

The Ends and Fictions of Occupation

Between Fact and Norm

1.1 The Normative Shift from Conquest to Occupation

What is occupation in international law? Section III of the Hague Regulations, entitled “Military Authority over the Territory of the Hostile State,” opens with Article 42: “Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.”¹

This Article and the question of whether a situation can be defined as occupation under its terms is addressed in detail in the next chapters, where I address the implications of a normative approach for the decision on the existence, and specifically the ending, of occupation. I also consider how the shift to a normative rather than merely factual (together with the shift to a functional rather than conceptual) understanding of occupation is necessary if occupiers are to be held accountable in complex situations involving varying levels of control. The present chapter, however, deals with another facet of the need for a normative understanding of occupation, which I will argue is imperative to prevent occupation from becoming yet another variation of conquest, colonialism, apartheid, or other forms of prohibited regimes.

Of critical importance for the purpose of this chapter is Article 43 of the Hague Regulations, which determines:

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety/civil life, while respecting, unless absolutely prevented, the laws in force in the country.²

¹ Art. 42 of the Hague Regulations on the Laws and Customs of War on Land, 1907.

² Note that the official French version refers to “l’ordre et la vie publique.” The term “civil life” is therefore more appropriate than the term “safety” used in the English version, hence the two alternatives appearing in the text. See EYAL BENVENISTI, *THE INTERNATIONAL LAW OF OCCUPATION* 68 (Oxford Univ. Press, 2nd ed. 2012), footnote 1.

This provision became the cornerstone in the determination of the nature and scope of the occupant's responsibility: the occupation is temporary and the occupying power is to manage the territory in a manner that protects civil life, exercising its authority as a trustee of the sovereign.

In an article I co-authored with two colleagues, we discerned three basic legal principles inherent in the law of occupation deriving from Article 43, from other provisions of the Hague Regulations, and from the law of occupation in general³:

- (a) Sovereignty and title to an occupied territory are not vested in the occupying power. This principle derives from the inalienability of sovereignty, which cannot be breached through the actual or threatened use of force. Under contemporary international law and in view of the principle of self-determination, the said sovereignty is vested in the population under occupation.⁴
- (b) The occupying power is entrusted with the management of public order and civil life in the territory under its control. Given the principle of self-determination, the people under occupation are the beneficiaries of this trust, and their dispossession and subjugation is thus a violation of this trust.
- (c) Occupation is temporary, and may neither be permanent nor indefinite.

These principles are obviously interrelated: the constraints on the occupant's discretion, clarified in principles (a) and (b) respectively, lead to the conclusion that occupation must necessarily be temporary, and the violation of the temporal constraints expressed in principle (c) cannot but violate principles (a) and (b). In the next section, I address each of the three principles separately. Together, they reveal that occupation is not merely a *factual* situation that triggers the application of certain norms, in particular the relevant part of the 1907 Hague Regulations (Hague Regulations) and the Fourth Geneva Convention (GCIV), which apply within occupation.

³ For a detailed discussion, see Orna Ben-Naftali, Aeyal M. Gross, & Keren Michaeli, *Illegal Occupation: Framing the Occupied Palestinian Territory*, 23(3) BERKELEY J. INT'L L. 551 (2005).

⁴ Traditionally, sovereignty had been attached to the state that had held title to the territory prior to occupation. Currently, the focus has shifted to the rights of the population under occupation. See *id.* at 554. For a discussion of this shift in the law of occupation from an emphasis on the political interest of the ousted regime to the protection of the population under occupation, see BENVENISTI, *supra* note 2, at 72. On the centrality of the need to respect the sovereign rights of the occupied people, see Alain Pellet, *The Destruction of Troy Will Not Take Place*, in INTERNATIONAL LAW AND THE ADMINISTRATION OF OCCUPIED TERRITORIES 169–204 (Emma Playfair ed., Oxford: Clarendon Press 1992).

Rather, occupation is also a *normative* concept that is governed by the normative framework outlined earlier. Any occupation that deviates from this framework, we argued, is illegal.⁵

A normative approach to occupation differs from a “merely factual” one, which views occupation as a neutral situation to which certain norms apply.⁶ In this chapter and the ones to follow, I show how the normative contents of occupation may be of guidance in some of the current debates and dilemmas on the international law of occupation. Given the denial of liberty and self-determination inherent in these situations, occupation is a “suspicious” regime that may perpetuate the denial of freedoms unless the normative content is strictly adhered to. The normative approach differs from an approach that considers occupation in international law conceptually neutral. Advocating such an approach, Eyal Benvenisti claims that the drafters of the Hague Regulations took pains to emphasize that occupation is a *de facto* regime.⁷

⁵ For a more elaborate discussion of the thesis, see Ben-Naftali et al., *supra* note 3. On the argument that occupation is illegal if it violates a preemptory norm of international law that operates *erga omnes* and relates to territorial status, and on the consequences of the illegality of occupation, see Yael Ronen, *Illegal Occupation and Its Consequences*, 41 ISR. L. REV. 201 (2008). In Ronen’s view, illegal occupations are primarily those resulting from the violation of the prohibition on the use of force and of the right of self-determination, or maintained in violation of the right to self-determination. On the argument that the concept of illegal occupation is – and should remain – confined to situations resulting from the occupant’s unlawful use of force and does not extend to occupations resulting from the use of force in self-defense by the occupying state, see Ariel Zemach, *Can Occupation Resulting from a War of Self-Defense Become Illegal?* 24(2) MINN. J. OF INT’L L. (2015). This position differs from the one advocated here, which dissociates the legality of the occupation from the *jus ad bellum* question of the legality of the use of force. On “illegal occupation” in the context of the legality of the use of force, see also Adam Roberts, *What Is a Military Occupation?* 55 BRIT. Y.B. INT’L L. 293–294 (Ian Brownlie & Derek Bowett eds., Oxford Univ. Press 1984).

⁶ Peter Stirk points to a built-in tension in this regard. On the one hand, military occupation is defined as a *factual* situation, and the authority and obligation of the occupier are defined *de facto*. On the other hand, authority, obligation, and sovereignty are constitutive *norms* in the political relationship between the occupier and the inhabitants of an occupied territory, which define military occupation as a form of government. PETER M. R. STIRK, *THE POLITICS OF MILITARY OCCUPATION* 54 (Edinburgh Univ. Press, 2009). The approach suggested here, which seeks to give occupation as such a normative content, may be seen as a way to address this tension.

⁷ BENVENISTI, *supra* note 2, at 15. See also Benvenisti’s critical discussion of the likening of occupation to colonialism in some UN documents and in the Additional Protocol to the Geneva Conventions of 1949 (relating to the Protection of Victims of International Armed Conflict [Protocol I]), June 8, 1977, 1125 U.N.T.S. 3. BENVENISTI, *supra* note 2, at 17. As discussed in the text, occupation may actually turn into new forms of colonialism or become akin to it. Benvenisti does not deny that occupation can become “illegal,” but, in his view, only an occupation regime that earnestly refuses to contribute to efforts to reach a peaceful solution should be illegal since it would then be viewed as involved

This factual approach is apparent, for example, in his discussion of whether Israel continues to be the occupier in the West Bank and Gaza after, respectively, the Oslo agreements and the Gaza disengagement that are discussed in detail in Chapter 3. Benvenisti notes that “the question of occupation is a question of fact” and derives conclusions from facts regarding the exercise of power by the Israeli army in the relevant territories.⁸

To set the framework for this discussion, I want to point to two possible readings of the law of occupation. A benevolent reading sees it as a body of law guaranteeing that occupation – a situation of one state occupying and controlling the territory (and with it the population) of another – will not be akin to conquest, colonialism, or apartheid but will rather be a temporary rule that will benefit the local population until the territory is freed. Given the principles of self-determination and non-acquisition of land by force,⁹ occupation should not lead to indefinite control and/or annexation. This determination is the outcome of the principle summarized in Oppenheim’s famous maxim, “[t]here is not an atom of sovereignty in the authority of the occupying power.”¹⁰ A less benign reading, however, views the law of occupation as profiting from the cloak of temporality and the stamp of international legality since – unlike conquest, colonialism, or apartheid – it is considered an accepted legal phenomenon.¹¹ Seeing

in outright annexation. No claim of illegality would be proper in his view as long as the occupant’s conditions for peaceful settlement of the conflict are motivated by “reasonable security interests.” BENVENISTI, *supra* note 2, at 245–246. Benvenisti also moves beyond a merely factual approach, at least on the question of when the law of occupation applies, which I discuss in Chapter 2. He notes that the Hague Regulations on the Laws and Customs of War on Land, 1949, and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287, envisioned what he calls “a simple factual test.” Given the modern law on state sovereignty, however, normative criteria are now relevant to the analysis of when the law of occupation applies. BENVENISTI, *supra* note 2, at 199.

⁸ BENVENISTI, *supra* note 2, at 211.

⁹ For a discussion of these principles and their relevance, see *infra* notes 15–22, and accompanying text.

¹⁰ Lassa Oppenheim, *The Legal Relations between an Occupying Power and the Inhabitants*, 33 LAW Q. REV. 364 (1917).

¹¹ On the illegality of colonialism, see G.A. Res. 1514 (XV), U.N. GAOR, 15th Sess., Supp. No. 16, U.N. Doc. A/4684, at 66 (Dec. 14, 1960) (Declaration on the Granting of Independence to Colonial Countries and Peoples). On the illegality of apartheid, see International Convention on the Suppression and Punishment of the Crime of Apartheid, G.A. Res. 3068 (XXVIII), 28 U.N. GAOR, Supp. No. 30, U.N. Doc. A/9030, at 75 (1974), 1015 U.N.T.S. 243; 1998 Rome Statute of the International Criminal Court, Art. 7(j), July 17, 1998, 2187 U.N.T.S. 90. On the customary nature of the prohibition on apartheid, see John Dugard & John Reynolds, *Apartheid, International Law, and the Occupied Palestinian Territory*, 24 EUR. J. INT’L L. 867, 882 (2013). On conquest, see *infra* notes 12–19 and accompanying text.

occupation as “neutral” may actually legitimize new forms of what should be considered illegal – including new forms of conquest, colonialism, and apartheid – by dressing them up in the new clothes of the legal and temporary institution of occupation. This chapter argues that this danger is almost unavoidable, unless occupation is reconceived as not merely a factual situation but also, or mainly, as a normative content.

The rise of two important legal norms – the prohibition on the acquisition of land by force¹² and the right of self-determination¹³ – clarified that military occupation cannot be a legal way of acquiring territory and that “conquest” is illegal.

Historically, the right of conquest was understood as the right of the victor to sovereignty over the conquered territory and its inhabitants. The requirement of fact to be fulfilled before title by conquest can be established is that the territory must be in the conqueror’s effective possession.¹⁴ Sharon Korman shows that classic as well as nineteenth and early twentieth century scholars almost unanimously agreed on the presence of a right of conquest in international law, while later arguments stated that international law no longer upheld this right.¹⁵ The adoption of the self-determination principle and of the legal prohibition on the use of force by states rendered conquest, or the forcible acquisition of territory, an invalid mode for acquiring title, leading to what Korman calls “the demise of the right of conquest.”¹⁶ This demise parallels the development of the modern law of occupation, mainly during the nineteenth century. As Benvenisti points out, the modern law of occupation was derived from the norm – at that time developing solely within Europe¹⁷ – that sovereignty may not

¹² On the prohibition of the use of force, see 1945 UN Charter, Art. 2(4), June 26, 1945, A.T.S. 1. On the prohibition of the use of force as part of international customary law, see the decision in the *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, I.C.J. Rep. 1986, 14 (June 27), ¶¶ 187–201. On the prohibition of acquisition of land by force, see SHARON KORMAN, *THE RIGHT OF CONQUEST* 179–248 (Oxford: Clarendon 1986).

¹³ On the right to self-determination, see International Covenant on Civil and Political Rights, Art. 1(1), Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171, and International Covenant on Economic, Social and Cultural Rights, Art. 1(1), Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3. Western Sahara, Advisory Opinion, 1975 I.C.J. 12 (Oct. 16), ¶¶ 54–71. See generally ANTONIO CASSESE, *SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL* (Cambridge Univ. Press 1995).

¹⁴ KORMAN, *supra* note 12, at 8.

¹⁵ *Id.* at 7–8.

¹⁶ *Id.* at 133.

¹⁷ On the law of occupation developing as European law, see also YUTAKA ARAI-TAKAHASHI, *THE LAW OF OCCUPATION* 72 (The Hague: Martinus Nijhoff 2009).

be alienated through the use of force and that an occupying power is precluded from annexing the occupied territory. Although responsible for the management of public order and civil life, the occupier is bound to respect and maintain the political and other institutions existing in the territory.¹⁸ Besides sovereignty, then, it is the rise of the self-determination idea that contributed to the distinction between occupation and conquest.¹⁹ The relationship between the historical development of the law of occupation and the current norm prohibiting acquisition of land by force exceeds the scope of this chapter. For the purpose of the present discussion, then, the two are viewed as interrelated. The normative content of the law of occupation should thus reflect both this prohibition and the self-determination principle.

The rise of sovereignty and of the prohibition on the use of force in the acquisition of land, as well as the rise of self-determination, all evidently lead to the modern law of occupation. But the law of occupation, as noted, began as a “European project,”²⁰ chiefly as a social contract among European powers that were viewed as entitled to sovereignty.²¹ Until

¹⁸ BENVENISTI, *supra* note 2, at 1. On the development of the concept of occupation in international law, see BENVENISTI, *supra* note 2, at 20–24; Eyal Benvenisti, *The Origins of the Concept of Belligerent Occupation*, 26 LAW & HIST. REV. 621 (2008). On how the respect for sovereignty, together with the demise of conquest, constituted a cardinal force in the emergence of the modern concept of occupation eventually codified in the Hague Regulations, see ANDREA CARCANO, *THE TRANSFORMATION OF OCCUPIED TERRITORY IN INTERNATIONAL LAW* 19–26, 34–36 (Boston-Leiden: Brill Nijhoff 2015). Von Glahn points out that the existing rules governing military occupations were preceded by centuries in whose course no real distinction was drawn between military occupations, on the one hand, and conquest and subjugation, on the other. A demarcation between “real acquisition” and “mere occupation by the armed forces of a belligerent” first appeared in the second half of the eighteenth century, but only after the end of the Napoleonic Wars did scholars and jurists succeed in separating occupation from annexation through armed conquest. Within a comparatively short period of time, the modern rules of military occupation were developed by scholars, followed by the Lieber Code, the Brussels Declaration, and eventually the Hague Regulation. See GERHARD VON GLAHN, *THE OCCUPATION OF ENEMY TERRITORY* 7–9 (Univ. of Minnesota Press 1957). For a history of the law of occupation, see also David Glazier, *Ignorance Is Not Bliss: The Law of Belligerent Occupation and the U.S. Invasion of Iraq*, 58 RUTGERS L. REV. 121, 128–185 (2005).

¹⁹ BENVENISTI, *supra* note 2, at 25–26. Stirk argues that the usual narrative about the distinction between conquest and occupation is misleading because it exaggerates the dominance of the norms and practice of conquest but still accepts the “basic conceptual distinction between conquest and occupation that is most widely accepted as fundamental to the emergence of military occupation as a distinctive form of military government and temporary authority.” STIRK, *supra* note 6, at 11, 227.

²⁰ BENVENISTI, *supra* note 2, at 22

²¹ Yutaka Arai-Takahashi, *Preoccupied with Occupation: Critical Examination of the Historical Development of the Law of Occupation*, 94 INT’L REV. RED CROSS 51, 78 (2012)

decolonization, the legal regime of occupation applicable to “civilized” European states differed from the system of colonial rule implemented in regard to “uncivilized people.” *Jus in bello* was considered inapplicable to “colonial occupation,” which allowed acquisition of title to territory and forced annexation.²² In the postcolonial era, self-determination trumped colonialism and “colonial occupation” is no longer exempt from the modern law of occupation. But as the present chapter shows, unless occupation adheres strictly to its normative content it can, under the cloak of temporariness, lead to very similar results of continued rule by a conquering country, this time in the garb of legitimacy.

The next section explores in greater detail the three principles shaping the normative content of occupation.

1.2 Occupation: The Normative Content

1.2.1 *The Suspension of Sovereignty: Occupation Does Not Confer Title*

Oppenheim’s dictum on occupation not giving even one atom of sovereignty resonates in current statements on the law of occupation. Benvenisti claims that the entire law of occupation is founded on the principle of the inalienability of sovereignty through the unilateral action of a foreign power, whether through the actual or threatened use of force. Effective control by foreign military force can never, in and by itself, bring about a valid transfer of sovereignty.²³ Similarly, Dinstein states that “[t]he main pillar of the law of belligerent occupation is embedded in the maxim that occupation does not affect sovereignty.”²⁴ Roberts argues that the prohibition on unilateral annexation is the foundation of the entire idea of occupation as subject to a distinct regulatory framework.²⁵ Reflecting

²² *Id.* at 75. On this see also Nehal Bhuta, *The Antinomies of Transformative Occupation*, 16 EUR. J. INT’L L. 721, 729 (2005); CARCANO, *supra* note 18, at 40. For a broad analysis of these underlying concepts of sovereignty within the colonial context of international law, see Anthony Anghie, *Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law*, 40 HARV. INT’L L. J. 4, 22, 44–46 (1999); ANTHONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* 82–84, 100–107 (Cambridge Univ. Press 2004).

²³ BENVENISTI, *supra* note 2, at 6.

²⁴ YORAM DINSTEIN, *THE INTERNATIONAL LAW OF BELLIGERENT OCCUPATION* 49 (Cambridge Univ. Press 2009).

²⁵ Adam Roberts, *Transformative Military Occupation: Applying the Laws of War and Human Rights*, 100 AM. J. INT’L L. 580, 582–585 (2006).

the principle prohibiting the acquisition of land by force, this basic tenet of the law of occupation is valid even if the status of the territory under consideration is in dispute.²⁶ The rationale behind this principle rests, as noted, on the prohibition on the use of force and on the right to self-determination. Contrary to the past international law that had recognized the right of conquest, then, the law of occupation has an entirely different starting point. Not only does Article 43 of the Hague Regulations not confer any sovereign powers on the occupants but it also limits their authority to the maintenance of public order and civil life, while “respecting, unless absolutely prevented, the laws in force in the country.” This proviso precludes the occupants’ annexation of territory. This preclusion was further clarified in Article 47 of GCIV, which emphasizes that annexation of an occupied territory does not deprive the protected persons of the rights guaranteed by the Convention. Annexation, then, does not alter the status of the territory or its population.²⁷ The principle is reaffirmed in Article 4 of Additional Protocol 1 (AP1) to the Geneva Conventions, restating that neither occupation of a territory nor the application of the Protocol’s provisions shall affect this territory’s legal status.²⁸

The illegality attached to the acquisition of land by force was a direct result of the international community’s gradual renunciation of the use of force as an acceptable policy.²⁹ This principle, currently one of the most basic tenets of international law, is enshrined in Article 2(4) of the UN Charter. The unacceptability of acquiring territory through the use or threat of force is thus viewed as a corollary of the prohibition on the use of force.³⁰

²⁶ See, e.g., EECC Partial Award, Central Front (Eri. v. Eth.), Ethiopia’s Claim 2 (2004) 28–29, where the Eritrea–Ethiopia Claims Commission rejected the link between the disputed status of certain territories and the protection of individuals present in these territories. The protections of international humanitarian law, held the Commission, “should not be cast into doubt because the belligerents dispute the status of the territory.” The Commission rejected the idea that only territory to which title is clear can be occupied territory. See also Roberts, *supra* note 5, at 279–283.

²⁷ COMMENTARY: IV GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR 275–276 (Jean S. Pictet ed., Geneva: International Committee of the Red Cross 1958).

²⁸ COMMENTARY ON THE ADDITIONAL PROTOCOLS OF 8 JULY 1977 TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949 73–74 (Yves Sandoz, Christine Swinarsky, & Bruno Zimmermann eds., Geneva: International Committee of the Red Cross 1987).

²⁹ For a detailed description of the evolution of the prohibition on the use of force, see YORAM DINSTEIN, WAR, AGGRESSION AND SELF-DEFENSE 78–98 (Cambridge Univ. Press 2001).

³⁰ In Korman’s words, “the only rights in respect of occupied territory to which military occupation ... give rise ... are those rights (and duties) for which provision is made in the law of belligerent occupation.” See KORMAN, *supra* note 12, at 200–218.

Most scholars, as well as international practice, have also rejected the claim that, in the event of lawful use of force resulting in the effective occupation of the aggressor's territory, a right of annexation exists with respect to that territory.³¹ Article 47, together with Article 49 of GCIV, which bans the transfer of civilians from the occupying power to the occupied territory, point to military occupation as temporary rather than permanent.³² This rule applies "irrespective of which state is the aggressor, since the laws of war, or the *jus in bello* that the law of belligerent occupation is a part, apply equally to both parties in any armed conflict."³³ Finally, significant grounds for rejecting the argument that legitimizes acquisition of territory through use of force in self-defense is the inability at times to identify who is the aggressor and who the victim in a particular conflict.³⁴

The conclusion that the use of force cannot confer legal title finds support in the UN Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States, which does not distinguish between legal and illegal use of force: "No territorial acquisition resulting from the threat or use of force shall be recognized as legal."³⁵ The same rationale underlies the UN Security Council's Resolution 242, which reiterated the inadmissibility of acquiring territory by war, despite Israel's persistent claim that it had acted in self-defense.³⁶ As Roberts notes, the annexation or quasi-annexation of the Golan Heights and East Jerusalem by Israel has not been recognized by states or international bodies, which have consistently viewed the law on occupation as applicable despite Israel's view of its actions in the 1967 war as defensive.³⁷

Complementing the notion that no use of force can confer legal title to territory is the principle of self-determination. Occupation, then, suspends sovereignty insofar as it severs its ordinary link with effective control but does not, and indeed cannot, alter it. Rather, effective control has to be exercised in a manner that accords with the obligations of the occupying power as a trustee, which are detailed in the following subsection.

³¹ *Id.* at 219.

³² *Id.* at 219–220.

³³ *Id.* at 220.

³⁴ ROBERT Y. JENNINGS, *THE ACQUISITION OF TERRITORY IN INTERNATIONAL LAW* 54 (Manchester Univ. Press 1963).

³⁵ G.A. Res. 2625 (XXV), U.N. GAOR, 25th Sess., U.N. Doc. A/Res/25/2625, at 121 (Oct. 24, 1970) (The Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States).

³⁶ S.C. Res. 242, U.N. Doc. S/RES/242 (Nov. 22, 1967).

³⁷ Roberts, *supra* note 25, at 584.

1.2.2 *Occupation as Trusteeship*

The notion of trusteeship is implicit in the principle that occupation does not confer title and that the occupant is vested, in the words of Article 43 of the 1907 Fourth Hague Convention, with the authority “to take all the measures in his power to restore, and ensure, as far as possible, public order and safety/civil life, while respecting, unless absolutely prevented, the laws in force in the country.”³⁸

Trust in this context consists of two features: the security needs of the occupying power and the maintenance of civil life, thus involving a conflict of interests between those of the population and those of the occupant.³⁹ In the nineteenth century, when state involvement in the life of the population was minimal, this framework led primarily to two rules: incumbent on the occupant was mainly the negative duty of refraining from infringing the inhabitants’ basic rights, and incumbent on the inhabitants was a duty of obedience to the occupant.⁴⁰

As the law of occupation evolved, the scales began to tip in favor of the inhabitants, a development reflected in the layer added to the Hague Regulations in 1949 – the Fourth Geneva Convention⁴¹ – which considerably expanded the protections granted to them. GCIV sets obligations to respect their persons, honor, family life, religious convictions, and customs, and to treat them humanely at all times. It ensures special protection to women, and prohibits discrimination.⁴² The Convention prohibits, corporal punishment, medical experiments,⁴³ collective punishment, pillage, reprisals,⁴⁴ inflicting physical suffering, taking hostages,⁴⁵ deportations,⁴⁶ and all retroactive criminal legislation and punishment.⁴⁷ The occupant’s

³⁸ Roberts, *supra* note 5, at 295.

³⁹ On conflicts of interest between occupant and occupied, see BENVENISTI, *supra* note 2, at 69.

⁴⁰ See generally Oppenheim, *supra* note 10, at 365–369; Richard R. Baxter, *The Duty of Obedience to the Belligerent Occupant*, 27 BRIT. Y.B. INT’L L. 235 (1950).

⁴¹ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287. On the Geneva Convention as changing the emphasis from the political interest of the ousted regime to the protection of the population, see BENVENISTI, *supra* note 2, at 12, 72.

⁴² Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Art. 27, Aug. 12, 1949, 75 U.N.T.S. 287.

⁴³ *Id.*, Art. 32.

⁴⁴ *Id.*, Art. 33.

⁴⁵ *Id.*, Art. 34.

⁴⁶ *Id.*, Art. 49.

⁴⁷ *Id.*, Arts. 65, 67.