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ISRAELI BELLIGERENT OCCUPATION
AND PALESTINIAN ARMED RESISTANCE
IN INTERNATIONAL LAW

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FOREWORD

The Research Center of the Palestine Liberation Organization published, towards the end of 1968, a study by Elias Hanna on the *Legal Status of the Arab Resistance in Occupied Territory* (Palestine Monographs 49). Some chapters of the study were translated into English and were included in Monograph 54 with two other studies on related subjects.

The Research Center now takes pleasure in publishing yet another study on the legal aspects of the Palestine resistance movement by Dr. Ezzeldin Foda.

The justice of the Arab cause and the struggle for the liberation of Palestine would have a stronger impact if they were substantiated by legal statutes. Convincing the world of the rightness of our liberal, revolutionary stand would actually consolidate this struggle. In fact, it would complement, to a great extent, the victories of our brave heroes waging the battle of liberation in the field.

Anis Sayegh
Director of Research Center

INTRODUCTION

This detailed study is actually aimed at exposing Israel's infringement of international laws, agreements, and the charter of the United Nations. It reveals Israel's disrespect for all human considerations during the June 1967 war and directly after the cessation of the armed conflict — i.e. following the occupation of the West Bank of Jordan, the Sinai Desert, and the Golan Heights. It was this occupation which drove the population in these areas to rebel, carry arms, and organize themselves inside and outside the occupied territories, resisting both the occupying forces and the illegal measures they adopted, measures that contradicted the temporary nature of the occupation.

Perhaps the greatest fault of the Israelis is their attempt to realize the plan first set out by the Zionists and the West about a quarter of a century ago — at any price. This plan called for the establishment of a racialist Jewish state in Palestine, extending from the Euphrates to the Nile River. The realization of this plan was to be carried out at the expense of Arab existence, irrespective of the legal considerations involved therein. It was in this way that Israeli crimes made their beginning. In fact, they started with the launching of a war,

despite the fact that it was prohibited by the Charter of the United Nations (Article 2/4) and other international laws and agreements.

Israel, whose leaders were accustomed to terrorist acts against the Arab inhabitants before and after the formation of the State of Israel, believed that committing crimes against humans was the best and most effective way of imposing its existence and domination on the Arab people. In order to realize its objective, Israel depended on Zionist influence and on misguiding world public opinion. It also tried to disprove all the legal principles governing occupation, the treatment of occupied people and other international agreements on war and occupation. In fact, Israel disregarded man's experiences during the two World Wars, especially the right of occupied people to resist occupation and defend the homeland against all aggressions and crimes by the occupying authorities.

This study thus developed slowly into a comparison between Israel's particular stand and international principles, particularly the series of resolutions adopted by the United Nations General Assembly and the Security Council in this respect. The study also includes the stands and tendencies of that part of world public opinion which is concerned with maintaining the ties of the international organization and sponsoring the protection of human rights *vis-a-vis* Israeli crimes and contraventions.

For this reason, the first part of this study was

limited to the consequences of the Israeli aggression and its echo at the United Nations and in the concerned world opinion. The purpose was mainly directed at presenting evidence of Israel's abjurement and abstention from showing reverence to resolutions of the international organization. Israel's illegal measures include annexation, maltreatment of civilians and their rights. Furthermore, the United Nations has been unable to adopt a firm, legal stand *vis-a-vis* the Israeli aggression — a stand that can force Israel to withdraw from occupied areas without condition or limitations. Such a withdrawal would be an affirmation of the fact that an aggressor cannot realize any regional or political gains as a result of aggression. The evidence and facts submitted here about Israel's violations and crimes are taken from the reports of representatives of the United Nations Secretary General, from what has been submitted by neutral observers, and from meetings and conferences of Human Rights Committees. The purpose of these reports is to study the legality of Israeli actions in the light of international statutes and principles, including those stipulated by international agreements and documents.

While the first part relates developments, facts, and violations the second part of this study tackles the legal position of an occupied area together with the relation of the occupying power to the occupied country.

The third part concentrates on the relation of the inhabitants to the occupation authorities in addition to the legality of resistance inside the occupied area.

It should be finally pointed out that this study does not tackle the legal aspects of the conditions and regulations of fighting which govern the activities of the resistance fighters or the treatment of prisoners. The study also does not touch on military activities carried out against civilian targets except within the limits of its examination of the legality of the occupation.

I

ISRAELI AGGRESSION AND THE UNITED NATIONS

The Negative Aspect : Responsibility of UN

The June 1967, aggression and the Israeli occupation of Arab lands in the Hashemite Kingdom of Jordan, the United Arab Republic and the Syrian Arab Republic prompted the Security Council to adopt resolutions calling for a ceasefire on June 6,7, and 9.

Jordan accepted the ceasefire on June 6 while the UAR and Syria abided by it on June 8 and 9 respectively. Despite the fact that Israel accepted the ceasefire officially on June 9, it carried on military operations, particularly against Syria aiming at the strategic position of the Golan Heights.

At the request of Syria and the Soviet Union, the Security Council continued in session between June 9 and 14 to discuss the continuing Israeli aggression. This, however, did not yield any positive results until Israel was able to occupy the Syrian city of Kuneitra. It admitted, on June 13, that it had actually occupied the city on June 10, but that in the meantime it could not abide by the ceasefire resolution because of alleged Syrian attacks on Israeli front-line villages.

What further strengthened Israel's position was the inability of the Security Council, under U.S. and British pressure, to adopt resolutions and recommendations which called for condemning Israel for its violation of the ceasefire and calling on it to withdraw behind the truce lines.

It is relevant to point out the U.S. draft resolution, which was submitted to counter the Soviet and Indian resolutions. The U.S. delegate to the United Nations, Arthur Goldberg, submitted this draft resolution on June 8. After calling on the belligerent parties to comply with the appeals of the Security Council, the U.S. resolution proposed that the ceasefire should be followed by talks, through the United Nations, on means of withdrawal, the abandonment of the use of force, and the respect of international rights.[1]

The purpose of this was to allow Israel, whose objective was in the first place to continue with its expansionist plan and to liquidate the Palestine question through the use of force and expropriation, to maintain its forces in occupied Arab territories until negotiations for the solution of the Palestine question or its liquidation were carried out — negotiations which could have lasted for months or even years.

The heated discussions that went on inside the Security Council, the General Assembly, and even the talks in UN lobbies did not yield any solution for the withdrawal of Israeli forces to positions which they

(1) UN Doc., S/7952 and Rev. 1-2.
Journal de Droit International, No. 4, 1968, pp. 863-866.

controlled before June 5. Such a solution would have stopped Israel from reaping the fruits of its criminal aggression in accordance with the international principle stipulating that "no fruits of aggression are acceptable." The reason that such a resolution was not adopted was because of U.S. opposition. The U.S. has the influence to control more than one third of the General Assembly members, thus preventing the adoption of any resolution that is not in its interests. It also has an equal control of a sufficient number of votes in the Security Council to enable it to prevent the adoption of any resolution that is harmful to its own interests. This control actually renders unnecessary the use of the right of the "veto" at the Council.

It is in this way that the U.S. stand prevented the United Nations from exercising its duties in accordance with its Charter, placing on this international body grave responsibilities in relation to the Arab countries. The fact that the question of imposing sanctions on the aggressor was not discussed encouraged Israel to continue with its disturbance of the peace in the Middle East and its refusal to withdraw from the lands it occupied. There would have been no legal difficulties in defining the aggression. Such a definition could have been made in light of the following considerations:

1. Israel justified its aggression by the aggressive Egyptian actions against her. Israel considered the closure of the Straits of Tiran as a maritime blockade and an act of war against Israel. The latter country also considered

Egypt's request for the withdrawal of UN emergency forces together with the concentration of Egyptian troops in Sinai as acts which revealed Egypt's aggressive intentions. In this way, Israel became the victim of an "armed aggression" in the broad sense and that in the light of all this, it had the right of self-defense in accordance with Article 51 of the United Nations Charter.

Israel forgot, in this regard, that the concentration of troops and the request for withdrawal of emergency forces from Sinai were necessary for Egypt as a protection against the concentration of Israeli troops along the front with Israel, especially that Israeli officials threatened to extend the battle to the heart of Syria. Israel also forgot that the closure of the Straits of Tiran, national Egyptian water that separated a historic Gulf (the Gulf of Aqaba) from the high seas, is an act that fully agrees with Egyptian sovereignty and that Egypt was exercising its right over its own territory.

It should also be pointed out that Egypt was not the first to open fire, despite the fact that Israel pretended at the beginning that this was the case. It later agreed, while the whole issue was still at the United Nations, that its air attack on Egyptian airports together with land attacks on Gaza, Sinai, and Sharm Al Shaikh, had actually preceded any Egyptian military activity.

It is thus obvious, from a legal point of view, that the Israeli aggression cannot in any way be justified. Articles 51 and 4/2 of the UN Charter prohibit the use of force against the safety of the land and against political independence while they also stand between the

aggressor and his reaping fruits of his aggression.

A large number of jurists, headed by Hans Kelsen, Luther Bach, and Kunz see the need for distinguishing between the specific meaning and stipulations of Article 51 and Article 4/2. In the light of these considerations, it becomes clear when the right of self-defense becomes permissible and legal in the United Nations Charter, irrespective of previous statutes in traditional international law.

While the United Nations Charter is founded on the principle of prohibiting the use or threat of force, it does not permit self-defense, except under the considerations and general principles of the Charter that organize a new international society where war is not allowed.

These jurists regard the use of self-defense under the Charter as limited to retaliation to an "Actual Armed Attack," as Article 51 expresses it. But this does not mean deterrent action or a deterrent war, which Israel used as a right for self-defense.

This, in fact, fully reveals the illegality of the Israeli aggression in accordance with the stipulations of Article 51 of the United Nations Charter.[2]

Despite all of this, the Israeli interpretation of

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(2) See in this regard: L. Oppenheim, *International Law,* Vol 2, p. 156.

Also H. Kelsen, *Recent Trends in the Law of the Charter of the United Nations,* 1952, p. 914.

Kunz, "Individual and Collective Self-Defense," *A.J.I.L.,* 1947, pp. 872, 878.

Brownlie, "Use of Force in Self Defense," *British Yearbook of International Law,* 1961.

Article 51 should be expounded and debated from a jurist's point of view. D.W. Bowett and others advocate the idea that the UN Charter does not limit the rights that states enjoy in exercising their sovereignty. Bowett introduces the text which deals with the jurisdiction of the United Nations as an autonomous international organization in which is embodied the rights and sovereigntie of all states. He argues that states have not abandoned their right of self-defense nor have they given up the right of specifying the circumstances in which they find themselves forced to resort to self-defense. He cited the beginning of Article 51 which stated that "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense..." In the Kellogg-Briand Pact of 1928, it was emphasized that each state has the right of defending its lands against attack or invasion and this state alone has the right to decide the circumstances that call for resorting to self-defense.

In light of this explanation, the principles of the traditional international law become a precedent to the UN Charter while the latter becomes a complement to these laws and not an identical copy of them. In this way, the traditional international laws become a reference for the extent of the measures that should suffice for self-defense in addition to specifying the importance of carrying out a deterrent action when it appears liable that the enemy will carry out an armed attack.[3]

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(3) D.W. Bowett, *Self-Defense in International Law*, 1958, pp. 184 - 185.

Waldock points out in this regard that what Article 51 governing an armed attack as a means for self-defense, stipulates the use of mutual help and the collective right for self-defence.[4]

Schwarzenberger also points out that the Charter did not introduce anything new to the general principles of self-defense except to govern the resort to self-defense until the Security Council has taken measures necessary to maintain peace. It is possible that the Security Council might fail to reach a solution for the conflict. In such a case, it will be deemed necessary to resort to the general principles of self-defense in traditional international law.[5]

Yet despite the pretexts and arguments used by this group of jurists, the Israeli aggression on the morning of June 5 is not legally justified. There is still need for agreement on whether Egypt's closure of the Gulf of Aqaba through the Straits of Tiran can be considered an act of aggression or not. The United Nations has not yet agreed on this point. In fact, there is no agreement yet on the need for such a discussion.

Even if we follow Bowett's view that there is no direct necessity between aggression and self-defense — i.e. that a resort can be made to self-defense irrespective of whether aggression takes place — did Egypt's closure of the Straits of Tiran justify the Israeli air and

(4) Waldock, "Use of Force in International Law," *Recueil des Cours,* No. 81, 1952, pp. 455 - 503.

(5) Schwarzenberger, "Principles of International Law," *Recueil des Cours,* No. 87, 1955, p. 195.

(6) Bowett, *op. cit.,* note 54.

land attacks, at Egypt's front and at all other fronts? In other words, one raises the question of whether Israel's overall aggression was the necessary and proportional measure for responding to Egypt's closure of the Gulf of Aqaba. Naturally, one would be assuming that Egypt's closure of the Straits of Tiran was illegal in the light of international law and that, in accordance with the law, it was not exercising one of its rights as a sovereign state within its regional jurisdiction over the Straits of Tiran — this waterway which represents Egyptian national water in its capacity as a strait linking a historically national water basin and the high seas. Or, in the least, Egypt would have control of regional waters in which it can prevent shipping of enemy vessels during time of belligerency.

Israel, however, before it resorted to its overall attack, did not meet the limited Egyptian measure with an equal dimension as the principles of legal defense stipulate in the traditional laws.[7]

2. The aggressor's nonadherence to the consequent ceasefire resolutions together with the open and clear confrontation that was needed to condemn and deter the aggression.

The ceasefire resolution is addressed to both of the belligerent parties. It expounds the will of the Security Council for cessation of the fighting and its denial of the

(7) See *Harvard International Law Journal,* Spring, 1968, Comment, pp. 252-253.

legality of the acquisition of gains as a result of one party's adherence to the resolution while the other did not. As long as one of the two sides seeks to either attack or ask for peace, then the resolution should be respected.

Israel did not abide by the ceasefire resolution, for even a provisional period, until the evening of June 9, 1967, during which time she was able to realize her expansionist aims by occupying Sinai, the West Bank, and the Golan Heights. This, in itself, reveals the nature of the Israeli aggression and stresses the need, at the time, for the Security Council to adopt measures that would deter Israel and impose sanctions on it.[8]

Both legally and practically, the refusal of one of the belligerent parties to abide by the ceasefire resolution or even its infringement of the ceasefire provides outright evidence of the aggression and specifies the aggressor.[9] This has been stipulated by international action at the UN and also in general international agreements with the

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(8) What is rather interesting in relation to the Zionist imperialist planning for expansion at the expense of the Arab states, is a reference in the report of the British Labor Party National Congress on December 1, 1944, to opening the doors for Jewish immigration. The report stated that the Arabs could be encouraged to emigrate as a means for settlement of Jews. The Arabs are to be paid cash compensations for their lands while their resettlement will be facilitated. The Arabs own a lot of land, the report said, and they have no right to ask for the expulsion of the Jews from narrow Palestine lands. The report noted that it is the duty of the Labor Party to reconsider the possibility of extending Palestine borders in agreement with Egypt, Syria, and East Jordan.

(9) Quincy Wright, "The Concept of Aggression in International Law," *A.J.I.L.* 1935, pp. 373, 382; "The Prevention of Aggression," *A.J.I.L.* 1956, pp. 514, 530.

ultimate aim of improving the means for preventing belligerency on September 26, 1931.

The United Nations action should not have stopped at the mere demand of halting the fighting as a temporary measure until a solution to the conflict had been reached. There was no excuse that the UN organs should not find a justification, after the actual fighting was over, to specify the aggression and determine who the aggressor was no matter what the circumstances and despite the fact that the aggressor did not adhere immediately to the ceasefire.

It is futile to claim that, following the halting of fighting, the UN had no right to impose a solution on the conflict or that it was only authorized after the ceasefire to issue recommendations for the solution of the situation if the continuation of the fighting would lead to a threat to the peace and security of the world in accordance with articles 2/11, 14, 33, 34, 36, and 37 of the UN Charter.[10] In addition to these powers, the UN has to implement the stipulation of Chapter 7 of the Charter. This chapter deals with the measures that should be taken in cases where peace is threatened and in case of aggression. The Chapter also governs the steps that must be taken in case the ceasefire resolution is not respected, leading to regional expansion and to seizure of land, followed by the refusal of the occupier to withdraw or even in the

(10) Quincy Wright, "Legal Aspects of the Middle East Situation," *Law and Contemporary Problems,* Winter 1968, p. 25.

case where the aggressor annexes the occupied land before a solution to the conflict is reached (Articles 39, 41, and 42 of the Charter).

Without these powers, the United Nations would have failed to reach the legal means that would guarantee the effectiveness of its resolutions. Its existence without such guarantees would be detrimental to the cause for which it was first founded to defend and for which it banned the use of force. The general threat that arises out of the use of force cannot be measured without the application of guarantees and effective means to deter the aggressor and to impose punishments on him (Articles 39, 41, 42 of the UN Charter).

3. The definition of aggression does not depend either on the one who started the fire or on failure to abide by the ceasefire resolution. There are other considerations which jurists have come to agree on that prove and define both the aggression and the aggressor. Among these considerations are the military preparations of the Israelis, the statements expressing Israel's desire to expand and create the vital link for itself extending from the Euphrates to the Nile. To this should be added measures adopted by the Israelis following the aggression, such as the annexation of Jerusalem, refusal to withdraw, imposition of legislation together with administrative and educational measures imposed on the inhabitants of the occupied territories. There were other indications of advanced preparations aimed at expansion in Arab land.

It is obvious that such outright infringements of

international law, the UN Charter, and the Geneva Convention of 1949 are a continuation of the objectives for which the enemy prepared, started, and waged the aggression. It is also for these reasons that Israel refused passage for the United Nations Emergency Forces through its territories. It did not want to expose its intentions and preparations for waging an offensive on the eve of the battle.[11]

It is legally and practically accepted that advanced preparation for the battle and the military superiority after the battle are both taken as evidence for defining the aggression and the aggressor.[12] This was the case in the Nuremburg trials. It was also stipulated by the report of the Rumboldt Committee, which carried out investigations on the question of the Greek-Bulgarian borders in 1925. The Lytton Commission also agreed on this point when it investigated the Manchuria incident in 1931. The advanced preparation of Japan for the war with China and its superiority after the war played a role in the submission of the report.

This does not mean that there is a necessary relationship between military victory and the will for aggression. It does mean, however, that victory and military superiority in modern warfare are allied to the one that delivers the first blow in addition to the measures taken before that in the form of preparations that reveal bad intentions, a desire for superiority, and a love for domina-

(11) *Ibid.*, p. 26.
(12) *Ibid.*, p. 27.

tion and aggression.

If every particular stage of the battle is regarded independently, in the light of the circumstances and considerations that can help in defining the aggressor, then the June 1967 war together with the advanced Israeli military preparations and the Israeli military superiority provide ample proof that Israel initiated the war. We are not concerned here with what Israel had previously stated, just as the U.S. claimed during the Cuban crisis, that Israel was using the right of deterrent self-defense. The exploitation of this now famous phrase, with all its flexible connotations, has become a means for justifying the aggressive actions of states for the purpose of conquest and expansion in all its forms, both traditional and modern.

4. In defending itself, Israel repeats what Arab officials have already said, that an actual state of war has existed between the Arabs and Israelis since 1948 and that the truce is nothing but an intermediary stage between war and peace, and expresses the will to carry out a state of war unless a peace treaty is otherwise signed. The Israelis used to deny that a state of belligerency existed between them and the Arabs. They used to claim that the truce agreements, which they abrogated a number of times and which they said had ended with the October 29, 1956, invasion of Egypt, were actually substitutes for peace agreements that ended the state of belligerency since these were signed following negotiations between representatives of the two sides in the presence

of a United Nations representative during the first seven months of 1949. It was on this basis that the Israelis used to consider the truce lines of 1949 as international borders for Israel which had to be respected.[13]

The Israeli stand was based on a desire to further strengthen the *siatus quo,* which was stipulated by the truce. In fact, the Israeli attitude goes beyond the attempt to maintain the *status quo.* It should be recalled that the Israeli state was established by force in the Middle East. Its boundaries were established by the United Nations Partition resolution issued on November 29, 1947. It was on the basis of this resolution that Israel was founded as a State on May 14, 1948.

For one thing, the United Nations had no power to partition the country. It had already exceeded its powers by limiting a particular area of Palestine for formation of the State of Israel.

Furthermore, it should be emphasized that all the lands that Israel claimed to be legally hers and within her sovereignty as a state, but which were not included in the Partition resolution, is an act of illegal confiscation and an exercising of the actual authority rather than the exercising of legal authority — the latter being a right of states over their own regions.

Israel, however, never misses the chance of adopting controversial and illegal stands and actions. Such activities actually fulfill a long-cherished objective of the

(13) Shabtai Rosenne, "Directions for the Middle East Settlement," *Law and Contemporary Problems,* Winter, 1968, pp. 50-53.

Zionists, which aims at eradicating the Arab existence in Palestine and expanding in the Arab countries for the realization of the Greater Israel.

And, among Israel's current controversial stands which have resulted from the Israeli aggression is its insistence on annexing the city of Jerusalem in addition to its adherence to the lands which it occupied during the June 1967 war. Israel now claims that the 1949 truce lines were only provisional military lines.[14] It should be pointed out that truce and ceasefire lines cannot become permanent borders of a state unless the concerned state explicitly agrees to this, in its capacity as the holder of legal sovereignty over these lands despite the fact that the exercising of such sovereignty and jurisdiction has been halted as a result of the establishment of an illegal condition through military occupation.

The Israeli stand and attitude actually reveals Israel's aggressive planning for the realization of further regional expansion at the expense of the peoples of neighboring states and in direct abrogation of international law and the Charter of the United Nations.

The responsibility of the United Nations, however, is not limited to the fact that neither the aggression nor the aggressor were defined. The UN stand was exposed when it issued ceasefire resolutions without any condi-

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14) Robert H. Forward and Laurence F. Jay, "The Arab-Israeli War and International Law," *Harvard International Law Journal,* Spring, 1968, pp. 245, 255; *New York Times,* November 1, 1967.

tions. This actually led to the end of belligerency along the military lines of the belligerent states. This offered the chance to the aggressor to impose his conditions for any withdrawal to the previous lines. The aggressor in this case was not satisfied with only demanding the establishment of isolated areas that would guarantee further expansion in the future; the aggressor went beyond that to ask for the maintenance of the *status quo* along the ceasefire lines irrespective of the stipulations of international principles and documents that condemn aggression and reject using it as a means to impose new geographical boundaries to expansionist Israel.

In actuality, the United Nations ceasefire resolution stipulated a return to previous boundaries of the aggressor. This condition is an indivisible part of the ceasefire resolution if a return to peace and security are to be reached. This was the case when the ceasefire resolutions were issued in Kashmir in 1948, in the Korean war in 1950, and in the Tripartite Aggression on Egypt in 1956.[15]

In light of these results, for which there was no legal justification why the United Nations failed to condemn the aggression and force the aggressor to withdraw his forces to the previous lines, the United Nations had no choice but to resume the discussion of the crisis in an

(15) This is contrary to what happened in the Dominican Republic crisis in 1965 or in the Palestine war of 1948. In the latter case, the Security Council resolution No. 56 issued on May 19, 1948, stipulated that "it is not permissible for any of the belligerent states to acquire any military gains or political concessions as a result of the abrogation of the truce."

attempt at finding a compromise solution that would bind the conflicting viewpoints of all sides. This led to the meeting of the Security Council on November 9, 1967, and a British draft resolution was actually adopted on November 22, 1967, despite the ambiguities of the text of the resolution that led to various interpretations by the Arab states and Israel.

The resolution emphasized the need for the establishment of permanent peace in the Middle East on the basis of the following principles:

1. Withdrawal of Israeli forces from occupied areas.
2. Termination of the state of belligerency and respect for the sovereign rights, regional boundaries, and political independence of every state in the area.
3. Freedom of navigation in international waterways.
4. A just solution to the refugee problem.
5. Appointment of a special representative of the UN Secretary General, who will conduct contacts aimed at realizing a solution in the light of the text and principles of this resolution.

But while the Arab states insist that the implementation should start with the first principle of Israeli withdrawal from occupied territories, Israel associates this principle with what the preamble of the resolution stipulates concerning the establishment of permanent

peace in the Middle East. In other words, Israel insists on continuing with the occupation until it is capable of reaching a peace treaty with the Arab countries through which it can dictate its own terms, planning its own borders and its vital resources while establishing normal diplomatic and commercial relations.

Thus the new intransigent stand of Israel and its interpretation of the resolution together with its insistence on imposing peace under the pressure of occupation have given a new meaning to the November 22, 1967, resolution. In fact, the Israeli stand was just another copy of the draft resolution which the U.S. submitted to the Security Council for approval following the Israeli occupation of the Arab states on June 5, 1967.

The Positive Aspect : Investigating the Facts

Despite the fact that the United Nations organs failed to deter the aggressor and to impose punishment on him although a resolution was adopted calling for its withdrawal, world conscience as represented in the world body did not fail to adopt a resolution refusing to recognize regional gains brought about by belligerency. It did not fail also to condemn all measures and laws for annexing or dividing lands that are governed by the sovereignty of the occupied state.

The United Nations General Assembly thus adopted two unanimous resolutions in this regard. The first, No. 2253, was adopted on July 4, 1967, while the second, No.

2254, was adopted on July 7, 1967. On May 21, 1967, the Security Council also adopted resolution No. 252, concerning the fact that Israel did not abide by two previous resolutions of the General Assembly in cancelling all measures aimed at changing the status of Jerusalem while also refraining from taking any similar measures in the future.

World conscience did not also fail to protect the human rights of the people in the lands occupied by Israel following the June 1967 war. The world body did not hesitate to emphasize safety of the people in the occupied areas and their properties, in accordance with international laws which were first drafted by The Hague Conventions of 1899 and 1907 and the Geneva Convention of 1949.

The United Nations Security Council thus adopted the following resolutions in this regard: No. 237 on June 6, 1967; No. 248 on March 24, 1968; No. 259 on September 27, 1968. This is all in addition to the General Assembly resolutions No. 2252 on July 4, 1967, and No. 2341 on December 19, 1967, the latter pertaining to the United Nations Relief and Works Agency (UNRWA) and also emphasizing resolution No. 2252 in relation to the rights of civilians in occupied areas. There was also resolution No. 6 (24) adopted by the Human Rights Committee on February 27, 1968. The International Human Rights Conference which met in Tehran also adopted a resolution on May 7, 1968, reiterating all international principles which call upon the occupying power to respect the life and rights of the people in the occupied areas. The

occupying power is also called upon to respect the ideologies, beliefs, traditions, properties, and legal rights of these people in accordance with international agreements and documents, such as The Hague and Geneva Conventions, the Human Rights Declaration, and the statutes of Nuremburg, Tokyo and Stockholm.

The resolution No. 237 adopted by the Security Council on July 14, 1967, stipulated the following:

> "The Security Council,
>
> "Considering the urgent need to spare the civil populations and the prisoners of war in the area of conflict in the Middle East from additional sufferings,
>
> "Considering that essential and inalienable human rights should be respected even during the vicissitudes of war,
>
> "Considering that all the obligations of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August, 1949, should be complied with by the parties involved in the conflict.
>
> "1. Calls upon the Government of Israel to ensure the safety, welfare, and security of the inhabitants of the areas where military operations have taken place and to facilitate the return of those inhabitants who have fled the areas since the outbreak of hostilities.
>
> "2. Recommends to the Governments concerned the scrupulous respect of the humanitarian principles governing the treatment of prisoners of war and the protection of civilian persons in time of war, contained in the Geneva Conventions of 12 August, 1949.
>
> "3. Requests the Secretary General to follow the effective implementation of this resolution and to report to the Security Council."[16]

(16) S/Res/237 (1967), June 14, 1967.

The United Nations General Assembly, in its fifth emergency session and in the session of July 4, 1967, adopted the above-mentioned Security Council resolution and included it in its resolution No. 2252. This governed the aid that is given to civilians and prisoners of war by the concerned organizations (the Red Cross, UNRWA, UNICEF, and other).

In Article 10 of this resolution, the General Assembly called on the Secretary General to submit, after consultation with the Commissioner General of UNRWA, an urgent report on the needs which are stipulated by Articles 5 and 6 of the same resolution, concerning offering emergency help to people not included in the refugee list, those who had been forced out of their homes, civilians who were victims of the June 5, 1967, aggression or those who were refugees from 1948.[17]

In accordance with Security Council resolution No. 237, the Secretary General of the United Nations appointed on July 6, 1967, Nils-Goran Gussing and sent him to the Middle East during the period between July 11 and September 1, 1967. His mission was to acquire the facts that would enable the Secretary General to assume his responsibility in accordance with Article 3 of the above-mentioned resolution, particularly concerning the investigation of the conditions of people in the areas subjected to Israeli occupation, the measures that have been taken to facilitate the return of the refugees, and the ways in

(17) See text of resolution in Annex 1 : Res. 2252 (Es-V); A/6787, August 18, 1967, pp. 1-3.

which prisoners of war are treated and the civilians are protected.[18]

Nils-Goran Gussing accomplished his mission under very difficult circumstances. Israel sought to foil his humanitarian mission, for it called on him to carry out an investigation of the conditions of Jewish minorities in the Arab countries. The purpose of this was to divert attention from the conditions of Arabs in occupied areas as stipulated by the Security Council and General Assembly resolutions, since these were the areas in which military operations were carried out and which were provisionally subjected to actual Israeli authority.

Despite the fact that Gussing undertook numerous trips to the countries concerned in the conflict, his collection of specific information and facts was rendered very difficult. This was the case directly after the war, since administrative and communications facilities were disrupted and it also became difficult to collect facts because of conflicting official statements. In addition to this, he was not able to meet with spokesmen for the civilian population of the occupied areas except in the presence of Israeli officials. These facts were pointed out in the final report of the Secretary General about the Gussing mission on September 15, 1967.[19]

Despite the difficulties, the final report of the Secretary General contained examples of Israel's disregard

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(18) A/6797, September 15, 1967, pp. 1-2.

(19) *Ibid.*, report of the Secretary General of the United Nations (document A/6797 on September 15, 1967).

for the rights of civilians in occupied areas following the June 1967 war and until the date of the report. The report asserts that Israeli measures were beyond its jurisdiction as an actual provisional power. Some of the examples that were mentioned in this report:

1. In the town of Kuneitra, which had an original population ranging between 20,000 and 30,000, only about 200 persons were left, the majority of whom were old men, women and children. The United Nations representative did not exclude the possibility that some acts must have been committed that prompted the population to flee in terror, like firing in the air, and the theatrical repetition of how the Israeli forces occupied the city. The Israeli authorities were satisfied with the impact of such actions on the outflow of the population. It also became clear to the special UN representative that the existence of security measures would have helped in bringing back the terrorized population to their homeland.

2. Despite the reports available from Israeli sources that Kuneitra was occupied without any fighting, the personal representative saw traces that indicated that nearly every house or shop had been broken into and robbed. Some of the houses showed indications that they had been burnt after being robbed. Israeli spokesmen did not deny the robberies, but they pointed out to the special UN representative that thefts and robberies often accompany war.

3. When the personal representative of the Secretary General visited the city of Qalqilya, whose population

ranged between 13,000 and 14,000, he noticed that a large number of houses had been annihilated. A city representative emphasized that by the end of the war, only about 15 or 20 houses were demolished. He said that the inhabitants of the city had moved to the nearby hills of Azzoun; they then moved to Nablus, where they stayed for three days. They were allowed to go back to their city only after three weeks; they found that around 850 houses had been pulled down out of a total of about 2,000 houses.

4. In the Hebron district, the village of Awa (population around 2,500) and the village of Beit Marsim (population 500) were destroyed while all movable properties of the population and the adjacent forest were burnt. The Israeli authorities claimed that these two villages lodged resistance members of Fateh.

5. A doctor accompanying the personal representative reported that the Nablus Hospital had been robbed. The crown of the Virgin Mary in the Holy Sepulchre of Jerusalem was also stolen in addition to thefts of houses and shops by Israeli soldiers.

6. The city of Nablus is suffering from unemployment in the economic sector. Similar complaints were submitted by the construction, iron, furniture, clothing, and soap industries. All of these industries used to employ a large number of workers.

7. In Hebron and other cities, the Israeli Custodian Officer confiscated the houses and properties of all absentee owners, despite the fact that some of these were only temporarily absent in Amman. In some cases, the relatives of the owner were in the city and asked that

they be allowed to handle their relatives' property.

8. Moslems were prevented from visiting the main mosque erected on the tomb of Abraham. It was later agreed that the Moslems will pray during certain hours only while the remaining part of the day was left for Jewish visitors who happened to be passing through Hebron.

9. When the personal representative visited some refugee camps in the Gaza Strip, a spokesman for the refugees drew his attention to the continuous inspections carried out by the Israeli authorities all the time. They asked that these inspections not be carried out at night.

10. The inhabitants of East Qantara complained that the visit of one Israeli doctor per week was not enough. They said that the hospital had been robbed and its services were not sufficient. They also complained of the dearth in food supplies and said that the water was not fit for drinking.

The report of the Secretary General concluded that there was no doubt of the extreme difficulties undergone by the people who had suffered from the war. The report indicated that difficulties in living conditions were still continuing in a number of places. The Secretary General hoped that the governments concerned would differentiate between the entirely human aspect of the situation in the Middle East from the political and military aspects so that the necessary steps could be taken to alleviate the pains of innocent civilians.

Reference should also be made at this point to the

report submitted by the Secretary General on September 12, 1969, to the General Assembly and to the Security Council in relation to his personal envoy, Ernesto Thalman, who was sent to collect information on conditions in Jerusalem in accordance with the General Assembly resolution, No. 2254 (Article 3), adopted on July 14, 1967. The Assembly called on Israel to cancel all the measures that had been taken to change the status of Jerusalem or annex the city to the Israeli sector. A major part of the report was dedicated to explaining the conditions of the Arab inhabitants and the treatment that they received from the Israeli authorities, especially that governing their freedom, their property, and the disrespect shown for holy places. Among these, the following was mentioned:

1. Israeli leaders emphasized to Thalman that Israel was adopting all the necessary measures in order to extend its control to all the areas that were not held before the June 1967 war. They indicated that they had taken the necessary legal steps that would guarantee the annexation of the Old City of Jerusalem and some of the Arab villages around it — mainly, Sour Baher, Sheikh Jarrah, Kalandia Airport, Mount Scopus, and the Sha'fat area. The Israeli authorities further emphasized to Thalman that the annexation measures were irrevocable and not negotiable. In other words, the Israeli authorities showed no indications that they were planning to abide by the two resolutions issued by the General Assembly of the United Nations concening Jerusalem. In fact, the

Israeli authorities took further steps for the annexation of Jerusalem in total disregard of the unanimous General Assembly resolutions and the will of the inhabitants themselves.

2. In this regard, the Israeli authorities dissolved the Municipal Council of the Arab city, expelled the Mayor of Jerusalem, cancelled all Jordanian laws and replaced them by those of Israel, separated the city from the rest of the West Bank and placed it under the jurisdiction of Israeli courts after dissolving all the Jordanian courts, replaced the Jordanian currency by that of Israel at prices lower than those of the international markets, imposed fees on all goods coming from the West Bank, refused to recognize car registrations and other permits issued by the Jordanian authorities, imposed the Israeli curricula on all schools, stopped using the Arabic language in all official formalities, cancelled all Jordanian departments at the Post Office, Health, Customs... etc.

3. All the Arabs interviewed by the special representative had been shocked by Israel's abrogation of the holiness of Islamic places. They referred to the time when the Rabbi of the Israeli Defense Army, Brigadier Scholmo Goren, prayed with his group in the Court of the Aqsa Mosque. They also mentioned Israel's plans and demands in the Temple area, the destruction of 135 houses belonging to the Islamic Waqfs (religious authorities) in the Moroccan Quarter of Jerusalem which caused the expulsion of about 650 poor Moslems, its supervision of the sermons that were delivered on Fridays at the Aqsa Mosque — something which contravenes the stipulates

of the Koran and Islam.

4. Christian leaders expressed their concern and emphasized the need for special protection of the holy places. They insisted that Jerusalem should maintain its international character in the form of a *Corpus Separatum* under international supervision.

5. The Arab inhabitants of Jerusalem and the West Bank announced their opposition to all annexationist measures, which were taking place against their will and wishes. They rejected all Israeli measures aimed at wiping out the Arab nature of Jerusalem, especially the attempts made to have the mixed Israeli society influence the conservative Arab traditions and customs. They said they were ready to recognize the Israeli military rule for handling of daily administrative affairs, but they refused the attempts made to merge them with Israel by force. They pointed out that international laws prohibited the occupation authorities from changing the legal and administrative setup of the occupied areas.

The Commissioner General of UNRWA then submitted his annual report to the General Assembly and the latter adopted a resolution on the basis of this report. The new resolution reemphasized the previous one, No. 2252, pertaining to human aid offered to civilians, and reiterating Security Council resolution No. 237.

It was shown to the Security Council and the General Assembly that not less than 350,000 persons escaped from the areas under Israeli occupation. These included refugees already registered with UNRWA, new refugees

who moved to the East Bank of Jordan (about 200,000), to the southwestern part of Syria (between 110,000 and 85,000) and across the Suez Canal (about 35,000). These moved out both during and after the war. It was emphasized that Israel had put obstacles in the way of the free return of these people to their houses. There was a spread of terrorist acts, harsh treatment, and attacks on the dignity and honor of individuals. Lands were confiscated, Israeli settlements were established in place of Arab villages, while acts of revenge against the inhabitants increased.

In the light of these measures, the Secretary General was asked to continue his efforts to have the Security Council and General Assembly resolutions implemented.

In reply to the UN Secretary General, however, Israel, on April 18, 1968, refused to allow the Secretary General to send another envoy to try to implement the two resolutions unless this envoy investigated the treatment of the Jewish minorities in the Arab countries, which also lie within the area of belligerence — i.e. Syria, Jordan, and Egypt. Israel put this condition despite the fact that the two resolutions adopted by the Security Council and the General Assembly were limited to Arab civilians living in areas under Israeli occupation, in addition to 350,000 refugees who escaped following the June 1967 war and who were prevented from returning to their homes by the Israeli authorities.

Israel thus worked to foil the legal value and importance of the two resolutions governing the treatment

of civilians in occupied areas and the return of the refugees to their homeland. The way in which Israel interpreted the resolutions formed an outright abrogation of the United Nations Charter (Article 7/2). Israel was interfering in something which is the direct responsibility of the Arab countries concerned, particularly since these issues did not form a threat to world peace or contravene international obligations as dictated by the 1949 Geneva Conventions. The treatment of the Jews in the Arab countries was nothing in comparison to the conditions of provisional occupation in which a people forced by his enemy to flee from his land, for fear of arrest, intimidation, hunger, mass persecution in the form of destruction of whole villages or confiscation of property, and the liquidation of the Arab character of Palestine.[20]

The two resolutions adopted by the Security Council and the General Assembly governing the treatment of civilians in occupied areas was aimed at implementing well-established legal principles. These principles are also aimed at giving a legal aspect to the occupation and its provisional nature following a period of belligerency and until the time is ripe for the country of origin, which had stopped exercising its role over the occupied areas, is able to carry out such a role or otherwise until the oc-

(20) The Israeli delegate at the Security Council attacked also the Soviet Union for its persecution of Jews and Syria for its persecution of Kurds and Christians. The Israeli delegate was thus adopting a racialist stand by differentiating between people on the basis of their race or religion, thus abrogating the UN Charter S/PV, 1454, September 27, 1968, pp. 93-97.

cupied areas is given up through a truce agreement following a referendum among the people of the occupied area.

It thus becomes clear that what was stipulated by the Security Council and General Assembly resolutions concerning the safety and security of the people in the occupied areas, facilitating the return of the refugees at the end of the fighting, and concerning the treatment of prisoners of war are actually aimed at safeguarding human rights during times of war and peace. These principles were emphasized by the Geneva Conventions of August 12, 1949.

Role of Public Opinon

But the Israeli policy of palliating the facts from the world soon prompted various sectors of world public opinion to support the civilian rights of the Arabs in occupied areas. The following could be mentioned as an example :

1. Writings of foreign correspondents for newspapers and news agencies, who were able to visit the occupied areas and see with their own eyes the traces of the Israeli aggression and its terrorist methods through the natural and legal confiscation of the rights of civilians.[21] The well-known British writer, Michel Adams, wrote in the *Guardian* on January 26, 1968 :

(21) See in this regard, Institute for Palestine Studies, *Israel and the Geneva Convention,* (Beirut : 1968).

"In the measures it is now taking against civilian Arab population in the Gaza Strip, the Israeli army of occupation is disregarding the provisions of the 1949 Geneva Convention for the protection of civilians in time of war."

"In response to a series of minor incidents in the past three weeks, the Israeli army has imposed collective punishments on the population (mainly refugees from Palestine) regardless of age and sex. These include curfews lasting several days during which no proper provisions is made for the distribution of food and water, arbitrary arrests, and the random demolition of house and property belonging to civilians in no way connected with incidents.

"When I left Gaza this morning, three refugee camps housing 100,000 Palestinian refugees were under day and night curfew, and there was sporadic shooting in the streets of Gaza City which served no apparent purpose beyond intimidation of the civilian population. UNRWA, which is responsible for the welfare of refugees in the Gaza Strip, is not told in advance of the curfews which have been succeeding each other for the past two or three weeks.

"During the break, all men between 16 and 60 were ordered on to the compound on the seashore where they held for seven hours during one of the winter's severest storms while Israeli guards repeatedly fired with small arms over their heads.

"The reason given for the five-day curfew at Shati was the explosion of a tiny home-made petard (the official Israeli account said that it consisted of half a pound of TNT in a Pepsi Cola tin) near Gaza fish market, causing no casualties. The culprit was said to have run along the beach in the direction of the refugee camp. Failing to identify him, the Israelis, besides imposing the curfew, blew up nine fishermen's storehouses in which they kept their nets and tackle and destroyed a number of fishing boats.

"In a similar incident in Wahda Street in Gaza, Israeli soldiers demolished four houses

(the explosion brought down eight more) after a firecracker had been thrown near one of the houses. The inhabitants were given 10 minutes to evacuate their families, including small children, and can still be seen picking among the rubble to see if anything is salvageable.

"When I asked Colonel Mart how he reconciled them with his Government's signature on the Geneva Convention he showed interest.

" 'What is this convention?' he asked, and when I explained that it outlawed collective punishment against civilians and the destruction of civilian property even in time of war, he shrugged his shoulders. 'Our soldiers don't like this work,' he said, 'But you must understand they have to protect security.'

"More of the non-Arab, non-Jewish population of Gaza is convinced that there is hardly any serious resistance movement in operation in the area...

"They believe that the only danger to security in Gaza comes from the present determined and often brutal attemps by the Israeli Army to 'persuade' the Arab refugees to leave the Gaza Strip, thus opening the way to its annexation by Israel. My observations confirm this view.

"I had my ups and downs during four years as a prisoner of war in Germany, but the Germans never treated me as harshly as the Israelis are treating the Arabs of Gaza Strip, the majority of whom are women and children."

In another article published by London's *Private Eye,* of November 10, 1967, the Jewish writer, Amos Kenan, described the following :

"...We were told to search the houses of the village, to take prisoner any armed men. Unarmed people were to be allowed to pack up their belongings and to be told to go to the nearby vil-

lage Beit Sura. We were ordered to block the entrances of the village and prevent inhabitants returning from their hideouts, after they had heard Israeli broadcasts urging them to return to their homes, from entering the village. The order was shoot over their heads and tell them not to enter the village.

"We told them to go to Beit Sura. They told us that they were driven out everywhere, forbidden to enter any village, that they were wandering like that for four days, without food, without water, some dying on the road. They asked to return to the village, and said we better kill them. Some had a goat, a lamb, a donkey, or camel. A father ground wheat by hand to feed his four children. On the horizon we could see the next group arriving.

"We drove them out. They go on wandering in the south like lost cattle. The weak die. In the evening we found that we had been deceived, for in Beit Sura two bulldozers commenced destruction and they were forbidden to enter. We found that not only in our sector was the order straightened out for security reasons, but in all sectors. The promise in the radio was not kept, the declared policy was never carried out.

Another British writer, David Holden, wrote in the *Sunday Times* on November 19, 1967, the following:

"...Two months ago, in a village three miles from Jerusalem, five houses were blown up because an Arab fired three or four ill-directed shots from one of them. In three refugee camps around Nablus two weeks ago, 200 men were arrested with the aid of hooded searchers who were supposed to be informers. In Gaza, according to UNRWA sources that I believe to be reliable, 144 inhabited houses in a refugee camp were bulldozed in a single night, and a recent communal grave in the camp was excavated under UNRWA supervision, contained 23 bodies.

"In some places there has been sweeping destruction of Arab homes. The case is well-known of the 220 families whose houses were levelled in front of the Wailing Wall immediately after the Israeli occupation of Jerusalem, in order to provide an open space for Jewish pilgrims.

"In Qalqilya, where forty percent of the houses were destroyed after the war, some of the people have also returned to live under make-shift roofs in ruined houses. But last week, near the Damia Bridge over the Jordan, bulldozers were at work flattening some of the homes from which 20,000 to 30,000 people fled across the river in June.

"At the same time, an Israeli Government custodian is taking over all the property in Arab Jerusalem and the West Bank owned by people who are now 'absent' whether or not they have applied to return and whether or not they fled in fear or just happened to be out of the country when the June war began.

"Claims to caretaker rights in absentee property by relatives or legal partners are rejected on the grounds that they could lead to disputes if the absentees eventually return. No such property seems to have been disposed of yet, although several Israeli banks have opened branches in empty premises in Arab Jerusalem — but to the Arabs the implications seem obvious. Even a Western diplomat was moved to describe the Israeli action as "perfect preparation for highway robbery."

2. Protests of international organizations against the contraventions of the Israeli occupation authorities of all international agreements and laws in relation to the treatment of civilians:

A French judicial organization, A.I.J.D. of Paris, published a report about the mission carried out by an investigation committee in the Middle East. The committee

members were Assistant Professor of International Law at the University of Napoli, Fransesco Fabrey, and another Belgium attorney, Julius Shumeh. The purpose of the mission was "to visit the areas occupied by the Israeli Army and the refugee camps and to study the measures taken by the occupation authorities in the light of international law, especially those pertaining to the protection of civilians."

Despite the fact that the Israeli authorities prevented the investigation committee from entering the occupied areas, the members were able to come out with a number of facts that provided ample proof of the contraventions committed by the occupation authorities *vis-a-vis* international laws and the human rights of civilians.

The investigating committee was able to derive its information not from the Jordanian and UAR governments, but by visiting refugee camps and talking with those who had been deported from the occupied areas. There were also the complaints voiced by Moslems and Christians of all denominations in addition to the reports of UNRWA officials. Israeli intellectuals had also protested against the curbs imposed on freedom of movement, the arrests without trials, mass intimidations, the blowing up of houses by dynamite, the expulsion of inhabitants and other actions that lead to further deepening the hatred between Jews and Arabs.[22] The mission was thus able to become well acquainted with Israel's disrespect for and violation of human rights, The Hague Conventions

(22) *Ibid.*, pp. 52-55.

of 1907 and the Geneva Conventions of 1949, governing the occupied areas and the treatment of civilians there.[23]

The Human Rights Conferences

During the 1968 celebration of the International Year of Human Rights, the Human Rights Committee expressed its grave concern for the violation of human rights and the maltreatment of civilians in Arab occupied areas. On February 2, 1968, it adopted resolution 6 (24), bearing in mind the Geneva Conventions of 1949 regarding the protection of civilian persons in time of war, recalling Security Council resolution 237 (1967) in which it was emphasized that essential and inalienable rights should be respected even during the vicissitudes of war and called upon the government of Israel to facilitate the return of those inhabitants who have fled the areas of military operations since the outbreak of the hostilities.[24]

The Human Rights Committee also sent, during its 24th session, the following cable to the government of Israel:

> "The United Nations Commission on Human Rights is distressed to learn from newspapers of Israeli acts of destroying homes of Arab civilian population inhabiting the areas occupied by the Israeli authorities subsequent to the hostilities

(23) *La Mission d'Enquete de L'A.I.J.D. en Moyen-Orient,* (Brussels: 1968), pp. 8-9.

(24) See Appendix 2 for text of resolution.

> of June 1967. The Commission on Human Rights calls upon the Government of Israel to desist forthwith from indulging in such practices and to respect human rights and fundamental freedoms."

The International Human Rights Conference, which was held in Tehran between April 22 and May 13, 1968, also tackled the question of Israel's disrespect for human rights and international principles governing the treatment of civilians in the areas occupied by Israel. This study was done in the light of the report submitted by the Commissioner General of UNRWA, Laurence Michelmore, under the title, "Human Rights and the Palestine Refugees." Consideration was also taken of the speeches delivered by delegates from Afro-Asian countries whereby it was pointed out that these states have abided by the Bandung Human Rights Conference while Israel has not. The delegates pointed out that Israel has expanded by nearly five times its original area through the use of military force. The original area was specified by a General Assembly resolution on November 29, 1949, governing the partition of Palestine.[25]

At its 23rd plenary meeting on May 7, 1968, the Human Rights Conference, being guided by the Universal Declaration of Human Rights, adopted a resolution "drawing the attention of the Government of Israel to the grave consequences resulting from disregard of

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(25) Georges Vaucher, *Le Problème des Refugiés Palestiniens et de la Palestine Occupée à la Lumière de la Declaration Universelle des Droits de l'Homme,* Genève, 1968, pp. 14-20.

fundamental freedoms and human rights in occupied territories." The Conference also called on the government of Israel "to desist forthwith from acts of destroying homes of Arab civilian population inhabiting areas occupied by Israel, and to respect and implement the Universal Declaration of Human Rights and the Geneva Conventions of 12 August 1949 in occupied territories." Finally, the resolution requested the General Assembly "to appoint a special committee to investigate violations of human rights in the territories occupied by Israel and to report thereon." It also requested "the Commission of Human Rights to keep the matter under constant review."[26]

In the light of the resolution adopted by the conference on May 7, 1968, and following reports that terrorist actions, blowing up houses, and mass deportations were still being carried out by the Israeli authorities, in addition to the expulsion of nationalist and religious leaders from their homeland, the delegates of Pakistan and Senegal submitted a draft resolution to the Security Council emphasizing the urgent need to send a representative of the Secretary General to investigate the conditions of the inhabitants in occupied areas and to report on them. This draft resolution was submitted also following the obstacles that were placed in the way of the second delegation, representing the Secretary General. These obstacles actually prompted the inhabitants of occupied areas to issue strong statements and protests to both the

(26) See text of resolution in Appendix 3.

Security Council and the Secretary General of the United Nations until they were finally forced to resort to armed resistance against Zionist terrorism.

Following the debate of the conditions that Israel had put for allowing a representative of the Secretary General to enter the occupied areas, the Security Council adopted the resolution in support of the Arab viewpoint and rejecting the Israeli conditions. The Council decided that the mission of the personal envoy should be limited to the areas subjected to military occupation since the June 1967 war. The resolution No. 259 adopted by the Security Council on September 27, 1968, requested "the Government of Israel to receive the Special Representative of the Secretary General to cooperate with him and to facilitate his work."[27]

The Secretary General did not find, however, cooperation from Israel to enable him to implement this resolution. Israel ignored resolution No. 259. In a letter sent by the Israeli delegate of the United Nations to the Secretary General on October 10, 1968, Israel indicated that it plans to cooperate only on the basis of resolution 237 of 1967, under the same conditions of the fact-finding tour, headed by Gussing whereby the investigation should cover all people, Arabs and Jews, in the countries directly concerned.[28] In other words, on the basis of the Israeli interpretation of resolution No. 237 of June 14, 1967.

The resolution adopted by the International Human

(27) See text of resolution in Appendix 4.
(28) UN Doc. S/8851.

Rights Conference in Tehran, calling on the General Assembly to appoint a special investigation committee to look into Israel's violations of human rights in occupied areas, was well received by the Economic and Social Council. This was expressed in a resolution adopted recently by the General Assembly.

The Regional Arab Human Rights Conference that was held in Beirut between December 2 and 10, 1968, decided, upon the recommendation of Sean MacBride, Secretary General of the International Commission of Jurists, to have the Arab countries receive the special committee and to supply it with all the necessary facts and documents that will enable the committee to carry out its mission if Israel refuses the committee entry to the occupied areas.

II

THE LEGAL ASPECTS OF MILITARY OCCUPATION IN TIME OF BELLIGERENCY

The Law of Military Occupation

Following the facts, instances and violations presented and after the review of the reaction to the attitude of the Israeli occupation forces in Arab territories at the United Nations and competent section of world opinion, it is appropriate to review juridical opinions and the application of legal principles in detailed subjects concerning the attitude of the occupier in areas under its authority and administration, like the rights of civilians, the basis for their treatment, the protection of their property and their right to reply by armed resistance to the illegal attitude of occupation authorities.[1] There will also be a review of the rules governing military occupation, the position of the occupied territory and the rights and duties of its people with relation to the occupation authority and with the original country which has legal

(1) Belligerent occupation, or occupation of enemy territory in time of war, as different from pacific occupation, or military occupation of alien territory in time of peace.
A.M. Stuyt, *The General Principles of Law,* (The Hague: 1964), pp. 241-250.

authority over the territory.

International law does not allow Israel and its allies to benefit from the political repercussions and procedural rules which have stopped the United Nations from taking a clear and open resolution condemning the Israeli aggression and demanding full compensation under the rules of law or to the anarchy of the situation to exploit the affairs of the Middle East and put history two centuries back by using the right of war to occupy and annex land.

Agreements have been concluded and regulations formulated to organize such conditions, define the rights of the state whose territories and people are under occupation and impose commitments on occupation authorities. Despite the fact that modern international law does not recognize Israel's action after its aggression

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(2) The principle forcing the aggressor to compensate its victims for the losses caused by its aggression. Aggressor should be liable to compensate his victims resulting from his acts of aggression. This principle was included in modern international treaties like the Fourth Hague Convention on land warfare (Article 3), the Fourth Geneva Convention on the protection of civilians (Article 148) and the Versailles Treaty (Article 232) under which Germany compensated Belgium for all its losses resulting from the German invasion and the violation of the 1839 treaty on Belgium's neutrality. Germany also compensated other countries for violating the law of war. For the same reasons Greece compensated Bulgaria over a border incident resulting from a Greek aggression in 1925. The Kellogg-Briand Pact of 1928 stipulated that the violating country should compensate for all the losses caused by the abrogation of the Pact on the part of signatory states or their citizens. See Quincy Wright, "The Outlawry of War and the Law of War," *American Journal of International Law,* 1953, p. 356.

on June 5, 1967, when it launched an armed attack to achieve territorial gains and occupied territories by force, and despite the fact that the United Nations Charter bans the use of force except in the case of collective security and legal defense, there is an actual temporary state resulting from this invasion and the military occupation of some Arab territories in Egypt, Jordan and Syria.

It is hardly necessary to recall that the definition of aggression is one thing and the existence of an actual and material state of war is another thing. This is regardless of the conditions set forth by conventional law on the organization or declaration of war and regardless of the UN Charter's ban of all members of the world community from the use of force against the safety or political sovereignty of any state in a way which does not serve the objectives of the United Nations (Article 2/4 of the Charter).

We thus find ourselves before two parallel cases which differ with regard to their respective legal set of rules:

A. The state of belligerency, with all that it includes of aggression or armed invasion by one country against another. From the military and material points, this case is considered the phase of fighting on the battlefield where the legal rules of the law of belligerency are applied *stricto sensu.*

B. The state of military occupation or the temporary state following the armed attack until the termination of the state of belligerency. The military and material aspect

is regarded as a time of relative calm behind the line of battle where legal rules of military occupation law are applied.

It would be better to separate between the two states in the application of the two laws for considerations resulting first, from the difference in origin and development between the rules of military occupation law in the wake of the Napoleonic wars and the origin and development of rules regulating the state of belligerency *stricto sensu* in the long periods which preceded the conclusion of the First Geneva Convention for the protection of victims of war in 1864.[3] Those considerations also result from the legal work of the rules of the military occupation law (as stated by the Brussels Conference in 1874, The Hague Conventions of 1899 and 1907 and the Geneva Conventions of 1949)[4] with regards to the organization of the conditions of the occupied territory and its people and its exclusion from the application of war law rules in the belligerent area. This is to forbid occupation authorities from covering reprisal actions against the occupied territory and its people under the

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(3) See Quincy Wright, *A Study of War,* 1942;
G. Draper, G.I.A.D., *The Conception of the Just War;*
Henri Coursier, *Etudes sur la Formation du Droit Humanitaire,* (Genève : 1952);
Jean S. Pictet, "Armed Conflicts, Laws and Customs," *The Review,* International Commission of Jurists, No. 1, March 1969, pp. 24-26.

(4) The rules of the belligerent occupation law were put into 15 articles in the third chapter of the Regulations annexed to The Hague Convention on land warfare and the Fourth Geneva Convention (1949) on the protection of civilians.

name of military needs and the necessities of war.[5]

To apply the rule banning the annexation of territories occupied in time of belligerency in isolation from the legal basis for the application of this rule under belligerent occupation and the legal position of the occupied territory, the temporary nature of occupation and the required guarantees for the protection of the occupied territory and its people, means that the aggressor would become free to take harsh action in changing the character of the territory and treating its people since they fall in the area of conflict while they are not of the aggressor's citizens. In addition, the occupying nation often prefers not to treat the people of the occupied territory in accordance with its laws so as to avoid any responsibility under its domestic laws stemming from the treatment of any individual of its forces to the people and their property.[6] This foils the aim of applying the occupation law to provide minimum protection and observation of modern humanitarian and civilian principles.

As a result, jurisprudence refuses to allow occupation authorities to claim that necessities of war do not allow a ban on belligerent violence in occupied territories as a whole, i.e. without differentiation between lines of fighting and the occupied territories behind them where the military conflict between the armed forces has subsided. This conflicts with the aim of the law of belligerency

(5) Cf. George Schwarzenberger, *International Law as Applied by International Courts and Tribunals,* Vol. II, (London : 1968), pp. 163, 178.

(6) A.M. Stuyt, *op. cit.,* p. 258.

stricto sensu regarding the organization of war, limiting human suffering and banning military violence against civilians and civilian targets. Furthermore, there must be a separation between the line of battle where military operations are going on and the law of belligerency is applied to the letter and the areas where fighting has calmed down or subsided and the occupation law is applied.

It is doubtless that the two areas are usually connected and that despite the calm and the end of the fighting in the occupied territory, necessities of belligerency may force the occupant to adopt certain measures to guarantee the security of its forces, military installations and communication routes in those territories. The Geneva Convention on the Protection of Civilian Persons in Time of War of August 8, 1949, reported some cases where military necessities are given priority on condition that this does not disrupt the balance necessary for the application of commitments under the Convention to protect civilians and their property. Article 64/2 of the Convention states:

> "The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them."

This text shows the extent and ambiguity of authorities held by the occupying power and the military and civilian occupation administration. But it is agreed legally and practically that this license provided to occupation authorities in extraordinarily dangerous circumstances should not be used as a pretext to shirk the basis for protection which the Convention committed the occupation state to maintain and guarantee.[7] In this light, later articles of the Convention include various guarantees for the people of the occupied territory in the extraordinary circumstances when the occupying power enforce legislation or penalty codes regarded as orders of a temporary authority which seems to them necessary under Article 64/2.

Since it could be correlated between military necessities in time of belligerency and human and civilian requirements in occupied territories, and since the relative distance between the line of battle and the occupied territories makes possible a separation between the legal rules applied in both cases and areas, the application of military occupation law becomes dependent on the priority given to humanitarian considerations over military necessity. As a result, the violation of rules of this law as stated by the Geneva and The Hague Conventions with regards to what they ban or permit occupation authorities, becomes an action violating international law which brings a responsibility to the occupying state towards the occupied territory at the end of the

(7) Cf. Jean S. Pictet, *IV Geneva Convention,* International Committee of the Red Cross, (Geneva : 1958), p. 337.

state of belligerence and occupation.[8]

The separation between the law of belligerency and the part of it connected with occupied territories outside the field of fighting and armed clashes between armies[9] is designed to lay down the rules of military occupation law and its role with regards to:

1. Asserting the actual temporary state of military occupation. This does not allow the unilateral annexation of areas under the occupiers' authority for the duration of war between the occupying state and the state with legal jurisdiction over the occupied territory.

2. Stressing the human and civilized nature with which the occupying state and its authorities should treat the territory under their authority. The occupier has no choice but to treat the occupied territory and its people in accordance with the law of military occupation which is, in fact, a set of rules laid down to protect civilians, their rights and property in the occupied territory in light of the general international law.

3. Defining the jurisdiction of the occupying power, its military and civilian authorities in running the

(8) The ruling of the German-Portuguese Arbitration Court in 1930, Schwarzenberger, *op. cit.*, p. 166; United Nations, *Reports of International Arbitral Awards,* 1948, pp. 1035-1040.

(9) For a contradictory view which does not distinguish between the law of belligerency and the law of occupation on the basis that occupation is a method of war and an instrument of conflict to guarantee the enemy's control of the occupied territory administration.

Cf. Odile Debbasch, *L' Occupation Militaire,* (Paris : 1962), p. 6.

occupied territory and the organization of relations between the state and its occupying authorities in addition to the organization of relations between the occupying power and occupied state and between the occupied state and its people in the occupied territory.

Military Occupation is a De Facto Temporary State

Article 42 of the Regulations annexed to The Hague Convention respecting the Laws and Customs of War on Land of October 18, 1907, defined the occupied territory as follow: "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."

Oppenheim defined military occupation as surpassing invasion which occupies enemy territory with the aim of taking it over temporarily. The difference between invasion and occupation is clear from the creation by the occupier of a sort of administration, something which an invader does not do.[10]

In this regard there is no difference between whether the military occupation of a territory in time of belligerency took place as a result of the surrender of the state of authority (like the surrender of France to Germany), the result of the armed forces and their command laying down arms (as was the case of Holland before Germany) or as a result of a truce or ceasefire with the maintenance of the state of belligerency and war (as was the case

(10) Oppenheim, *op. cit.*, p. 167.

during the aggression of June 5, 1967, by Israel against Arab states). The concern here is with a definite material case, that of occupation and bringing a territory under the effective control of military and civilian authorities of the occupier whether that control covers the whole territory invaded by the occupation forces or part of it. This is the basis that gives occupation authorities their special position in the belligerency law and in the light of which the law of military occupation organizes the state of occupation and makes special arrangements in the relationship between the occupying state and the occupied territory and its people. It bans the annexation of a territory occupied in time of war on the grounds of the continuity of authority by the state and government which owns the occupied territory over that territory. The state and government also enjoy legal authority over the territory although this has been disrupted by forceful occupation. "It is a *de facto* authority with a legal status of its own based on the laws of war."[11]

In the light of this explanation of the meaning of *de facto* authority of occupation in Article 42, Article 43 of the Regulations sited defined the occupied country as the legally constituted authority. Summing up, the effectiveness of military occupation and its direct result of bringing the occupied territory under the military and material authority of occupation forces and authorities is the distinguishing element in defining military occupation and the possibility of applying the legal rules with regards

(11) Schwarzenberger, *op. cit.*, p. 322.

to the time and place. The military occupation law is only applicable in enemy territory where the *de facto* authority of the occupation forces has been strengthened after invasion. But the law of military occupation does not apply to territories which occupation forces invaded but are still unable to control in view of continuing fighting, territories belonging to the occupation country in which a revolution had been suppressed without granting its men the right of fighters,[12] territories of allied countries[13] and territories of a country liberated from the enemy by armies of its allies.[14]

This distinguishes between invasion and occupation and between the law of war *strictio sensu* and the law of military occupation.[15] In territories invaded by the army

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(12) *Ibid.*, pp. 174-177.

(13) Debbasch, *op. cit.*, pp. 7-8. Some people prefer to not call this occupation but rather presence of allied forces in time of war in a nonenemy country *(ibid.*, p. 8).

(14) Others regard the presence of allied forces in Austria after World War II the same as their presence in France, Belgium and Holland, a liberation act and not a military occupation. In this sense, Austria is not regarded as an occupied territory but rather a liberated country where occupation law does not apply. The question is governed by political considerations with regard to the presence or absence of a state of war and hostilities. Cf. V. Seery, *United States International Law Reports*, 1955. p. 389.

(15) Article 70/1 of the Fourth Geneva Convention (1949) on the protection of Civilian Persons in Time of War makes this distinction in time and place more clearly with regards to those who violate the laws and methods of war : "Protected persons shall not be arrested, prosecuted or convicted by the Occupying Power for acts committed or for opinions expressed before the occupation, or during a temporary interruption there of, with the exception of breaches of the laws and customs of war."

of the occupying power but where hostilities have not subsided, the law of war is applied because it is not yet considered an occupied territory in the light of the previous definition. The people are guaranteed a minimum of protection and humane treatment in accordance with international law on wartime treatment and the Fourth Geneva Convention (1949).

In territories which do not belong to an enemy state, like dominions or protectorates of the occupation country, where the army suppresses a revolution that has not developed into civil war and whose men have not been granted the rights of fighters (like Spain's action in suppressing the Riff revolution in Morocco in 1924) the law of military occupation is not applied because there has been no war between two states. Modern jurisdiction calls for the law of war to apply rules to relieve human misery with regard to prisoners and people, and that this should not be only the responsibility of the occupying power's domestic laws.

As a result, the elements of belligerent occupation and the application of its legal principles may be defined as follows:

First, the existence of a state of war and armed hostilities in which one party manages to invade the territories of the other and occupy it in part or whole. Naturally, this situation is different from the presence of forces or foreign bases in the territory of a country in peacetime because they carry out their military duty without interference in the management of the territory

or its people. In this context, French forces were stationed in Saar region under Article 49 of the Versailles Treaty of 1919, and British and American bases are found in Libya under the 1951 and 1953 agreements. This is different from the state of military occupation in time of peace under agreement as was the case when U.S., French, British and Belgian forces occupied the Rhine district with the consent of Germany under the agreement of June 28, 1919, and Articles 428 and 432 of the Versailles Treaty. It is also different from the presence of forces of one country in the territory of another country from the same bloc for coordination of strategic plans as is the case between the countries of NATO and the Warsaw Pact. It is different from an individual action like the intervention of Western countries in China against the Boxer uprising in 1900 to protect foreign communities, the action of Warsaw Pact countries in invading Czechoslovakia in November 1968, to protect the security of Socialist countries, or retaliatory acts like those which took place when Italy occupied the Greek island of Corfu in 1923, or the occupation of French forces on the Turkish island of Mitlin in 1901.

In all those cases of military occupation in time of peace, regardless of the methods and causes, there is no rule to stop the occupied country from assuming its full territorial authority and sovereignty except with regards to the foreign occupation forces. It is the basic agreement and the respect of local authority in most of those cases that separate those cases of peaceful occupation from those of belligerent occupation. Some even say that an

authority assumed by agreement for the protection of the mutual goals of the two sides is based on the law not the material and military power of the occupation forces, despite the political undertones for the presence of occupation forces among the people of the occupied country who explain this foreign presence as a kind of neo-imperialism. Practically, the authorities of peaceful occupation cannot assume some administrative work and exert pressure as a result of the presence of their forces on several domains of territorial authority of the original country.[16]

Second, the existence of an actual state which is the occupation by foreign forces of territories of another country and subjecting them to their material and military authority. Modern international law does not recognize invasion and occupation except as a temporary *pur fait* having no effect on the sovereignty of the original country which owns the occupied territory regardless of the fact that it has stopped executing its authority as a result of the force *majeure* of occupation.[17]

Thus, the law of belligerent occupation regularizes this temporary state and defines the authorities of the occupant and the extent of its power to run the occupied territory. This is done in the light of the occupant's actual position and how much authority it needs to maintain public order as a necessity to protect its security and the lives of its forces on one side and the lives and properties

(16) Stuyt, *op. cit.*, pp. 240-250; Debbasch, *op. cit.*, pp. 8-9, 250.

(17) Debbasch, *op. cit.*, 5, 18, 151; Stuyt, *op. cit.*, pp. 252-254.

of the inhabitants on the other (Article 43 of the 1907 Hague Convention). This position does not give the occupant any legal rights to overpass the requirements of the temporary situation regarding security and military needs or to suppress the people and ignore its duties under the law of belligerent occupation on their treatment, the protection of their lives and property and the respect of their special conditions at the time of its military or civilian administration of the occupied territory. In this context, Hyde says that the occupant enjoys certain rights which have to be entailed by certain commitments concerning the adoption of possible measures aimed at restoring public order and guaranteeing security.[18]

Thus the temporary actual state under the law of belligerent occupation does not allow the occupant country to transfer sovereignty rights to itself[19] or to replace the original country by its own government or its legislative and legal powers in assuming the rights of sovereignty. It has the right to supervise the administration of the occupied territory while balancing between the requirements of its security and forces and between its obligations towards the territory and its people. It is not allowed to assume actual authority as a result of an act of force which is invasion and forceful occupation, and it cannot claim the right of assuming the legal authority of the people who enjoy sovereignty over all their territories

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(18) C.C. Hyde, *International Law,* 1945, Vol. III, para. 690.

(19) Lord McNair & A. D. Watts, *The Legal Effects of War,* (Cambridge: 1966), pp. 368-369.

(occupied and not occupied) and the government which represents them.

According to Montesquieu "le droit de conquete n'est pas un droit," therefore the occupation authority has no right, although it has the power.[20] Judge Eugene Borel said in the arbitration case of Turkish debts in 1925 that regardless of the consequences resulting from enemy occupation of territories prior to the establishment of peace, this occupation certainly does not transfer sovereignty to the occupying power.[21]

In a ruling connected with the disputes which followed the break up of the Austro-Hungarian empire on September 9, 1928, it was stated that truce agreements are not peace that grant occupation authorities the right to assume power.[22]

The International Court of Justice discussed the nature of belligerent occupation in the case of lighthouses between France and Greece. Although it did not issue a definite view in this connection, Professor Politis, who represented Greece, said: "belligerent occupation does not put any legal conditions on the legal authority. The holder of the legal authority faces all sorts of *de fait* obstacles resulting from the state of war but according to The Hague Convention in particular they put no legal conditions."

Professor Basdevant, who represented France, said that the country with occupied territories "legally enjoys

(20) Montesequieu, *Lettres Persanes,* XCVI.
(21) Stuyt, *op. cit.,* p. 252.
(22) *Recueil De Décisions Des Tribunaux Arbitraux Mixtes,* Paris, Tome VIII, p. 593.

its authorities but practically cannot assume them."[23]

A national ruling by the Belgian Court of Cassation on July 5, 1917, said: "military force, as a material element cannot change the legal nature of sovereignty rights or transfer them from the head of state of the defeated country to the occupation country even if this force has the means to disrupt some or all of the defeated country's authorities.

"The view that occupation cancels national sovereignty is baseless.

"The division of territories is rejected by actual law and the opening phrases of Article 43 of the Regulations annexed to the Fourth Hague Convention."[24]

Jurisdiction since late nineteenth century and early twentieth century supported this argument. F. Llewellyn-Jones said that neither military nor peaceful occupation means relinquishment or transfers of the sovereignty of the government of the occupied authorities. In case of military occupation, the Occupying Power has the sole power of exercising the necessary authority governing the safety of its forces and military operations. The laws of the defeated country remain effective unless these harm the position of the occupation army. All administrative and judicial employees of the occupied state exercise their duties as usual. The Occupying Power does not interfere in the daily life of the occupied people in time of war.[25]

(23) Stuyt, *op. cit.*, p. 252.

(24) *Ibid*, p. 253.

(25) F. Llewellyn-Jones, *Military Occupation of Alien Territory In Time of Peace*, Transactions of the Grotius Society, 1923, pp. 159.

R. Robin said,

> "The sovereignty of the occupied state is practically paralyzed but remains effective legally. Occupation is nothing but an actual state which results from war. In what concerns the Occupying Power, its authority on these lands is nothing else but seizure. For this reason, it enjoys some rights while at the same time has certain obligations. It is an actual authority which has no sovereign rights. This authority becomes legal only after peace is signed and the occupied areas are relinguished. A material occupation, like military occupation, leads to nothing but the establishment of an actual authority which has no legal right to make alteration in the international status of the occupied region."[26]

The Belgian Court of Cassation ruled that :

> "The Belgian sovereignty, which springs from the people, does not change by the mere establishment of an actual state which aims at occupying some lands through German forces, because might does not stipulate law."[27]

Relations Between the Occupying Power and the Occupied Territory

Since force does not make the law, or give rights of sovereignty and since it gives the occupying state limited powers defining the relation between the occupying state and the original state and the relation between occupation authorities and the people of the occupied territory, the occupation has no influence on the national-

(26) Robin, R. *Des Occupations Militaires en Dehors des Occupations de Guerre,* (Paris: 1913) pp. 5,7,8.

(27) Stuyt, *op. cit.,* p. 253.

ity of the people and their allegiance to the original country which owns the occupied territory.[28] The occupant, however, may ask the people to obey the orders it issues in accordance with its powers in managing the territory and maintaining the safety of its forces under the law of occupation.[29] For while occupation disrupts the authority of the state over the occupied territory or causes it to lose its political independence, it does not end its international character as a result of the principle of continuity of state. The occupying state assumes material authority based on the rules in operation in the occupied territory. However, the authority of the state of origin of the territory, for the duration of the state of war and occupation of the territory, remains unchanged. Therefore, a state whose territories are all occupied has the right to form a government in exile outside its own territory.[30]

During the Nazi occupation of Europe between 1941 and 1945 several governments in exile were created. They were either made up of the administrative machinery of the country of origin or were formed outside their territories because of the war conditions, and continued to

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(28) Article 45 of the Regulations annexed to the Fourth Hague Convention and Article 68 of the Fourth Geneva Convention of 1949 on the protection of civilians in time of war.

(29) Lord McNair says: "For the same reason, occupation operates no change of nationality upon the inhabitants and no transfer of allegiance, though the occupier acquires a right against the inhabitants who remain that they should obey his lawful regulations for the adminstration of territory and safety of his forces." McNair, *op. cit.*, p. 369.

(30) Debbasch, *op. cit.*, pp. 226-228.

assume their authorities and address the people of their occupied territory despite the difficulties and obstacles raised as a result of occupation and their effect on assuming material authority or carrying out their regulations and orders in the occupied territory.

It is clear that despite the limited scope of authority assumed by occupation authorities in the occupied territory under the law of belligerent occupation, the country of origin or the government in exile keeps power over the territory under the principle of the continuity of state or government. Theory and international action do not hinder issuing decisions and assuming powers from a foreign country. For the protection of the higher and vital interests of the occupied territory's people and the desire to liberate the territory from the enemy in addition to allegiance to the homeland, become the best expression of the people's support for the government in exile to save the country from the dangers of occupation and disappearance of the state's national entity.[31]

As a result of those links and the occupied state's continued assumption of its activity and its assertion of keeping sovereignty over the occupied territory and its people, international treaties between it and other states on the organization of consular relations and the rights of their nationals remain effective to guarantee the rights and interests of those nationals.[32] The exchange of diplomatic relations and the opening of diplomatic missions

(31) *Ibid.*, p. 228.
(32) McNair, *op. cit.*, p. 368.

between the government in exile and states which recognize it is important proof of the recognition only of the occupying state's material power while upholding sovereignty to the country of origin.

The British Parliament on March 3, 1941, declared its recognition of the powers of the governments in exile of Poland, Norway, Holland, Yugoslavia and Greece, which had taken refuge in Egypt, Crete and Britain during World War II. Britain and the United States exchanged diplomatic missions with those governments.[33]

If this is the kind of international action with regard to countries whose territories were completely occupied and whose governments moved into exile or who formed new governments in exile to uphold sovereignty for the occupied territory, then the occupation of a territory while the state of origin remains in other territories should not lead to a transfer of sovereignty of the occupied territory to the occupying state which is assuming temporary material power.

Occupation authorities should not take action which is the right of the party with legal sovereignty and authority over the occupied territories. For the occupation authorities are first and foremost a military administration and a temporary material authority. They are only allowed necessary action of a temporary nature. They cannot legislate for the occupied territory like the occupied state of origin. They also have no right to issue

(33) P. Guggenheim, *Traité de Droit International,* (Genève: 1954), Tome I, p. 208.

sentences in courts of the occupied territories in the name of an organization or person other than the owners of legal authority in the occupied territory. They issue orders made necessary by their temporary material presence in the territory and temporary absence of sovereignty over the territory as a result of the occupation. They must not take any measures to cause any changes in the conditions of the territory as organized by the sovereign authorities of the country of origin and its lawful administration, whether economic, legislative, administrative, social or educational as long as such measures are not necessitated by the safety of their forces and the administration of the territory.

In light of these considerations, the decision of the Israeli government on February 29, 1968, to consider Sinai, the West Bank of Jordan and the Syrian Golan Heights Israeli areas instead of enemy territory is an action falling outside its nature as a temporary authority that does not own the territory or land. Despite the explanations of the Israeli authorities that their action is administrative and being aimed at facilitating communications and the establishment of customs points on the border of the West Bank with Jordan, the action remains in the nature of a legal and administrative change in the occupied territories not required for security and public order. It is aimed at paving the way for the annexation which Israeli officials intend to carry out and which contradicts with the state of war and the occupation law.[34]

(34) McNair, *op. cit.*, p. 369.

Such Israeli actions also included interference in the education system and attempts to direct the Friday sermon in mosques, evacuating and blowing up houses, and forced individual and mass deportations, including that of thousands of Jerusalem inhabitants in prepartion for the settlement of Israeli families in their places and annexation of the city. There is a great difference between what international law stipulates to protect the rights of individuals against such actions when taken by the country with legal and material authority and by the occupying power whose presence is temporary without any important reason and in violation of international principles and agreements. Article 43 of the Regulations annexed to the Fourth Hague Convention (1907) stresses the need to respect conditions, laws and regulations in the occupied territories. This means the protection of lives and property and the organization of all kinds of social and human services for civilians. The article forbids occupation authorities from making any changes in the conditions, rules and regulations of the occupied territory unless absolutely prevented. If occupation authorities were forced to make some changes, they must be limited to a minimum and should be made only for the sake of the occupation army and its men and the occupation administration without misusing authority or exploiting conditions to achieve a special interest for the occupation at the expense of the territory and its people.[35]

(35) McNair, *op. cit.*, p. 370; Draper, G.I.A.D.: *The Red Cross Conventions,* Praeger, 1958, p. 39.

Thus, the cancellation by allied authorities of some Nazi laws which contradict human principles and the general principles of law was justified because the allies could not implement them (since they were absolutely prevented as mentioned above.[36]

Articles 27-34, 47, and 78 of the Fourth Geneva Convention on the protection of civilians in time of war were separated from Article 43 of the said Regulations.

Article 64 of the Fourth Geneva Convention (concerning the Protection of Civilian Persons in Time of War) states:

> "The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention. Subject to the latter consideration and to the necessity for ensuring the effective administration of justice, the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws."

It is clear that those articles are based on the legal nature of military occupation. Draper summed them up as follows:

> "(a) The limited and temporary nature of occupation, (b) that sovereignty is not vested in the Occupier, (c) that the prime duty is the establishment of order in the occupied area, (d) that the minimum alteration should be made to the existing administration, economy, legal

(36) Oppenheim *op. cit.*, pp. 446-447.

> system, and general life of the occupied community, and (e) that that minimum is to be determined by the restrictions and changes properly imposed for the security of the occupier's armed forces and civil administration."[37]

As a result, occupation authorities are not allowed:

1. To claim sovereignty rights over the occupied territory or transfer those rights to themselves.

2. To take other than the necessary actions under their temporary material authority for their security and the safety of their men, property, forces, administration and installations or to assume other than the necessary action to carry out their commitments to the occupied territory and their people under the law of belligerent occupation (Article 64/2 of the Fourth Geneva Convention on the protection of civilians in time of war).

3. To amend or annul laws in force in the occupied territory or its administration, judicial, economic, social, cultural and educational systems unless they threaten the security of the occupation and pose an obstacle to the implementation of the 1949 Geneva Convention on the protection of civilians in time of war.

4. To interfere in the daily life of people of the occupied areas whether through investigation, arrest or similar methods except in the most limited manner and in light of the previous requirements or in view of the violation of the laws and customs of war (Article 70/1 of the 1949 Geneva Convention on the protection of civilians).

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(37) Draper, *op. cit.*, p. 39.

5. To question, try, arrest or deport any of their nationals who sought refuge before the outbreak of hostilities in the territories of the occupied state unless for violations committed after the outbreak of hostilities or before them on condition that under the laws of the occupied state the accused should have been handed over to their government in time of peace (Article 70/2 of the 1949 Fourth Geneva Convention on the protection of civilians in time of peace).

6. To divide the occupied territories or annex them before the state of belligerency ends and a peace treaty is signed.[38] The division of the territory takes place by agreement or it is left for the occupying state[39] as a result of the surrender of the occupied state or its absorption into the occupying state.

The relation between the country with occupied territory and the occupying state follows this pattern:

1. It continues to enjoy rights of sovereignty over the occupied territory and address its people through orders and legislation although it cannot, in practice, assume material power and implement its laws and orders as a result of a forced material situation which is the occupation of the territory by foreign troops.

2. It returns to assuming its authority by law and

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(38) For the difference between the end of the state of belligerency and the signing of peace; cf. McNair, *op. cit.*, p. 12.

(39) Italy's occupation of Tripoli and Cyrenaica in 1912. Cf. Oppenhein, *op. cit.*, Vol. II, par. 273.

practice after the end and repulsion of the aggression unless a peace treaty decrees otherwise.

The Illegality of Annexation in Time of War

The illegality of annexing territories to the occupying state in time of war is underlined by the temporary material nature of occupation, and the intermediate position of the law of belligerent occupation, between the law of belligerency and the rules governing the assumption of authority in time of peace. In addition, the preventive rules in the law of belligerent occupation limit the authority of the occupying state in running the affairs of the occupied territories while upholding the integral rights of the original state.

There was a time when invasion and annexation were allowed as a method of gaining the ownership of a territory. In this context lies France's invasion and annexation of Algeria in the mid-nineteenth century. This appeared natural because wars were allowed as a legal method in international relations and a basic condition of a state's sovereignty. Professor Luther Bacht decided that by a simple cessation of hostilities without the conclusion of a peace treaty, the *status quo post bellum* is upheld as long as the defeated side stopped fighting, left the occupied territory and ceased claiming them.[40]

(40) Bacht later has reservations and says annexation is possible only in a legal war started by the defeated nation. Cf. L. Oppenheim, *op. cit.*, Vol. II, 263, note 27; M. McMahon, *Conquest and Modern International Law,* 1940.

Yet against such traditional views which supported the policy of force more than they tried to bring stability to the international system on the basis of law, there appeared the principle which rejected the annexation of an occupied territory by unilateral decision in time of war even after a treaty had been concluded and not only the cessation of hostilities. This principle was used in the nineteenth and twentieth centuries. The Fellander ruled on September 11, 1967 that "the occupation of town, fort or place in time of war does not lose the owner his ownership and sovereignty over his territories regardless of the time as long as he does not give the land up in a treaty."[41]

Unless the temporary material nature of the occupation is emphasized and reflected in the actions of the occupying power and the attitudes of nonbelligerent states towards this material situation, there are no rules to prohibit annexation in time of war. Under the law of belligerency there is no basis for the principles of peaceful coexistence. No belligerent nation has to undertake not to interfere in the domestic affairs or respect the political independence and safeguard the safety of enemy territory.

But international action since the nineteenth century, supported by jurists, has considered the annexation of an occupied territory in time of war as premature action, contrary to the limits set forth by international law for the occupation authorities and administration as long as hostilities have not ended. There is no way to develop

(41) H. Van Hautte, *Les Occupations Etrangères en Belgique sous L'Ancien Régime,* (Gent: 1930), Vol. I, p. 272.

these limits except by transferring authority from the original country to the occupying country, which could not be done without the defeated country's consent to change the *status quo ante*. But annexation by unilateral force, like South Africa's annexation of Orange Free State at the end of the war in South Africa is no more admissable under international law, and world society no longer approves it.

Thus international action has become the basic factor in asserting the rejection of annexation by unilateral force as a result of invasion and occupation. Actual annexation has become an illegal action on the part of the occupying nation against the occupied nation. International action is underlined when other nonbelligerent countries do not recognize the annexation unless the defeated nation gives up its rights to the occupied territory.[42] Otherwise its action towards the country with occupied territory becomes illegal. This is how the illegality of the annexation of an occupied territory by unilateral action in time of war got its mandatory basis in international law.[43] Modern international law even rejects approval of the annexation of territory of a defeated nation as a result of pressure and coercion in a peace treaty.[44] The annexation, whether made through suppression or pressure and coercion, is illegal because it neglects the

(42) This takes place by agreement, approval of the material state of annexation or silence to indicate approval and abrogation of rights. Cf. Debbasch, *op. cit.*, p. 335.

(43) Schwarzenberger, *op. cit.*, p. 167.

(44) *Ibid*, p. 168.

wishes of the people who have sovereignty over their territory and the right to self-determination. It is a principle known since the American revolution in 1763 and the French revolution in 1789 and established during the various civil wars in nineteenth century Europe. It was also included in the Monroe Doctrine which rejected any interference in the affairs of the New World in 1823 and the announcements of U.S. President Wilson and the Bolshevik revolution during and after World War I. This was confirmed by the Nuremberg Court in 1946. The international military tribunal rejected the claim that Germany's annexation of Bohemia and Moravia in March, 1939, after their occupation had taken place with the consent of President Hacha, on the grounds that the consent was the result of pressure and coercion on the negotiators and that the conditions for real consent were nonexistent, thus making the annexation null and void.[45] It rejected the renunciation of a territory by a government or state without asking the people in a referendum inside and outside the territory, the people being the holders of full sovereignty over their territory.[46]

This was also the trend of international action in world organizations since the League of Nations and the United Nations. It rejected annexation in time of belligerency even with regard to the occupying nation in a lawful war thus stressing that annexation in time of belligerency is rejected regardless of the legality or illegality of war.

(45) *Ibid.*, p. 323.

(46) Debbasch, *op. cit.*, p. 336.

This is in first place with regard to the country with occupied territory as a result of an illegal aggression.[47]

In the absence of a clear text banning annexation, the international system made several commitments and legal rules which in effect, ban the invasion and threat to the safety of territories and refuse to acknowledge territorial changes favoring the aggressor thus rejecting unilateral annexation by way of suppression and coercion.[48]

The League of Nations era aimed at limiting the extent of war and demanded the resort to peaceful methods of reconciliation and arbitration first. The Kellogg-Briand Pact of 1928 banned the settlement of international conflicts to achieve national goals by war. The sixth chapter (also Article 2/3) of the United Nations Charter makes the use of peaceful methods in solving international disputes imperative and bans the use of force or threat of force in international relations to threaten the safety and political independence of any country for purposes contradicting those of the United Nations, whether by invasion or its actual consequences in occupation and annexation.[49] (Article 2/4) : Article 1 of the Charter defined its purposes particularly with regard to the right of peoples for self-determination. Articles 55, 73 and 76 stressed that the right of peoples for self-determination and the banning of war as a legal method in relations between states are

(47) Schwarzenberger, *op. cit.*, p. 167.
(48) *Ibid.*, p. 167.
(49) Debbasch, *op. cit.*, p. 333.

further assertions that the peoples' rights to chose their political future and define their legal position and right to independence have taken the place of conquest and colonial invasion. These were previously allowed to justify the enforcement of the occupying nation's authority over the occupied territory at a time when war was a recognized legal system.

International action was stressed after World War II. Within the framework of the United Nations it called for the right of self-determination in the International Declaration on Human Rights and in the first article of both agreements on political and civilian rights and economic and social rights. The declaration on decolonization which was issued by the UN General Assembly in 1960 said that the rejection of national self-determination and the annexation of lands and territories by right of invasion and force took world society back to the state of anarchy which had resulted from wars and the policies of force in the seventeenth and eighteenth centuries. Furthermore, it violated an international rule that had been in operation since the nineteenth century, as well as violating commitments already made under international agreements.

In addition to the United Nations Charter there are other international doctrines and documents condemning war and banning the annexation of territories on its basis.[50] The Stimson Doctrine of U.S. Secretary of State

(50) Cf. M. H. El-Farra, "The Role of the United Nations vis-à-vis the Palestine Question," *Law and Contemporary Problems,* Winter 1968, Vol. 33, No. 1., p. 71; Whiteman, *Digest of International Law,* 1965, Vol. V, pp. 880-881.

in 1932, following the Japan-China war and the attempt of Japan to establish a republic in Manchuria after wresting it from China, refused to recognize territorial changes resulting from the use of force or to recognize governments established in violation of public and private international commitments.

The Inter American Conference of 1936 expressed, in the Buenos Aires Agreement, strong condemnation of conquest as a lawful means of territorial aggrandisement and denied the validity of the acquisition of territory by the use of force.

The American states reaffirmed this principle in their 1928 Lima declaration which said that "occupation or annexation of territory or amendments of territorial conditions and boundaries by way of invasion or other than peaceful methods are considered illegal and bring no legal consequences." The Charter of the Organization of American States which was signed in Bogota on April 4, 1948, said in its Article 17 that it did not recognize "any territorial gains or special priviledges acquired by force or any other method of suppression."

All this supports the international convention banning the annexation of territories occupied in time of war. In addition, the third part of the Regulations annexed to the Fourth Hague Convention of 1899 and 1907 respecting the laws and customs of war on land, Article 43, distinctly defines the authority of the material administration of occupation.[51] Article 43 states that the authority of the

(51) Schwarzenberger, *op. cit.*, p. 168.

legitimate having, in fact passed into the hands of the occupier, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.[52]

Article 47 of the 1949 Fourth Geneva Convention on the Protection of Civilian Persons in Time of War says :

> Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory."

Some people find that the text implies the possibility of the annexation of land by unilateral action in time of war because it openly refers to annexations contrary to the general rule of international behavior and to the rejection of annexation by international agreements and by the preparatory work done for the 1949 Geneva Convention.[53] This text and the texts of the Convention's third part on occupied territory (Articles 47-78) came as a result of a great conflict of interests between these countries which suffered during World War II and wanted to stress the protection of civilians, and between those

(52) Pictet, *op. cit.*, p. 273.
(53) Schwarzenberger, *op. cit.*, p. 168.

countries which sought to protect the interests of occupying states, their authorities and forces as was their situation when the Convention was concluded in 1949.[54]

Some government experts suggested, during the diplomatic conference which prepared the Convention in 1949, the use of the word "alleged" before annexation while some delegations asked for the dropping of the word annexation altogether for fear that the conference might be interpreted as recognizing annexation by unilateral action in time of war. The conference, however, kept the word annexation without change, arguing that the explanation of the text does not mean that annexation is supported by the law or international action and believing in the necessity of facing some cases of *l'annexion de fait* during World War II which were not recognized as legal annexation despite the names and facades used to hide these attempts at annexation, for these subterfuges were based on the occupying power's force and political aims or on its desire to implement the provisions of the Convention on the protection of civilians in occupied territories.[55]

Under this category falls the annexation by Nazi Germany of the Alsace and Lorraine districts during their occupation in 1939. The first was annexed to Bade district and the second to Sarre between November 30, 1940 and 1944. It also includes Nazi Germany's annexation of areas from Belgium and Poland during their occupation.[56]

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(54) Draper, *op. cit.*, p. 38.
(55) Pictet, *op. cit.*, p. 275.
(56) McNair, *op. cit.*, p. 369.

Israel annexed Arab Jerusalem on June 28, 1967, while the subject of its aggression was still before the United Nations. It tried to take preliminary steps to annex the occupied territories of Sinai, the West Bank of Jordan and the Syrian Golan Heights by issuing a decision considering them Israeli areas not belonging to the countries with legal authority over them. It hid behind such facades and expressions as "administrative annexation" and the desire to facilitate the administration of occupied territories, communications, social life, etc.

Such measures are taken under the material state of occupation and are regarded as a material development for assuming power by force. Therefore, they do not take the legal form of occupation according to rules organizing it and defining its powers. The recognition of the material state of occupation under the law of belligerent occupation means the paralyzing of the occupied country's authority and the curtailing of its prerogatives temporarily until the territory is relinguished by agreement or it reassumes its powers. But the recognition *de fait* annexation, regardless of its name, means an end to the original country's authority and its transfer to the occupying country or the usurpation of the territory by force and suppression.[57] It is evident that this situation contradicts the law of belligerent occupation, the general rules of international behavior and the principles of the United Nations Charter. According to Pictet the ban on the annexation of occupied territories by unilateral action

(57) Debbasch, *op. cit.*, pp. 334-335.

in time of war is an internationally accepted principle supported by jurists and is further justified by numerous rulings of national and international courts.[58]

Article 47 of the Geneva Convention means that the occupier could in no way shirk the responsibility for the protection of civilians by taking an extraordinary measure in violation of its powers under the law of belligerent occupation and the rules of international law and behavior, e.g.; (a) changing the constitutional form of the administration and government, appointing mayors and municipal officials from people of its own nationality or from people cooperating with it in the occupied territory, establishing new political organizations, or cancelling laws and applying new laws; or (b) concluding a treaty with the administrative authorities in the occupied territory to abolish some commitments under the Convention, thus posing a danger to the population; or (c) annexing the occupied teritory, in part or in total, in violation of the occupied nation's will, international behavior and agreements whether by using force to achieve its strategic, political or military goals or by trying to evade the implementation of the Convention with regard to the protection of civilians.[59]

Thus Article 47 of the Geneva Convention is merely a humanitarian text aimed at the protection of civilians and not the recognition of annexation in time of war or other illegal actions in the course of applying the rules

(58) Pictet, *op. cit.*, p. 275.
(59) *Ibid.*, p. 272-276.

of the law of occupation. This is the essential rule of Article 7 concerning the application of all conditions of protection in the Convention, no matter what actions and measures the occupation authorities adopt to avoid the implementation of the Convention under the law of belligerent occupation.[60]

Regardless of any explanations that may be put forward to change the meaning of the general rule on annexation as covered by Article 47, the commitment contained in the Kellogg-Briand Pact and the United Nations Charter refute any claims of this sort. They replace the rights of invasion and conquest with the rights of states to protection of their sovereignty and the safety of territories and they refuse to recognize any territorial state.[61]

Among the decisions of international courts of law on rules banning annexation in time of war, there is the ruling of Judge Borel in the case of Turkey's debts. In this conflict Bulgaria relinquished parts of her territories to the victors in Neuilly peace treaty of 1919. The Bulgarian government considered itself no more responsible for those territories after the victors occupied under an armistice signed on September 29, 1918, and before the peace treaty came into effect on August 9, 1920. It claimed that the occupation did not take place as a result of fighting although the state of belligerency was still existent. Greece said that international responsibility for

(60) McNair, *op. cit.*, p. 369.
(61) Schwarzenberger, *op. cit.*, 169.

the territories rested with Bulgaria until August 9, 1920. The judge ruled that occupation in itself does not transfer legal authority. Only a peace treaty does and all dates prior to its conclusion are irrelevant. He explained his view by referring to jurists and Article 51 of the Versailles 1919 treaty. The article reunited Alsace and Lorraine with France from the date of signing the armistice with France on November 11, 1918, considering that their previous annexation to Germany had not entailed a transfer of France's powers.[62]

In the arbitration in 1925, between the United States and Britain over Iloilo islands of the Philippines, the court stressed that U.S. occupation of Philippines after the armistice did not entail a transfer of power to it prior to the ratification of the Paris Peace Treaty and the exchange of instruments of ratification on April 11, 1899.[63]

The mixed arbitration court which looked into the mines case between Hungary and Yugoslavia in 1928, ruled that the armistice between the two countries on November 3, 1918, had no effect on the powers of the mines authority in Budapest and work in occupied territories. Those powers remained effective until the Trianon Peace Treaty of July 26, 1921, expired.[64]

The Nuremberg Military Tribunal adopted the following principles :

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(62) United Nations, *Report of International Awards,* 1948, I, pp. 529-555.
(63) Schwarzenberger, *op. cit.,* p. 185.
(64) *Ibid.,* VI, p. 172.

a. The illegality of the annexation of land as a result of an aggressive war.

b. Since the allies conquered by Germany in World War II were fighting to liberate the occupied territories, the powers of Germany over those lands necessarily did not go beyond the powers of an occupation authority in time of war.

c. The relationship between Germany and the districts of Bohemia and Moravia which it annexed after its forces had occupied them in March, 1939, was one of military occupation ruled by the laws of war.

d. Germany's declaration of an aggressive war against those areas did not mean absolve it from the rules which governed its position as an occupation authority.

The *de fait* annexation of Upper Rhine, Lower Rhine and Mozel areas to neighboring German districts during the Nazi occupation of France, put French courts in a delicate position until the reunification of France and the publication of the decree of September 14, 1949, which returned the French Republican legal system to those areas. The courts tried their best to solve the delicate problems posed by the German annulment of French laws and endeavored to correlate between the need not to recognize the occupier's measures in Alsace and Lorraine between 1939 and 1945, and the desire to protect the in-

terests of individual inhabitants. The court rulings varied in treating this malign aspect of German expansion.

In a ruling on July 24, 1951, the Nancy Court underlined the illegality of the German measures taken on the basis of *de fait* annexation and stressed the fact that French criminal laws remained effective in those territories. However they said that in view of the *de fait* cancellation of French laws the only way to acquit those who violated French law and did not abide by it is to take into consideration the *de fait* legal situation in those areas.[65]

The United States judiciary absolutely refuses to acknowledge annexation not recognized by the U.S. legislation. [66]

The Belgian legislation revealed a decision issued on May 5, 1944, cancelling all decrees, laws and orders based on the *de fait* annexation by Germany of some Belgian territories during World War II, but later amended the decision in a law issued in 1953, which covered such matters as divorce and annulment of marriage.[67] The judiciary was forced to recognize some cases in view of the *de fait* annexation without legally acknowledging it.[68]

In a famous ruling on July 21, 1953, over a verbal will of one prisoner of Auschwitz concentration camp, the Paris court decided that the law governing the will was Polish law and not the German civil law which the occupant had imposed during the war on the territories

(65) Debbasch, *op. cit.*, pp. 212-213.
(66) *Ibid.*, p. 213.
(67) McNair, *op. cit.*, pp. 296, 411.
(68) Debbasch, *op. cit.*, p. 213.

that Nazi government annexed to the Reich.[69]

The Colmar court ruled on May 25, 1952, that Germany's *de fait* annexation of the French territories in Rhine and Mosel in violation of international law did not justify not applying French law in those territories. A plaintiff has the right to file suit against a Frenchman asking for compensation for losses inflicted on him under that law, but since the defendant caused the damage while serving with the occupation forces in their police force, French courts have no jurisdiction over the case. The case would have been different if the defendant was responsible in a personal capacity.[70] In another ruling by the Colmar court on January 16, 1952, it was decided that the occupation authorities violated Article 42 of the Fourth Geneva Agreement on Land War and the French-German armistice of June 22, 1940, Article 3 which stipulated that the French civilian administration should remain in the occupied territories until a peace treaty was signed. This violation took place when they appointed village chiefs and mayors who went beyond their powers in applying the law, because they believed in national socialism, and illegally took over the property of absent persons without completing the formalities of transfer of ownership, and thus those men were personally responsible.[71] The French Court of Cassation gave its view on the subject in two decisions issued on December

(69) Debbasch, *op. cit.*, p. 213.
(70) *Ibid.*, pp. 214-215.
(71) *Ibid.*, p. 216.

2, 1952. It said that actions by administrative officials appointed in violation of international and local laws and on the basis of a *de fait* annexation did not mean that the annexation was correct or legal because it was not based on a peace treaty, peace démarches or a diplomatic agreement between the Reich government and France. But it said that the actions must be approved so that individuals who were hurt by them should not lose their rights for compensation. For example, it decided that the sacking of a French director of an Alsace hospital and the appointment of a German director in his place did not mean that all actions of the German were illegal. The court attributed an administrative decision to the administrative actions of German authorities in *de fait* annexed areas which often resulted in the illegal seizure of the administration responsible for the compensation of the victims.[72]

It is clear that the French Court of Cassation aimed at refuting any idea of a transfer of French authority on the basis of the *de fait* annexation in time of war. It considered that the German officials assumed *de fait* authority in the name of the French administration in French territories. On this basis victims should be compensated for losses inflicted upon them by actions in extraordinary times. The responsibility of occupation authorities for those actions and measures which contradict with international law and the Fourth Hague Convention

(72) *Ibid.*, p. 216.

(Articles 42 and 43) comes within international law which decided the kind of punishment for a party to this law which did not honor its international commitments as a result of error or misuse of its powers as the occupation authority under the law of belligerent occupation.[73]

Such actions and measures by occupation authorities incensed the French resistance movement and the French National Committee often referred to them as international brigandism. French jurists commented on this through the words of George Sel: "The Occupying Power exercises a purely administrative role and only in cases where this is deemed necessary by the occupation or by the Power's forces."[74]

Waline further explained this by saying that replacing one authority by another is merely an actual behaviour which does not entail any legal implications except in that which concerns the mistakes committed by the occupation authorities *vis-a-vis* international principles.[75]

In the light of these rulings and decisions, it is clear that it is illegal for Israel to annex Arab Jerusalem by unilateral action in time of war on the assumption that since the lines between the city's two sectors are military and not political, they can be amended through Israel's mili-

(73) The material consequence of international responsibility is limited to compensation. Following a ruling regarding the international responsibility, the victim country becomes entitled to compensation. Individuals have the right to compensation in accordance with their domestic laws.

(74) Debbasch, *op. cit.*, p. 217.

(75) *Ibid.*, p. 217.

tary operations on June 5, 1967.[76] Israel uses the same pretext with regards to the West Bank and Gaza Strip.[77] It also depends on imposing the *status quo* through the prolongation of the *status quo post bellum* which it claims legality in annexing Sinai and the Golan Heights[78] in violation of the United Nations Charter which bans the annexation of land as a result of the use of force.

It is clear that Israel is trying to win an international license for sovereignty through unilateral annexation and ratification of a *de fait* situation regardless of agreement by the parties. It also tries to absorb the occupied areas by assuming authority over them and changing their administrative, legal and education systems in order to obtain a means of winning sovereignty without any legal backing.[79]

This shows how far the Israeli occupation authorities have gone beyond their powers by effecting a *de fait* annexation and violating the rules of belligerent occupation and the Fourth Geneva Convention of 1949. As a result it must be held responsible for illegal actions under international law particularly with regard to the Geneva Convention on the protection of the rights of civilians (Articles 2/55, 147, 148).

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(79) Cf. Quadré, *Droit Public International,* (Palermo Israeli official.

(77) *Harvard International Law Journal,* "Commentary," *op. cit.,* pp. 254-257.

(78) Cf. Luther Bacht's view, L. Oppenheim, *op. cit.,* Vol. II, p. 263.

(79) Cf. Quadre, *Droit Public International,* (Palermo : 1960), p. 586.

Israel's responsibility for damage caused as a result of its aggression on June 5, 1967, the international crimes it has committed during the aggression and occupation and its violations of legal commitments are still the subject of further consideration in accordance with the principle that the aggressor should compensate the victim for damages caused by the aggression.

But the present international society, lacks perfect regulations and the United Nations has failed to play a positive role except in the field of fact-finding and in asserting the presence of certain violations without being able to play the role of an international government. It is feared that in this situation Israel may get away with its policy of *fait accompli* towards Arab countries and succeed in covering up all its illegal actions as long as it is possible for the policy of force to defeat the law.[80]

(80) The report of the League of Democratic Italian Lawyers to the Second Conference for the Support of Arab Peoples in Cairo between January 25 and 28, 1969.

III

THE LEGALITY OF RESISTANCE AGAINST OCCUPATION AUTHORITIES

The Relationship Between the Occupying State and the People of the Occupied Territory

The relationship between the occupying powers and the people of the occupied territory is defined in the light of the principal problem of belligerent occupation. This is the problem of dual authority — the legal authority of the occupied state and the material authority of the occupying state. In addition there is the possibility of co-existence and a balance between the two sides. The life of the people of the occupied territory under the extraordinary temporary conditions of occupation remains natural as long as the administration of the belligerent occupation is assuming its material authority in accordance with the general international rules and regulations decreed by the law of belligerent occupation on the basis of the general rules of international behavior and international agreements in addition to The Hague Conventions of 1899 and 1907 and the Geneva Convention of 1949.

Since the authority of occupation is based on a material situation which enables it to hold the inhabitants in its hands, crush them and demand that they obey it,[1] the good will of the inhabitants in this situation will not be forthcoming unless the occupying power adheres, in applying its authority, to a general set of rules in accordance with the nature of belligerent law in modern society, in addition to special rules referred to in the Geneva and The Hague Conventions with regard to the maintenance of law and order, the protection of the lives of the inhabitants, the respect of their freedom and dignity and the protection of their money and property.[2]

According to the rule forbidding the annexation of occupied territory during time of war and the organization of the law of belligerent occupation for the actual temporary situation of the occupation and the maintenance of the sovereign rights of the state whose territory is occupied, the occupying power has no right to impose its nationality on the inhabitants of the occupied territory. It also has no right to deprive them of their original nationality or to deprive them of the loyalty relationship which binds them legally to their state and homeland by imposing on them an oath of obedience. In other words, the occupying power or occupation

(1) Oppenheim has a different expression on obedience. Cf. L. Oppenheim, "The Legal Relations Between an Occupying Power and the Inhabitants," *Law Quarterly Review*, 1917, p. 368.

(2) Article 43 of the 1899 and 1907 Hague Conventions, Articles 27-34, 47-78 of the 1949 Geneva Convention on the Protection of Civilian Persons in Time of War.

authorities should not ask the inhabitants of the occupied territories to commit an act of treason against their homeland or disloyalty to their government by participating in military operations carried out by occupying forces or through divulging secrets which affect the national security of their state or its military forces.[3]

Article 45 of the Regulations annexed to The Hague Conventions (1899, 1907) on Land Warfare is quite clear on this issue. Article 67 of the Fourth Geneva Convention on the Protection of Civilian Persons in Time of War of 1949 also stipulates that when military tribunals, formed by the occupation authorities according to Article 66 of the same convention, are in the process of trying one of the inhabitants of the occupied territory, they "shall take into consideration the fact that the accused is not a national of the Occupying Power." Commenting on this, a group of jurists explain:

A crime of high treason when committed by nationals of the occupying state differs in its nature from that committed by an alien of that state in view of the allegiance which the latter bears for his own state. Such a person should not be considered a traitor, and should be respected for the national feelings that prompted him to act against the interests of those who are enemies of his own country. As a result, the reasons that prompted him to act should be taken into consideration before deciding on the punishment that the law governing a war of belligerence authorizes the occupying power to take.[4]

(3) Schwarzenberger, *op. cit.*, pp. 327-328.
(4) Pictet, *op. cit.*, p. 342.

Paragraph three of Article 68 of the above mentioned convention also stipulates that: "The death penalty may not be pronounced on a protected person unless the attention of the court has been particularly called to the fact that since the accused is not a national of the Occupying Power, he is not bound to it by any duty of allegiance."

In examining the two texts it is found that the conditions in which the accused finds himself a victim of aggression and occupation suffered by his homeland should be considered as extenuating circumstances when capital punishment is prescribed for a crime. The phrase "is not bound to it by any duty of allegiance" is the basis of the general rule according to which the occupation authorities should organise their relationships with the inhabitants of the occupied territory. Whatever the circumstances, the inhabitants of occupied territories protected by the Fourth Geneva Convention of 1949 maintain their loyalty and obedience to orders and instructions issued to them by the state which is the legal sovereign over those territories.[5] It is also noted that the same stipulations are reiterated in Article 118 of the same Convention[6] and in Articles 87 and 100 of the Third Geneva Convention on the General Protection of Prisoners of War of August 12, 1949.

The questions to be raised then are : Have the

(5) *Ibid.*, p. 346; "Final Record of the Diplomatic Conference of Geneva of 1949," Vol. II-A, pp. 673-674.

(6) Cf. Article 105 of the Fourth Geneva Convention.

occupying authorities the right to impose obedience on the inhabitants of the occupied territory? Is there a legal basis to the contention that obedience to the occupying authorities is required in lieu of rights granted to them and that a breach of this commitment would constitute a war crime or war treason? This could hardly be imagined in the light of the above mentioned articles of the Geneva Convention on the Protection of Civilian Persons in Time of War of 1949 which places the relationship between the occupying authorities and the inhabitants of occupied territories outside the framework of the relations of a state with its own citizens. It is also difficult to imagine that those who drafted this Convention as well as The Hague Convention on Land Warfare of 1899 and 1907 meant to grant rights to individuals or impose duties on them within a general international framework, addressing them directly as individuals in general international law. It is clear that the rights and duties under the laws and conventions of war and international agreements pertaining to times of war are meant not for individuals but for belligerent states and neutral states only.[7]

A violation by the occupying power, therefore, of rules limiting its freedom of exerting authority on the occupied territory and its inhabitants is an international responsibility whose actual effect lies within the different kinds of compensation (compensation in kind, compensation for damage or moral compensation). Persons

(7) Opinion outlined in Schwarzenberger, *op. cit.*, p. 328; Debbasch, *op. cit.*, p. 235.

responsible for acts and crimes in breach of the law of war and military occupation are liable when apprehended to prosecution as war criminals according to the extraordinary powers invested in the state whose territory was occupied.[8]

If the inhabitants of the occupied territory, however, violate orders of the occupying authorities issued within the limits allowed by the law of military occupation, the occupying authorities have the right to impose punishments on those responsible provided minimum conditions of human treatment are observed according to the guarantees of the Fourth Geneva Convention on the Protection of Civilian Persons in Time of War of 1949. This is the only limitation on the authority of the occupant state in this case. They are, however, no more than orders and instructions concerning the ordering of the activities of the occupying authority, limiting its jurisdiction over the occupied territory. The inhabitants of the occupied territory could, therefore, only violate an internal law and not a general international law.[9]

General international law does not impose a legal duty on the citizens of any state to obey its authority or respect its territorial imperative. This is an internal question which does not lie within the competance of general international law. It could be considered the main condition governing the relations between the inhabitants of occupied territories and the actual temporary authority of

(8) *Ibid.*, pp. 328, 450; Pictet, *op. cit.*, pp. 602-603.
(9) *Ibid.*, p. 328.

the occupying power. All the commitments imposed on the inhabitants of occupied territories towards the occupying authorities are therefore simply commitments under local law. Any person refusing to abide by these commitments or violating them would not be committing a war crime or war treason as some contend. International jurisprudence does not recognise this in general international law[10] and the American military tribunal at Nuremburg refused to consider such allegations when the actions of the Polish resistance were described as treasonable.[11]

General international law is not concerned with this field except in defining the powers of the occupying authorities in the context of the law of military occupation. What appears as duties to be observed by the inhabitants of the occupied lands towards the occupying authorities are, in the light of general international law, no more than reflections of these powers and the inhibiting orders of international law defining the effects of past centuries when the occupying power forcibly annexed occupied territories without encountering any resistance from the inhabitants. As to whether actual local laws implemented by the occupying authorities in the occupied territories is actually consistent with general international law and its inhibiting orders according to international agreements and conventions governing the law of military occupation, this remains within the frame-

(10) *Ibid.*, p 329.
(11) Debbasch, *op. cit.* p. 236.

work of the relation between the legal persons concerned in general international law, especially the state whose territory is occupied, the protecting power and the occupying power.[12]

The relations between the occupying power and the inhabitants of the occupied territory can be defined as follows

1. The occupying power in the light of the temporary, extraordinary and actual nature of military occupation cannot implement its territorial powers as they are exercised inside its lands and territorial boundaries except in violation of the limits and authority defined by the law of military occupation or through actual annexation in breach of the general rules of international convention and international laws and agreements.

The legal position of the orders and decisions issued by the occupying power even in normal conditions where it does not violate its powers are, therefore, simply orders of an occupying authority which do not assume a legal nature. These powers remain within the competance only of the occupied state holding legal sovereignty over the territory. The superior court of Liege, defining the authority of an occupying power, said in a renowned decision on February 13, 1917, "Quelle ne gouverne, mais quelle administre."[13]

2. The occupying power cannot claim the powers of

(12) *Ibid.*, p. 329; Debbasch, *op. cit.*, pp. 234, 236.
(13) Cf. Stuyt, *op. cit.*, pp. 256-258.

the occupied state since administration is based on a *fait accompli* resulting from a still existing state of war. If it exercises such powers it would be hindering the territorial imperatives of the occupied state holding sovereignty over the occupied territory bringing upon itself international responsibilities and legal violations.

3. The occupying power has, however, to act within the limits of the powers granted to it by the law of military occupation in the light of its actual temporary position in the occupied territory. In addition to those general limitations, it has to work within the special material limits imposed by the above mentioned Geneva and Hague accords on the treatment of civilians in the occupied territory.

The occupying power in normal circumstances of implementing the law of military occupation refrains from taking over the powers of territorial sovereignty and from imposing on the inhabitants of the occupied territories and its own inhabitants at the same time its own territorial powers as implemented inside its borders. Thus it clears itself from responsibility according to its internal laws towards the inhabitants of the occupied territories by refraining from illegal acts or violations requiring compensation to individuals.

Therefore, "we have, in the light of general international law, to differentiate clearly — as defined in the decision of the joint Anglo-German arbitration tribunal of December 12, 1923, — between the measures adopted by a state inside its own territory in accordance with its

territorial sovereignty, and measures adopted and implemented by its authorities in an enemy state conquered and occupied by its forces. The acts of impounding in enemy territory conquered and occupied fall within this second category... However illegal these acts of impounding and confiscation in the light of Article 52 of The Hague Regulations, it appears at first glance that there are great difficulties in implementing the principles of internal law in connection with charges brought against individuals for violations of private property of others on acts of a belligerent state in its actions or misuse of its military power in an enemy state occupied by its forces."[14]

The occupying power, in conclusion, bears international responsibility for its violations against inhabitants of occupied territories and must pay compensation within the framework of what is usually referred to as war compensation according to Article 3 of the Regulations annexed to The Hague Convention of 1907 on Land Warfare and Articles 147 and 148 of the Fourth Geneva Convention of 1949 on the Protection of Civilian Persons in Time of War.[15]

Practically, international responsibility is not assumed and its impact is not realized except after the termination of war and after the occupied state re-exercizes its own role as a sovereign state. In time of war, however, com-

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(14) Stuyt, *op. cit.*, p. 258.

(15) See Schwarzenberger, *op. cit.*, pp. 457-461; Pictet, *op. cit.*, pp. 602-603; Debbasch, *op. cit.*, p. 61.

pensation by the occupying power to individuals is a mere moral and humanitarian obligation.[16]

We have also to note that the relationship between the state whose territory is occupied and the inhabitants of this territory remains unchanged. Those inhabitants remain liable to prosecution if they commit, during the period of occupation, acts contrary to their legal obligations, the same as the case was before the commencement of fighting and acts of belligerence.

The Right of Civilians in Occupied Territory to Rebel in Self-Defence.

The general rules explained thus far define the general outlines set by the international community for the practice of government by an occupation authority whether in relation to the occupied sovereign state or to the inhabitants of the occupied territory.

In addition to the general limitations explained above, the occupation authorities face a large number of specific limitations in its relationship with the inhabitants of the occupied territory. These limits originate in the contractual international law as set out in the Regulations annexed to the Fourth Hague Convention of 1899 and 1907, the Fourth Geneva Convention of 1949 on the Protection of Civilian Persons in Time of War and the general principles of human rights and measures to protect those rights. The basic premise is that human rights must be preserved at all times and limitations set

(16) Stuyt, *op. cit.*, p. 260.

on those rights in times of war and especially in occupied territories as a result of military necessities and other forced reasons are considered the exception and not the rule. The Geneva Convention mentioned above, therefore, stipulated various guarantees preventing occupation authorities from arbitrary exercise of their authority through invalidating the rights of civilians in occupied territories. It set out a series of specific limits in relation to respect of private property, banning looting and holding of hostages, confiscating of funds and other property, banning the imposition of taxes not related to the normal running of the system of occupation, banning forced individual and mass deportation, banning any change in the status of public servants and judges or imposing punishments on them, banning the removal of courts from the occupied territories to the territory of the occupant state, the freedom of intellectual activity, the maintenance of administration, order and general security, the organisation of religious activities... etc (Articles 27-34, 47-78 of the Convention).

The limits previously set on our subject prevent us from going into the theoretical side of the general issues raised by this aspect of human rights in times of war and peace.[17] Referring to these issues in the context of the Fourth Geneva Convention of 1949 on the Protection of Civilian Persons in Time of War and in the light of comments, elucidations and court decisions require a study more comprehensive than is possible within the

(17) This will be dealt with in another detailed study.

terms of this study.

We will limit ourselves here, therefore, to a discussion of the rights of civilians in occupied territories to self-defence, and to the principles and general restrictions imposed by the law for military occupation on the occupation authorities which we have reviewed, as well as violations by the Israeli authorities in this respect as mentioned by the United Nations Secretary General and other sources which we have quoted.

It is sufficient to review the past violations of international law and of the military occupation law and various international conventions regarding the actual annexation of Jerusalem, and to compare them to the flagrant violations of the Geneva Convention on the Protection of Civilian Persons in Occupied Territories that are now taking place to realize the seriousness of the conditions of the inhabitants of these territories.

These people are seeking safeguards against the loss of their freedom and rights, against deportation and the confiscation of their funds and property, and against the alteration of their administrative, legal and educational systems. They seek guarantees against control of their religious rites, in Jerusalem or other occupied areas.

It seems that the only possible guarantee in this respect, in view of the attitude of the international organisation and its bodies and in the face of Israel's intransigence, is that adopted by the resistance movement in the West Bank, the Gaza Strip and Sinai. This confronts the transgression by the occupation authorities and its forces

from the limitations of the military occupation law and the Geneva Convention with the opposition by the civilians and their refusal to cooperate with these authorities and forces, organising instead an armed resistance for liberation.

Thus a new legal status is born, conforming to the law and opposed to the status of the Israeli government and its authorities in occupied territory. It is a situation that had never occurred to Zionist planning, which wanted to end Arab presence between the Euphrates and the Nile. The legality of this attitude by the resistance movements and secret organisations in ensuring the Arab civilians' rights is indicated by the opposition voiced by the international community — as represented in the resolutions of the United Nations General Assembly, Security Council and human rights committees and conferences — to Israel exceeding its authority in occupied Arab territories.

It is indicated that the resistance movements and organisations are entitled, and even committed to defending their sovereignty, independence and right to self-determination, and that they are entitled to maintain their land as an integral part of the states to which they are affiliated by nationality, patriotism and allegiance to their homeland.

If we study the situation in the light of modern jurisprudence, and the nature of the relationship between the occupation authorities and the people of occupied territory, we shall find that the people's right and duty

to oppose the occupant have, for scores of years, played their role in defining this relationship on the basis of the absence of any obligation under international law to obey and on the basis of relations of allegiance to the original state. In fact, resistance by occupied peoples has led to evolution of the occupation laws to ban unilateral annexation in times of war and to prevent transfer of sovereignty rights from the occupied state in a bid by these peoples to defend themselves and protect their entity, security and right to self-determination.[18]

The relationship between the occupation authorities and the population has shown itself to be one of submission to effective authority, governed by considerations of necessity and the permission given to the occupation authorities to defend their security and the safety of their forces in exchange for safeguarding public order and the security and rights of citizens. As a result, this relationship lacks any legal or theoretical basis justifying obedience or making a revolt by the people of occupied territories against occupation forces a violation of any international principles.[19]

Actually, if we discuss the matter in the light of the provisions of the Geneva Conventions of 1949, we shall find no ruling that deprives the people of occupied territories from exercising their right to a civil or armed rebellion against the occupation authorities for departing from the limits of their competence. In addition to the

(18) Debbasch, *op. cit.*, pp. 232-233.
(19) *Ibid,* pp. 233-234.

provisions we have already cited regarding the required allegiance by people of occupied territories to the occupation authorities, we shall find that the Fourth Geneva Convention of 1949 on the Treatment of Civilians in Time of War gives a kind of protection to these people when they undertake acts of insurrection or rebellion. Article 3 states that there should be no discrimination in humane treatment between civilians or others who rebel against the enemy. Article 27 says there should be no discrimination between civilians protected by the Convention because of their political beliefs. Finally, Article 54/1 of the Convention recognises that public officials of the occupied areas are entitled to civil disobedience and opposition of the occupation authorities. The provision reads:

> "The Occupying Power may not alter the status of public officials or judges in the occupied territories, or in any way apply sanctions to or take any measures of coercion or discrimination against them, should they abstain from fulfilling their functions for reasons of conscience."

But generally matters are not confined to civil disobedience or unarmed rebellion. Oppressive acts by the occupation authorities may drive the inhabitants to a mass uprising in which they take up arms and come out to meet the occupant who has exceeded his authority. They would do so without having sufficient time to organise themselves or form regular resistance movements in accordance with Article 4 of the Third Geneva Convention of 1949 on the treatment of prisoners of war. Will the right of these people to defend themselves and

reply to the oppressive acts of the authorities and their illegitimate aggression be recognised? In other words, would it be justifiable to brand the civilians as hostile because of this uprising, and would it be warranted to treat them as belligerents and prisoners of war, particularly as regards the treatment of their wounded and waiving prosecution against them, as is the case with armed forces and regular troops?[20]

Some exponents believe that the revolt by people of an occupied territory against the occupation authorities is a violation of an international commitment and that the people therefore forfeit their right to enjoy protection by the occupants. At the same time, they say such a violation gives the occupants the right to try the people on charges of committing war crimes.[21] As we have already pointed out, this view is based on a legal relationship between the occupying power and the citizens in occupied territories under which the people were to obey the occupant? But that was at a time when war and unilateral annexation was permissible in international affairs.

In fact, some[22] believe in this connection that the text of Article 5 of the Fourth Geneva Convention of 1949 tackled this case when it said:

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(20) *Ibid.*, p. 237. Also cf. Major R.R. Baxter. "The Duty of Obedience to the Belligerent Occupant," *British Yearbook of International Law,* 1950, pp. 253-257.

(21) Baxter, *op. cit.*, p. 254.

(22) Schwarzenberger, *op. cit.*, p. 327.

> "Where in the territory of a Party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention, as would, if exercised in the favour of such individual person, be prejudicial to the security of such State..."
> "In each case, such persons shall nevertheless be treated with humanity and, in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention..."

Actually, this provision was drawn up by the conference to deal in particular with acts of sabotage, espionage, banditry and similar behaviour other than resistance from the Soviet delegation which put forward a draft article for each of these acts to be mentioned specifically in order to avoid conflicting interpretations of the phrase "efforts harmful to the security of the state."[23]

But it is understood from these discussions, despite the present formula, that the conference tended to exclude acts of resistance from harmful efforts mentioned.

On the other hand, such jurists as Hall, Charles de Visscher, Calvo and Haynes Taylor considered that the people of occupied areas had the "right" to rebellion, and that they may even have a "duty" to rebel because of the continued relation of allegiance to their occupied state.[24]

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(23) Pictet, *op. cit.*, pp. 52-56.
(24) Charles de Visscher, L'Occupation de Guerre, *Law Quarterly Review*, 1918, pp. 76-77.

This latter trend found acceptance and support in the Anglo-Saxon countries, particularly in the United States and Britain which provided in their military laws for "War Rebellions."[25]

Since it has been admitted that the people of occupied areas owe no allegiance to the occupation authorities under the Geneva Convention, and as it has been established that there is no legal basis binding the population to obey the occupation authorities and admitted that it is the right or obligation of the people to revolt against the occupation in an aggressive war or against an occupant exceeding his prerogatives, it is the duty of the occupant to ensure protection for all citizens under the Geneva Convention in all conditions.

It has been established that their resistance does not constitute a violation of international commitments imposed on them under the Geneva Conventions and they are not committing acts of war but should be protected and have the rights and privileges of combatants on the lines of resistance movements described in Article 4 of the Third Geneva Convention of 1949 on the treatment of war prisoners.

The conditions in which the Second World War was fought, and intensification of resistance movements against the Nazi and Japanese occupation drew attention

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(25) Baxter, *op. cit.*, p. 255. Article 10 of the American forces land fighting law says a combatant has no right to declare that he will treat everyone of the armed forces of a people rebelling against the enemy as a member of a band or an armed robber.

to the popular resistance movements in wars of liberation, and to the fact that there should be no discrimination between regular armies and a peaceful people rising to face the aggression in an era of total war. It was neither logical nor just that there should be the same treatment for a citizen who takes up arms to defend his homeland and his own person, and the citizen who is prosecuted before a criminal or military court for acts of espionage under the internal laws of the occupation state, as mentioned in Article 5 of the Geneva Convention of 1949 regarding the protection of civilians.

Although the Danish delegate to the diplomatic conference of 1949 in Geneva to reconsider the Prisoners of War Convention proposed the addition of a clause extending the status of war prisoners to civilians who rebel, acting in lawful defence of their homeland against unlawful aggression or against the occupation authorities[26] was not adopted, it was not opposed either. The idea of discriminating between civilians who participate in a just war and civilians taking part in an unlawful aggression found response among many interpreters, who said the first group should be considered as belligerents and enjoy the rights of combatants to the exclusion of the second category.

It is either just nor fair to rob a peaceful people of their right to defend themselves against unlawful aggression or the occupation which exceeds its preroga-

(26) Jean de Preaux, *The III Geneva Convention, Commentary,* (Geneva: 1958), pp. 56-61.

tives for fear of the individuals being prosecuted as saboteurs or terrorists — as fascists once branded resistance movements and as Israel today labels the powerful revolution in the occupied Arab territories.

In times of occupation and war, are not these people entitled to the right of defence they enjoy in times of peace? Or should they submit to acts of plunder, destruction of property, expropriation, alteration of the judicial and education systems and land annexation?

The text of Article 4 of the Third Geneva Convention of 1949 on the treatment of war criminals, in referring to resistance movements — whose members are described as combatants — as "organised resistance movements" and the phrase "organised resistance" were a victory for the imperialist states' viewpoint. These states had not experienced submission to foreign occupation and wanted to tighten restrictions on armed revolts against the occupation authorities.[27] There is no resistance movement which can meet the requirement of rallying and military organisation under the occupation, apart from the four other conditions which come under this text. These stipulate that resistance movements

> "(a) are commanded by a person responsible for his subordinates, and (b) have a fixed distinctive sign recognizable at a distance, and (c) carry arms openly, and (d) conduct their activities in accordance with the laws of war. It may well be thought the effectiveness of any resistance movement that complies with these requirements

(27) Draper, *op. cit.*, p. 40.

will be considerably reduced if not destroyed."[28]

"Resistance movements work secretly and wear no uniform."[29] In addition, the overt carrying of arms is no longer practical in modern warfare. But it may be said that resistance men and guerrillas appear in uniform at the moment of fighting and confrontation, just like regular armies.

But even if the people of occupied territories do not wish to carry out the provisions of Article 4 of the Geneva Convention on the treatment of prisoners of war — as far as the public organisation of resistance behind enemy lines is concerned — the Fourth Geneva Convention on the treatment of civilians in time of war has given them other means of protection during trials. Articles 71-75 of the Convention stipulate that there should be a legal trial in which the accused will have the right to present evidence necessary to their defence and may, in particular, call witnesses. They shall have the right to be assisted by a qualified advocate or council of their own choice, who shall be able to visit them freely and shall enjoy the necessary facilities for preparing the defence. Representatives of the protecting power shall have the right to attend the trial of any protected person, unless the hearing is *en camera*... etc.

In particular, the Fourth Geneva Convention of 1949 gave the inhabitants of occupied territories who undertake

(28) *Ibid.*, p. 40.
(29) *Ibid.*, p. 39.

a fierce uprising to defend themselves and their countries against occupation certain terms which ensure their protection within the framework of this agreement "in all circumstances" (Article 1 of the Convention). This applies "to all cases of a declared war or of any other armed conflict" (Article 3 of the Convention) or "in the case of armed conflict not of an international character. (Article 3 of the Convention)

Legal Position of the Armed Resistance and Means of its Protection

Actually this position is revealed only in the light of a study of the types of war and the law and organisation of warfare. The forms of war have differed and their concept has changed in modern times. Wars are no longer a legal situation *(situation de droit)* apart from their existence as a factual situation *(situation de fait)* as was the case on the eve of the establishment of International Law following the Westphalia Peace in 1948. International conditions at the time — the eve of the establishment of the national state and emergence and victory of capitalism, prevalence of state sovereignty and organisation of international relations on the basis of a traditional balance of power — necessitated the appearance of war as a characteristic of the modern state's sovereignty. It emerged as an indispensable means of carrying out the state's nationalist policy at the expense of other states and communities.

Consequently, the idea of a just war, that justified

the existence of any factual war so long as its motives and aims conform to the teachings of the Church, was no longer acceptable to those who held thrones and imperialist ambitions. The organisation of states of war in accordance with the wishes of the State and its sovereign rights now required the inclusion of legal formulas and terms which made of it a legal war, beginning or ending according to international law, and not mere armed clashes, just or unjust.[30]

When a sovereign state undertook to record some principles of war, it was only natural that it would not seek under any circumstances to condemn or ban war in itself. It merely gathered and recorded some of the principles of international tradition — principles dictated by international ethics, heavenly codes and human conscience, with the aim of organising warfare and reducing human suffering in wars.

As a result, traditional international law governed the state of war and the application of the laws of warfare to it on the basis of the following considerations :

1. That it should be an international war, in which belligerence and armed clashes take place between the regular armies of two or more states.

This does not mean that traditional jurisprudence

(30) This leads to the existence of legal wars without the parties to it using armed force or creating an actual state of warfare. At the same time, one state may use armed force against another without the existence of a legal state of war. See Lord McNair, *op. cit.*, pp. 2-6.

(Grotius, Zouche, Pufendorf, Vattel) did not recognise other types of armed clashes outside the framework of legal war. There have always been, besides legal wars, other types of warfare labelled rebellion, insurrection, revolution or civil war. As a whole, these types are of the same nature since they represent a conflict between an international person and sections of his community which do not come under international law's concept of a public war between sovereign states.[31]

However, traditional international law has recognised the phenomenon of civil war as a result of the states' recognition of the rights of combatants in revolutions committed to the law and regulations of war.[32]

2. The declaration of a state of war, and serving notice by the State wishing to disengage itself from a state of peace with another or other states. In such a situation, the other state or states concerned have no choice but to respond to this hostile stand and adopt an attitude of self-defence.[33] It was on this basis that consti-

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(31) Grotius has called these types of warfare mixed wars, waged between the state and its nationals. De Martins called them wars between members of one state and Calvo branded them the "conflict" between individuals in the same state. De Vattel said, "When the State splits and is divided into two antagonistic sections, each resorting to arms, that is civil war."

(32) Julius Stone, *Legal Controls of International Conflict,* (Sydney: 1954), p. 305. That is the case in the Spanish Civil War and the Korean War, although the United Nations does not recognise North Korea, as well as the Algerian Liberation War.

(33) *Ibid.,* p. 3-5 ; McNair, *op. cit.,* p. 7.

tutional lawmakers in Anglo-Saxon countries (particularly in the United States) have refused to define any state not preceded by a declaration of war, as a legal state of war. It was, therefore, emphasized that the third of The Hague Conventions of 1907 should stipulate that signatory states abide by the need of serving notice of war.

And yet international law has developed greatly in this respect by taking into account that the mere recognition by one of the belligerents of the existence of a state of war with the other party was in itself a manifestation of the existence of this state of war. Failure to abide by the pledge contained in the 1907 Convention on serving notice of war is thus a violation of this international commitment by the signatory states.[34]

3. Finally, war under traditional jurisdiction is not a state of actual armed or material clash requiring application of the laws and regulations of war, regardless of how the fighting started or who the parties to the conflict are. It is a legal state arising from the existence of specific conditions which determine an actual situation as a state of war conforming to international law and requiring the application of its regulations in organising warfare and reducing the sufferings resulting from it.

This conventional theory on the concept of war and the protection of mankind from its impact has been an obstacle to the modern evolution of international relations

(34) McNair, *op. cit.*, pp. 7-8.

in view of national liberation wars. It has obstructed consideration of the constitutional developments arising from the peoples' rights to self-determination and the individuals' rights to protection of their fundamental freedoms.

In defining legal wars and differentiating between them and other forms of armed clashes, this theory has failed to protect the kinds of war that are not international and the armed clashes arising within the single state, or between militant revolutionaries and the regular armies of a strife-torn state (such as the wars in Vietnam, Congo, and Northern Iraq). In addition, it has constituted an obstacle to authorising the use of armed force — except through international wars — for the self-defence of small peoples and states.[35]

In addition, the basis of this theory in expressing the legitimacy of international war as a means of fulfilling the states' national policies is no longer legal following the Paris Pact (Kellogg-Briand) of 1928 and the United Nations Charter of 1945. The United Nations Charter was explicit in banning the threat of force or its use against the territorial integrity or political independence of any state, or in any other manner that does not conform to the aims of the United Nations (Articles 2/4).

In its sixth chapter, the Charter explained the means of resolving disputes between states peacefully, such as

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(35) Cf. the attitude of the small states at The Hague Conference of 1899 and their insistence on authorising all kinds of legitimate self-defence without regular armies.
W.J. Ford "Resistance Movements in Occupied Territory," *Netherlands International Law Review,* Oct. 1956, p. 355.

through negotiation, mediation, investigation, conciliation, arbitration, court settlement, or resort to international or regional organisations.

The United Nations Charter was frank and explicit in banning international wars and not recognising the ensuing territorial gains. But it has admitted other types of wars which are fought to repulse aggression, which was banned under the collective security system of the United Nations (Chapter Seven of the Charter). It has also recognised the right of states individually and collectively to defend themselves until the Security Council has adopted the measures to ensure international peace and security (Article 51 of the Charter).

It is obvious that when modern international law bans the use of armed force or the threat to use it in international wars, and when it sanctions the resort to armed force in self-defence, on the basis that this constitutes a just war, it seeks to recognise a new situation. This situation has been necessitated by practical reasons and it combines the traditional states of peace and war. The phenomenon of revolutionary wars, such as the wars of liberation and national resistance movements which are an attempt by the occupied people to defend their rights, determine their future or repulse the aggression of occupation forces in wars of a criminal type, holds the same legal status as the wars of self-defence.[36]

This attitude by the small states has been confirmed

(36) Cf. Metin Tomkoc, *International Civil War,* (Ankara: 1967), pp. 67-87.

since the first attempts to set down the law of war and organise it at the Brussels Conference of 1874 and the First Hague Conference of 1899. The big powers which wanted to have the freedom of political action and imperialist expansion, and to give legality to the purely military conflict between regular armies alone were faced by the opposition of the small states participating in the conference. The latter refused to have the concept of legal war confined to this form of armed conflict, and decided not to disown national resistance but to have it protected by the war laws. The dispute between the participants intensified to the point where it threatened the conference with failure. Then the conference issued a declaration saying that the inscription of certain traditional rules for war in agreements resulting from the conference did not in any way mean belittling other means of defence.[37]

It is well known that the law of war and military occupation and their regulations inscribed in the Hague Conventions of 1899, and amended by the Hague Conventions of 1907, the Geneva Protocol of 1924 and the Geneva Conventions of 1949, are a series of regulations which disclose part of what has been established as international tradition, but do not fully cover all the means and limits of the inhuman use of war and arms.[38]

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(37) Ford, *op. cit.*, p. 355.

(38) These first agreements (the Hague Conventions of 1899 and 1907) to which reference is made in particular regarding protection of the belligerents in a war which took

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The Hague Conferences were held especially to define the types of weapons used in wars and methods of settling

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place legally according to jurisprudence, provide for:

1. The right of belligerents to adopt means of injuring the enemy is not unlimited (Hague Conventions II of 1899 and IV of 1907, Article 22).
2. It is especially forbidden —
   a. To employ poison or poisoned weapons;
   b. To kill or wound treacherously... (Article 23 of the said Conventions).
3. The attack or bombardment, *by whatever means,* of towns, villages, dwellings, or buildings which are undefended is prohibited (Hague Convention IV of 1907 Article 25).
4. The bombardment by naval forces of undefended ports, towns, villages, dwellings or buildings is forbidden (Hague Convention IX of 1907, Article 1).
5. A town or place, even when taken by storm, may not be pillaged (Hague Convention II of 1899, Article 28; Hague Convention IV of 1907, Article 47 and Hague Convention IX of 1907, Article 7).
6. A belligerent is forbidden to force the inhabitants of territory occupied by it to *furnish information about the army of the other belligerent, or about its means of defense,* (Hague Convention IV of 1907, Article 44).
7. No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they can not be regarded as jointly and severally responsible (Hague Convention II of 1899, and IV of 1907, Article 50).
8. The declaration issued by the Hague Conference of 1899 banned the use of poisonous gas.
9. The Geneva Protocol of 1924 banned the use of poisonous gas and bacteriological weapons and similar methods to defeat the enemy.
10. In its recommendation No. 2162 (Session 21) of December 5, 1966, the United Nations General Assembly called on all states to observe the principles and aims mentioned in the Geneva Protocol of 1924. It also called for stigmatising any violation of these principles while stressing the need for acceding to the Protocol.

disputes peacefully. They were not convened to set down all traditional principles known to humanity on banning the inhuman employment of arms or on various armed conflicts. The Hague Conventions of 1899 and 1917 contained texts which give this impression. We shall cite, for example, part of the preamble of the Fourth Hague Convention of 1907 which said:

> "Until a more complete code of laws of war has been issued, the high contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience."[39]

The Geneva Protocol of 1924 says that acts opposed to the public conscience of the civilised world no doubt run counter to international law. Consequently, whatever is banned by the provisions of this Protocol must be accepted internationally as principles of international law, specifying what the human conscience and international action can admit.

After all this, is there any need for further discussion on the nature of war which requires the application of laws reducing the sufferings of humanity? Will the proclamation of war by one state against another continue to be a fundamental condition for the application of these

(39) *Bulletin de la Commission Internationale de Juristes*, Sept. 1968, pp. 5-6 (known as De Martins condition).

Conventions? Or will the mere flare-up of an actual armed conflict between two regular forces automatically lead to application of the rules referred to in proportion to the course of the fighting?[40]

In view of these considerations regarding the nature and humane objective of the legal rules mentioned in these Conventions on the law of war, and in view of the determining — not originating — nature of these rules and the need to consult the verdict of international tradition and human conscience in each case that does not come under any provision of the mentioned Conventions, it may be said that the difference between international and non-international (or limited) wars is no longer dependent on the application of these agreements in large or small measure.[41]

Perhaps this difference has diminished to the point where at present it covers only the framework or scope of the war in each case and how far the provisions of international law apply to them. Is it to be applied from the beginning, as is the case in international war, where there is no change in the personality of the two belligerent states? Or should the application of these regulations change in accordance with the changing phases and

(40) Bulletin *op. cit.*, p. 7

(41) Cf. Jean Siotis, *Le Droit de la Guerre et les Conflits Armés d'un Caractére Non-International,* (Paris: 1968) pp. 21-22. The author says in this respect:"The only element which differentiates them is of a quantitative nature. The degree of application of the Rights of War." ("Le seul element qui les différencie est d'une nature quantitative, le degré d'application du Droit de la Guerre.")

evolution of the international status and the expansion of military operations that is necessitated by recognition of that status?[42]

But can it logically be argued that in all these phases and cases an actual state of war should not be subject to regulation by the law of war and reduction of human sufferings? Does this not mean that all inhuman and unethical acts become permissible in such a case? Is it permissible in modern international law for a state to benefit from the privileges of the law of war when it exercises the right of international war in the traditional concept while the United Nations Charter bans the threat to use force or the use of force? Is it permissible when the United Nations, because of its Charter, cannot stand idle but is committed to take all measures ranging from economic boycott, suspension of international communications and severance of diplomatic relations to military intervention with armed forces against the violating state?

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(42) Traditional international law refuses to recognise revolutionaries as an organised political entity (phase of civil war) before they are accorded the rights of belligerents. This applies to the militia, resistance fighters or volunteer corps fulfilling the following conditions:

a. Are commanded by a person responsible for his subordinates;
b. Have a fixed distinctive sign recognizable at a distance;
c Carry arms openly; and
d. Conduct their operations in accordance with the laws and customs of war.

A. Rolin, *Le Droit Moderne de la Guerre,* 1920.

W.L. Walker, *Recognition of Belligerency and Grant of Belligerent Rights; Lathor Kotrsch, The Concept of War in Contemporary History and International Law,* (Geneva: 1958).

When the international organisation undertakes such intervention to prevent a conflict or situation that threatens world peace and security, does it not mean that it is exercising the right of the international community to prevent and condemn any armed clash, no matter on what scale and how long it lasts? (Articles 34, 41, 42 of the United Nations Charter.)[43]

And what is the status of the war to be undertaken by the United Nations in this respect, whether as police action, suppression required by collective security, or the war permitted and organised by the UN Charter in self-defence? Do not the law and principles of a humane war apply to it in accordance with the Hague and Geneva Conventions? Modern international law has prohibited the resort to international war and its aims of achieving regional gains opposed to the territorial integrity and political independence of states. Furthermore, no state can exercise this right envisaged by traditional international law. Yet, on the other hand, it has permitted other types of noninternational war, which, because of their nature and objectives, do not come within the context of war covered by traditional international law. Does this, therefore, imply that the law of war and the regulations for its conduct as a means of defence against inhuman methods of war are operative in the above forms of non-international wars? To rule otherwise would mean that we are still adhering to the verdict of traditional jurisprudence which links international war as a legal status — though

(43) Siotis, *op. cit.*, p. 20.

it is no longer legal — to the application of the law of war. Or it would mean that we adopt a hostile and extremist attitude to the evolution of the law of war and increased reduction of humanity's sufferings on the basis of prohibiting the right of war and denying its objectives to which we have referred, despite the existence of other cases of non-international wars and armed clashes of all kinds.

In its modern evolution, international law does not condemn other kinds of war organised by the United Nations Charter or armed clashes which develop within the community into civil war where the rights of belligerents are recognised together with their right to have the laws and regulations of a humane war applied to them.

In fact, in organising the rules of war and recording some of the traditional regulations, traditional international law did not aim at justifying or prohibiting a war in particular. It sought to prohibit all kinds of inhuman acts. It is futile to say that some of these rules apply only to acts which in the past were considered to have a legal aspect and should not apply to acts which, in the wake of World War II and the wave of liberation wars in the colonies, are considered in the United Nations Charter as legal and valid.

The law regulating the conduct of war in a bid to reduce the sufferings of mankind is still valid and requires constant evolution and amendment as long as acts of social violence in international relations exist. It exists as long as some Western jurists consider that the United Nations Charter's provision banning the threat to

use force or its use as designating war in its old, traditional concept and not an act of violence or force not rising to the level of declared international armed force, such as reprisals, retaliation, naval blockade, sabotage or protective wars.

All this is of considerable importance in determining the scope of our research into the application of international Conventions which record the law regulating war and the reduction of the suffering it causes. It is of even greater importance in regard to the basic rights of peoples and individuals which these agreements contain, and their application to the armed conflicts which are not of an international, traditional aspect, as well as the armed national resistance operations in occupied territories. (The regulations are better established and older in the history of man than the emergence of the statutory human rights in their legal form which it is now sought to incorporate in constitutions and international charters.)

Needless to say, many of the rights and freedoms contained in the International Declaration of Human Rights of 1948, and in the Political, Social and Economic Charters open to signature in the Human Rights Year, were included in the four Geneva Conventions for the protection of war victims of 1949, and which are considered complementary to The Hague Convention of 1899 and 1907 on land and naval war.

We thus find that international agreements on the protection of human rights in times of peace stipulate the right of the signatory state to make reservations regard-

ing the safeguard of these rights within limits necessitated by the circumstances of wars or other reasons of internal conflict threatening the nation (Article 15 of the European Human Rights Agreements, Article 4 of the International Charter on civil and political rights). Consequently, in order to safeguard these rights for peoples and individuals we cannot but refer to the agreements organising the law of war which are based on protecting the victims and belligerents, particularly the Geneva Conventions of 1949.[44]

It is significant that these Geneva Conventions have avoided the concept of war in the traditional juridical sense as a conditional legal state and concluded by adopting the concept of a material war, the criterion of which is determined in the field of battle and which does not necessarily involve states seeking to realise their policy at the expense of others.[45]

Article Two of the Geneva Convention on the Protection of Civilian Persons in Time of War, dated December

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(44) Dietrich Shindler, "Das Nuanitare im Roham der Internationalen Garantie der Menschenrechte," *International Round Table Discussion on Human Rights,* (Berlin: 1966), pp. 40-50.

(45) Kotrsch defines a material war as follows: "Material war implies a continuous clash of arms conducted by organised armies which engage the responsibility of governments. It does not presume the conditions that the belligerents must be states. The existence of war in the material sense is something to be judged by evidence not of intentions, but of activities of military forces in the field."
L. Kotrsch, *The Concept of War in Contemporary History and International Law,* (Geneva: 1956), p. 56.

8, 1949, says:

> "In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.
> The Convention shall also apply to all cases of partial or total occupation of the territory or a High Contracting Party, even if the said occupation meets with no armed resistance.
> Although one of the Powers in the conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof."

Article Three of the above Convention says:

> "In the case of an armed conflict not of an international character occuring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:
> 1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.
> To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
> a. violence to life and person, in particular murder of all kinds, mutilation, cruel treat-

ment and torture;
b. taking of hostages;
c. outrages upon personal dignity, in particular humiliating and degrading treatment;
d. the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized people.

2. The wounded and sick shall be collected and cared for.

An impartial humanitarian body such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict."

Legality of Resistance and Armed Revolution

Some writers interpret "armed clash without an international character," contained in the Geneva Convention on the application of the rules of war to the belligerents, to mean a state of civil war following recognition of the revolutionaries' rights to be regarded as belligerents. But this interpretation is no longer taken into account in the argument that the law to be applied to the rebels or insurgents before belligerents' rights are granted is the internal penal code of the state where the insurrection is taking place.

But some of the modern commentators in general, and the Anglo-Saxon jurists in particular, point out that from the moment a revolution breaks out and the rebels

break with the authority and raise the banner of insurrection, the international rules of the law of war should be applied to them even in a limited degree. As the revolution spreads and clashes assume a wider scale, the application of the law of war also takes place on a larger scale. The issue is thus dependent on the material or quantitative development of events which determine the evolution of the rebels' international status. The application of international law expands to include the various aspects of the conflict by moving from the phase of a conflict or clash which is not of international character to one between two international personalities in the real sense of the word. Or it will develop until one of the two antagonists perishes politically and legally, either through the victory of the revolution and its replacement of the government or the extinction of the revolution and the disappearance of the legal personality of the rebels.[46]

As a result, it seems to us that there is no room for differentiating between successive or numerous phases of the course of the revolution and its evolution from the phase of insurrection to that of revolution, then to civil war. All these are quantitative and not qualitative phases during which the international personality develops according to the evolution of the clashes, their expansion and continuation. These different names are only an expression of a single nature of a specific material state in which revolutionary action is evolving according to

(46) Siotis, *op. cit.*, pp 21-23.

various criteria of political — not legal — thought.

Traditional jurisprudence has not given us, in fact, any' definite criteria with which to distinguish between the phases of clashes preceding civil war which are not of an international character, and the phase of civil war itself as part of the clashes. Consequently, they can be distinguished only on the basis of whether or not they are protected by the law of war. Since the aim of the law is the same in all these cases, it becomes quite difficult to make such a distinction.

Since this is the case in relation to an internal armed clash between a government and its citizens, an armed conflict between resistance men and occupation forces is all the more in need of the application of the law of war organising the operations and protecting the men from danger.

In cases of total or partial occupation of provinces, sovereignty — as we have already stated — continues to be held by the occupied state. Provisional occupation does not indicate any change in relationship between the occupied state and the rights of sovereignty over that province.

That is because the occurrence of a specific situation necessitating that the province be held by, or kept under the control of, a hostile force does not mean the negation of the province's national character. It cannot be conceived that the province would become a hostile one or that its inhabitants would become enemies of their own people. In this respect, the Prize Court's verdict in the

Gerasimo case, pronounced on April 2, 1857, said:

> "It is not logical, however long this occupation will last, that Moldavia should become part of Russia, or that its people should become enemies of those who fight Russia. The maximum that the occupation can achieve is a provisional suspension of the High Porte's sovereignty and a provisional imposition of Russian control. But the national character of the region will remain unchanged. Any attempt by Russia running against this principle will be met by rejection."[47]

Since the occupation forces' authority is based on the *fait accompli* policy and not on exercising the prerogatives of legal sovereignty, the occupation authorities often resort to ill-treating the citizens and forcing them to obey. They may force them to divulge secrets or information on their fellow citizens or their armed forces until the citizens are compelled to resist and take up arms against the occupant.

An authority that is based on force — not law — as is the case with occupation authorities in general, is resisted only by force.

In such cases, the citizens have to organise themselves into armed national resistance movements as an inevitable means made legal by international law for self-defence and protection of property and the territorial integrity of the occupied state. But the occupation authorities intensify the provocation so that citizens take up arms. As an example, we may cite the Israeli authorities'

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(47) E.S. Roscoe, *Reports of Prize Cases 1745-1859,* (London: 1905), Vol. 2, pp. 484-590.

measures in the occupied areas to annex Jerusalem. They have changed the system of education and justice, pulled down buildings, expelled the inhabitants and seized land. All these steps violate the general principles which should be applied in times of a partial or total occupation, as mentioned by provisions of the Geneva Convention on the Protection of Civilian Persons.[48]

An important section of jurists has tended to justify resistance by the population to the occupation authorities. They have asserted its legality to the point where they have called for application of the rules of war and humane principles on reducing its sufferings to members of the resistance forces and not to the regulars of the occupation authority, whose presence is illegal and arises from their having swept into the occupied province in violation of international law which bans international war for political or territorial gains.

While the inhabitants become free to defend themselves and their homeland against the invaders with all possible means, the occupation forces remain bound to follow the laws and rules of war in treating the civilians and captured resistance fighters.[49]

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(48) Cf. text of this convention dated 12 August 1949, Nos. 2, 27, 32, 47 and 49.

(49) This view was given by the prosecution in the case of hostages before the U.S. Military Tribunal.

U.S. Military Tribunal V. Hostages Case, in Folk, *op. cit.*, pp. 356-357. The view is also shared by the Polish jurist, Sawicki, in an article: G. Sawicki, "Châtiment Ou Encouragement?" *Revue de Droit International* (Sottele) 1948, No. 3, pp. 240 ff. It is also held by the Russian jurist, Trainin, in →

In this respect, the Supreme Military Court decided in the Greiser case:

A. Polish courts cannot pass sentences to punish those who commit acts regarded by international law as legitimate.

B. A war of aggression cannot be justified in the light of international law.

C. Acts by the occupation authorities are considered illegal since the occupation arising from a war that took place contrary to international law is illegal.

Finally, the legality of acts of resistance by the inhabitants of occupied areas arises in the light of the nature of the provisional occupation to which we have referred and the relationship of allegiance between the people and their occupied state. Since the occupation authorities are exercising a mere *de facto* and not *de jure* authority, and the people owe allegiance to the occupied state which has the legal sovereignty and is entitled to penalize those individuals who divest themselves of loyalty towards it after the occupation ends, there is no legal or moral commitment binding the citizens of the occupied territory towards the occupying power and its forces. In fact, secret resistance against the enemy in the occupied province becomes a legal aspect of war.[50]

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another article: I.P. Trainin, "Questions of Guerilla Warfare in the Law of War," *American Journal of International Law*, 1946, pp. 534 ff.

(50) The Hague Special Court decision of April 5, 1948 in the case of Hohere SS-Und Polzeifuhrer, in Folk, p. 366.

In brief, there is no relation or rule in international law to prevent the inhabitants of occupied territories from undertaking acts of national armed resistance. In fact, jurists consider they have an obligation to do so in defence of the homeland and its integrity, and in support of honour instead of giving in, accepting the rules of the occupation authority and not participating positively in resisting the occupant.

This is supported by the series of principles and rules we have mentioned in referring to allegiance, self-defence and protection of rights given to civilians by the military occupation law against the occupation authorities.

But Article 4/A/2 of the Third Geneva Convention designating prisoners of war mentions only the members of organized resistance movements who become an organized army behind the enemy lines. It specifies them as:

> "Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:
> a. that of being commanded by a person responsible for his subordinates;
> b. that of having a fixed distinctive sign recognizable at a distance;
> c. that of carrying arms openly;
> d. that of conducting their operations in accordance with the laws and customs of war."

It seems that in the light of this text there are certain

restrictions on the possibility of protecting irregular secret resistance members within occupied territory. Under the text, members of an organised resistance movement who form an army behind the enemy lines are alone entitled to enjoy the rights of belligerents and are regarded as prisoners of war when arrested.

It is evident that the condition of belonging to either party of the armed conflict means the nationality of the resistance members and their allegiance to the occupied state, which has the sovereignty over the occupied territory and is still in a state of war and noncapitulation to the occupying state. It is not a mere *de facto* affiliation, as is the case with volunteers of a nationality other than that of the occupied state. It is a legal relationship linking the people of the occupied territory to the state which has sovereignty over the province.

It is also evident that the word resistance means overt clash at the moment of confrontation and battle. Otherwise, the taking up of arms openly is not required. That is the tactical method adopted in various modern wars in which fighting is undertaken by organized forces.

But what happens if a member of the resistance undertakes activity without carrying a distinctive sign, because of the nature of secret resistance?

Actually, these requirements were not stipulated by Article 4 of the Third Geneva Convention on a public uprising when they take up arms to face foreign invasion. Clause A/6 of the Article says that he will be regarded as a war prisoner in the sense meant in the Convention

> "Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war."

Anglo-Saxon jurists have adopted this attitude towards the inhabitants of occupied territories who rise against the occupation in defence of their persons and homeland, by stretching the meaning of a people rising to repel invasion of a country that has not been occupied. Thus, they also included the people's rising to drive away invasion and occupation forces from territory already occupied. Does this not mean that the occupation army and authorities have lost effective control of the occupied province and that the current status of the occupation, as far as comparative quiet and order are concerned, is nonexistent, so that Article 4/A/6 already mentioned can be applied on the basis that irregular resistance members enjoy the rights of belligerents and prisoners of war?

Regardless of the text of Article 4/A/2 of the Geneva Convention on prisoners of war and organized resistance members enjoying the interpretation we have given for its requirements regarding belligerents' rights, there are other methods of protection under the Fourth Geneva Convention of 1949 on the Protection of Civilian Persons in Time of War to ensure minimum protection for irregular members of resistance or the people who have had no time to organise themselves against the occupation forces. We find these methods common in Articles 1, 2, 3,

27, 54, and 71-75 of this Convention.

It must be stressed that Article 3 of this Convention on the Protection of Civilian Persons and the three other Conventions lay down terms of importance regarding protection "in the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties." Though the provision deals only with armed conflict within the territories of the states themselves, the general bearing applies to armed conflict within occupied territory under the sovereignty of one of the contracting powers. The legal obligations on respect of personal dignity and non-violation of it, banning the taking of hostages and violence against life and person, particularly killing, cruelty, torture, etc., in the text are only a declaration of the general principles which the belligerents must observe under the law of war and military occupation.[51]

(51) This view is supported by Schwarzenberger, *op. cit.*, p. 327.

I. Seidl-Hohenveldern & I. Patrnogic, "La Protection des Populations Civiles dans les Conflits Armés de Caractère Non-international," *Annales de Droit International Médical,* Juin, (Monaco; 1968) pp. 17-19.

APPENDIX I

TEXT OF UNITED NATIONS RESOLUTION OF 4 JULY 1967 ON HUMANITARIAN ASSISTANCE [2252 (ES-V)]

The General Assembly,

Considering the urgent need to alleviate the suffering inflicted on civilians and on prisoners of war as a result of the recent hostilities in the Middle East.

1. *Welcomes with great satisfaction* Security Council resolution 237 (1967) of 14 June 1967, whereby the Council:

(a) Considered the urgent need to spare the civil populations and the prisoners of war in the area of conflict in the Middle East additional sufferings;

(b) Considered that essential and inalienable human rights should be respected even during the vicissitudes of war;

(c) Considered that all the obligations of the Geneva Convention relative to the treatment of Prisoners of War of 12 August 1949[1] should be complied with by the parties involved in the conflict;

(d) Called upon the Government of Israel to ensure

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(1) United Nations *Treaty Series,* Vol. 75 (1950), No. 972.

the safety, welfare and security of the inhabitants of the areas where military operations had taken place and to facilitate the return of those inhabitants who had fled the areas since the outbreak of hostilities;

(e) Recommended to the Governments concerned the scrupulous respect of the humanitarian principles governing the treatment of prisoners of war and the protection of civilian persons in time of war, contained in the Geneva Conventions of 12 August 1949;[2]

(f) Requested the Secretary-General to follow the effective implementation of the resolution and to report to the Security Council;

2. *Notes with gratitude and satisfaction* and endorses the appeal made by the President of the General Assembly on 26 June 1967;[3]

3 *Notes with gratification* the work undertaken by the International Committee of the Red Cross, the League of Red Cross Societies and other voluntary organizations to provide humanitarian assistance to civilians;

4. *Notes further with gratification* the assistance which the United Nations Children's Fund is providing to women and children in the area;

5. *Commends* the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East for his efforts to continue the activities of the Agency in the present situation with respect to all persons coming within his mandate;

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(2) *Ibid.*, Nos. 970-973.
(3) A/PV. 1536, pp. 13-17.

6. *Endorses,* bearing in mind the objectives of the above-mentioned Security Council resolution, the efforts of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East to provide humanitarian assistance, as far as practicable, on an emergency basis and as a temporary measure, to other persons in the area who are at present displaced and are in serious need of immediate assistance as a result of the recent hostilities;

7. *Welcomes* the close co-operation of the United Nations Relief and Works Agency for Palestine Refugees in the Near East and the other organizations concerned for the purpose of co-ordinating assistance;

8. *Calls upon* all the Member States concerned to facilitate the transport of supplies to all areas in which assistance is being rendered;

9. *Appeals* to all Governments, as well as organizations and individuals, to make special contributions for the above purposes to the United Nations Relief and Works Agency for Palestine Refugees in the Near East, as well as to the other inter-governmental and non-governmental organizations concerned;

10. *Requests* the Secretary-General, in consultation with the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, to report urgently to the General Assembly on the needs arising under paragraphs 5 and 6 above;

11. *Further requests* the Secretary-General to follow the effective implementation of the present resolution and to report thereon to the General Assembly.

APPENDIX II

RESOLUTION 6 (XXIV) 27 FEBRUARY 1968 QUESTION OF HUMAN RIGHTS IN THE TERRITORIES OCCUPIED AS A RESULT OF HOSTILITIES IN THE MIDDLE EAST

The Commission on Human Rights,

Recalling provisions of the Geneva Conventions of 12 August 1949 regarding the protection of civilian persons in time of war,

Mindful of the principle embodied in the Universal Declaration of Human Rights regarding the right of everyone to return to his own country,

Recalling resolution 237 (1967), adopted by the Security Council on 14 June 1967, in which the Council considered the essential and inalienable human rights should be respected even during the vicissitudes of war and called upon the Government of Israel, *inter alia,* to facilitate the return of those inhabitants who had fled the areas of military operations since the outbreak of hostilities,

Recalling also, resolution 2252 (ES-V) of the General Assembly, which welcomed with great satisfaction Security Council resolution 237 (1967), of 14 June 1967, and called for humanitarian assistance,

1. *Notes* with appreciation the resolutions adopted by the Security Council and the General Assembly in accordance with the provisions of the Universal Declaration of Human Rights and the Geneva Conventions of 1949 regarding human rights in the Middle East;

2. *Affirms* the right of all the inhabitants who have left since the outbreak of hostilities in the Middle East to return and that the Government concerned should take the necessary measures in order to facilitate the return of those inhabitants to their own country without delay;

3. *Requests* the Secretary-General to keep the Commission informed upon developments with respect to operative paragraphs 1 and 2 above.

APPENDIX III

TEXT OF RESOLUTION ADOPTED BY THE INTERNATIONAL CONFERENCE ON HUMAN RIGHTS OF 7 MAY 1968 ON RESPECT FOR AND IMPLEMENTION OF HUMAN RIGHTS IN OCCUPIED TERRITORIES

The International Conference on Human Rights,

Being guided by the Universal Declaration of Human Rights;

Having heard the statements made in the Conference with regard to the question of "Respect for and Implementation of Human Rights in Occupied Territories," and noting the Note submitted by the Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (Document A/CONF. 32/22);

Bearing in mind the provisions of the Geneva Conventions of 12 August 1949 regarding the protection of civilian persons in time of war;

Recalling Security Council resolution 237 (1967) and General Assembly resolution 2252 (ES-V) in which the Council and the Assembly considered that essential and inalienable rights should be respected even during the vicissitudes of war, and called upon the Government of

Israel to facilitate the return of those inhabitants who have fled the areas of military operations since the outbreak of hostilities;

Recalling further Articles 2, 18 and 30 of the Universal Declaration of Human Rights and resolutions 2253 (ES-V) of 4 July 1967, and 2254 (ES-V) of 14 July 1967 adopted by the General Assembly calling upon Israel to rescind all measures already taken and to desist forthwith from taking any action which would alter the status of Jerusalem and deploring the failure of Israel to implement that resolution;

Mindful of the principle embodied in the Universal Declaration of Human Rights regarding the right of everyone to return to his own country;

Further recalling:

(a) Resolutions 6 (XXIV) of the Commission on Human Rights affirming the rights of the inhabitants who have left since the outbreak of hostilities in the Middle East to return, and that the Government concerned should take the necessary measures in order to facilitate the return of those inhabitants to their own country without delay;

(b) The telegram dispatched by the Commission on Human Rights on 9 March 1968, calling upon the Government of Israel to desist forthwith from acts of destroying homes of Arab civilian population inhabiting areas occupied by Israel;

1. *Expresses* its grave concern for the violation of human rights in Arab territories occupied as a result of the June 1967 hostilities;

2. *Draws the attention* of the Government of Israel to the grave consequences resulting from disregard of fundamental freedoms and human rights in occupied territories;

3. *Calls on* the Government of Israel to desist forthwith from acts of destroying homes of Arab civilian population inhabiting areas occupied by Israel, and to respect and implement the Universal Declaration of Human Rights and the Geneva Conventions of 12 August 1949 in occupied territories.

4. *Affirms* the inalienable rights of all inhabitants who have left their homes as a result of the outbreak of hostilities in the Middle East to return, resume normal life; recover their property and homes, and rejoin their families, according to the provision of the Universal Declaration of Human Rights;

5. *Requests* the General Assembly to appoint a special committee to investigate violations of human rights in the territories occupied by Israel and to report thereon;

6. *Requests* the Commission on Human Rights to keep the matter under constant review.

APPENDIX IV

TEXT OF UN SECURITY COUNCIL RESOLUTION (S/RES/259) 1958

The Security Council,

Concerned with the safety, welfare and security of the Arab territories under military occupation by Israel following the hostilities of 5 June 1967,

Recalling its resolution 237 of 14 June 1967,

Noting the report by the Secretary-General, contained in document S/8699, and appreciating his efforts in this connexion,

Deploring the delay in the implementation of resolution 237 (1967) because of the conditions still being set by Israel for receiving a Special Representative of the Secretary-General,

1. *Requests* the Secretary-General urgently to dispatch a Special Representative to the Arab territories under military occupation by Israel following the hostilities of 5 June 1967, and to report on the implementation of resolution 237 (1967);

2. *Requests* the Government of Israel to receive the Special Representative of the Secretary-General, to cooperate with him and to facilitate his work;

3. *Recommends* that the Secretary-General be afforded

all co-operation in his efforts to bring about the implementation of the present resolution and resolution 237 (1967).

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VII. Special Publications

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