying economic and political cooperation.

This new state of affairs brings us to another systemic element relevant to enclave stability in Europe: the existence of a generally cordial atmosphere in relations among the countries of Western Europe. Such a setting makes it highly unlikely that a European state would provoke a major confrontation over a foreign enclaved body embedded in its territory.

Lastly, as far as exogenous factors are concerned, enclave stability is not unrelated to the status of these outliers as low salience phenomena. All are very small; and they do not have large populations. Moreover, their political and military significance is limited.

In the second category, a searching examination of the local scene has revealed the operation of important indigenous elements which tend to reenforce a somewhat untidy though regularized status quo. First, the crucial question of access has

been resolved successfully. While the right of transit is by no means absolute, at least the ordinary resident, civil official and solitary police officer making his round of duty enjoy free, if not unregulated, passage. Second, it has been shown that despite the barrier of separation administrative ties between the possessing state and the exclave are quite close. Undoubtedly, our most startling finding, is the degree to which the host state facilitates these ties. Third, grave economic problems stemming from isolation have been resolved to the mutual satisfaction of all parties. Indeed, extreme geographic position -- what was once a distinct economic liability -- has been transformed into a source of immense profit through tourist promotion. If only for these reasons then, the individual and collective futures of these areas now seem secure.

## BIBLIOGRAPHY

The most difficult aspect of this study was not its writing but the patient collecting and sifting of data. For the last four years I have been engaged in a systematic effort to compile a bibliography that would cover my topic comprehensively.

My task was at once made simple and rendered complex by the paucity of material. The Library of Congress was perhaps my greatest disappointment in this respect. For although it provides a basic subject index to a significant portion of the world's present output of published (and unpublished) material, it does not even list "exclave" (or "enclave") in its main catalogue.

Due to this lack of consideration for my topic by the world's foremost library, I was compelled to consult many general and specialized indexes, published intermittently on such diverse subjects (or aspects thereof) as geography, history, international relations, law and political science. In the main, this proved to be an arduous and time-consuming pursuit and one that yielded little profit.

Normally, one of the best sources of current published information about any subject is the periodical literature. But careful review of such widely-known periodical indexes as

Readers' Guide and Social Sciences & Humanities Index revealed that articles on my topic are few and far between. Even the usually dependable New York Times Index contains next to nothing on the problem.

As expected, few books have been of use to me. The major texts on international relations do not even mention exclaves (enclaves) much less discuss them. Generally, of those standard works in international law and political geography that I have consulted and included in my bibliography, only sketchy references have been made to the subject. While it is true that a few highly-specialized treatises have been addressed to one or another European exclave, these rare books are long out of date and deal primarily with limited time periods; none are in English.

Two World Court cases have involved exclaves and consequently have generated much useful material. The first and least important is the Case Concerning Sovereignty over Certain Frontier Land (1959). Essentially, this dispute dealt with conflicting claims of ownership by Belgium and Holland over two plots of land. The second and most significant case in terms of precedent setting is the Case Concerning Right of Passage over Indian Territory (1960). Briefly, this controversy involved an alleged right of Portugal to get back and forth to its exclave over Indian soil. Although these

cases are not of great international importance, they are extremely relevant to this research effort and I have mentioned their materials in the bibliography.

A close scrutiny of Dissertation Abstracts International, which publishes abstracts of dissertations submitted to University Microfilms by a varying number of cooperating North American and European universities, reveals a startling lack of scholarly attention to the exclave phenomenon. As far as I was able to learn through independent sources, only eight dissertations in the world have ever been directly concerned with the problem. Several boundary studies, which have been included here, however, do refer to exclaves at least tangentially.

Interestingly enough, all but one of the eight theses were written from the juridical point of view. And the overwhelming majority of these deal with single problem areas or aspects thereof. Büsingen is extraordinary in that it has been the subject of four legal investigations. Until this study was undertaken, however, there was no known attempt to examine exclaves from an interdisciplinary perspective.

Despite efforts to assemble a comprehensive bibliography on exclaves, most of my material pertaining to the current situation in Western Europe has been obtained from first-hand research. During July-August, 1972, I conducted a

special fact-finding tour, which took me through all the outliers under study. On the scene I talked with local officials, who are charged with the day-to-day administration of these areas. I also had the chance to interview exclave dwellers. At a higher level I talked with numerous persons in the ministry of interior and foreign office who have a general responsibility for the problem. For the most part my conversations with these authorities were friendly and informative, although the political sensitivity of my subject barred me from reading current reports. Much of the material I received in this way was on a "not for attribution" basis. For this reason many of the footnote citations in the chapters dealing with the current time are not intended so much as sources but as references where the reader may corroborate independently the material I have presented.

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