

XI – Military Occupation

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11.1 INTRODUCTION

This Chapter addresses military occupation. The GC provides specific rules for the internment of protected persons in occupation, which are addressed in Chapter X.

Military occupation is a temporary measure for administering territory under the control of invading forces, and involves a complicated, trilateral set of legal relations between the Occupying Power, the temporarily ousted sovereign authority, and the inhabitants of occupied territory.¹

The law of belligerent occupation seeks to account for both military and humanitarian imperatives. The Occupying Power's primary objective in conducting military occupation is to further the purpose of the war in which the occupying forces are engaged and to ensure the maintenance and security of those forces, but the Occupying Power is also bound to provide for

¹ Refer to § 11.4 (Legal Position of the Occupying Power).

the interests and welfare of the civilian population of the occupied territory.² The Occupying Power has obligations related to the maintenance of public order and safety, and the protection of civilians and property in occupied territory.³

11.1.1 Military Occupation – Notes on Terminology.

11.1.1.1 Military Occupation, Military Government, Belligerent Occupation, and Martial Law. The practice of conducting military occupation is very old, and the law of military occupation has long been part of the law of war.⁴ Military occupation is also called belligerent occupation. The conduct of military occupation has also been characterized as an exercise of “military government”⁵ or “martial law.”⁶

² GREENSPAN, THE MODERN LAW OF LAND WARFARE 213 (“In considering the law on military occupation the dual nature of such an occupation must be borne in mind. Its primary objective is to further the purpose of the war in which the occupying forces are engaged and to ensure the maintenance and security of those forces; yet at the same time the occupant is bound to provide for the interests and welfare of the civilian population of the occupied territory.”).

³ Refer to § 11.5 (Duty of the Occupying Power to Ensure Public Order and Safety).

⁴ See, e.g., *American Ins. Co. v. 356 Bales of Cotton*, 26 U.S. 511, 542 (1828) (Marshall, C.J.) (“The usage of the world is, if a nation be not entirely subdued, to consider the holding of conquered territory as a mere military occupation, until its fate shall be determined at the treaty of peace.”); *Thirty Hogsheads of Sugar v. Boyle*, 13 U.S. 191, 195 (1815) (Marshall, C.J.) (“Some doubt has been suggested whether Santa Cruz, while in the possession of Great Britain, could properly be considered as a British island. But for this doubt there can be no foundation. Although acquisitions made during war are not considered as permanent until confirmed by treaty, yet to every commercial and belligerent purpose, they are considered as a part of the domain of the conqueror, so long as he retains the possession and government of them. The island of Santa Cruz, after its capitulation, remained a British island until it was restored to Denmark.”). See also WINTHROP, MILITARY LAW & PRECEDENTS 800-01 (“Instances in our history of military government are presented in our Revolutionary war during the occupancy by the British of Boston, New York and Philadelphia; at Castine, Maine, when taken and held by the British in 1814-15; and in the provinces of Mexico in the course of the conquest of the same by our forces in 1846-7. It was however during the late civil war, which, by reasons of its exceptional proportions, was assimilated to an international war, that Military Government was more generally and variously exercised, and its nature more fully illustrated than at any previous period of our history.”).

⁵ WINTHROP, MILITARY LAW & PRECEDENTS 799 (“By *military government* is meant that dominion exercised in war by a belligerent power over territory of the enemy invaded and occupied by him and over the inhabitants thereof. By most writers, prior to the appearance of the dissenting opinion of Chase, C.J., in *Ex parte Milligan*, this species of government was designated in general terms as ‘martial law,’ and thus was confused with or not properly distinguished from the *martial law proper* exerted at home under circumstances of emergency, and yet to be considered.”); *Ex parte Milligan*, 71 U.S. 2, 141-42 (1866) (Chase, C.J., separate opinion) (“There are under the Constitution three kinds of military jurisdiction: one to be exercised both in peace and war; another to be exercised in time of foreign war without the boundaries of the United States, or in time of rebellion and civil war within states or districts occupied by rebels treated as belligerents; and a third to be exercised in time of invasion or insurrection within the limits of the United States, or during rebellion within the limits of states maintaining adhesion to the National Government, when the public danger requires its exercise. The first of these may be called jurisdiction under MILITARY LAW, and is found in acts of Congress prescribing rules and articles of war, or otherwise providing for the government of the national forces; the second may be distinguished as MILITARY GOVERNMENT, superseding, as far as may be deemed expedient, the local law, and exercised by the military commander under the direction of the President, with the express or implied sanction of Congress; while the third may be denominated MARTIAL LAW PROPER, and is called into action by Congress, or temporarily, when the action of Congress cannot be invited, and in the case of justifying or excusing peril, by the President, in times of

This manual uses the terms “military occupation,” “belligerent occupation,” and “occupation” to refer to situations governed by the law of belligerent occupation.

11.1.1.2 *Occupying Power, Occupant, and Occupying State*. Treaties or other legal documents may refer to the State conducting the occupation as the “Occupying Power,” “Occupying State,” or “occupant.” This manual uses the term “Occupying Power” to refer to a State conducting an occupation.

In some cases, multiple States may conduct an occupation together, and each State may be considered an Occupying Power.⁷

11.1.2 Military Occupation and Bodies of International Law.

11.1.2.1 *Military Occupation and Other Law of War Rules*. In general, the law of war rules that are not specific to the occupation of enemy territory continue to apply to situations that are addressed by those rules that may arise during occupation. For example, the rules for the conduct of hostilities and the humane treatment of detainees apply also to combat operations and detention operations, respectively, during occupation.

However, the fact of occupation triggers the application of additional rules specific to occupation.⁸

11.1.2.2 *Occupation and the Hague IV Regulations*. Articles 42 through 56 of the Hague IV Regulations address military occupation.

When the GC and the Hague IV Regulations are both applicable, the provisions of the GC regarding occupation supplement the provisions of the Hague IV Regulations regarding occupation.⁹

When the 1954 Hague Cultural Property Convention and the Hague IV Regulations are both applicable, the provisions of the 1954 Hague Cultural Property Convention regarding

insurrection or invasion, or of civil or foreign war, within districts or localities where ordinary law no longer adequately secures public safety and private rights.”).

⁶ LIEBER CODE art. 1 (“A place, district, or country occupied by an enemy stands, in consequence of the occupation, under the Martial Law of the invading or occupying army, whether any proclamation declaring Martial Law, or any public warning to the inhabitants, has been issued or not. Martial Law is the immediate and direct effect and consequence of occupation or conquest. The presence of a hostile army proclaims its Martial Law.”).

⁷ For example, Supplemental Brief of the United States, Apr. 22, 2005, *United States of America ex rel. DR, Inc. v. Custer Battles, LLC*, 376 F. Supp. 2d 617 (E.D. Va. 2005), 2005 DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 228, 232 (“The United States and the United Kingdom, and other member states of the Coalition were the occupying powers in Iraq under the laws and usages of war. The CPA was the administrative device that the Coalition created under the laws and usages of war to perform civil government functions in liberated Iraq during the brief period of occupation. As an active member of the Coalition, the United States played an important role in, and had certain responsibilities for, the occupation, which it chose to fulfill through creation of and participation in the CPA.”).

⁸ Refer to § 11.2 (When Military Occupation Law Applies).

⁹ Refer to § 19.16.5.2 (Relationship Between the GC and the 1899 Hague II and the 1907 Hague IV Conventions).

occupation supplement the provisions of the Hague IV Regulations regarding occupation.¹⁰

Although in some cases the Hague IV Regulations would not be applicable as a matter of treaty law because belligerent States might not be Parties to Hague IV, many of the provisions in Articles 42 through 56 of the Hague IV Regulations reflect customary international law.¹¹ For example, Article 42 of the Hague IV Regulations, which provides a standard for when the law of belligerent occupation applies, is regarded as customary international law.¹²

11.1.2.3 *Occupation and the 1949 Geneva Conventions.* Common Article 2 of the 1949 Geneva Conventions provides that “[t]he Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.”¹³

Articles 47 through 78 of the GC specifically address occupied territories.¹⁴ Other provisions of the GC also apply to occupied territory. For example, Articles 27 through 34 of the GC contain provisions common to the territories of parties to the conflict and to occupied territories.¹⁵

11.1.2.4 *Occupation and the 1954 Hague Cultural Property Convention.* The 1954 Hague Cultural Property Convention applies to all cases of partial or total occupation of the territory of a High Contracting Party, even if this occupation meets with no armed resistance.¹⁶

The 1954 Hague Cultural Property Convention and the Regulations for the Execution of the 1954 Hague Cultural Property Convention also have provisions that explicitly address occupation.¹⁷

¹⁰ Refer to § 19.17.1.1 (Relationship Between the 1954 Hague Cultural Property Convention and Certain 1899 and 1907 Hague Conventions).

¹¹ See, e.g., United States, *et al.* v. Göring, *et al.*, *Judgment*, I TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE IMT 253-54 (“With respect to War Crimes, however, as has already been pointed out, the crimes defined by Article 6, Section (b), of the Charter were already recognized as War Crimes under international law. They were covered by Articles 46, 50, 52, and 56 of the Hague Convention of 1907, and Articles 2, 3, 4, 46, and 51 of the Geneva Convention of 1929. ... But it is argued that the Hague Convention does not apply in this case, because of the ‘general participation’ clause in Article 2 of the Hague Convention of 1907. ... The rules of land warfare expressed in the Convention undoubtedly represented an advance over existing international law at the time of their adoption. But the convention expressly stated that it was an attempt ‘to revise the general laws and customs of war’, which it thus recognized to be then existing, but by 1939 these rules laid down in the Convention were recognized by all civilized nations, and were regarded as being declaratory of the laws and customs of war which are referred to in Article 6 (b) of the Charter.”).

¹² Refer to § 11.2.2 (Standard for Determining When Territory Is Considered Occupied).

¹³ GWS art. 2; GWS-SEA art. 2; GPW art. 2; GC art. 2.

¹⁴ Refer to § 19.16.5.1 (Application of Different Parts of the GC).

¹⁵ Refer to § 19.16.5.1 (Application of Different Parts of the GC).

¹⁶ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 18 (“The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.”).

¹⁷ Refer to § 11.19 (Protection of Cultural Property During Occupation).

11.1.2.5 *Occupation and U.N. Security Council Resolutions.* The U.N. Security Council may call upon Occupying Powers to comply with existing international law.¹⁸

Acting under the Charter of the United Nations, the U.N. Security Council may also establish authorities or limitations that might interact with those otherwise applicable under occupation law.¹⁹ For example, a U.N. Security Council authorization may provide additional authority for an Occupying Power to govern occupied territory.²⁰

In cases of conflict with obligations in other treaties or under customary international law, such obligations provided by the U.N. Security Council may prevail.²¹ Thus, such authority may be used to take action that would not otherwise be permissible under the law of belligerent occupation.

11.1.2.6 *Occupation and the ICCPR and Other Human Rights Treaties.* It has been the U.S. view that the International Covenant on Civil and Political Rights (ICCPR) does not create obligations for an Occupying Power with respect to occupied territory because a contracting State's obligations under the ICCPR only extend to persons within its territory and subject to its jurisdiction.²² Although persons within occupied territory are subject to the jurisdiction of the Occupying Power for certain purposes, they are not within the Occupying Power's national territory. This limit to the scope of the ICCPR's obligations was proposed by the United States to preclude the creation of obligations for States with respect to territories that

¹⁸ For example, U.N. SECURITY COUNCIL RESOLUTION 1483, U.N. Doc. S/RES/1483, ¶5 (May 22, 2003) (“Calls upon all concerned to comply fully with their obligations under international law including in particular the Geneva Conventions of 1949 and the Hague Regulations of 1907;”).

¹⁹ For example, John B. Bellinger, III, Legal Adviser, Department of State, *United Nations Security Council Resolutions and the Application of International Humanitarian Law, Human Rights and Refugee Law*, Sept. 9, 2005, 2005 DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 957-58 (“Prior to the Iraq intervention, lawyers for the United States and its Coalition partners thoroughly analyzed a complex range of issues related to the expected occupation of Iraq. This review involved developing an understanding of how the law of occupation—in particular the Hague Regulations and Geneva Convention—would likely apply to Coalition activities. At the same time, there already existed a broad and complex range of Chapter VII Security Council resolutions addressing a number of issues, including Iraqi requirements to disarm, economic and arms embargos, and restrictions related to the production and sale of Iraqi petroleum products. As the Coalition analyzed the principles of occupation law, we were careful also to analyze the extent to which pre-existing Chapter VII resolutions included provisions that might themselves establish authorities or limitations that might interact with those otherwise applicable under occupation law.”).

²⁰ For example, U.N. SECURITY COUNCIL RESOLUTION 1483, U.N. Doc. S/RES/1483, ¶4 (May 22, 2003) (“Calls upon the Authority, consistent with the Charter of the United Nations and other relevant international law, to promote the welfare of the Iraqi people through the effective administration of the territory, including in particular working towards the restoration of conditions of security and stability and the creation of conditions in which the Iraqi people can freely determine their own political future;”); Coalition Provisional Authority Regulation No. 1, §1(1) (May 16, 2003) (“The CPA is vested with all executive, legislative and judicial authority necessary to achieve its objectives, to be exercised under relevant U.N. Security Council resolutions, including Resolution 1483 (2003), and the laws and usages of war. This authority shall be exercised by the CPA Administrator.”).

²¹ Refer to § 1.11.2.1 (U.N. Member State Obligations With Respect to U.N. Security Council Decisions); § 3.5.4 (U.N. Security Council Decisions and *Jus in Bello*).

²² Refer to § 1.6.3.3 (International Covenant on Civil and Political Rights (ICCPR)).

they occupied, such as post-World War II Germany and Japan.²³

In addition, the law of belligerent occupation is specially crafted to address the situation of belligerent occupation. Thus, in cases of apparent conflict with other provisions of law that are not intended to address the situation of belligerent occupation, there might be a presumption that such provisions would not conflict with occupation law, or that occupation law likely would prevail when addressing the situation of belligerent occupation.²⁴

Other States, such as some coalition partners, may interpret their human rights treaty obligations to create obligations for their military operations outside their home territory in the context of belligerent occupation.²⁵

Subject to the Occupying Power's authority to change local law,²⁶ an occupied State's domestic law that has been enacted pursuant to its human rights treaty obligations or that meets the requirements of the occupied State's human rights treaty obligations may continue to apply during an occupation.

11.1.3 Application of Occupation Law to Situations Not Constituting Belligerent Occupation. The law of belligerent occupation is only applicable as a matter of law when certain conditions have been met.²⁷ The law of belligerent occupation generally does not apply to (1) mere invasion; (2) liberation of friendly territory; (3) non-international armed conflict; or (4) post-war situations (except for certain provisions of the GC). Nonetheless, it may be appropriate to apply rules from the law of belligerent occupation in such situations.

11.1.3.1 *Mere Invasion.* Mere physical presence of a belligerent's military forces in the territory of its enemy alone does not constitute military occupation. Such presence might not constitute an effective and firm possession of enemy territory, or the belligerent State might

²³ Eleanor Roosevelt, Chairman, U.N. Economic and Social Council, Commission on Human Rights, Sixth Session, Summary Record of the Hundred and Thirty-Eighth Meeting, U.N. Doc. E/CN.4/SR.138 ¶34 (Apr. 6, 1950) ("The purpose of the proposed addition was to make it clear that the draft Covenant would apply only to persons within the territory and subject to the jurisdiction of contracting States. The United States was afraid that without such an addition the draft Covenant might be construed as obliging the contracting States to enact legislation concerning persons who, although outside its territory were technically within its jurisdiction for certain purposes. An illustration would be the occupied territories of Germany, Austria and Japan: persons within those countries were subject to the jurisdiction of the occupying States in certain respects, but were outside the scope of the legislation of those States. Another illustration would be the case of leased territories: some countries leased certain territories from others for limited purposes, and there might be questions of conflicting authority between the lessor nation and the lessee nation."). See also Eleanor Roosevelt, Chairman, U.N. Economic and Social Council, Commission on Human Rights, Sixth Session, Summary Record of the Hundred and Ninety-Fourth Meeting, U.N. Doc. E/CN.4/SR.194 ¶14 (May 16, 1950) ("That [insertion of language] would limit the application of the covenant only to persons within its territory and subject to its jurisdiction. By this amendment the United States Government would not, by ratifying the covenant, be assuming an obligation to ensure the rights recognized in it to the citizens of countries under United States occupation.").

²⁴ Refer to § 1.3.2 (The Law of War's Relationship to Other Bodies of Law).

²⁵ Refer to § 1.6.3.2 (Different Views on the Applicability of Human Rights Treaties).

²⁶ Refer to § 11.9 (Local Law and Legislation).

²⁷ Refer to § 11.2 (When Military Occupation Law Applies).

lack the intention to displace and substitute the enemy State's authority with its own.²⁸

Guidance for the U.S. armed forces has sought, to the extent possible, to apply the rules of the law of occupation as a matter of policy to areas through which U.S. forces are passing, and even on the battlefield.²⁹

11.1.3.2 *Liberation of Friendly Territory*. The law of belligerent occupation does not apply to the liberation of friendly territory.³⁰ Indeed, a belligerent occupation presupposes that the Occupying Power is hostile in relation to the State whose territory is being occupied.³¹

The administration of liberated territory may be conducted in accordance with a civil affairs agreement between the co-belligerent States.³² In the absence of such an agreement, a military government may be established in the area as a provisional and interim measure.³³ The law of belligerent occupation may provide appropriate rules to apply by analogy, pending an agreement with the lawful government.³⁴

11.1.3.3 *Occupation and Non-International Armed Conflict*. The law of

²⁸ Refer to § 11.2.2.1 ("Actually Placed" – Effectiveness of Occupation); § 11.2.2.2 ("Under the Authority" – Suspension and Substitution of Governmental Authority).

²⁹ 1956 FM 27-10 (Change No. 1 1976) ¶352 ("*b. Application of Law of Occupation*. The rules set forth in this chapter apply of their own force only to belligerently occupied areas, but they should, as a matter of policy, be observed as far as possible in areas through which troops are passing and even on the battlefield.").

³⁰ See FM 27-10 (Change No. 1 1976) ¶354 ("Civil affairs administration is that form of administration established in friendly territory whereby a foreign government pursuant to an agreement, expressed or implied, with the government of the area concerned, may exercise certain authority normally the function of the local government. Such administration is often established in areas which are freed from enemy occupation. It is normally required when the government of the area concerned is unable or unwilling to assume full responsibility for its administration. Territory subject to civil affairs administration is not considered to be occupied."); Raymund T. Yingling and Robert W. Ginnane, *The Geneva Conventions of 1949*, 46 AJIL 393, 417 (1953) ("While the Civilian Convention contains no definition of 'occupation,' probably nothing could be added to the principle in Hague Article 42 that 'Territory is considered occupied when it is actually placed under the authority of the hostile army. The convention will not apply in liberated territory of an allied country such as France in 1944 in relation to the United States and the United Kingdom.'").

³¹ Refer to § 11.2.2.3 ("Of the Hostile Army" – Belligerent Occupation Applies to Enemy Territory).

³² For example, Directives and Agreements in Civil Affairs in France, Aug. 25, 1944, reprinted in U.S. ARMY, JUDGE ADVOCATE GENERAL SCHOOL, CIVIL AFFAIRS MILITARY GOVERNMENT: SELECTED CASES AND MATERIALS 10 (1958) ("As a result of discussions between American, British, and French representatives, agreement has been reached on the practical arrangements for civil affairs administration in Continental France.").

³³ 1956 FM 27-10 (Change No. 1 1976) ¶354 ("If circumstances have precluded the conclusion of a civil affairs agreement with the lawful government of allied territory recovered from enemy occupation or of other territory liberated from the enemy, military government may be established in the area as a provisional and interim measure (see par. 12b and c). A civil affairs agreement should, however, be concluded with the lawful government at the earliest possible opportunity.").

³⁴ 1958 UK MANUAL ¶499 note 3(b) ("Where it is not possible to conclude 'Civil Affairs' agreement before the liberation of allied territory, there may be an interregnum between invasion of such territory and the assumption of authority on the part of the domestic civilian government. In such a situation the powers and restraints applicable to an occupant by international law ought to apply as a minimum standard until such time as a 'Civil Affairs' agreement can be concluded.").

belligerent occupation does not address non-international armed conflict as such because a belligerent occupation presupposes that the Occupying Power is hostile in relation to the State whose territory is being occupied.³⁵ A State's military forces controlling its own territory would not be regarded as conducting an occupation; similarly, foreign forces conducting operations with the consent of the territorial State would also not be regarded as conducting an occupation.³⁶

However, the law of belligerent occupation may be applicable to a non-international armed conflict when a non-State party to the conflict has been recognized as a belligerent.³⁷ In addition, a non-international armed conflict could be regarded as taking place in the context of, or alongside, an occupation.³⁸

11.1.3.4 *Occupation and Post-War Situations.* Before the GC was adopted and entered into force, the law of belligerent occupation was not applicable when a state of hostilities had completely ceased.³⁹ The general inapplicability of the law of belligerent occupation to post-war situations may be viewed as resulting from the law of belligerent occupation presupposing that a hostile relationship exists between the invading force's State and the State of the occupied territory.⁴⁰ For example, if the State of the occupied territory unconditionally surrendered and any international armed conflict completely ended, the law of belligerent occupation was not applicable.⁴¹

³⁵ Refer to § 17.1.3.1 (Nationality and Territoriality Exclusions in the Law of International Armed Conflict).

³⁶ Refer to § 11.2.2.3 ("Of the Hostile Army" – Belligerent Occupation Applies to Enemy Territory).

³⁷ Refer to § 3.3.3.1 (Recognition by Outside States of a Rebel Faction as a Belligerent in a Civil War).

³⁸ For example, Jack L. Goldsmith III, Assistant Attorney General, "Protected Person" Status in Occupied Iraq Under the Fourth Geneva Convention, Mar. 18, 2004, 28 OPINIONS OF THE OFFICE OF LEGAL COUNSEL 35, 36 ("The United States is currently involved in two armed conflicts that are relevant to our analysis: the armed conflict with and occupation of Iraq, and the armed conflict with al Qaeda. In this Part we analyze how article 2 applies to each conflict *considered independently*. This analysis is not conclusive as to how GC applies when the two conflicts become intertwined, as they may when al Qaeda operatives carry on their armed conflict against the United States in occupied Iraq. This latter issue is addressed in Part III, *infra*."). Compare § 3.3.1.2 (Mixed Conflicts Between Opposing States and Non-State Armed Groups).

³⁹ For example, Forrest Hannaman, Chief of the Legal Service Division of the Office of the United States High Commissioner for Germany, Letter to the Judge Advocate Division of EUCOM (Jan. 28, 1952), X WHITEMAN'S DIGEST 595-96 ("The position of the United States that the Hague Regulations do not apply to the post-capitulation period of the present occupation of German [was noted by] the Military Governor in a First Indorsement to the Commander-in-Chief, European Command, dated January 7, 1948 (AG 386.3LD), [which] stated *inter alia*: '... it appears that the French authorities are interested in the policy of the United States in regard to the treatment of property owned or used by the Wehrmacht and in the applicability of the Annex to Hague Convention IV of 1907 to that question ... With respect to the applicability at the present time of the Annex ... the Legal Division of this Headquarters has expressed the view ... that since the period of hostilities has ended, the provisions of Section III of the Annex to Hague Convention IV of 1907 'do not literally apply to the present occupation of Germany' ...") (amendments shown in Digest).

⁴⁰ Refer to § 11.2.2.3 ("Of the Hostile Army" – Belligerent Occupation Applies to Enemy Territory).

⁴¹ For example, United States v. Altstoetter, *et al.*, III TRIALS OF WAR CRIMINALS BEFORE THE NMT 960 ("It is this fact of the complete disintegration of the government in Germany, followed by unconditional surrender and by occupation of the territory, which explains and justifies the assumption and exercise of supreme governmental power by the Allies. The same fact distinguishes the present occupation of Germany from the type of occupation

The GC, however, continues to apply in occupied territory until one year after the general close of military operations, and the Occupying Power is bound, for the duration of the occupation, to the extent that such State exercises the functions of government in such territory, by the provisions of certain articles of the GC.⁴² Additionally, protected persons under the GC who remain in the custody of the Occupying Power following the end of occupation retain that protection until their release, repatriation, or re-establishment.⁴³

In addition, it may be appropriate to adhere to the rules of belligerent occupation or to apply those rules by analogy even if not applicable as a matter of law in post-conflict situations.⁴⁴ The rules of belligerent occupation may reflect fundamental safeguards applicable to a wider range of situations.⁴⁵

which occurs when, in the course of actual warfare, an invading army enters and occupies the territory of another state, whose government is still in existence and is in receipt of international recognition, and whose armies, with those of its allies, are still in the field. In the latter case the occupying power is subject to the limitations imposed upon it by the Hague Convention and by the laws and customs of war. In the former case (the occupation of Germany) the Allied Powers were not subject to those limitations. By reason of the complete breakdown of government, industry, agriculture, and supply, they were under an imperative humanitarian duty of far wider scope to reorganize government and industry and to foster local democratic governmental agencies throughout the territory.”).

⁴² Refer to § 11.3.2 (Duration of GC Obligations in the Case of Occupied Territory).

⁴³ Refer to § 10.3.4 (Commencement and Duration of Protected Person Status).

⁴⁴ For example, Forrest Hannaman, Chief Legal Advice Division, Memorandum to Office of Economic Affairs – Finance Division on Revenues from Laender-Owned Property (Mar. 30, 1951), *reprinted in* XX SELECTED OPINIONS JANUARY 1, 1951 – APRIL 30, 1951 OF OFFICE OF THE UNITED STATES HIGH COMMISSIONER FOR GERMANY, OFFICE OF GENERAL COUNSEL, FRANKFURT, GERMANY, 57-58 (“The Hague Regulations were designed to define the powers of a belligerent occupant of enemy territory during, or shortly after, hostilities. As such, they cannot be considered literally applicable to the situation in Germany today, and we cannot consider without reflection that the occupying powers may exercise to their full extent powers which a belligerent occupant might rightfully exercise under the Regulations. Insofar as there exists an accepted custom and practice of nations relevant to our situation it is largely our own practice, since our present situation is without international precedent. In determining any concrete problem of this nature it has consistently been the position of the legal advisors to OMGUS and HICOG that whenever, in light of the actual problem and all of the relevant factors, the Hague Regulations may be considered as expressing principles of international law which are pertinent to our situation, those principles should be observed by us.”); Major G.B. Crook and Major W.G. Downey, Memorandum for the Judge Advocate General, *Present Applicability of Hague and Geneva Conventions in Germany*, *reprinted in* Ernst H. Feilchenfeld and Members of the Institute of World Polity, *Status of Germany*, 1 WORLD POLITY 182, 196 (1958) (“We conclude, therefore, that: a. The authority of the Allied Control Council and of the United States zone commander in occupied Germany is not limited by the provisions of Section III of the Regulations annexed to the Hague Convention IV (1907) and such Regulations have not been applicable to the occupation of Germany since 5 June 1945. ... The general rules expressed in the Hague Regulations will be considered as guiding principles unless and until specific U.S. or Allied occupation policies require deviation.”).

⁴⁵ 1956 FM 27-10 (Change No. 1 1976) ¶10 (“However, certain designated provisions of the Geneva Conventions of 1949 (see GC, art. 6; par 249 herein) continue to be operative, notwithstanding the termination of any antecedent hostilities, during the continuance of a military occupation. Insofar as the unwritten law of war and the Hague Regulations extend certain fundamental safeguards to the persons and property of the populations of occupied territory, their protection continues until the termination of any occupation having its origin in the military supremacy of the occupant, notwithstanding the fact the Geneva Convention relative to the Protection of Civilian Persons may have ceased to be applicable.”).

11.2 WHEN MILITARY OCCUPATION LAW APPLIES

The law of military occupation applies when a military occupation exists in fact.

Even if the requirements of the law of belligerent occupation do not apply as a matter of law, general law of war principles and rules, such as those for the conduct of hostilities, continue to apply.⁴⁶

11.2.1 Military Occupation as a Fact. Military occupation is a question of fact.⁴⁷ The legal consequences arising from the fact of occupation (*i.e.*, that this fact is the basis for both rights and duties) illustrates how the law of war may be viewed as both permissive and restrictive in nature.⁴⁸

The fact of occupation is the basis for the Occupying Power to exercise authority over the occupied territory.⁴⁹ The fact of occupation, as a requirement for the exercise of authority over the occupied territory, prevents a State from simply claiming the authorities of military government over an enemy territory without actually controlling such territory.⁵⁰

The fact of occupation also imposes certain duties on the Occupying Power with respect to occupied territory.⁵¹ The fact of occupation, as a requirement for triggering the duties of an Occupying Power, means that a State that does not, in fact, occupy an area, does not incur the obligations of an Occupying Power.

Once an occupation exists in fact, regardless of whether the invasion was lawful or

⁴⁶ Eritrea-Ethiopia Claims Commission, *Partial Award – Western Front, Aerial Bombardment and Related Claims, Eritrea’s Claims 1, 3, 5, 9-13, 14, 21, 25 & 26*, ¶27 (Dec. 19, 2005) (“The Commission agrees that the Ethiopian military presence was more transitory in most towns and villages on the Western Front than it was on the Central Front, where the Commission found Ethiopia to be an occupying power. The Commission also recognizes that not all of the obligations of Section III of Part III of Geneva Convention IV (the section that deals with occupied territories) can reasonably be applied to an armed force anticipating combat and present in an area for only a few days. Nevertheless, a State is obligated by the remainder of that Convention and by customary international humanitarian law to take appropriate measures to protect enemy civilians and civilian property present within areas under the control of its armed forces. Even in areas where combat is occurring, civilians and civilian objects cannot lawfully be made objects of attack.”).

⁴⁷ 1956 FM 27-10 (Change No. 1 1976) ¶355 (“Military occupation is a question of fact.”).

⁴⁸ *Refer to* § 1.3.3 (Restrictive and Permissive Character of the Law of War).

⁴⁹ *See, e.g.*, WINTHROP, *MILITARY LAW & PRECEDENTS* 799 (“The authority for military government is the fact of occupation. Not a mere temporary occupation of enemy’s country on the march, but a settled and established one. Mere invasion, the presence of the hostile army in the country, is not sufficient. There must be a full possession, a firm holding, a government *de facto*.”); *MacLeod v. United States*, 229 U.S. 416, 425 (1913) (“There has been considerable discussion in the cases and in works of authoritative writers upon the subject of what constitutes an occupation which will give the right to exercise governmental authority. Such occupation is not merely invasion, but is invasion plus possession of the enemy’s country for the purpose of holding it temporarily at least.”); *United States v. Rice*, 17 U.S. 246, 254 (1819) (Story, J.) (“By the conquest and military occupation of Castine, the enemy acquired that firm possession which enabled him to exercise the fullest rights of sovereignty over that place.”).

⁵⁰ *Compare* § 13.10.2.3 (Effectiveness of the Blockade).

⁵¹ *Refer to* § 11.5 (Duty of the Occupying Power to Ensure Public Order and Safety).

unlawful under *jus ad bellum*, the rights and duties of the Occupying Power and the population in relation to each other apply.⁵² This application of the law of belligerent occupation is an example of how *jus in bello* rules and *jus ad bellum* rules generally operate independently of one another.⁵³

11.2.2 Standard for Determining When Territory Is Considered Occupied. Territory is considered occupied when it is actually placed under the authority of the hostile forces.⁵⁴

This standard for when the law of belligerent occupation applies is reflected in Article 42 of the Hague IV Regulations and is regarded as customary international law.⁵⁵

11.2.2.1 “Actually Placed” – Effectiveness of Occupation. Military occupation must be actual and effective; that is, the organized resistance must have been overcome, and the Occupying Power must have taken measures to establish its authority.⁵⁶

It is sufficient that the occupying force can, within a reasonable time, send detachments of forces to enforce its authority within the occupied district. Military occupation does not require the presence of military forces in every populated area, although the occupying force must, *inter alia*, control the most important places.⁵⁷

The type of forces used to maintain the authority of the Occupying Power is not material.

⁵² See, e.g., *United States v. List, et al.* (The Hostage Case), XI TRIALS OF WAR CRIMINALS BEFORE THE NMT 1247 (“At the outset, we desire to point out that international law makes no distinction between a lawful and an unlawful occupant in dealing with the respective duties of occupant and population in occupied territory. There is no reciprocal connection between the manner of the military occupation of territory and the rights and duties of the occupant and population to each other after the relationship has in fact been established. Whether the invasion was lawful or criminal is not an important factor in the consideration of this subject.”).

⁵³ Refer to § 3.5.2 (*Jus in Bello* and *Jus ad Bellum* Generally Operate Independently of One Another).

⁵⁴ HAGUE IV REG. art. 42 (“Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.”).

⁵⁵ See, e.g., Jack L. Goldsmith III, Assistant Attorney General, “*Protected Person*” Status in Occupied Iraq Under the Fourth Geneva Convention, Mar. 18, 2004, 28 OPINIONS OF THE OFFICE OF LEGAL COUNSEL 35, 37 footnote 1 (“The Hague Regulations do not apply to the United States’ conflict with and occupation of Iraq as a matter of treaty law because Iraq is not a party to the Hague Convention. ... But as the citations in the text make clear, article 42(1) of the Hague Regulations, which provides that occupation begins ‘when [territory] is actually placed under the authority of the hostile army,’ reflects customary international law.”); *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, 2005 I.C.J. 168, 229 (¶172) (“[U]nder customary international law, as reflected in Article 42 of the Hague Regulations of 1907, territory is considered to be occupied when it is actually placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised ...”).

⁵⁶ 1956 FM 27-10 (Change No. 1 1976) ¶356 (“It follows from the definition that belligerent occupation must be both actual and effective, that is, the organized resistance must have been overcome and the force in possession must have taken measures to establish its authority.”).

⁵⁷ *Keely v. Sanders*, 99 U.S. 441, 447 (1878) (“No conquering army occupies the entire territory conquered. Its authority is established when it occupies and holds securely the most important places, and when there is no opposing governmental authority within the territory. The inability of any other power to establish and maintain governmental authority therein is the test.”).

For example, the occupation might be maintained by permanently based units or mobile forces, either of which would be able to send detachments of forces to enforce the authority of the Occupying Power within the occupied district.⁵⁸ However, air superiority alone would not constitute an effective occupation.

Similarly, as long as the occupation is effective, there is no precise number of forces that are considered necessary to constitute an effective occupation. The number of forces necessary to maintain effective occupation will depend on various considerations, such as the disposition of the inhabitants, the number and density of the population, the nature of the terrain, and similar factors.⁵⁹

An occupation may be effective despite the existence of areas in the enemy State that are temporarily controlled by enemy forces or pockets of resistance. For example, the fact that a defended location (such as a city or town) still controlled by enemy forces exists within an area declared occupied by the Occupying Power does not render the occupation of the remainder of the area invalid, provided that continued resistance in such place or defended zone does not render the occupier unable to exercise control over the remainder of the occupied territory.⁶⁰ Similarly, an occupation may continue to be effective despite intermittent insurgent attacks or temporary seizures of territory by resistance forces.⁶¹

11.2.2.2 *“Under the Authority” – Suspension and Substitution of Governmental Authority.* Occupation also requires the suspension of the territorial State’s authority and the substitution of the Occupying Power’s authority for the territorial State’s authority.⁶²

The territorial State must be rendered incapable of publicly exercising its authority in the

⁵⁸ 1956 FM 27-10 (Change No. 1 1976) ¶356 (“It is sufficient that the occupying force can, within a reasonable time, send detachments of troops to make its authority felt within the occupied district. It is immaterial whether the authority of the occupant is maintained by fixed garrisons or flying columns, whether by small or large forces, so long as the occupation is effective.”).

⁵⁹ 1956 FM 27-10 (Change No. 1 1976) ¶356 (“The number of troops necessary to maintain effective occupation will depend on various considerations such as the disposition of the inhabitants, the number and density of the population, the nature of the terrain, and similar factors. The mere existence of a fort or defended area within the occupied district, provided the fort or defended area is under attack, does not render the occupation of the remainder of the district ineffective. Similarly, the mere existence of local resistance groups does not render the occupation ineffective.”).

⁶⁰ 1958 UK MANUAL ¶502 (“The fact that there is a defended place or zone still in possession of the national forces within an occupied district does not make the occupation of the remainder invalid, provided that such place or defended zone is surrounded and effectively cut off from the rest of the occupied district.”).

⁶¹ *United States v. List, et al. (The Hostage Case)*, XI TRIALS OF WAR CRIMINALS BEFORE THE NMT 1243 (“It is clear that the German armed forces were able to maintain control of Greece and Yugoslavia until they evacuated them in the fall of 1944. While it is true that the partisans were able to control sections of these countries at various times, it is established that the Germans could at any time they desired assume physical control of any part of the country. The control of the resistance forces was temporary only and not such as would deprive the German armed forces of its status of an occupant.”).

⁶² LIEBER CODE art. 3 (“Martial Law in a hostile country consists in the suspension, by the occupying military authority, of the criminal and civil law, and of the domestic administration and government in the occupied place or territory, and in the substitution of military rule and force for the same, as well as in the dictation of general laws, as far as military necessity requires this suspension, substitution, or dictation.”).

territory, and the Occupying Power must substitute its authority for that of the territorial State.⁶³ Invading forces in possession of the territory must have taken measures to establish their authority.⁶⁴ For example, such measures may include establishing its own governmental authority for that area and making regulations for the conduct of temporary government.⁶⁵ The suspension and substitution of authority may take place with local authorities continuing to administer territory subject to the paramount authority of the Occupying Power.⁶⁶ On the other hand, routine measures necessary to provide for unit security (*e.g.*, warning private persons not to threaten or interfere with military operations) would not necessarily constitute measures to establish authority over enemy territory.

The substitution of authority by the Occupying Power may be shown by a proclamation of occupation, although such a proclamation is not required.⁶⁷

11.2.2.3 *“Of the Hostile Army” – Belligerent Occupation Applies to Enemy Territory.* Occupation occurs when territory is actually placed under the authority of the hostile army. Thus, the existence of an occupation presupposes a hostile relationship between the invading force’s State and the State of the occupied territory, although the occupation need not

⁶³ 1956 FM 27-10 (Change No. 1 1976) ¶355 (“Military occupation is a question of fact. It presupposes a hostile invasion, resisted or unresisted, as a result of which the invader has rendered the invaded government incapable of publicly exercising its authority, and that the invader has successfully substituted its own authority for that of the legitimate government in the territory invaded.”). *See also* Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, 2005 I.C.J. 165, 230 (¶¶173-74) (“In order to reach a conclusion as to whether a State, the military forces of which are present on the territory of another State as a result of an intervention, is an ‘occupying Power’ in the meaning of the term as understood in *jus in bello*, the Court must examine whether there is sufficient evidence to demonstrate that the said authority was in fact established and exercised by the intervening State in the areas in question. In the present case the Court will need to satisfy itself that the Ugandan armed forces in the DRC were not only stationed in particular locations, but also that they had substituted their own authority for that of the Congolese Government [T]he territorial limits of any zone of occupation by Uganda in the DRC cannot be determined by simply drawing a line connecting the geographical locations where Ugandan troops were present as has been done on the sketch-map presented by the DRC (see paragraphs 55 and 73 above).”).

⁶⁴ GREENSPAN, *THE MODERN LAW OF LAND WARFARE* 213-14 (“An occupant sets up some form of administration in the territory, an invader merely passing through it does not.”).

⁶⁵ *For example*, *MacLeod v. United States*, 229 U.S. 416, 424-25 (1913) (“When the Spanish fleet was destroyed at Manila, May 1, 1898, it became apparent that the Government of the United States might be required to take the necessary steps to make provision for the government and control of such part of the Philippines as might come into the military occupation of the forces of the United States. The right to thus occupy an enemy’s country and temporarily provide for its government has been recognized by previous action of the executive authority and sanctioned by frequent decisions of this court. The local government being destroyed, the conqueror may set up its own authority and make rules and regulations for the conduct of temporary government, and to that end may collect taxes and duties to support the military authority and carry on operations incident to the occupation. Such was the course of the Government with respect to the territory acquired by conquest and afterwards ceded by the Mexican Government to the United States.”).

⁶⁶ *Refer to* § 11.8.2 (Continued Performance of Duties by Civil Servants and Other Officials of Local Governments).

⁶⁷ *Refer to* § 11.2.4 (Proclamation of Occupation).

be met with armed resistance.⁶⁸

For example, the law of belligerent occupation would not apply to the use of military forces to control a State's own territory, such as in cases of domestic emergency, insurrection, or non-international armed conflict.⁶⁹

Similarly, the law of belligerent occupation would not apply to the liberation of friendly territory that was previously occupied by the enemy.⁷⁰

The requirement of a hostile relationship between the invading force's State and the State of the occupied territory also prevents the law of belligerent occupation from applying to post-conflict situations (except for certain provisions of the GC).⁷¹

11.2.3 Scope of Occupied Territory. The occupation extends only to the territory where such authority has been established and can be exercised.⁷²

For example, a State may remain in control of part of its territory while the remainder of its territory is under occupation. The 1949 Geneva Conventions apply in cases of partial or total occupation of a State.⁷³

The end of occupation in one part of occupied territory does not end the occupation in other parts of the occupied territory where the Occupying Power maintains its authority.

11.2.4 Proclamation of Occupation. Due to the special relations established between the civilian population of the occupied territory and the Occupying Power, the fact of military occupation and the territory over which it extends should be made known to the citizens of the occupied territory and to other States.

However, there is no specific legal requirement that the Occupying Power issue a proclamation of military occupation.⁷⁴

⁶⁸ GWS art. 2 ("The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance."); GWS-SEA art. 2 (same); GPW art. 2 (same); GC art. 2 (same).

⁶⁹ *Refer to* § 11.1.3.3 (Occupation and Non-International Armed Conflict).

⁷⁰ *Refer to* § 11.1.3.2 (Liberation of Friendly Territory).

⁷¹ *Refer to* § 11.1.3.4 (Occupation and Post-War Situations).

⁷² HAGUE IV REG. art. 42 ("Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.").

⁷³ *Refer to* § 11.1.2.3 (Occupation and the 1949 Geneva Conventions).

⁷⁴ 1956 FM 27-10 (Change No. 1 1976) ¶357 ("In a strict legal sense no proclamation of military occupation is necessary. However, on account of the special relations established between the inhabitants of the occupied territory and the occupant by virtue of the presence of occupying forces, the fact of military occupation, with the extent of territory affected, should be made known. The practice of the United States is to make this fact known by proclamation."); 1914 RULES OF LAND WARFARE ¶292 ("In a strict legal sense no proclamation of military occupation is necessary. On account of the special relations established between the inhabitants of the occupied

The question of whether territory is occupied does not depend upon the issuance of any particular proclamation or other instrument. Territory may be occupied even though no proclamation of occupation has been issued. Conversely, the issuance of proclamation of occupation does not empower a State with the rights of an Occupying Power if it does not control such territory in fact.

A proclamation may help fix the date of the beginning of the occupation.⁷⁵ The proclamation may also advise inhabitants of occupied territory of the rules with which they must comply.⁷⁶ In particular, the proclamation may be used to advise inhabitants of changes to law, including penal law.⁷⁷

The general practice of the United States has been to make the fact of occupation known by proclamation or similar notice.⁷⁸ In addition to giving notice to the inhabitants of occupied

territory and the occupant, by virtue of the presence of the invading force, the fact of military occupation, with the extent of territory [sic] affected by the same, should be made known. The practice in this country is to make this fact known by proclamation.”); LIEBER CODE art. 1 (“A place, district, or country occupied by an enemy stands, in consequence of the occupation, under the Martial Law of the invading or occupying army, whether any proclamation declaring Martial Law, or any public warning to the inhabitants, has been issued or not. Martial Law is the immediate and direct effect and consequence of occupation or conquest. The presence of a hostile army proclaims its Martial Law.”).

⁷⁵ For example, Jack L. Goldsmith III, Assistant Attorney General, “*Protected Person*” Status in Occupied Iraq Under the Fourth Geneva Convention, Mar. 18, 2004, 28 OPINIONS OF THE OFFICE OF LEGAL COUNSEL 35, 37 (“Applying this standard, the United States became an occupying power no later than April 16, 2003, the date on which General Tommy Franks announced the creation of the ‘Coalition Provisional Authority to exercise powers of government temporarily, and as necessary, especially to provide security, to allow the delivery of humanitarian aid and to eliminate weapons of mass destruction.’ See Tommy R. Franks, Freedom Message to the Iraqi People (Apr. 16, 2003)”); The Venice, 69 U.S. 258, 276 (1865) (“The transports conveying the troops under the command of Major-General Butler, commanding the Department of the Gulf, arrived on the 1st of May, and the actual occupation of the city was begun. There was no armed resistance, but abundant manifestations of hostile spirit and temper both by the people and the authorities. The landing of the troops was completed on the 2d of May, and on the 6th a proclamation of General Butler, which had been prepared and dated on the 1st, and the next day printed by some soldiers, in an office seized for the purpose, was published in the newspapers of the city. Some copies of the proclamation had been previously distributed to individuals, but it was not made known to the population generally until thus published. There was no hostile demonstration, and no disturbance afterwards; and we think that the military occupation of the city of New Orleans may be considered as substantially complete from the date of this publication; and that all the rights and obligations resulting from such occupation, or from the terms of the proclamation, may be properly regarded as existing from that time. This proclamation declared the city to be under martial law, and announced the principles by which the commanding general would be guided in its administration.”).

⁷⁶ For example, 1958 UK MANUAL ¶504 note 1 (“The practice in this matter in past wars appears to have been variable. Frequently the inhabitants were only warned to behave peaceably, not to communicate with the enemy, and to comply with requisitions; as for instance when the British troops entered France in 1813 and 1815. In 1870, in France, the Germans generally, but not always, proclaimed military jurisdiction directly[;] they took possession of a locality, by posting a notice which gave a list of offences against the troops for which the penalty of death would be inflicted.”).

⁷⁷ Refer to § 11.9.3 (Procedural Obligation – Notification to the Population of Changes in Law); § 11.11.2.1 (Publication of Penal Provisions Before Coming Into Force).

⁷⁸ For example, Coalition Provisional Authority Regulation No. 1, §1(1) (May 16, 2003) (“The CPA shall exercise powers of government temporarily in order to provide for the effective administration of Iraq during the period of transitional administration ...”).

territory, notice may be given to other governments.⁷⁹ In some cases, the U.N. Security Council has recognized the fact of occupation.⁸⁰

11.3 END OF OCCUPATION AND DURATION OF GC OBLIGATIONS

The status of belligerent occupation ends when the conditions for its application are no longer met. Certain GC obligations with respect to occupied territory continue for the duration of the occupation after the general close of military operations.

11.3.1 End of Occupation. Belligerent occupation ceases when the conditions for its application are no longer met.⁸¹ In particular, as discussed below, the status of belligerent occupation ceases when the invader no longer factually governs the occupied territory or when a hostile relationship no longer exists between the State of the occupied territory and the Occupying Power.⁸²

Belligerent occupation ends when the Occupying Power no longer has effectively placed the occupied territory under its control.⁸³ For example, an uprising by the local population may prevent the Occupying Power from actually enforcing its authority over occupied territory. Similarly, the Occupying Power's expulsion or complete withdrawal from the territory would also suffice because the former Occupying Power generally would not be able to control sufficiently the occupied territory.

Belligerent occupation also may end when a hostile relationship no longer exists between the Occupying Power and the State of the occupied territory (although, as discussed in the following subsection, certain GC obligations may continue to apply).⁸⁴ For example, if a new,

⁷⁹ For example, John D. Negroponte & Jeremy Greenstock, *Letter Dated 8 May 2003 from the Permanent Representatives of the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations Addressed to the President of the Security Council*, U.N. Doc. S/2003/538 ("the United States, the United Kingdom, and Coalition partners, acting under existing command and control arrangements through the Commander of Coalition Forces, have created the Coalition Provisional Authority, which includes the Office of Reconstruction and Humanitarian Assistance, to exercise the powers of government temporarily, and, as necessary, especially to provide security, to allow the delivery of humanitarian aid, and to eliminate weapons of mass destruction. The United States, the United Kingdom and Coalition partners, working through the Coalition Provisional Authority, shall inter alia, provide for security in and for the provisional administration of Iraq ...").

⁸⁰ For example, U.N. SECURITY COUNCIL RESOLUTION 1483, U.N. Doc. S/RES/1483, 2 (May 22, 2003) ("Noting the letter of 8 May 2003 from the Permanent Representatives of the United States of America and the United Kingdom of Great Britain and Northern Ireland to the President of the Security Council (S/2003/538) and recognizing the specific authorities, responsibilities, and obligations under applicable international law of these states as occupying powers under unified command (the 'Authority'),"); U.N. SECURITY COUNCIL RESOLUTION 661, U.N. Doc. S/RES/661 (1990) (Aug. 6, 1990) ("Determined to bring the invasion and occupation of Kuwait by Iraq to an end and to restore the sovereignty, independence and territorial integrity of Kuwait,").

⁸¹ Refer to § 11.2.2 (Standard for Determining When Territory Is Considered Occupied).

⁸² WINTHROP, *MILITARY LAW & PRECEDENTS* 801 ("The status of military government continues from the inception of the actual occupation till the invader is expelled by force of arms, or himself abandons the conquest, or till, under a treaty of peace, the country is restored to its original allegiance or becomes incorporated with the domain of the prevailing belligerent.").

⁸³ Refer to § 11.2.2.1 ("Actually Placed" – Effectiveness of Occupation).

⁸⁴ Refer to § 11.2.2.3 ("Of the Hostile Army" – Belligerent Occupation Applies to Enemy Territory).

independent government of the previously occupied territory assumes control of the territory and consents to the presence of the previously occupying forces, then such a situation would no longer be considered a belligerent occupation. Similarly, if a peace treaty legitimately transfers the territory to the sovereignty of the Occupying Power, then the Occupying Power would no longer be characterized as such. However, an Occupying Power is not permitted, under the law of belligerent occupation, to annex occupied territory.⁸⁵

11.3.2 Duration of GC Obligations in the Case of Occupied Territory. In the home territory of parties to the conflict, the application of the GC shall cease on the general close of military operations.⁸⁶

In the case of occupied territory, the application of the GC shall cease one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such State exercises the functions of government in such territory, by the provisions of the following Articles of the GC:

- 1 through 12 (general provisions and common articles, *e.g.*, the Protecting Power continues to function, and the derogation for security reasons continues to apply);
- 27, 29 through 34 (humane treatment);
- 47 (preserves rights as against change by annexation or arrangement with the local authorities so long as occupation lasts);
- 49 (transfers, evacuation, and deportation);
- 51, 52 (prohibitions against certain compulsory service and protection of workers);
- 53 (respect for property);
- 59, 61 through 63 (facilitating relief programs);
- 64 through 77 (criminal proceedings); and
- 143 (access by Protecting Powers and the ICRC).⁸⁷

The one-year time limit for the cessation of the application of the GC (apart from the provisions that continue to apply to the extent that the Occupying Power exercises the functions of government in occupied territory) was proposed to account for situations like those of

⁸⁵ Refer to § 11.4.2 (Limitations on the Power of the Occupying Power Stemming From Its Lack of Sovereignty Over Occupied Territory).

⁸⁶ Refer to § 10.3.4 (Commencement and Duration of Protected Person Status).

⁸⁷ GC art. 6 (“In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles of the present Convention: 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, 143.”).

Germany and Japan after World War II.⁸⁸ AP I provides that the 1949 Geneva Conventions and AP I shall cease to apply, in the case of occupied territories, on the termination of the occupation;⁸⁹ coalition partners that are Occupying Powers and Parties to AP I would be bound by this rule.

In any case, individuals entitled to GC protection who remain in the custody of the Occupying Power following the end of occupation retain that protection until their release, repatriation, or re-establishment.⁹⁰ In addition, it may be appropriate following the end of occupation to continue to apply by analogy certain rules from the law of belligerent occupation, even if such rules do not apply as a matter of law.⁹¹

11.4 LEGAL POSITION OF THE OCCUPYING POWER

Military occupation of enemy territory involves a complicated, trilateral set of legal relations between the Occupying Power, the temporarily ousted sovereign authority, and the inhabitants of occupied territory.⁹² The fact of occupation gives the Occupying Power the right to govern enemy territory temporarily, but does not transfer sovereignty over occupied territory

⁸⁸ II-A FINAL RECORD OF THE DIPLOMATIC CONFERENCE OF GENEVA OF 1949 623 (“Mr. CLATTENBURG (United States of America) said that his Delegation would propose an amendment to Article 4 to provide that the Civilians Convention should cease to apply not earlier than one year after the termination of hostilities. It would be noted that the Convention did not define the terms ‘occupied territory’ or ‘military occupation’. It was the view of the United States Delegation that the obligations imposed by the Convention on an Occupying Power should be applicable to the period of hostilities and to the period of disorganization following on the hostilities; these obligations would vary according to the nature and duration of the occupation. Experience had shown that an Occupying Power did, in fact, exercise the majority of the governmental functions in occupied territory. A prolonged military occupation was, however, also characterized by a progressive return of governmental responsibility to local authorities. The Occupying Power should be bound by the obligations of the Convention only during such time as the institutions of the occupied territory were unable to provide for the needs of the inhabitants. The ultimate solution of such problems as revictualling, sanitation and war damage was not the responsibility of the Occupying Power. He quoted the case of the Allied occupation of Germany and Japan to show that the responsibility of the Occupying Powers for the welfare of the local populations was far less at present than during the period immediately following hostilities.”).

⁸⁹ AP I art. 3 (“Without prejudice to the provisions which are applicable at all times: (a) The Conventions and this Protocol shall apply from the beginning of any situation referred to in Article 1 of this Protocol; (b) The application of the Conventions and of this Protocol shall cease, in the territory of Parties to the conflict, on the general close of military operations and, in the case of occupied territories, on the termination of the occupation, except, in either circumstance, for those persons whose final release, repatriation or reestablishment takes place thereafter. These persons shall continue to benefit from the relevant provisions of the Conventions and of this Protocol until their final release, repatriation or re-establishment.”).

⁹⁰ Refer to § 10.3.4 (Commencement and Duration of Protected Person Status).

⁹¹ Refer to § 11.1.3.4 (Occupation and Post-War Situations).

⁹² JULIUS STONE, LEGAL CONTROLS ON INTERNATIONAL CONFLICT 694 (1954) (“Whether belligerent occupation has been established depends not merely on the will of the belligerent, but whether his actual control satisfies the standards of range and stability laid down by international law. If it does not, he is a mere invader enjoying a comparatively narrow legal authority. If it does, international law attributes to him legal powers which *merely as a belligerent* he does not have, touching almost all aspects of the government of the territory and the lives of its inhabitants. Since, moreover, the ousted sovereign still retains all the residue of legal authority not attributed to the Occupant, it is apparent that belligerent occupation involves at its core a complicated trilateral set of legal relations between the Occupant, the temporarily ousted sovereign and the inhabitants.”).

to the Occupying Power.

11.4.1 Right of the Occupying Power to Govern the Enemy Territory Temporarily. The right to govern the territory of the enemy during its military occupation is one of the incidents of war.⁹³ By the fact of occupation (*i.e.*, the Occupying Power's established power over occupied territory), the Occupying Power is conferred the authority to exercise some of the rights of sovereignty.⁹⁴ The exercise of these sovereign rights also results from the necessity of maintaining law and order, indispensable both to the inhabitants and to the occupying force, and the failure or inability of the legitimate government to exercise its functions, or the undesirability of allowing it to do so.⁹⁵

11.4.2 Limitations on the Power of the Occupying Power Stemming From Its Lack of Sovereignty Over Occupied Territory. Belligerent occupation in a foreign war, being based upon the possession of enemy territory, necessarily implies that the sovereignty of the occupied territory is not vested in the Occupying Power.⁹⁶ Occupation is essentially provisional.⁹⁷

Because sovereignty is not vested in the Occupying Power, the fact of military occupation does not authorize the Occupying Power to take certain actions. For example, the Occupying Power is not authorized by the fact of belligerent occupation to annex occupied territory or to create a new State.⁹⁸ In addition, the Occupying Power may not compel the

⁹³ *Coleman v. Tennessee*, 97 U.S. 509, 517 (1879) ("The doctrine of international law on the effect of military occupation of enemy's territory upon its former laws is well established. Though the late war was not between independent nations, but between different portions of the same nation, yet having taken the proportions of a territorial war, the insurgents having become formidable enough to be recognized as belligerents, the same doctrine must be held to apply. The right to govern the territory of the enemy during its military occupation is one of the incidents of war, being a consequence of its acquisition; and the character and form of the government to be established depend entirely upon the laws of the conquering State or the orders of its military commander.").

⁹⁴ 1956 FM 27-10 (Change No. 1 1976) ¶358 ("Being an incident of war, military occupation confers upon the invading force the means of exercising control for the period of occupation. It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty. The exercise of these rights results from the established power of the occupant and from the necessity of maintaining law and order, indispensable both to the inhabitants and to the occupying force.").

⁹⁵ 1956 FM 27-10 (Change No. 1 1976) ¶362 ("Military government is the form of administration by which an occupying power exercises governmental authority over occupied territory. The necessity for such government arises from the failure or inability of the legitimate government to exercise its functions on account of the military occupation, or the undesirability of allowing it to do so.").

⁹⁶ 1956 FM 27-10 (Change No. 1 1976) ¶353 ("Belligerent occupation in a foreign war, being based upon the possession of enemy territory, necessarily implies that the sovereignty of the occupied territory is not vested in the occupying power. Occupation is essentially provisional.").

⁹⁷ *See, e.g.*, VON GLAHN, *THE OCCUPATION OF ENEMY TERRITORY* 31 ("The consensus of the opinions of writers on international law is that the legitimate government of the territory retains its sovereignty but that the latter is suspended during the period of belligerent occupation."); EYAL BENVENISTI, *THE INTERNATIONAL LAW OF OCCUPATION* 6 (2004) ("The power exercising effective control within another's sovereign territory has only temporary managerial powers, for the period until a peaceful solution is reached. During that limited period, the occupant administers the territory on behalf of the sovereign. Thus the occupant's status is conceived to be that of a trustee.").

⁹⁸ 1956 FM 27-10 (Change No. 1 1976) ¶358 ("It is therefore unlawful for a belligerent occupant to annex occupied territory or to create a new State therein while hostilities are still in progress."). *Refer to* § 11.6.3 (Occupying Power's Duty to Respect the Rights of Protected Persons Secured by the GC).

inhabitants of occupied territory to become its nationals or otherwise to swear allegiance to it.⁹⁹ Similarly, in view of the provisional nature of belligerent occupation, the authority of the Occupying Power under occupation law has been interpreted as being subject to limitations on the ability of the Occupying Power to alter institutions of government permanently or change the constitution of a country.¹⁰⁰

11.5 DUTY OF THE OCCUPYING POWER TO ENSURE PUBLIC ORDER AND SAFETY

The authority of the legitimate power having in fact passed into the hands of the Occupying Power, the latter shall take all the measures in its 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.¹⁰¹ This principle has been recognized as customary international law.¹⁰²

The Occupying Power has a general duty to maintain public order and to provide for the

⁹⁹ Refer to § 11.6.2.1 (Prohibition on Compelling Inhabitants of Occupied Territory to Swear Allegiance to the Hostile State).

¹⁰⁰ John B. Bellinger, III, Legal Adviser, Department of State, *United Nations Security Council Resolutions and the Application of International Humanitarian Law, Human Rights and Refugee Law*, Sept. 9, 2005, 2005 DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 958-59 (“Some commentators take the position that occupation law establishes limitations on the ability of the occupying power to alter institutions of government permanently or change the constitution of a country.”). See also 2004 UK MANUAL ¶11.25.1 (“Since the occupying power has a duty to look after the welfare of the inhabitants, regulations, for example, fixing prices and securing the equitable distribution of food and other commodities, are permissible. The occupying power should make no more changes to the law than are absolutely necessary, particularly where the occupied territory already has an adequate legal system.”); 2001 CANADIAN MANUAL ¶1205(1) (“During occupation by the enemy, the sovereignty of the legitimate government continues to exist but it is temporarily latent. The powers of the occupant are of a provisional nature and it should only take measures, which are necessary for the purposes of the armed conflict, the maintenance of order and safety and the proper administration of the occupied territory. Generally speaking, the occupant is not entitled to alter the existing form of government, to upset the constitution and domestic laws of the occupied territory, or to set aside the rights of the inhabitants.”); JULIUS STONE, LEGAL CONTROLS OF INTERNATIONAL CONFLICT 698 (1954) (“The limits on the legislative and regulatory power are as vague as the authority is general. The Occupant’s authority is ‘military authority’. Clearly this is not full sovereignty, but equally clearly it extends under the regulations to civil matters. His authority, of course, is limited like all his other powers to the occupied territory, under Article 42, paragraph 2; and by Article 43 the Occupant must respect the laws in force unless ‘absolutely prevented’. But this last limitation has never been taken literally; and unless it is so taken, the boundaries of the Occupant’s legislative power are still to be drawn. The most widely approved line of distinction is that the Occupant, in view of his merely provisional position, cannot make permanent changes in regard to fundamental institutions, for instance, change a republic into a monarchy. It becomes, however, increasingly difficult to say with confidence what is a fundamental institution.”).

¹⁰¹ HAGUE IV REG. art. 43 (“The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”).

¹⁰² *Opinion on the Legality of the Issuance of AMG (Allied Military Government) Currency in Sicily*, Sept. 23, 1943, reprinted in *Occupation Currency Transactions: Hearings Before the Committees on Appropriations Armed Services and Banking and Currency, U.S. Senate*, 80th Congress, First Session, 73, 75 (Jun. 17-18, 1947) (“The Hague Convention clearly enunciated the principle that the laws applicable in an occupied territory remain in effect during the occupation, subject to change by the military authorities within the limitations of the Convention. Article 43 provides: ... This declaration of the Hague Convention amounts only to a reaffirmation of the recognized international law prior to that time.”).

preservation of rights of the inhabitants, including rights to their private property.¹⁰³

11.5.1 Authority Conferred by the Occupying Power's Duty to Ensure Public Order and Safety. The Occupying Power's duty to take all the measures in its power to restore and ensure, as far as possible, public order and safety also provides it authority take such actions. For example, the Occupying Power may enact provisions to maintain the orderly government of the territory.¹⁰⁴

11.5.2 Duty to Respect, Unless Absolutely Prevented, the Laws in Force in the Country. The duty to respect, unless absolutely prevented, the laws in force in the country prohibits the Occupying Power from arbitrarily exercising its authority to suspend, repeal, or change the municipal law applicable to occupied territory.¹⁰⁵

The duty to respect, unless absolutely prevented, the laws in force in the country has been interpreted not to apply to local administrative laws, such as regulations, executive orders, ordinances, and decrees.¹⁰⁶

11.6 PROTECTION OF THE POPULATION OF AN OCCUPIED TERRITORY

Under the law of belligerent occupation, the Occupying Power has certain duties with respect to the population of an occupied territory, including protected persons under the GC.

11.6.1 General Protections, Including Humane Treatment, of the Population of an

¹⁰³ *Aboitiz & Co. v. Price*, 99 F. Supp. 602, 610 (D. Utah 1951) (“[I]nternational law has recognized the right of the protection of [the Occupying Power’s] military interests and the exercise of police powers. However, such law also imposes upon the occupant the duty to maintain public order and to provide for the preservation of the rights of the inhabitants. The emphasis is upon public order and safety, and the welfare of the inhabitants.”). *See also* *Ochoa v. Hernandez y Morales*, 230 U.S. 139, 159 (1913) (“The protocol of August 12, 1898 (30 Stat. 1742), the purport of which has already been given, left our Government, by its military forces, in the occupation and control of Porto Rico as a colony of Spain, and bound by the principles of international law to do whatever was necessary to secure public safety, social order, and the guaranties of private property.”).

¹⁰⁴ *Refer to* § 11.9.2 (Authority for the Occupying Power to Suspend, Repeal, or Change the Municipal Law Applicable to Occupied Territory).

¹⁰⁵ *See* GC COMMENTARY 335-36 (“Article 64 expresses, in a more precise and detailed form, the terms of Article 43 of the Hague Regulations, which lays down that the Occupying Power is to respect the laws in force in the country ‘unless absolutely prevented’. ... The principle that the penal laws in force in the occupied territory must be maintained is subject to two reservations. The first relates to the security of the Occupying Power, which must obviously be permitted to cancel provisions such as those concerning recruiting or urging the population to resist the enemy. The second reservation is in the interests of the population and makes it possible to abrogate any discriminatory measures incompatible with humane requirements. ... These two exceptions are of a strictly limitative nature. The occupation authorities cannot abrogate or suspend the penal laws for any other reason—and not, in particular, merely to make it accord with their own legal conceptions.”).

¹⁰⁶ VON GLAHN, *THE OCCUPATION OF ENEMY TERRITORY* 99 (“In sharp contrast to the ‘restricted’ view concerning civil laws, the occupant is generally conceded very extensive powers to change, alter, or suspend the ordinances and decrees (as distinct from laws) of the legitimate sovereign of an occupied territory. It is held that administrative regulations and executive orders are quite sharply distinct from the constitutional and statute law of a country and that they do not constitute as important or vital a part of the latter’s legal structure. Hence the occupant is held to have the power to interfere and to enact such regulations and ordinances as are deemed fitting and proper in his interests and in the interests of his armed forces.”).

Occupied Territory. The population of an occupied territory, like other protected persons under the GC, are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs.¹⁰⁷ They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats of violence, and against insults and public curiosity.

Other provisions for the humane treatment of protected persons set forth in Articles 27 through 34 of the GC apply to the population of an occupied territory. For example, women must be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault.¹⁰⁸ Reprisals against protected persons and their property are prohibited.¹⁰⁹ The taking of hostages is prohibited.¹¹⁰

In addition, protected persons in occupied territory shall have every facility for making application to the Protecting Powers, the ICRC, the National Red Cross (Red Crescent, Red Lion and Sun) Society of the country where they may be, as well as to any organization that might assist them.¹¹¹

11.6.2 Overview of Additional Protections for the Population That Are Specific to Occupation. There are a number of protections for the population of occupied territory that are specific to occupation. For example, specific provision exists for the protection of children in occupied territory.¹¹² Specific constraints exist on the authority of the Occupying Power to punish protected persons, direct their movement, or compel them to perform labor.¹¹³ Provision also is made with respect to: (1) food and medical supplies of the population; (2) public health and hygiene; (3) spiritual assistance; and (4) relief efforts and consignments.¹¹⁴

The following prohibitions also apply with respect to the inhabitants of occupied territory:

11.6.2.1 Prohibition on Compelling Inhabitants of Occupied Territory to Swear Allegiance to the Hostile State. It is forbidden to compel the inhabitants of occupied territory to

¹⁰⁷ Refer to § 10.5 (Humane Treatment and Other Basic Protections for Protected Persons). See also HAGUE IV REG. art. 46 (“Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.”).

¹⁰⁸ Refer to § 10.5.1.2 (Protection for Women Against Rape or Other Indecent Assault).

¹⁰⁹ Refer to § 10.5.4 (Reprisals Against Protected Persons and Their Property).

¹¹⁰ Refer to § 10.5.1.4 (Taking of Hostages).

¹¹¹ Refer to § 10.5.6 (Facility for Applying to the Protecting Powers and Assistance Organizations Such as the ICRC).

¹¹² Refer to § 11.13 (Protection of Children in Occupied Territory).

¹¹³ Refer to § 11.11 (Criminal Law in Occupied Territory); 11.12 (Movement of Persons in Occupied Territory); 11.20.1 (Types of Labor That May Not Be Compelled).

¹¹⁴ Refer to § 11.14 (Food and Medical Supplies for the Civilian Population); § 11.15 (Public Health and Hygiene); § 11.16 (Spiritual Assistance); § 11.17 (Relief Efforts and Consignments).

swear allegiance to the hostile State.¹¹⁵

11.6.2.2 Prohibition Against General Penalties in Occupied Territory. No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.¹¹⁶ Such penalties are prohibited, even if authorized under the law of the occupied territory.

Collective penalties are prohibited as a general matter.¹¹⁷

11.6.3 Occupying Power's Duty to Respect the Rights of Protected Persons Secured by the GC. The Occupying Power has certain obligations to respect the rights of protected persons secured by the GC.

Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the GC by any change introduced, as the result of the occupation of a territory, into the institutions or government of the occupied 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.¹¹⁸ For example, an Occupying Power may not purport to annex occupied territory in order to avoid its responsibilities as an Occupying Power.¹¹⁹

The Occupying Power may not enter into any special agreements that would adversely affect the situation of protected persons, as defined by the GC, nor restrict the rights that the GC confers upon them.¹²⁰

¹¹⁵ HAGUE IV REG. art. 45 ("It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power."); 1899 HAGUE II REG. art. 45 ("Any pressure on the population of occupied territory to take the oath to the hostile Power is prohibited.").

¹¹⁶ HAGUE IV REG. art. 50 ("No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.").

¹¹⁷ Refer to § 8.16.2.1 (Individual Penal Responsibility and No Collective Punishment).

¹¹⁸ GC art. 47 ("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.").

¹¹⁹ See Trial of Robert Wagner, Gauleiter and Head of the Civil Government of Alsace during the Occupation, and Six Others, III U.N. LAW REPORTS 23, 45 (Permanent Military Tribunal at Strasbourg, Apr. 23-May 3, 1946, and Court of Appeal, Jul. 24, 1946) ("Wagner put forward a plea based upon an alleged violation by false application of the Ordinance of 28th August, 1944, claiming that the acts alleged were committed in Alsace, which was annexed by Germany, and on territory over which French sovereignty had ceased to operate. The purported declaration of annexation of Alsace by Germany on which reliance was placed in the plea was deemed by the Court of Appeal to be nothing more than a unilateral act which could not legally modify the clauses of the treaty signed at Versailles on 28th June, 1919, by the representatives of Germany. Therefore the acts alleged to have been committed by Wagner were committed in Alsace, French territory, and constituted war crimes in the sense of Art. 1 of the Ordinance of 28th August, 1944.").

¹²⁰ Refer to § 10.1.1.2 (Special Agreements Under the GC).

The Occupying Power may also not evade its responsibilities through the purported renunciation by protected persons of the rights secured to them by the GC and by any special agreements referred to in Article 7 of the GC.¹²¹

In certain cases, a protected person's rights of communication under the GC may be forfeited for security reasons.¹²²

11.6.4 Citizens of Neutral States in Occupied Territory. Citizens of neutral States residing within an occupied territory are generally treated the same as other residents of occupied territory.¹²³

11.7 AUTHORITY OF THE OCCUPYING POWER OVER INHABITANTS

The Occupying Power's authority over inhabitants of occupied territory derives from its war powers and from its duty to ensure public order and safety in occupied territory. The Occupying Power, as a belligerent State, may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.¹²⁴ In addition, the Occupying Power may take measures necessary to fulfill its duty to ensure public order and safety.¹²⁵

11.7.1 Inhabitants' Obedience to the Occupying Power. It is the duty of the inhabitants to carry on their ordinary peaceful pursuits, to behave in an absolutely peaceful manner, to take no part whatever in the hostilities carried on, to refrain from all injurious acts toward the forces or in respect to their operations, and to render strict obedience to the orders of the occupant.¹²⁶

Subject to the restrictions imposed by international law, the Occupying Power may demand and enforce from the inhabitants of occupied territory such obedience as may be necessary for the security of its forces, for the maintenance of law and order, and for the proper administration of the country.¹²⁷

The inhabitant's obedience to the Occupying Power is generally distinguished from a duty of allegiance.¹²⁸ The inhabitant's duty of allegiance to his or her State of nationality is not

¹²¹ Refer to § 10.3.6 (Non-Renunciation of Rights Secured by the GC).

¹²² Refer to § 10.4.2 (Derogation in Occupied Territory).

¹²³ Refer to § 15.6.4 (Neutral Persons Resident in Occupied Territory).

¹²⁴ Refer to § 10.6 (Measures of Control and Security).

¹²⁵ Refer to § 11.5.1 (Authority Conferred by the Occupying Power's Duty to Ensure Public Order and Safety).

¹²⁶ 1956 FM 27-10 (Change No. 1 1976) ¶432 ("It is the duty of the inhabitants to carry on their ordinary peaceful pursuits, to behave in an absolutely peaceful manner, to take no part whatever in the hostilities carried on, to refrain from all injurious acts toward the troops or in respect to their operations, and to render strict obedience to the orders of the occupant.").

¹²⁷ 1956 FM 27-10 (Change No. 1 1976) ¶432 ("Subject to the restrictions imposed by international law, the occupant can demand and enforce from the inhabitants of occupied territory such obedience as may be necessary for the security of its forces, for the maintenance of law and order, and for the proper administration of the country.").

¹²⁸ Brigadier General George B. Davis, *Working Memoranda (Confidential for the United States Delegates): The Second Peace Conference (Paragraph 2 of Programme), The Rules of War on Land*, 37 (1907) ("But the control

severed.¹²⁹ The inhabitants, however, are not bound to obey their State of nationality.¹³⁰

11.7.1.1 *Enforcement of Obedience.* The Occupying Power's enforcement of obedience must comply with the law of war. For example, measures prohibited by the law of war, such as collective punishments, acts of torture, or reprisals, may not be used.

11.7.2 *Censorship and Other Regulation of the Media.* Under the law of belligerent occupation,¹³¹ for the purposes of security, an Occupying Power may establish censorship or regulation of any or all forms of media (*e.g.*, press, radio, television) and entertainment (*e.g.*, theater, movies), of correspondence, and of other means of communication.¹³² For example, an Occupying Power may prohibit entirely the publication of newspapers that pose a threat to security, or it may prescribe regulations for the publication or circulation of newspapers of other media for the purpose of fulfilling its obligations to restore public order.¹³³

The Occupying Power is not required to furnish facilities for postal service, but may take charge of them itself, especially if the officials of the occupied district fail to act or to obey its

which the commanding general exercises over the inhabitants of occupied territory is not based upon any theory of allegiance, their relation to him being out of constrained obedience to his commands. As the allegiance of the population has not been changed, the occupying commander can not compel the individuals composing it to commit acts of treason; that is, to take part in acts of hostility against their own government.”).

¹²⁹ GC COMMENTARY 346 (“The words ‘duty of allegiance’ [in Article 68 of the GC] constitute an acknowledgment of the fundamental principle according to which the occupation does not sever the bond existing between the inhabitants and the conquered State. Protected persons must nevertheless obey legitimate orders issued by the Occupying Power.”); GC COMMENTARY 305 (“It may be mentioned in this connection that public officials and judges act under the superintendence and control of the occupant to whom legal power has passed in actual practice and to whom they, like any other protected person, owe obedience. But this duty of obedience does not cancel out the duty of allegiance which subsists during the period of occupation.”).

¹³⁰ *United States v. Rice*, 17 U.S. 246, 254 (1819) (Story, J.) (“By the conquest and military occupation of Castine, the enemy acquired that firm possession which enabled him to exercise the fullest rights of sovereignty over that place. The sovereignty of the United States over the territory was, of course, suspended, and the laws of the United States could no longer be rightfully enforced there, or be obligatory upon the inhabitants who remained and submitted to the conquerors. By the surrender, the inhabitants passed under a temporary allegiance to the British government, and were bound by such laws, and such only, as it chose to recognise and impose. From the nature of the case, no other laws could be obligatory upon them, for where there is no protection or allegiance or sovereignty, there can be no claim to obedience. Castine was, therefore, during this period, so far as respected our revenue laws, to be deemed a foreign port; and goods imported into it by the inhabitants, were subject to such duties only as the British government chose to require. Such goods were in no correct sense imported into the United States.”).

¹³¹ The discussion in this sub-section focuses solely on what is permitted under the law of war and does not address possible implications of censorship under the First Amendment of the Constitution.

¹³² 1956 FM 27-10 (Change No. 1 1976) ¶377 (“The belligerent occupant may establish censorship of the press, radio, theater, motion pictures, and television, of correspondence, and of all other means of communication. It may prohibit entirely the publication of newspapers or prescribe regulations for their publication and circulation.”).

¹³³ *For example*, Coalition Provisional Authority Public Notice, *Towards a Responsible Iraqi Media*, Jun. 10, 2003 (“Disseminating material that incites violence, however poses a direct threat to personal freedoms, and is therefore banned under the terms of this order, as it is in any civilized society. Equally, advocating the return to power of the repressive and criminal Ba’athist regime would undermine civil order and the freedom from fear of political repression, both of which are necessary for the development of a free and democratic Iraq. Thus the CPA is issuing an Order that prohibits Iraqi media organizations from broadcasting or publishing material that would seriously undermine security and civil order in Iraq.”).

orders.¹³⁴

11.7.3 Control of Means of Transportation. An Occupying Power is entitled to exercise authority over all means of public and private transportation, whether land, waterborne, or air, within the occupied territory, and may seize them and regulate their operation.¹³⁵

11.7.4 Limits on Safety Measures. If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment.¹³⁶ The Occupying Power must comply with certain procedural requirements (*e.g.*, appeal, periodic review) when conducting assigned residence or internment of protected persons in occupied territory based on imperative reasons of security.¹³⁷ The Occupying Power also has an obligation to support persons who are assigned residence and thus are required to leave their homes, consistent with the standards for the treatment of internees.¹³⁸

11.8 ADMINISTRATION OF OCCUPIED TERRITORY

11.8.1 Paramount Authority of the Occupying Power Over Government Functions in Occupied Territory. The functions of the hostile government—whether of a general, provincial, or local character—continue only to the extent they are sanctioned by the Occupying Power.¹³⁹

11.8.2 Continued Performance of Duties by Civil Servants and Other Officials of Local Governments. The Occupying Power may, while retaining its paramount authority, permit the government of the country to perform some or all of its normal functions.¹⁴⁰ It may, for example, call upon the local authorities to administer designated rear areas, subject to the

¹³⁴ 1956 FM 27-10 (Change No. 1 1976) ¶377 (“The occupant is not required to furnish facilities for postal service, but may take charge of them itself, especially if the officials of the occupied district fail to act or to obey its orders.”).

¹³⁵ 1956 FM 27-10 (Change No. 1 1976) ¶378 (“The belligerent occupant exercises authority over all means of transportation, both public and private, within the occupied district, and may seize them and regulate their operation.”).

¹³⁶ *Refer to* § 10.6.3 (No Measures of Control More Severe Than Assigned Residence or Internment).

¹³⁷ *Refer to* § 10.9.3 (Procedure for Internment or Assigned Residence in Occupied Territory).

¹³⁸ *Refer to* § 10.6.4 (Support to Persons Who Are Assigned Residence Should Be Guided by Internment Standards).

¹³⁹ 1956 FM 27-10 (Change No. 1 1976) ¶367a (“The functions of the hostile government—whether of a general, provincial, or local character—continue only to the extent they are sanctioned by the occupant.”). *For example*, Coalition Provisional Authority Regulation No. 1, §2 (May 16, 2003) (“Unless suspended or replaced by the CPA or superseded by legislation issued by democratic institutions of Iraq, laws in force in Iraq as of April 16, 2003 shall continue to apply in Iraq insofar as the laws do not prevent the CPA from exercising its rights and fulfilling its obligations, or conflict with the present or any other Regulation or Order issued by the CPA.”).

¹⁴⁰ 1956 FM 27-10 (Change No. 1 1976) ¶367b (“The occupant may, while retaining its paramount authority, permit the government of the country to perform some or all of its normal functions. It may, for example, call upon the local authorities to administer designated rear areas, subject to the guidance and direction of the occupying power. Such action is consistent with the status of occupation, so long as there exists the firm possession and the purpose to maintain paramount authority.”).

guidance and direction of the Occupying Power.¹⁴¹ Such action is consistent with the status of occupation, so long as there exists the firm possession of territory and the purpose to maintain paramount authority.¹⁴² Similarly, for example, courts are generally to continue the ordinary administration of justice during occupation.¹⁴³

The compulsion of civil servants and other officials of local governments to continue to perform their duties must be justified by military necessity and consistent with applicable provisions of the GC.¹⁴⁴

11.8.3 Local Governments Under Duress or Surrogate Governments. The restrictions placed upon the authority of a belligerent State cannot be avoided by a system of using a puppet government, central or local, to carry out acts that would be unlawful if performed directly by the Occupying Power. Acts induced or compelled by the Occupying Power are nonetheless its acts.¹⁴⁵

11.8.4 Responsibility of the Occupying Power for Treatment Accorded to Protected Persons by Its Agents. An Occupying Power, like belligerent States, is responsible for the treatment accorded to protected persons by its agents, irrespective of any individual responsibility that may be incurred.¹⁴⁶ The responsibility of the Occupying Power for its agents includes those agents that are not its nationals, such as locally recruited agents of the nationality of the State whose territory is occupied.¹⁴⁷

11.8.5 Immunity of Occupation Personnel From Local Law. Military and civilian personnel of the occupying forces and occupation administration and persons accompanying them are not subject to the local law or to the jurisdiction of the local civil or criminal courts of the occupied territory, unless expressly made subject thereto by a competent officer of the

¹⁴¹ For example, Reports of General MacArthur, in I Supplement MacArthur in Japan: The Occupation: Military Phase 25-26 (1966) (“While the air lift of the main initial force was in progress on 30 August, GHQ, AFPAC, issued an amendment to Operations Instructions No. 4, which materially altered the missions assigned to the Army commanders who soon would be arriving on the Nippon homeland. Instead of actually instituting ‘military government,’ Army commanders were to supervise the execution of the policies relative to government functions which GHQ, AFPAC, was to issue directly to the Japanese Government;”).

¹⁴² Refer to § 11.2.2.2 (“Under the Authority” – Suspension and Substitution of Governmental Authority).

¹⁴³ Refer to § 11.10 (Ordinary Courts in Occupied Territory).

¹⁴⁴ Refer to § 11.21.1 (Continued Service of Judges and Other Public Officials).

¹⁴⁵ 1956 FM 27-10 (Change No. 1 1976) ¶366 (“The restrictions placed upon the authority of a belligerent government cannot be avoided by a system of using a puppet government, central or local, to carry out acts which would be unlawful if performed directly by the occupant. Acts induced or compelled by the occupant are nonetheless its acts.”).

¹⁴⁶ Refer to § 10.3.5 (State Responsibility for Its Agents’ Treatment of Protected Persons); § 18.9.1 (State Responsibility for Violations of the Law of War by Its Armed Forces).

¹⁴⁷ GC COMMENTARY 212 (“The nationality of the agents does not affect the issue. That is of particular importance in occupied territories, as it means that the occupying authorities are responsible for acts committed by their locally recruited agents of the nationality of the occupied country.”).

Occupying Power.¹⁴⁸

It is important for the Occupying Power to ensure that an appropriate system of substantive law applies to such persons and that tribunals are in existence to deal with civil litigation to which they are parties and with offenses committed by them.¹⁴⁹ In the past, provost courts have been used for these purposes.¹⁵⁰ In recent practice, the Uniform Code of Military Justice and the Military Extraterritorial Jurisdiction Act, among others, have been used to address offenses committed by military and civilian personnel in the context of occupation.¹⁵¹

11.8.6 Civilian or Military Nature of the Occupation Government. It is immaterial whether the government over an enemy's territory consists in a military or civil or mixed administration. Its character is the same and the source of its authority the same. It is a government imposed by force, and the legality of its acts is determined by the law of war.¹⁵²

For example, the governing authority established by the Occupying Power may be composed of civilian personnel.¹⁵³

¹⁴⁸ 1956 FM 27-10 (Change No. 1 1976) ¶374 ("Military and civilian personnel of the occupying forces and occupation administration and persons accompanying them are not subject to the local law or to the jurisdiction of the local courts of the occupied territory unless expressly made subject thereto by a competent officer of the occupying forces or occupation administration."). *For example*, *Coleman v. Tennessee*, 97 U.S. 509, 518-19 (1878) ("The laws of Tennessee with regard to offenses and their punishment, which were allowed to remain in force during its military occupation, did not apply to the defendant, as he was at the time a soldier in the army of the United States and subject to the Articles of War. He was responsible for his conduct to the laws of his own government only as enforced by the commander of its army in that state, without whose consent he could not even go beyond its lines. Had he been caught by the forces of the enemy after committing the offense, he might have been subjected to a summary trial and punishment by order of their commander, and there would have been no just ground of complaint, for the marauder and the assassin are not protected by any usages of civilized warfare. But the courts of the state, whose regular government was superseded and whose laws were tolerated from motives of convenience, were without jurisdiction to deal with him.").

¹⁴⁹ 1956 FM 27-10 (Change No. 1 1976) ¶374 ("The occupant should see to it that an appropriate system of substantive law applies to such persons and that tribunals are in existence to deal with civil litigation to which they are parties and with offenses committed by them.").

¹⁵⁰ *Refer to* § 11.11.3.1 (U.S. Practice for Properly Constituted, Non-Political Military Courts).

¹⁵¹ *Refer to* § 18.19.3.1 (Uniform Code of Military Justice Offenses); § 18.19.3.5 (Extraterritorial Application of Certain Federal Offenses Through MEJA).

¹⁵² 1956 FM 27-10 (Change No. 1 1976) ¶368 ("It is immaterial whether the government over an enemy's territory consists in a military or civil or mixed administration. Its character is the same and the source of its authority the same. It is a government imposed by force, and the legality of its acts is determined by the law of war.").

¹⁵³ *For example*, E. ZIEMKE, *THE U.S. ARMY IN THE OCCUPATION OF GERMANY 1944-1946* 404 (1975) ("From the beginning the US Group Control Council had been considered more a vehicle for future civilian authority than an element of Army-administered military government. In April 1945, in his first outline for military government organization, Clay proposed also to bring civilians into the theater G-5 so that both it and the US Group Control Council could be 'carved out of' the military command when the shift to civilian responsibility occurred. A month later, in the organizational directive for military government, Clay stated, 'This organization must become civilian in character as rapidly as consistent with efficient performance so that it may become at the earliest possible date a framework for the administration of political control in Germany by the appropriate US civil agencies.'").

11.9 LOCAL LAW AND LEGISLATION

11.9.1 General Continuation of Municipal Law of the Occupied Territory as Between Inhabitants. In general, the municipal law of the occupied territory (*i.e.*, the ordinary domestic civil and criminal law) and their administration remain in full force so far as the inhabitants of occupied territory are concerned, unless changed by the Occupying Power.¹⁵⁴ For example, the penal laws of the occupied territory generally continue in force.¹⁵⁵

As a foreign State and as the paramount authority in the occupied territory, the Occupying Power is not bound by the municipal law of the occupied territory.¹⁵⁶ For example, the Occupying Power would not be bound by a municipal law that had been enacted by the State of the occupied territory to prevent trading with the enemy.¹⁵⁷ Similarly, the Occupying Power's personnel are immune from the application of local law.¹⁵⁸

11.9.2 Authority for the Occupying Power to Suspend, Repeal, or Change the Municipal Law Applicable to Occupied Territory. The duty of the Occupying Power to respect, unless absolutely prevented, the laws in force in the country prohibits it from arbitrarily exercising its authority to suspend, repeal, or change the municipal law applicable to occupied territory.¹⁵⁹ As with other authorities under the law of war, the Occupying Power must use its power with respect to the municipal law of occupied territory in good faith and not for the purpose of oppressing the population.¹⁶⁰

¹⁵⁴ *Coleman v. Tennessee*, 97 U.S. 509, 517 (1879) ("By such occupation the political relations between the people of the hostile country and their former government or sovereign are for the time severed; but the municipal laws -- that is, the laws which regulate private rights, enforce contracts, punish crime, and regulate the transfer of property - remain in full force, so far as they affect the inhabitants of the country among themselves, unless suspended or superseded by the conqueror. And the tribunals by which the laws are enforced continue as before, unless thus changed. In other words, the municipal laws of the State, and their administration, remain in full force so far as the inhabitants of the country are concerned, unless changed by the occupying belligerent."). See also *Ho Tung & Co. v. United States*, 42 Ct. Cl. 213, 227 (Ct. Cl. 1907) ("It is unquestioned that upon the occupation by our military forces of the port of Manila it was their duty to respect and assist in enforcing the municipal laws then in force there until the same might be changed by order of the military commander, called for by the necessities of war.").

¹⁵⁵ Refer to § 11.11.1 (General Continuation of Penal Laws of the Occupied Territory).

¹⁵⁶ Refer to § 11.8.1 (Paramount Authority of the Occupying Power Over Government Functions in Occupied Territory).

¹⁵⁷ For example, *N.V. De Bataafsche Petroleum Maatschappij & Ors. v. The War Damage Commission* (Court of Appeal, Singapore, April 13, 1956), reprinted in 51 AJIL 802, 807 (1957) ("The provisions of the [Netherlands Indies] Wartime Legal Relations Ordinance were, no doubt, very appropriate when applied to 'persons,' as defined in section 1 of the Ordinance, but to contend that they apply to a belligerent occupant, that is to say, to an International Person, who is thereby placed under a statutory obligation to seek the permission of the Director of Economic Affairs before doing any act which might benefit the enemy (which is, of course, himself) is, to my mind, an untenable proposition.").

¹⁵⁸ Refer to § 11.8.5 (Immunity of Occupation Personnel From Local Law).

¹⁵⁹ Refer to § 11.5.2 (Duty to Respect, Unless Absolutely Prevented, the Laws in Force in the Country).

¹⁶⁰ GC COMMENTARY 337 ("It will be seen that the powers which the Occupying Power is recognized to have are very extensive and complex, but these varied measures must not under any circumstances serve as a means of oppressing the population. The legislative and penal jurisdiction exercised by the occupation authorities, as holder of public power, is therefore hedged about with numerous safeguards set forth in the following Articles.").

The Occupying Power may subject the population of the occupied territory to provisions: (1) that are essential to enable the Occupying Power to fulfill its obligations under the GC; (2) to maintain the orderly government of the territory; and (3) 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.¹⁶¹

Broader authority for the Occupying Power to change the laws of the occupied territory may be provided by the U.N. Security Council.¹⁶²

After the Occupying Power's occupation has ended, its changes to the municipal law of the occupied territory may be changed, subject to the requirements of applicable international law.

11.9.2.1 Distinction Between Suspension, Repeal, Change, or Enactment of Municipal Laws. The distinction between the suspension, repeal, change, or enactment of a new law may be of little practical consequence.

Implicit in the authority to enact new laws is the authority to suspend or repeal existing laws. Thus, the repeal or suspension of a law may be accomplished by the Occupying Power subjecting the population of the occupied territory to additional provisions of law that are inconsistent with the earlier law. For example, a law permitting discrimination may be effectively suspended by the Occupying Power requiring officials to apply the law impartially.¹⁶³

The power to suspend or repeal laws may also include the power to amend laws. For example, the partial suspension of a tax imposed on the population may also be viewed as a change in the tax rate.¹⁶⁴

However, new penal provisions may not come into force before they have been published.¹⁶⁵

11.9.2.2 Examples of Laws That May Be Suspended, Repealed, Changed, or Enacted by the Occupying Power. Examples of provisions that may, depending on the circumstances, be suspended, repealed, changed, or enacted by the Occupying Power include legal provisions:

¹⁶¹ GC art. 64 ("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.").

¹⁶² Refer to § 11.1.2.5 (Occupation and U.N. Security Council Resolutions).

¹⁶³ For example, Coalition Provisional Authority Order No. 7, *Penal Code*, §4 (Jun. 10, 2003) ("In exercising their official functions, all persons undertaking public duties or holding public office, including all police, prosecutors, and judges, must apply the law impartially. No person will be discriminated against on the basis of sex, race, color, language, religion, political opinion, national, ethnic or social origin, or birth.").

¹⁶⁴ Refer to § 11.22.1.2 (Changes in Taxes or New Taxes).

¹⁶⁵ Refer to § 11.11.2.1 (Publication of Penal Provisions Before Coming Into Force).

- relating to serious offenses that pose a threat to public order, such as kidnapping, rape, and forcible vehicle larceny;¹⁶⁶
- relating to the sale or possession of weapons by members of the civilian population;¹⁶⁷
- relating to measures for the protection of the Occupying Power's forces or administration (e.g., laws relating to the recruitment of persons into the occupied State's armed forces or insurgent groups, relating to curfews or restricted areas);¹⁶⁸
- relating to political process, such as laws regarding the rights of suffrage and of assembly;¹⁶⁹
- relating to the supply of food and other items essential to the survival of the civilian population, and the prevention of illicit trade in, or hoarding of, such items;¹⁷⁰

¹⁶⁶ For example, Coalition Provisional Authority Order No. 31, *Modifications of Penal Code and Criminal Proceedings Law*, preamble, §§2-3, 5 (Sept. 10, 2003) (modifying sentences for certain offenses in the Iraqi Penal Code based on the recognition that "instances of kidnapping, rape, and forcible vehicle larceny represent a serious threat to the security and stability of the Iraqi population").

¹⁶⁷ For example, COLONEL I. L. HUNT, AMERICAN MILITARY GOVERNMENT OF OCCUPIED GERMANY, 1918-1920: REPORT OF THE OFFICER IN CHARGE OF CIVIL AFFAIRS, THIRD ARMY AND AMERICAN FORCES IN GERMANY 107 (1943) ("The carrying of arms or deadly weapons is forbidden except by the local police. Every person in possession of arms and ammunition of any kind must deliver them to the American authorities at such time or place as may be appointed. A receipt for each weapon will be given at the time of delivery and the weapon tagged with the name of the owner.' Precedents for forbidding the civil population to carry arms and ammunition during a military occupation are so numerous that the publication of such regulations by the American army in this instance cannot be considered a severe restriction. During the march to the Rhine, the Commanding General of the Third Army had recognized the necessity of a regulation of this nature, and in Memorandum No. 4 had instructed unit commanders to forbid civilians to carry deadly weapons.").

¹⁶⁸ GC COMMENTARY 337 ("(c) It is, lastly, authorized to promulgate penal provisions for its own protection. This power has long been recognized by international law. The provision is sufficiently comprehensive to cover all civilian and military organizations which an Occupying Power normally maintains in occupied territory. The Convention mentions 'the Occupying Power' itself besides referring to the members and property of the occupying forces or administration, so that general activities such as activities on behalf of enemy armed forces are covered. The Occupying Power is entitled to use establishments and lines of communication for its own needs; it is therefore entitled to take appropriate measures to ensure their security.").

¹⁶⁹ 1956 FM 27-10 (Change No. 1 1976) ¶371 ("The occupant may alter, repeal, or suspend laws of the following types: a. Legislation constituting a threat to its security, such as laws relating to recruitment and the bearing of arms. b. Legislation dealing with political process, such as laws regarding the rights of suffrage and of assembly. c. Legislation the enforcement of which would be inconsistent with the duties of the occupant, such as laws establishing racial discrimination.").

¹⁷⁰ For example, COLONEL I. L. HUNT, AMERICAN MILITARY GOVERNMENT OF OCCUPIED GERMANY, 1918-1920: REPORT OF THE OFFICER IN CHARGE OF CIVIL AFFAIRS, THIRD ARMY AND AMERICAN FORCES IN GERMANY 164-65 (1943) ("Sale of American foodstuffs was by the ticket system. ... The method of using the food tickets, was, in brief, as follows. Each person or head of family was issued the number of coupons to which he was entitled, each coupon authorizing him to buy a certain quantity of a certain food, within a certain period of time. There were also coupons, not bearing the name of any particular food, but numbered, to be used for foods not regularly issued. The coupons entitled the holder to register with some merchant of his own choice, who in turn registered his total requirements with the local Food Office. When the food arrived, each merchant was allotted the amount necessary to provide for the persons registered with him. Announcements of distribution were made in the daily papers. The

- relating to the administration of the law, such as repealing laws establishing racial discrimination or promulgating laws requiring the impartial application of the law by local officials;¹⁷¹ and
- relating to the Occupying Power's obligations under the GC, such as legislation to help provide for child welfare, labor, food, hygiene, and public health of the occupied territory.¹⁷²

11.9.3 Procedural Obligation – Notification to the Population of Changes in Law. The Occupying Power is not required to adhere to the local procedure for amending municipal law. However, the population of the occupied territory must be informed of the alteration, suspension, or repeal of existing laws, and of the enactment of new laws. In particular, penal provisions must be published before entering into force.¹⁷³

In practice, to ensure that all inhabitants are on notice of what is expected, the Occupying Power is to publish a decree or order at, or immediately after, the beginning of the occupation, in order to clarify the applicable laws and orders, and the punishments that can be imposed if the inhabitants fail to comply. Such notification may be provided as part of a proclamation of occupation.¹⁷⁴

11.10 ORDINARY COURTS IN OCCUPIED TERRITORY

In general, the courts and other tribunals of the occupied territory, like other governmental functions, should continue to operate.¹⁷⁵ For example, ordinary crimes that do not affect the security of the Occupying Power or its personnel should continue to be administered by the courts in the occupied territory.¹⁷⁶

merchant kept the coupons to indicate the amounts and regularity of his sales. Any allotment not entirely sold, might be returned to the food authorities or debited against the next allotment. The system seemed simple enough, but there was considerable traffic in tickets. Well-to-do people seldom suffered for lack of food, though they may often not have been able to get the variety they wanted.”).

¹⁷¹ *For example*, Coalition Provisional Authority Order No. 7, *Penal Code*, §4 (Jun. 10, 2003) (“In exercising their official functions, all persons undertaking public duties or holding public office, including all police, prosecutors, and judges, must apply the law impartially. No person will be discriminated against on the basis of sex, race, color, language, religion, political opinion, national, ethnic or social origin, or birth.”).

¹⁷² GC COMMENTARY 337 (“The legislative power of the occupant as the Power responsible for applying the Convention and the temporary holder of authority is limited to the matters set out in a limitative list below. (a) It may promulgate provisions required for the application of the Convention in accordance with the obligations imposed on it by the latter in a number of spheres: child welfare, labour, food, hygiene and public health etc.”).

¹⁷³ *Refer to* § 11.11.2.1 (Publication of Penal Provisions Before Coming Into Force).

¹⁷⁴ *Refer to* § 11.2.4 (Proclamation of Occupation).

¹⁷⁵ LIEBER CODE art. 6 (“All civil and penal law shall continue to take its usual course in the enemy’s places and territories under Martial Law, unless interrupted or stopped by order of the occupying military power; but all the functions of the hostile government – legislative, executive, or administrative – whether of a general, provincial, or local character, cease under Martial Law, or continue only with the sanction, or, if deemed necessary, the participation of the occupier or invader.”).

¹⁷⁶ *Refer to* § 11.11.1.4 (Continued Administration of Penal Law by Courts in the Occupied Territory).

However, the administration of justice in the occupied territory, like the performance of other governmental functions, is subject to the direction of the Occupying Power.¹⁷⁷

11.10.1 Authority to Suspend Ordinary Courts. The ordinary courts in occupied territory should be suspended only if: (1) judges and magistrates are unable or unwilling to perform their duties; (2) the courts are corrupt or unfairly constituted; or (3) the local judicial administration has collapsed due to the hostilities preceding the occupation.¹⁷⁸

In such cases, the Occupying Power may use its own properly constituted, non-political military courts to ensure that offenses against the local laws are properly tried.¹⁷⁹ The Occupying Power may also reform local courts, including by establishing new criminal courts under the law of the occupied State.¹⁸⁰

11.10.1.1 Judicial Inability or Unwillingness to Perform Their Duties. Judges and magistrates may abstain from fulfilling their functions for reasons of conscience.¹⁸¹ An inability to perform their normal duties may result from a failure of public services, such as public transportation, or threats by insurgents.

11.10.1.2 Corruption and Unfairness in the Judicial System. Corruption and unfairness in the judicial system may constitute a serious obstacle to public order and safety, and an obstacle to the Occupying Power's application of the fundamental fair trial protections guaranteed by the GC.¹⁸² The Occupying Power may take appropriate measures to remedy such corruption or unfairness. For example, committees may be established to review the suitability of judges and prosecutors.¹⁸³ Similarly, a facility may be established to help resolve conflicting property claims on a voluntary basis.¹⁸⁴

¹⁷⁷ For example, Coalition Provisional Authority Order No. 7, *Penal Code*, §1 (Jun. 10, 2003) ("All judges, police and prosecutors shall perform their duties in accordance with CPA Regulation No. 1 (CPA/REG/23 May 2003/01) and in accordance with any other Regulations, Orders, Memoranda or instructions issued by the CPA.").

¹⁷⁸ 1956 FM 27-10 (Change No. 1 1976) ¶373 ("The ordinary courts of justice should be suspended only if: a. Judges and magistrates abstain from fulfilling their functions (see GC, art. 54; par. 422 herein); or b. The courts are corrupt or unfairly constituted; or c. Local judicial administration has collapsed during the hostilities preceding the occupation and the occupant must set up its own courts to ensure that offenses against the local laws are properly tried. In such cases, the occupant may establish courts of its own and make this measure known to the inhabitants.").

¹⁷⁹ Refer to § 11.11.3 (Properly Constituted, Non-Political Military Courts in Occupied Territory).

¹⁸⁰ Refer to § 11.11.1.4 (Continued Administration of Penal Law by Courts in the Occupied Territory).

¹⁸¹ Refer to § 11.21.1 (Continued Service of Judges and Other Public Officials).

¹⁸² Refer to § 11.5 (Duty of the Occupying Power to Ensure Public Order and Safety); § 10.29 (Judicial Proceedings Regarding Protected Persons in Occupied Territory or Internees in a Belligerent's Home Territory).

¹⁸³ For example, Coalition Provisional Authority Order No. 15, *Establishment of the Judicial Review Committee*, §4(1) (Jun. 23, 2003) ("The Committee shall investigate and gather information on the suitability of Judges and Prosecutors to hold office. It shall have the power to remove judges and prosecutors from office, confirm their continued holding of office, appoint replacements for judges and prosecutors removed from office and resolve the claims of judges and prosecutors who assert that they were improperly removed from office.").

¹⁸⁴ For example, Coalition Provisional Authority Regulation No. 4, *Establishment of the Iraqi Property Reconciliation Facility*, §1(1) (Jun. 26, 2003) ("There shall be established an Iraqi Property Reconciliation Facility

11.10.2 Prohibition Against Extinguishing Rights and Actions of Enemy Nationals. It is especially forbidden to declare abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of a hostile party.¹⁸⁵

This rule has been interpreted to apply solely to enemy areas occupied by a belligerent.¹⁸⁶ It has been interpreted to prohibit a military commander from arbitrarily annulling the results of civil proceedings between private parties.¹⁸⁷

11.11 CRIMINAL LAW IN OCCUPIED TERRITORY

This section addresses criminal law in occupied territory. Additional rules apply to judicial proceedings against protected persons in occupied territory, which are also applied by analogy to judicial proceedings against internees in a belligerent's home territory.¹⁸⁸

(IPRF) that shall commence operation at a time to be fixed by the Administrator, for the purpose of collecting real property claims and promptly resolving such claims on a voluntary basis in a fair and judicious manner.”).

¹⁸⁵ HAGUE IV REG. art. 23 (“[I]t is especially forbidden ... (h) To declare abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of a hostile party.”).

¹⁸⁶ Ex parte Kumezo Kawato, 317 U.S. 69, 72 footnote 1 (1942) (“Petitioner argues that his case is covered by article 23 h of the Annex to the IVth Hague Convention of 1907: ‘It is especially prohibited . . . to declare abolished, suspended, or inadmissible in a Court of law the rights and action of the nationals of the hostile party.’ This clause, which was added to the convention of 1899 without substantial discussion either by the Delegates in General Assembly or by the committee and sub-committee which dealt with it, III Proceedings of the Hague Convention of 1907, 12, 107, 136, 240; and I *ibid.* 83, was construed by an English Court to apply solely in enemy areas occupied by a belligerent. *Porter v. Freudenberg*, [1915] 1 K. B. 857. The question has not been raised in the courts in this country, but the English interpretation was repeated with approval by Representative Montague of the Interstate Commerce Committee in his address to the House when he presented to it the Trading with the Enemy Act. 55 Cong. Rec. 4842 (1917).”).

¹⁸⁷ For example, 1958 UK MANUAL ¶524 note 1 (“Hague Rules 23 (h). The following example of the relevance of that article may be mentioned: during the British occupation of Cyrenaica in the course of the Second World War, in order to avoid disturbances, pressure was put upon the British administration to prevent the execution of a local judgment restoring to its Italian owner a mill in the occupation of an Arab trustee. The legal adviser of the Administration expressed the view that a failure to enforce the judgment would be contrary to this article, see *Watts in Grotius Society*, vol. 37, pp. 69-82.”). Cf. *Ochoa v. Hernandez y Morales*, 230 U.S. 139, 154-61 (1912) (“In order to determine the extent of the authority of General Henry, and the limitations upon it, we must look to the orders under which the military government was established and maintained. ... Under all the circumstances we deem it clear that the Governor was without authority from the President to make any order, judicial in its nature, that would have the effect of depriving any person of his property without due process of law. ... Whatever else may be uncertain about the definition of the term ‘due process of law,’ all authorities agree that it inhibits the taking of one man's property and giving it to another, contrary to settled usages and modes of procedure, and without notice or an opportunity for a hearing.”); *Raymond v. Thomas*, 91 U.S. 712, 715-16 (1876) (“We have looked carefully through the acts of March 2, 1867, and July 19, 1867. They give very large governmental powers to the military commanders designated, within the States committed respectively to their jurisdiction; but we have found nothing to warrant the order here in question. It was not an order for mere delay. It did not prescribe that the proceeding should stop until credit and confidence were restored, and business should resume its wonted channels. It wholly annulled a decree in equity regularly made by a competent judicial officer in a plain case clearly within his jurisdiction, and where there was no pretense of any unfairness, of any purpose to wrong or oppress, or of any indirection whatsoever. ... It was an arbitrary stretch of authority, needful to no good end that can be imagined.”).

¹⁸⁸ Refer to § 10.29 (Judicial Proceedings Regarding Protected Persons in Occupied Territory or Internees in a Belligerent's Home Territory).

11.11.1 General Continuation of Penal Laws of the Occupied Territory. The general principle that the Occupying Power must respect, unless absolutely prevented, the laws in force in the occupied territory also applies to the penal laws of the occupied territory.¹⁸⁹

In particular, the penal laws of the occupied territory shall remain in force during the occupation, with the exception that they may be repealed or suspended by the Occupying Power where they constitute a threat to its security or an obstacle to the application of the GC.¹⁹⁰ Subject to the latter consideration and to the necessity of ensuring the effective administration of justice, the courts of the occupied territory shall continue to function in respect of all offenses covered by these laws.¹⁹¹

11.11.1.1 Types of Laws That Are Considered Penal Laws. Penal laws addressed by this rule may be understood to include all laws, regulations, decrees, orders, and similar measures intended to repress offenses, including the rules of criminal procedure.¹⁹²

11.11.1.2 Laws Constituting an Obstacle to the Application of the GC. The Occupying Power may repeal or suspend penal laws constituting an obstacle to the application of the GC. For example, the Occupying Power may abrogate discriminatory measures that are incompatible with humane requirements.¹⁹³

11.11.1.3 Method of Repeal or Suspension of Penal Laws. The repeal or suspension of the penal laws of the occupied territory may be achieved directly through an order suspending or repealing the law.¹⁹⁴ The suspension of a penal law may also be done by requiring that a penal law may only be enforced with the approval of the Occupying Power.¹⁹⁵ The repeal

¹⁸⁹ Refer to § 11.9.1 (General Continuation of Municipal Law of the Occupied Territory as Between Inhabitants).

¹⁹⁰ GC art. 64 (“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.”).

¹⁹¹ GC art. 64 (“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.”).

¹⁹² GC COMMENTARY 335 (“The words ‘penal laws’ mean all legal provisions in connection with the repression of offenses: the penal code and rules of procedure proper, subsidiary penal laws, laws in the strict sense of the term, decrees, orders, the penal clauses of administrative regulations, penal clauses of financial laws, etc.”).

¹⁹³ GC COMMENTARY 335 (“The second reservation is in the interests of the population and makes it possible to abrogate any discriminatory measures incompatible with humane requirements. It refers in particular, to provisions which adversely affect racial or religious minorities, such provisions being contrary to the spirit of the Convention (Article 27), which forbids all adverse distinction based, in particular, on race, religion, and political opinion.”).

¹⁹⁴ For example, Coalition Provisional Authority Order No. 7, *Penal Code*, §2(1) (Jun. 10, 2003) (“Without prejudice to the continuing review of Iraqi laws, the Third Edition of the 1969 Iraqi Penal Code with amendments, registered in Baghdad on the fifth day of Jumada I 1389 or the nineteenth day of July 1969, shall apply, with the exception that i) Part Two, Chapter Two, Paragraph 200, and ii) Part Two, Chapter Three, Section One, Paragraph 225 are hereby suspended.”).

¹⁹⁵ For example, Coalition Provisional Authority Order No. 7, *Penal Code*, §2(2) (Jun. 10, 2003) (“Legal proceedings may be brought with respect to the following offenses only with the written permission of the Administrator of the CPA: a) Part One, Chapter Four, Paragraphs 81-84, publication offenses. b) Part Two, Chapter One, Paragraphs 156-189, offenses against the external security of the state. c) Part Two, Chapter Two, Paragraphs

or suspension of a penal law may also be done by the Occupying Power's subjecting the population of the occupied territory to additional provisions of law that are inconsistent with application of that penal law.¹⁹⁶

11.11.1.4 *Continued Administration of Penal Law by Courts in the Occupied Territory.* In general, ordinary crimes that do not affect the security of the Occupying Power or its personnel would be left to the jurisdiction of the courts in the occupied territory.¹⁹⁷

The continued administration of local and national penal law by the courts in occupied territory is subject to certain modifications by the Occupying Power, such as modifications necessary for ensuring the effective administration of justice.¹⁹⁸

The Occupying Power may reform or establish new criminal courts in occupied territory as part of its authority to subject the population of the occupied territory to additional provisions of law and its duty to restore and maintain public order.¹⁹⁹ In addition, the Occupying Power may use its properly constituted, non-political military courts in occupied territory for certain types of offenses.²⁰⁰

11.11.2 *Penal Provisions Enacted by the Occupying Power.* As with other types of legal provisions, the Occupying Power may subject the population of the occupied territory to penal provisions: (1) that are essential to enable the Occupying Power to fulfill its obligations under the GC; (2) to maintain the orderly government of the territory; and (3) 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.²⁰¹

11.11.2.1 *Publication of Penal Provisions Before Coming Into Force.* The penal provisions enacted by the Occupying Power shall not come into force before they have been

190-195; 198-199; 201-219, offenses against the internal security of the state. d) Part Two, Chapter Three, Section One, Paragraphs 223-224; 226-228, offenses against public authorities. e) Part Two, Chapter Three, Section Two, Paragraph 229, offense of insulting a public official.”).

¹⁹⁶ Refer to § 11.9.2.1 (Distinction Between Suspension, Repeal, Change, or Enactment of Municipal Laws).

¹⁹⁷ 1956 FM 27-10 (Change No. 1 1976) ¶370 (“Crimes not of a military nature and not affecting the occupant's security are normally left to the jurisdiction of the local courts.”).

¹⁹⁸ 1956 FM 27-10 (Change No. 1 1976) ¶370 (“In restoring public order and safety, the occupant will continue in force the ordinary civil and penal (criminal) laws of the occupied territory except to the extent it may be authorized by Article 64, GC (par 369), and Article 43, HR (par. 363), to alter, suspend, or repeal such laws (see also HR art. 23 (h); par. 372 herein; and GC, art. 51; par. 418 herein). These laws will be administered by the local officials as far as practicable.”).

¹⁹⁹ For example, Coalition Provisional Authority Order No. 13, *The Central Criminal Court of Iraq (Revised), (Amended)*, §1(1) (Apr. 22, 2004) (“There shall be established a Central Criminal Court of Iraq (hereinafter ‘the CCCI’), which shall sit in the city of Baghdad and in such sessions in other locations in Iraq as provided for in this Order. The CCCI shall have national jurisdiction over all matters set forth in Section 18.”).

²⁰⁰ Refer to § 11.11.3 (Properly Constituted, Non-Political Military Courts in Occupied Territory).

²⁰¹ Refer to § 11.9.2 (Authority for the Occupying Power to Suspend, Repeal, or Change the Municipal Law Applicable to Occupied Territory).

published and brought to the knowledge of the inhabitants in their own language.²⁰² When more than one language is used by the local population, the Occupying Power may adhere to the local practice regarding official publication of legislation.²⁰³

The effect of these penal provisions shall not be retroactive.²⁰⁴

11.11.3 Properly Constituted, Non-Political Military Courts in Occupied Territory. In case of a breach of the penal provisions promulgated by the Occupying Power by virtue of the second paragraph of Article 64 of the GC, the Occupying Power may hand over the accused to its properly constituted, non-political military courts, on condition that these courts sit in the occupied country. Courts of appeals shall preferably sit in the occupied country.²⁰⁵

These courts must be regularly constituted courts affording all the judicial guarantees that are recognized as indispensable by civilized peoples.²⁰⁶ These courts must also comply with requirements for judicial proceedings regarding protected persons in occupied territory.²⁰⁷

11.11.3.1 *U.S. Practice for Properly Constituted, Non-Political Military Courts.* The United States has a long history of using provost courts in occupied territory.²⁰⁸ In U.S. practice, provost courts have been used as properly constituted, non-political military courts.

²⁰² GC art. 65 (“The penal provisions enacted by the Occupying Power shall not come into force before they have been published and brought to the knowledge of the inhabitants in their own language.”).

²⁰³ GC COMMENTARY 338 footnote 3 (“In countries which have more than one official language the Occupying Power will follow local practice and publish the penal provisions it enacts, in either one or more than one language, according to whether the country’s legislation was published in one or in more than one language before the occupation.”).

²⁰⁴ GC art. 65 (“The effect of these penal provisions shall not be retroactive.”).

²⁰⁵ GC art. 66 (“In case of a breach of the penal provisions promulgated by it by virtue of the second paragraph of Article 64, the Occupying Power may hand over the accused to its properly constituted, non-political military courts, on condition that the said courts sit in the occupied country. Courts of appeal shall preferably sit in the occupied country.”).

²⁰⁶ Refer to § 8.16 (Criminal Procedure and Punishment).

²⁰⁷ Refer to § 10.29 (Judicial Proceedings Regarding Protected Persons in Occupied Territory or Internees in a Belligerent’s Home Territory).

²⁰⁸ For example, EARL F. ZIEMKE, THE U.S. ARMY IN THE OCCUPATION OF GERMANY, 1944-1946, 144 (1975) (“As instruments for shaping relations between the population and the occupation forces, military government courts were regarded as most important. They were expected, on the one hand, to enforce sternly the authority claimed in the proclamation and ordinances and, on the other, to point up for the Germans the difference between nazism and democracy by giving fair and impartial trials to all accused. Modeled after Army courts martial, the military government courts convened on three levels: summary (one officer), intermediate (one or more officers), and general (not less than three officers). Summary courts could impose up to one year in prison and fines in marks up to \$1,000; intermediate courts, ten years in prison and fines to \$10,000; and general courts, the death penalty and unlimited fines.”); WINTHROP, MILITARY LAW & PRECEDENTS 803-04 (“In the late civil war there was established at New Orleans by the President, by an order of October 20, 1862, a civil court entitled the ‘Provisional Court of Louisiana,’ with both civil and criminal jurisdiction. ... As to its jurisdiction of crimes, this appears maintained in an extended opinion of its judge, Hon. C.A. Peabody, in the cases of U.S. v. Reiter and Louis, charged with murder and arson. ... Other Provost Courts, with a jurisdiction assimilated in general to that of justices’ or police courts, were established from time to time by military commanders during the war;”).

Service regulations have addressed the use of provost courts.²⁰⁹

11.11.3.2 Applicable Law in Properly Constituted, Non-Political Military Courts. Properly constituted, non-political military courts shall apply only those provisions of law that were applicable prior to the offense, and that are in accordance with general principles of law, in particular the principle that the penalty shall be proportionate to the offense.²¹⁰ The requirement that properly constituted, non-political military courts shall apply only those provisions of law that were applicable prior to the offense reflects the general rule that penal laws cannot be retroactive and that there cannot be an offense or penalty unless the act in question was punishable under the law in force at the time the act was committed.²¹¹ The requirement that properly constituted, non-political military courts shall apply only those provisions of law that are in accordance with general principles of law includes the rule that punishments must be based on individual responsibility.²¹²

These courts shall also take into consideration the fact that the accused is not a national of the Occupying Power.²¹³

These courts also may, at their discretion, convert a sentence of imprisonment to one of internment for the same period.²¹⁴

11.11.4 Limitations on Penalties for Certain, Non-Serious Offenses Solely Intended to Harm the Occupying Power. Protected persons who commit an offense that is solely intended to harm the Occupying Power, but that is not an attempt on the life or limb of members of the occupying forces or administration, nor a grave collective danger, nor seriously damage the property of the occupying forces or administration, or the installations used by them, shall be

²⁰⁹ See, e.g., DEPARTMENT OF THE ARMY PAMPHLET 27-9-2, *Military Judges' Benchbook for Provost Courts* (Oct. 4, 2004).

²¹⁰ GC art. 67 ("The courts shall apply only those provisions of law which were applicable prior to the offence, and which are in accordance with general principles of law, in particular the principle that the penalty shall be proportionate to the offence."); GC COMMENTARY 341 ("Article 67 relates to the military courts before which the Occupying Power may bring accused persons under the terms of the preceding Article.").

²¹¹ GC COMMENTARY 341 ("The objet [sic] of the provision is to limit the possibility of arbitrary action by the Occupying Power by ensuring that penal jurisdiction is exercised on a sound basis of universally recognized legal principles. The rule that penal laws cannot be retroactive, which is stated here in general terms, had already been mentioned at the end of Article 65. *Nullum crimen, nulla poena sine lege* is a traditional principle of penal law. There can be no offence, and consequently no penalty, if the act in question is not referred to in a law in force at the time it was committed and subject to punishment under that law."). Refer to § 8.16.2.2 (No Crime or Punishment Without Prior Law); § 11.11.2.1 (Publication of Penal Provisions Before Coming Into Force).

²¹² GC COMMENTARY 342 ("The 'general principles of law', which are not set out individually here but are referred to as a whole, include the rule concerning the personal nature of punishments, under which nobody may be punished for an offence committed by someone else. This rule is also laid down in Article 33 mentioned above."). Refer to § 8.16.2.1 (Individual Penal Responsibility and No Collective Punishment); § 10.5.3.2 (Collective Penalties and Measures of Intimidation or Terrorism).

²¹³ GC art. 67 ("They shall take into consideration the fact that the accused is not a national of the Occupying Power.").

²¹⁴ Refer to § 11.11.4.2 (Discretion of Non-Political, Military Courts to Convert Sentences of Imprisonment to Sentences of Internment).

liable to internment or simple imprisonment, provided the duration of such internment or imprisonment is proportionate to the offense committed.²¹⁵

The minor offense must have been solely intended to harm the Occupying Power in order to trigger these restrictions.²¹⁶ For example, offenses such as traveling without a permit or violating exchange control regulations would not fall under this restriction, but, nonetheless, may result in internment or simple imprisonment.

11.11.4.1 *Internment or Imprisonment as the Only Measure Adopted for Depriving Protected Persons of Liberty for Such Offenses.* Furthermore, internment or imprisonment shall, for such offenses, be the only measure adopted for depriving protected persons of liberty.²¹⁷

Penalties that do not deprive the protected person of liberty, such as fines, or less severe measures, such as arrest, are not addressed by this rule.²¹⁸

11.11.4.2 *Discretion of Non-Political, Military Courts to Convert Sentences of Imprisonment to Sentences of Internment.* Properly constituted non-political military courts may, at their discretion, convert a sentence of imprisonment to one of internment for the same period.²¹⁹

11.11.5 *Imposing the Death Penalty for Offenses Committed by Protected Persons in Occupied Territory.* The GC provides that the penal provisions promulgated by the Occupying Power in accordance with Articles 64 and 65 of the GC may impose the death penalty against a protected person only in cases where the person is guilty of espionage, or serious acts of sabotage against the military installations of the Occupying Power, or of intentional offenses that have caused the death of one or more persons, provided that such offenses were punishable by death under the law of the occupied territory in force before the occupation began.²²⁰

²¹⁵ GC art. 68 (“Protected persons who commit an offence which is solely intended to harm the Occupying Power, but which does not constitute an attempt on the life or limb of members of the occupying forces or administration, nor a grave collective danger, nor seriously damage the property of the occupying forces or administration or the installations used by them, shall be liable to internment or simple imprisonment, provided the duration of such internment or imprisonment is proportionate to the offence committed.”).

²¹⁶ GC COMMENTARY 343 (“The minor offences must have been ‘solely’ intended to harm the Occupying Power. The inclusion of the word ‘solely’ excludes acts which harm the Occupying Power indirectly.”).

²¹⁷ GC art. 68 (“Furthermore, internment or imprisonment shall, for such offences, be the only measure adopted for depriving protected persons of liberty.”).

²¹⁸ GC COMMENTARY 344 (“It should be noted that internment and imprisonment are only mentioned as maximum penalties, and less severe penalties still, such as placing under arrest or fines, may be applied in the case of persons accused of minor offences.”).

²¹⁹ GC art. 68 (“The courts provided for under Article 66 of the present Convention may at their discretion convert a sentence of imprisonment to one of internment for the same period.”).

²²⁰ GC art. 68 (“The penal provisions promulgated by the Occupying Power in accordance with Articles 64 and 65 may impose the death penalty on a protected person only in cases where the person is guilty of espionage, of serious acts of sabotage against the military installations of the Occupying Power or of intentional offences which have

However, the United States has reserved the right to impose the death penalty in accordance with the provisions of Article 68, paragraph 2, of the GC without regard to whether the offenses referred to in that paragraph are punishable by death under the law of the occupied territory at the time the occupation begins.²²¹ The United States expressed the position that an Occupying Power would be unable to protect its own forces adequately against the activities of illegal combatants unless it retained the authority to apply the death penalty, and the rule in Article 68 of the GC would be subject to manipulation in that an adversary on the verge of being occupied might repeal the death penalty to encourage subversive activities against an Occupying Power.²²²

The death penalty may not be pronounced against 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 or she is not bound to it by any duty of allegiance.²²³

In any case, the death penalty may not be pronounced against a protected person who was under eighteen years of age at the time of the offense.²²⁴

In practice, if an occupation is undertaken with coalition partners, the death penalty may be suspended in order to address requests of these States.²²⁵

11.11.6 Deduction From Sentences of Period Under Arrest. In all cases, the duration of

caused the death of one or more persons, provided that such offences were punishable by death under the law of the occupied territory in force before the occupation began.”).

²²¹ United States, *Statement on Ratification of the GC*, Aug. 2, 1955, 213 UNTS 384 (“The United States reserves the right to impose the death penalty in accordance with the provisions of Article 68, paragraph 2, without regard to whether the offenses referred to therein are punishable by death under the law of the occupied territory at the time the occupation begins.”).

²²² SENATE EXECUTIVE REPORT 84-9, *Geneva Conventions for the Protection of War Victims: Report of the Committee on Foreign Relations on Executives D, E, F, and G*, 82nd Congress, First Session, 23 (Jun. 27, 1955) (“Adoption of this limitation upon the death penalty was due to the efforts of a number of countries, some of which had experienced whole-sale imposition of this extreme measure under military occupation, and others of which have abolished the death penalty in their legal systems. Our own Government, while willing to agree not to impose it except in the three categories of cases listed in article 68, was unable to accept the proviso further limiting its use. Along with the United Kingdom, we took the position that an occupying power would be unable to protect its own forces adequately against the activities of illegal combatants unless it retained the power to take drastic legal action to meet the situation. From a practical standpoint, moreover, the limitation in article 68 would permit an enemy on the point of being dislodged from the national territory to repeal a death penalty law previously applicable, thus opening the way to all kinds of subversive activities against the occupant which would not be punishable by death.”).

²²³ GC art. 68 (“The death penalty may not be pronounced against 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.”). Compare § 9.28.6 (Death Sentences); § 10.29.5 (Death Sentences).

²²⁴ GC art. 68 (“In any case, the death penalty may not be pronounced against a protected person who was under eighteen years of age at the time of the offense.”).

²²⁵ For example, Coalition Provision Authority Order No. 7, *Penal Code*, §3(1) (Jun. 10, 2003) (“Capital punishment is suspended. In each case where the death penalty is the only available penalty prescribed for an offense, the court may substitute the lesser penalty of life imprisonment, or such other lesser penalty as provided for in the Penal Code.”).

the period during which a protected person accused of an offense is under arrest awaiting trial or punishment shall be deducted from any period of imprisonment awarded.²²⁶

11.11.7 Limitation on Criminal Jurisdiction With Respect to Pre-Occupation Acts. The GC provides for certain limitations on the criminal jurisdiction of the Occupying Power with respect to the pre-occupation acts of protected persons and of nationals of the Occupying Power, who, before the outbreak of hostilities, have sought refuge in the territory of the occupied State.

11.11.7.1 *Pre-Occupation Acts of Protected Persons.* Protected persons shall not be arrested, prosecuted, or convicted by the Occupying Power for acts committed or opinions expressed before the occupation, or during a temporary interruption thereof, with the exception of breaches of the laws and customs of war.²²⁷

11.11.7.2 *Protection of Nationals of the Occupying Power Who, Before the Outbreak of Hostilities, Have Sought Refuge in the Territory of the Occupied State.* Nationals of the Occupying Power who, before the outbreak of hostilities, have sought refuge in the territory of the occupied State, shall not be arrested, prosecuted, convicted, or deported from the occupied territory, except for offenses committed after the outbreak of hostilities, or for offenses under common law committed before the outbreak of hostilities that, according to the law of the occupied State, would have justified extradition in time of peace.²²⁸

Thus, although protected persons may not be forcibly transferred or deported to another country,²²⁹ nationals of the Occupying Power may be involuntarily removed under certain circumstances.²³⁰

This rule is an exception to the general principle that a State's own nationals are excluded from the protection of the GC.²³¹

11.11.8 Disposition of Accused and Convicted Protected Persons Upon the Close of Occupation. Protected persons who have been accused of offenses or convicted by courts in

²²⁶ GC art. 69 ("In all cases, the duration of the period during which a protected person accused of an offence is under arrest awaiting trial or punishment shall be deducted from any period of imprisonment awarded.").

²²⁷ GC art. 70 ("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 thereof, with the exception of breaches of the laws and customs of war.").

²²⁸ GC art. 70 ("Nationals of the Occupying Power who, before the outbreak of hostilities, have sought refuge in the territory of the occupied State, shall not be arrested, prosecuted, convicted or deported from the occupied territory, except for offences committed after the outbreak of hostilities, or for offences under common law committed before the outbreak of hostilities which, according to the law of the occupied State, would have justified extradition in time of peace.").

²²⁹ Refer to § 11.12.3 (Prohibition Against Forcible Transfers and Deportations).

²³⁰ GC COMMENTARY 351-52 ("When criminals again fall into the hands of their State of origin, as a result of the occupation of the territory in which they are living, they must answer for their actions; the occupying authorities may therefore arrest them, take them back to their home country and bring them before its courts, provided the law of the occupied State would have justified their extradition in time of peace.").

²³¹ Refer to § 10.3.3.1 (A State's Own Nationals).

occupied territory shall be handed over at the close of occupation, with the relevant records, to the authorities of the liberated territory.²³²

Pending their transfer to such authorities, such protected persons continue to be protected by the GC because protected persons whose release, repatriation, or re-establishment may take place after such dates continue to benefit from the protections of the GC.²³³

The practical arrangements for the handing over of such protected persons will depend on the circumstances, including whether the liberation of occupied territory is accompanied by fighting and whether the local administration is able to function.²³⁴

If occupying forces will remain in occupied territory after the end of occupation, it is permissible, with the consent of the formerly occupied State, for the occupying forces to retain custody, in the formerly occupied territory, of protected persons accused or convicted of offenses.

11.12 MOVEMENT OF PERSONS IN OCCUPIED TERRITORY

11.12.1 Authority of the Occupying Power to Restrict Freedom of Movement. As a general matter, the Occupying Power assumes the authority of the State whose territory is occupied in controlling the movement of persons within the occupied territory, as well as the movement of persons entering and exiting occupied territory. For example, private persons, members of non-governmental organizations, or representatives of foreign States or international organizations seeking to enter occupied territory generally would not be able to do so without authorization from the Occupying Power.

The Occupying Power may withdraw from individuals the right to change their residence, restrict freedom of internal movement, forbid visits to certain districts, prohibit emigration and immigration by protected persons who are nationals of the State whose territory is occupied, and require that all individuals carry identification documents.²³⁵

11.12.2 Departure of Protected Persons Who Are Not Nationals of the State Whose Territory Is Occupied. Protected persons who are not nationals of the State whose territory is occupied may avail themselves of the right to leave occupied territory subject to the provisions of Article 35 of the GC, and decisions thereon shall be taken according to the procedure that the

²³² GC art. 77 (“Protected persons who have been accused of offenses or convicted by the courts in occupied territory, shall be handed over at the close of occupation, with the relevant records, to the authorities of the liberated territory.”).

²³³ Refer to § 10.3.4 (Commencement and Duration of Protected Person Status).

²³⁴ GC COMMENTARY 367 (“The Convention does not lay down any rules concerning the practical arrangements for handing over detainees, because they will depend on circumstances and on whether the liberation of the occupied territory is accompanied by fighting or not, and whether the local administration has been able to continue to function or not.”).

²³⁵ 1956 FM 27-10 (Change No. 1 1976) ¶375 (“The occupant may withdraw from individuals the right to change their residence, restrict freedom of internal movement, forbid visits to certain districts, prohibit emigration and immigration (but see GC art. 48; par. 381 herein), and require that all individuals carry identification documents.”).

Occupying Power shall establish in accordance with the Article 35 of the GC.²³⁶

Article 35 of the GC sets forth rules regarding the departure of protected persons from the home territory of a belligerent State and provides protected persons with a right to depart. But, Article 35 allows a belligerent to prevent such departure if such departure is contrary to the belligerent's national interests, and Article 35 specifies certain procedural requirements.²³⁷

Thus, for example, an Occupying Power may prevent the departure of protected persons who are not nationals of the State whose territory is occupied if such departure is contrary to the Occupying Power's national interests. The Occupying Power must comply with the requirements of Article 35 of the GC if it does so (*e.g.*, providing for the reconsideration of its refusal of permission to depart by an appropriate court or administrative board).²³⁸

11.12.3 Prohibition Against Forcible Transfers and Deportations. Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power, or of any other country, occupied or not, are prohibited, regardless of their motive.²³⁹

The unlawful deportation or transfer of protected persons in violation of this rule constitutes a grave breach of the GC.²⁴⁰

11.12.3.1 Exception for Certain Transfers and Evacuations. Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if required for the security of the population or for imperative military reasons. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when, for material reasons, it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.²⁴¹

For example, in some cases, the whole of occupied territory, such as an island, may be

²³⁶ GC art. 48 ("Protected persons who are not nationals of the Power whose territory is occupied, may avail themselves of the right to leave the territory subject to the provisions of Article 35, and decisions thereon shall be taken according to the procedure which the Occupying Power shall establish in accordance with the said Article.").

²³⁷ Refer to § 10.8.2 (Departures of Protected Persons From a Belligerent's Home Territory).

²³⁸ GC COMMENTARY 277 ("For the procedure to be followed, Article 48 refers expressly to Article 35. Persons who wish to leave the occupied territory therefore enjoy the same safeguards as protected persons living in the territory of a party to the conflict, i.e. they will have the right to appeal to a court or administrative board and to ask for a Protecting Power to intervene. On the other hand, under paragraph 1 of Article 35, the Occupying Power is entitled to object to the departure of a protected person when its national interests make this absolutely necessary.").

²³⁹ GC art. 49 ("Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.").

²⁴⁰ Refer to § 18.9.3.1 (Acts Constituting Grave Breaches).

²⁴¹ GC art. 49 ("Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.").

dangerous, and it may be safer for the protected person to be transferred from occupied territory.²⁴²

The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent: (1) that proper accommodation is provided to receive the protected persons; (2) that evacuations or transfers are effected with satisfactory conditions of hygiene, health, safety, and nutrition; and (3) that members of the same family are not separated.²⁴³

11.12.3.2 *Transfer Prohibition Only Applicable to Protected Persons.* Persons in occupied territory who do not receive protected person status under the GC are not subject to this prohibition on forcible transfers.²⁴⁴ For example, POWs may be transferred from occupied territory to POW camps in the home territory of a belligerent.²⁴⁵ Similarly, a person who is not entitled to protected person status, such as a national of a neutral or non-belligerent State who travels to an occupied State to fight the Occupying Power, would not be covered by this prohibition.²⁴⁶

11.12.3.3 *Notification of Transfers and Evacuations to the Protecting Power.* The Protecting Power shall be informed of any transfers and evacuations as soon as they have taken place.²⁴⁷

11.12.3.4 *Voluntary Transfers Not Prohibited.* Only forcible transfers are prohibited; voluntary transfers from occupied territory, such as voluntary transfers of persons belonging to a minority group that had been persecuted by the occupied State, would not be prohibited.²⁴⁸

²⁴² II-A FINAL RECORD OF THE DIPLOMATIC CONFERENCE OF GENEVA OF 1949 759 (“As regards the proposed suppression of the words ‘except in cases of physical necessity’, there were cases where, owing to the limited size of the territory, it was physically impossible to evacuate the population otherwise than to places outside the occupied territory. That was the case, for example, in the islands of Wake and Guam, where the whole of the territory could be considered as dangerous.”).

²⁴³ GC art. 49 (“The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.”).

²⁴⁴ Refer to § 10.3.2 (Persons Who Receive Protected Person Status Under the GC); § 10.3.3 (Categories of Nationals Specifically Excluded From the Definition of Protected Person Under the GC).

²⁴⁵ Refer to § 9.11.3.3 (Location Outside the Theater of Military Operations).

²⁴⁶ Refer to § 10.3.2.1 (“Find Themselves”).

²⁴⁷ GC art. 49 (“The Protecting Power shall be informed of any transfers and evacuations as soon as they have taken place.”). Consider AP I art. 78 (“Any such evacuation [of children] shall be supervised by the Protecting Power in agreement with the Parties concerned, namely the Party arranging the evacuation, the Party receiving the children and any Parties whose nationals are being evacuated.”).

²⁴⁸ II-A FINAL RECORD OF THE DIPLOMATIC CONFERENCE OF GENEVA OF 1949 827 (“Although there was general unanimity in condemning such deportations as took place during the recent war, the phrase at the beginning of Article 45 caused some trouble in view of the difficulty in reconciling exactly the ideas expressed with the various terms in French, English and Russian. In the end the Committee have decided on a wording which prohibits individual or mass forcible removals as well as deportations of protected persons from occupied territory to any

11.12.4 General Prohibition Against Detaining Protected Persons in Dangerous Areas. The Occupying Power shall not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demand.²⁴⁹

11.12.5 Prohibition Against Deporting or Transferring the Occupied State's Civilian Population Into Occupied Territory. The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.²⁵⁰

11.13 PROTECTION OF CHILDREN IN OCCUPIED TERRITORY

Article 50 of the GC provides for certain duties of an Occupying Power with respect to children in occupied territory. "Children" for the purposes of Article 50 of the GC and its obligations with respect to the protection of children in occupied territory may be understood generally to refer to children under fifteen years of age.²⁵¹

Other duties that are not specific to occupied territory exist with regard to children.²⁵²

11.13.1 Obligation With Respect to the Care and Education of Children. The Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children.²⁵³ This obligation goes beyond merely not interfering with such institutions, but also includes the affirmative duty to

other country, but which permits voluntary transfers."). *See also id.* at 759 ("Mr. CLATTENBURG (United States of America) believed that the addition (suggested by the Soviet Delegation) of the words 'any other transfer' would have hampered the evacuation of the religious and political minorities which the Allies, on entering Germany, had discovered in labour and concentration camps.").

²⁴⁹ GC art. 49 ("The Occupying Power shall not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demand."). *Consider* AP I art. 78 ("In each case [of the evacuation of children], all Parties to the conflict shall take all feasible precautions to avoid endangering the evacuation.").

²⁵⁰ GC art. 49 ("The Occupying Power shall not deport or transfer parts of its own civilian populations into the territory it occupies.").

²⁵¹ GC COMMENTARY 285 ("What should the word 'children' be considered to mean for the purposes of Article 50? Although the conception of 'children' has an important place in the Convention there is, as has already been pointed out, no general definition of the word. On the other hand the Convention has fixed various age limits in the provisions prescribing preferential treatment for children: fifteen years of age, in Articles 14 (hospital and safety zones), 23 (consignment of relief supplies), 24 and 38 (5) (measures relating to child welfare); twelve years of age in Article 24, paragraph 3 (identification); and, as will be seen, eighteen years of age in Articles 51, paragraph 2 (compulsory labour) and 68, paragraph 4 (death penalty). Article 50, unlike those just mentioned, does not specify any age limit for the children to whom it refers, except in the last paragraph. Since, however, the establishments and institutions which paragraph 1 is intended to protect are generally for children and young people up to the age of fifteen, that appears to be a reasonable upper limit and might therefore serve here as a criterion. The application of Article 50, however, cannot depend on any formal and often too rigid rule; its application must be governed by the degree of development of the physical and mental faculties of the persons concerned; it may therefore be applied to young people until such time as they attain their majority. The meaning given to the term 'children' will also, of course, depend on the legislation of the occupied country, particularly in respect of identification.").

²⁵² *Refer to* § 4.20 (Children).

²⁵³ GC art. 50 ("The Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children.").

support them when the responsible authorities of the country fail to do so.²⁵⁴

Should the local institutions be inadequate for the purpose, the Occupying Power shall make arrangements for the maintenance and education – if possible, by persons of their own nationality, language, and religion – of children who are orphaned or separated from their parents as a result of the war, and who cannot be adequately cared for by a near relative or friend.²⁵⁵

11.13.2 Obligation With Respect to the Identification of Children. The Occupying Power shall take all necessary steps to facilitate the identification of children and the registration of their parentage.²⁵⁶

A special section of the National Protected Person Information Bureau set up in accordance with Article 136 of the GC shall be responsible for taking all necessary steps to identify children whose identity is in doubt.²⁵⁷

11.13.3 Prohibition Against Changing the Personal Status of Children or Enlisting Them. The Occupying Power may not, in any case, change the personal status of children, nor enlist them in formations or organizations subordinate to it.²⁵⁸

11.13.4 Obligation Not to Hinder Preferential Measures for Children and Mothers. The Occupying Power shall not hinder the application of any preferential measures in regard to food, medical care, and protection against the effects of war that may have been adopted prior to the occupation in favor of children under fifteen years, expectant mothers, and mothers of children under seven years.²⁵⁹

11.14 FOOD AND MEDICAL SUPPLIES FOR THE CIVILIAN POPULATION

11.14.1 Duty of Ensuring the Food and Medical Supplies for the Population. To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the sufficiency of food and medical supplies for the population; it should, in particular, bring in the

²⁵⁴ GC COMMENTARY 286 (“The Occupying Powers must, with the co-operation of the national and local authorities, facilitate the proper working of children's institutions. That means that the occupying authorities are bound not only to avoid interfering with their activities, but also to support them actively and even encourage them if the responsible authorities of the country fail in their duty.”).

²⁵⁵ GC art. 50 (“Should the local institutions be inadequate for the purpose, the Occupying Power shall make arrangements for the maintenance and education, if possible by persons of their own nationality, language and religion, of children who are orphaned or separated from their parents as a result of the war and who cannot be adequately cared for by a near relative or friend.”).

²⁵⁶ GC art. 50 (“The Occupying Power shall take all necessary steps to facilitate the identification of children and the registration of their parentage.”).

²⁵⁷ Refer to § 10.31.2.5 (Special Section for the Identification of Children in Occupied Territory).

²⁵⁸ GC art. 50 (“The Occupying Power shall take all necessary steps to facilitate the identification of children and the registration of their parentage. It may not, in any case, change their personal status, nor enlist them in formations or organizations subordinate to it.”).

²⁵⁹ GC art. 50 (“The Occupying Power shall not hinder the application of any preferential measures in regard to food, medical care and protection against the effects of war, which may have been adopted prior to the occupation in favour of children under fifteen years, expectant mothers, and mothers of children under seven years.”).

necessary foodstuffs, medical stores, and other articles if the resources of the occupied territory are inadequate.²⁶⁰ Other articles may be understood to include all urgently required goods that may be essential to the “life of the territory.”²⁶¹

11.14.2 Limitation on Requisition of Food and Medical Supplies. The Occupying Power may not requisition foodstuffs, articles, or medical supplies available in the occupied territory, except for use by the occupation forces and administration personnel, and then only if the requirements of the civilian population have been taken into account.²⁶² Subject to the provisions of other international conventions, the Occupying Power shall make arrangements to ensure that fair value is paid for any requisitioned goods.²⁶³

11.14.3 Verification of the State of Food and Medical Supplies by the Protecting Power. The Protecting Power shall, at any time, be at liberty to verify the state of the food and medical supplies in occupied territories, except where temporary restrictions are made necessary by imperative military requirements.²⁶⁴

11.15 PUBLIC HEALTH AND HYGIENE

11.15.1 General Duty With Respect to Public Health. To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, medical and hospital establishments, medical services, and public health and hygiene in the occupied territory, with particular reference to the

²⁶⁰ GC art. 55 (“To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate.”).

²⁶¹ 1956 FM 27-10 (Change No. 1 1976) ¶384 (“*b. Other Articles To Be Supplied.* The other articles which the occupant is required to provide under the above provision include all urgently required, goods which may be essential to the life of the territory.”). See also GC COMMENTARY 309-10 (“Article 55 is concerned exclusively with the question of food and medical supplies for the population of an occupied territory. ... Supplies for the population are not limited to food, but include medical supplies and any article necessary to support life.”).

²⁶² GC art. 55 (“The Occupying Power may not requisition foodstuffs, articles or medical supplies available in the occupied territory, except for use by the occupation forces and administration personnel, and then only if the requirements of the civilian population have been taken into account.”). Consider AP I art. 14 (“Limitations on requisition of civilian medical units – ... 2. The Occupying Power shall not, therefore, requisition civilian medical units, their equipment, their materiel or the services of their personnel, so long as these resources are necessary for the provision of adequate medical services for the civilian population and for the continuing medical care of any wounded and sick already under treatment. 3. Provided that the general rule in paragraph 2 continues to be observed, the Occupying Power may requisition the said resources, subject to the following particular conditions: (a) that the resources necessary for the adequate and immediate medical treatment of the wounded and sick members of the armed forces of the Occupying Power or of prisoners of war; (b) that the requisition continues only while such necessity exists; and (c) that immediate arrangements are made to ensure that the medical needs of the civilian population, as well as those of any wounded and sick under treatment who are affected by the requisition, continue to be satisfied.”).

²⁶³ GC art. 55 (“Subject to the provisions of other international Conventions, the Occupying Power shall make arrangements to ensure that fair value is paid for any requisitioned goods.”).

²⁶⁴ GC art. 55 (“The Protecting Power shall, at any time, be at liberty to verify the state of the food and medical supplies in occupied territories, except where temporary restrictions are made necessary by imperative military requirements.”).

adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics.²⁶⁵ The responsibility for providing and maintaining health services falls primarily on the national and local authorities, but where such authorities are unable to provide adequately for the health needs of the civilian population, the Occupying Power then has the duty described above.²⁶⁶

11.15.2 Respect for the Work of Civilian Medical Personnel. Medical personnel of all categories must be allowed to carry out their duties.²⁶⁷ “Medical personnel of all categories” includes a wide range of persons engaged in medical work.²⁶⁸ It includes even those who are not affiliated with civilian hospitals who qualify for protection under Article 20 of the GC.²⁶⁹

11.15.3 Recognition of New Hospitals, Medical Personnel, and Transports. If new hospitals are set up in occupied territory and if the competent organs of the occupied State are not operating there, the occupying authorities must, if necessary, grant them the recognition provided for in Article 18 of the GC.²⁷⁰ This recognition allows the civilian hospitals to show that they are civilian hospitals and that the buildings that they occupy are not used for any purpose that would deprive these hospitals of protection.²⁷¹ In similar circumstances, the occupying authorities must also grant recognition to hospital personnel and transport vehicles under the provisions of Articles 20 and 21 of the GC.²⁷² This recognition also allows such

²⁶⁵ GC art. 56 (“To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics.”).

²⁶⁶ GC COMMENTARY 313-14 (“[T]here can be no question of making the Occupying Power alone responsible for the whole burden of organizing hospitals and health services and taking measures to control epidemics. The task is above all one for the competent services of the occupied country itself. It is possible that in certain cases the national authorities will be perfectly well able to look after the health of the population; in such cases the Occupying Power will not have to intervene; it will merely avoid hampering the work of the organizations responsible for the task. In most cases, however, the invading forces will be occupying a country suffering severely from the effects of war; hospitals and medical services will be disorganized, without the necessary supplies and quite unable to meet the needs of the population. The Occupying Power must then, with the co-operation of the authorities and to the fullest extent of the means available to it, ensure that hospital and medical services can work properly and continue to do so.”).

²⁶⁷ GC art. 56 (“Medical personnel of all categories shall be allowed to carry out their duties.”).

²⁶⁸ GC COMMENTARY 314 (“‘Medical personnel of all categories’ should be taken to mean all people engaged in a branch of medical work: doctors, surgeons, dentists, pharmacists, midwives, medical orderlies and nurses, stretcher bearers, ambulance drivers, etc., whether such persons are or are not attached to a hospital. On that point the provision differs from Article 20 of the Convention, which refers only to hospital staff, who are alone authorized to wear the armlet bearing the red cross emblem.”).

²⁶⁹ *Refer to § 7.17.4 (Protection of Civilian Hospital Personnel).*

²⁷⁰ GC art. 56 (“If new hospitals are set up in occupied territory and if the competent organs of the occupied State are not operating there, the occupying authorities shall, if necessary, grant them the recognition provided for in Article 18. In similar circumstances, the occupying authorities shall also grant recognition to hospital personnel and transport vehicles under the provisions of Articles 20 and 21.”).

²⁷¹ *Refer to § 7.17.2.1 (State-Issued Certificates for Civilian Hospitals).*

²⁷² GC art. 56 (“In similar circumstances, the occupying authorities shall also grant recognition to hospital personnel and transport vehicles under the provisions of Articles 20 and 21.”).

personnel and vehicles to display their entitlement to protection.²⁷³

11.15.4 Consideration of Cultural Traditions of the Population in Adopting Public Health Measures. In adopting measures of health and hygiene, and in their implementation, the Occupying Power must take into consideration the moral and ethical susceptibilities of the population of the occupied territory.²⁷⁴ The Occupying Power should respect the sentiments and traditions of the population, and should not introduce new methods if they are liable to cause deep disquiet among the population.²⁷⁵

11.15.5 Requisition of Civilian Hospitals. The Occupying Power may requisition civilian hospitals only temporarily and only in cases of urgent necessity for the care of military wounded and sick, and then on the condition that suitable arrangements are made in due time for the care and treatment of the hospital's current patients, and for the future needs of the civilian population for hospital accommodation. The material and stores of civilian hospitals cannot be requisitioned so long as they are necessary for the needs of the civilian population.²⁷⁶

If the requisition of medical supplies is required for the occupying force, they must take the needs of the civilian population into account and resupply the materials as soon as possible.²⁷⁷

11.16 SPIRITUAL ASSISTANCE

The Occupying Power shall permit ministers of religion to give spiritual assistance to the members of their religious communities. The Occupying Power shall also accept consignments of books and articles required for religious needs and shall facilitate their distribution in occupied territory.²⁷⁸

Religious assistance addressed by the GC, however, does not include activities that are a

²⁷³ Refer to § 7.17.4 (Protection of Civilian Hospital Personnel); § 7.18 (Land and Sea Civilian Hospital Convoys).

²⁷⁴ GC art. 56 ("In adopting measures of health and hygiene and in their implementation, the Occupying Power shall take into consideration the moral and ethical susceptibilities of the population of the occupied territory.").

²⁷⁵ GC COMMENTARY 315 ("The purpose of this provision is to ensure respect for sentiments and traditions, which must not be disregarded. The occupation must not involve the sudden introduction of new methods, if they are liable to cause deep disquiet among the population.").

²⁷⁶ GC art. 57 ("The Occupying Power may requisition civilian hospitals only temporarily and only in cases of urgent necessity for the care of military wounded and sick, and then on condition that suitable arrangements are made in due time for the care and treatment of patients and the needs of the civilian population for hospital accommodation. The material and stores of civilian hospitals cannot be requisitioned so long as they are necessary for the needs of the civilian population.").

²⁷⁷ GC COMMENTARY 318 ("When so doing, it will take the needs of the population into account and it will replace the material used as soon as possible, usually by importing medical supplies in accordance with Article 55.").

²⁷⁸ GC art. 58 ("The Occupying Power shall permit ministers of religion to give spiritual assistance to the members of their religious communities. The Occupying Power shall also accept consignments of books and articles required for religious needs and shall facilitate their distribution in occupied territory.").

pretext for political agitation against the Occupying Power.²⁷⁹

11.17 RELIEF EFFORTS AND CONSIGNMENTS

Special rules address relief efforts in occupied territory. Other rules address relief efforts outside the context of occupation.²⁸⁰

11.17.1 Collective Relief. If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the affected population, and shall facilitate them by all the means at its disposal. Such schemes, which may be undertaken either by States or by impartial humanitarian organizations such as the ICRC, shall consist, in particular, of the provision of consignments of foodstuffs, medical supplies, and clothing.²⁸¹

All Parties to the GC shall permit the free passage of these consignments and shall guarantee their protection.²⁸²

A State granting free passage to consignments on their way to territory occupied by an adverse party to the conflict shall, however, have the right to search the consignments, to regulate their passage according to prescribed times and routes, and to be reasonably satisfied (through the Protecting Power) that these consignments are to be used for the relief of the needy population, and are not to be used for the benefit of the Occupying Power.²⁸³

11.17.1.1 Diversion of Relief Consignments. The Occupying Power shall in no way whatsoever divert relief consignments from the purpose for which they are intended, except in cases of urgent necessity, in the interests of the population of the occupied territory, and with

²⁷⁹ GC COMMENTARY 318 (“[R]eligious assistance must in no case serve as a pretext for political agitation against the Occupying Power. Should occasion arise, the Occupying Power would be entitled to take appropriate action, since the provision under discussion authorizes only spiritual assistance, and not activities which have nothing to do with religion.”).

²⁸⁰ Refer to § 5.19.3 (Passage of Relief Consignments); § 8.10.1 (Receipt of Individual or Collective Relief); § 9.20 (POW Correspondence and Relief Shipments); § 10.23 (Internee Correspondence and Relief Shipments).

²⁸¹ GC art. 59 (“If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal. Such schemes, which may be undertaken either by States or by impartial humanitarian organizations such as the International Committee of the Red Cross, shall consist, in particular, of the provision of consignments of foodstuffs, medical supplies and clothing. All Contracting Parties shall permit the free passage of these consignments and shall guarantee their protection.”).

²⁸² GC art. 59 (“All Contracting Parties shall permit the free passage of these consignments and shall guarantee their protection.”).

²⁸³ GC art. 59 (“A Power granting free passage to consignments on their way to territory occupied by an adverse Party to the conflict shall, however, have the right to search the consignments, to regulate their passage according to prescribed times and routes, and to be reasonably satisfied through the Protecting Power that these consignments are to be used for the relief of the needy population and are not to be used for the benefit of the Occupying Power.”).

the consent of the Protecting Power.²⁸⁴

11.17.1.2 *Distribution of Collective Relief Consignments.* The distribution of collective relief consignments referred to in Articles 59 and 60 of the GC shall be carried out with the cooperation and under the supervision of the Protecting Power. This duty may also be delegated, by agreement between the Occupying Power and the Protecting Power, to a neutral State, the ICRC, or any other impartial humanitarian body.²⁸⁵

The Occupying Power shall facilitate the rapid distribution of these consignments.²⁸⁶ For example, it may be necessary for the occupation authorities to remove administrative impediments (e.g., granting permits) to relief organizations distributing consignments.²⁸⁷

11.17.1.3 *Charges, Taxes, and Customs Duties on Collective Relief Consignments for Occupied Territories.* Collective relief consignments referred to in Articles 59 and 60 of the GC shall be exempt in occupied territory from all charges, taxes, or customs duties unless such charges, taxes, or customs duties are necessary in the interests of the economy of the territory.²⁸⁸ All Parties to the GC shall endeavor to permit the transit and transport, free of charge, of such relief consignments on their way to occupied territories.²⁸⁹

11.17.2 *Individual Relief Consignments.* Subject to imperative reasons of security, protected persons in occupied territories shall be permitted to receive individual relief consignments sent to them.²⁹⁰

An individual relief consignment is a shipment that is addressed to a particular person.²⁹¹

²⁸⁴ GC art. 60 (“The Occupying Power shall in no way whatsoever divert relief consignments from the purpose for which they are intended, except in cases of urgent necessity, in the interests of the population of the occupied territory and with the consent of the Protecting Power.”).

²⁸⁵ GC art. 61 (“The distribution of the relief consignments referred to in the foregoing Articles shall be carried out with the cooperation and under the supervision of the Protecting Power. This duty may also be delegated, by agreement between the Occupying Power and the Protecting Power, to a neutral Power, to the International Committee of the Red Cross or to any other impartial humanitarian body.”).

²⁸⁶ GC art. 61 (“The Occupying Power shall facilitate the rapid distribution of these consignments.”).

²⁸⁷ GC COMMENTARY 328 (“The second sentence in paragraph 2 says that the Occupying Power is to facilitate the rapid distribution of the consignments. The effect of a relief scheme will depend above all on the time the consignments take to reach the recipients; it is therefore important for the occupation authorities to take all necessary steps to facilitate their despatch and distribution (cutting out red tape, making transport available, granting permits allowing freedom of movement, facilities of all kinds for the staff of the distributing and supervising bodies, etc.).”).

²⁸⁸ GC art. 61 (“Such consignments shall be exempt in occupied territory from all charges, taxes or customs duties unless these are necessary in the interests of the economy of the territory.”).

²⁸⁹ GC art. 61 (“All Contracting Parties shall endeavour to permit the transit and transport, free of charge, of such relief consignments on their way to occupied territories.”).

²⁹⁰ GC art. 62 (“Subject to imperative reasons of security, protected persons in occupied territories shall be permitted to receive the individual relief consignments sent to them.”).

²⁹¹ GC COMMENTARY 329 (“Unlike the three previous Articles which refer to relief supplies for a group of protected persons (collective consignments), Article 62 deals with consignments addressed to individuals (individual consignments).”).

The occupation authorities may limit or temporarily forbid the entry of individual relief supplies for imperative reasons of security, such as if the volume of relief consignments prevents security screening.²⁹²

11.17.3 Continuing Responsibilities of the Occupying Power. Relief consignments shall in no way relieve the Occupying Power of any of its responsibilities under Articles 55, 56, and 59 of the GC.²⁹³ The responsibilities of the Occupying Power under Articles 55, 56, and 59 of the GC relate to ensuring the provision of food, medical supplies, and medical services to the population.²⁹⁴

11.17.4 National Red Cross or Red Crescent Societies and Other Relief Organizations. Subject to temporary and exceptional measures imposed for urgent reasons of security by the Occupying Power:

- recognized National Red Cross (Red Crescent, Red Lion and Sun) Societies shall be able to pursue their activities in accordance with Red Cross principles, as prescribed by the International Red Cross Conferences. Other relief societies shall be permitted to continue their humanitarian activities under similar conditions;
- the Occupying Power may not require any changes in the personnel or structure of these societies that would prejudice these activities.²⁹⁵

The same principles shall apply to the activities and personnel of special organizations of a non-military character that already exist or that may be established for the purpose of ensuring the living conditions of the civilian population by the maintenance of the essential public utility services, by the distribution of relief, and by the organization of rescues.²⁹⁶

²⁹² GC COMMENTARY 329 (“[T]he occupation authorities have the right to refuse to receive individual relief consignments if imperative reasons of security so demand. A similar reservation in regard to collective relief was put forward during the preparatory work on Article 59, but was not adopted. The reservation was kept in Article 62 in order that efficient verification should not be rendered impossible by the arrival of huge quantities of individual parcels. Under such circumstances the Occupying Power could avoid importing articles detrimental to its security by limiting or temporarily forbidding the entry of individual relief supplies.”).

²⁹³ GC art. 60 (“Relief consignments shall in no way relieve the Occupying Power of any of its responsibilities under Articles 55, 56 and 59.”).

²⁹⁴ Refer to § 11.14 (Food and Medical Supplies for the Civilian Population); § 11.15 (Public Health and Hygiene); § 11.17.1 (Collective Relief).

²⁹⁵ GC art. 63 (“Subject to temporary and exceptional measures imposed for urgent reasons of security by the Occupying Power: (a) recognized National Red Cross (Red Crescent, Red Lion and Sun) Societies shall be able to pursue their activities in accordance with Red Cross principles, as defined by the International Red Cross Conferences. Other relief societies shall be permitted to continue their humanitarian activities under similar conditions; (b) the Occupying Power may not require any changes in the personnel or structure of these societies, which would prejudice the aforesaid activities.”).

²⁹⁶ GC art. 63 (“The same principles shall apply to the activities and personnel of special organizations of a non-military character, which already exist or which may be established, for the purpose of ensuring the living conditions of the civilian population by the maintenance of the essential public utility services, by the distribution of relief and by the organization of rescues.”).

11.18 ENEMY PROPERTY DURING OCCUPATION

Pillage is prohibited. Enemy property in occupied territory may not be seized or destroyed unless imperatively demanded by the necessities of war. The Occupying Power may take certain control measures with respect to property in occupied territory. Other rules apply to the treatment of public enemy property and private enemy property in occupied territory.

11.18.1 Prohibition Against Pillage in Occupied Territory. Pillage is forbidden.²⁹⁷ In addition to this specific prohibition in the context of occupied territory, pillage is prohibited as a general matter.²⁹⁸

11.18.2 Seizure or Destruction of Property During Occupation – Application of the Military Necessity Standard. The general rule that enemy property may not be seized or destroyed unless imperatively demanded by the necessities of war also applies to property during the occupation of enemy territory.²⁹⁹ In particular, any destruction by the Occupying Power of real (immovable) or personal (movable) property belonging individually or collectively to private persons, to the State of the occupied territory, to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.³⁰⁰

11.18.2.1 Assessment of Military Necessity for Seizure or Destruction. The evaluation of whether destruction of property is militarily necessary in the context of occupation is undertaken by applying the standards that also are applied in the context of combat operations.³⁰¹ For example, the evaluation of whether the destruction of property is militarily necessary is made by the responsible commander or other authority of the Occupying Power.³⁰² However, such assessment must be made in good faith based on the information available at the time.³⁰³

11.18.2.2 Temporary Possession for Direct Military Use. An Occupying Power may always take temporary possession of enemy property (real or personal, and public or

²⁹⁷ HAGUE IV REG. art. 47 (“Pillage is formally forbidden.”).

²⁹⁸ Refer to § 5.17.4 (Pillage Prohibited).

²⁹⁹ Refer to § 5.17.2 (Enemy Property – Military Necessity Standard).

³⁰⁰ GC art. 53 (“Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.”).

³⁰¹ Refer to § 5.17.2 (Enemy Property – Military Necessity Standard).

³⁰² GC COMMENTARY 302 (“Furthermore, it will be for the Occupying Power to judge the importance of such military requirements. It is therefore to be feared that bad faith in the application of the reservation may render the proposed safeguard valueless; for unscrupulous recourse to the clause concerning military necessity would allow the Occupying Power to circumvent the prohibition set forth in the Convention. The Occupying Power must therefore try to interpret the clause in a reasonable manner: whenever it is felt essential to resort to destruction, the occupying authorities must try to keep a sense of proportion in comparing the military advantages to be gained with the damage done.”).

³⁰³ Refer to § 5.4.2 (Decisions Must Be Made in Good Faith and Based on Information Available at the Time).

private) where required for direct military use in military operations. In the case of private property, an Occupying Power, where possible, should requisition the property and offer compensation to the owner.³⁰⁴

11.18.2.3 *Capture or Seizure and Vesting of Title in the Occupying Power.* In the case of real (immovable) property that is captured or seized, the Occupying Power may use such property for the duration of the occupation but does not take title to the property.³⁰⁵

Public property captured or seized from the enemy, as well as private property validly captured on the battlefield and abandoned property, is the property of the capturing State.³⁰⁶

Valid capture or seizure of property requires both an intent to take such action and a physical act of capture or seizure. The mere presence within occupied territory of property that is subject to appropriation under international law does not operate to vest title thereto in the Occupying Power.³⁰⁷

11.18.2.4 *Seizure or Destruction of Submarine Cables Connecting an Occupied Territory With a Neutral Territory.* Submarine cables connecting an occupied territory with a neutral territory shall not be seized or destroyed except in the case of absolute necessity. Such cables must likewise be restored and compensation fixed when peace is made.³⁰⁸

This rule applies only to activities on land and does not deal with seizure or destruction of cables in the open sea.³⁰⁹

11.18.3 *Property Control Measures.* Public and private property within occupied territory may be controlled by the Occupying Power to the degree necessary to prevent its use by or for

³⁰⁴ Refer to § 11.18.7 (Requisitions of Private Enemy Property).

³⁰⁵ Refer to § 11.18.5.1 (Public Real (Immovable) Property Susceptible of Direct Military Use); § 11.18.5.2 (Public Real (Immovable) Property That Is Essentially of a Non-Military Nature).

³⁰⁶ 1956 FM 27-10 (Change No. 1 1976) ¶396 (“Public property captured or seized from the enemy, as well as private property validly captured on the battlefield and abandoned property, is property of the United States (see *U.S. Const., Art. I, sec. 8, cl. 11*), and failure to turn over such property to the proper authorities or disposal thereof for personal profit is a violation of Article 103 of the Uniform Code of Military Justice.”). Refer to § 5.17.3.2 (Ownership of Captured or Found Property on the Battlefield).

³⁰⁷ 1956 FM 27-10 (Change No. 1 1976) ¶395 (“Valid capture or seizure of property requires both an intent to take such action and a physical act of capture or seizure. The mere presence within occupied territory of property which is subject to appropriation under international law does not operate to vest title thereto in the occupant.”).

³⁰⁸ HAGUE IV REG. art. 54 (“Submarine cables connecting an occupied territory with a neutral territory shall not be seized or destroyed except in the case of absolute necessity. They must likewise be restored and compensation fixed when peace is made.”).

³⁰⁹ JAMES BROWN SCOTT, THE PROCEEDINGS OF THE HAGUE PEACE CONFERENCES: III THE CONFERENCE OF 1907 13 (1921) (“Mr. Louis Renault observes that this amendment has reference only to what takes place on land, without touching the question of seizure or destruction of submarine cables in the open sea. The President thanks him for having given the text an interpretation that leaves no room for doubt.”).

the benefit of hostile forces, or in a manner harmful to the Occupying Power.³¹⁰ For example, in the case of persons who have acted against the security of the Occupying Power, the Occupying Power may freeze their accounts to prevent such funds from being used against the interests of the Occupying Power.³¹¹

Conservators may be appointed to manage the property of absent persons (including nationals of the United States and of friendly States) and of internees, property managed by such persons, and property of persons whose activities are deemed to be prejudicial to the Occupying Power. However, when the owners or managers of such property are again able to resume control of their property and the risk of its hostile use no longer exists, it must be returned to them.³¹²

Measures of property control must not extend to confiscation of private property.³¹³ For example, if the Occupying Power controls a private business and earns a profit, the owner must be indemnified.³¹⁴

However, the authority of the Occupying Power to impose such controls does not limit its power to seize or requisition property or take such other action with respect to it as may be authorized by other provisions of law.³¹⁵

11.18.4 Determination Whether Property Is Public or Private. The rules for the treatment of enemy property may depend on whether the property is public or private.

For example, private property may not be confiscated, and there is an obligation to pay compensation for requisitions of private property.³¹⁶ On the other hand, public property

³¹⁰ 1956 FM 27-10 (Change No. 1 1976) ¶399 (“Property within occupied territory may be controlled by the occupant to the degree necessary to prevent its use by or for the benefit of the hostile forces or in a manner harmful to the occupant.”).

³¹¹ VON GLAHN, THE OCCUPATION OF ENEMY TERRITORY 207 (“This control includes not only the steps mentioned above in connection with central banks and commercial banks but covers such things as the freezing of accounts where the owner of the funds in question has acted against the interests of the occupying power, control of large cash deposits, control over safe deposit boxes, and, of course, the removal of personnel held to be undesirable from the viewpoint of the occupant.”).

³¹² 1956 FM 27-10 (Change No. 1 1976) ¶399 (“Conservators may be appointed to manage the property of absent persons (including nationals of the United States and of friendly States) and of internees, property managed by such persons, and property of persons whose activities are deemed to be prejudicial to the occupant. However, when the owners or managers of such property are again able to resume control of their property and the risk of its hostile use no longer exists, it must be returned to them.”).

³¹³ Refer to § 11.18.6.1 (Prohibition on Confiscation of Private Property in Occupied Territory).

³¹⁴ Refer to § 11.23.3 (Control of Business in Occupied Territory).

³¹⁵ 1956 FM 27-10 (Change No. 1 1976) ¶399 (“Measures of property control must not extend to confiscation. However, the authority of the occupant to impose such controls does not limit its power to seize or requisition property or take such other action with respect to it as may be authorized by other provisions of law.”).

³¹⁶ Refer to § 11.18.6.1 (Prohibition on Confiscation of Private Property in Occupied Territory); § 11.18.7.3 (Prices and Compensation for Requisitioned Articles and Services).

generally may be seized or captured without any obligation to pay compensation.³¹⁷

11.18.4.1 *Beneficial Ownership Test.* Under modern conditions, the distinction between public and private property is not always easy to draw. For the purpose of treatment of property under military occupation, it is often necessary to look beyond strict legal title and to ascertain the character of the property on the basis of the beneficial ownership thereof. Thus, for example, trust funds, pension funds, and bank deposits generated by private persons are not to be regarded as public property simply by reason of their being held by a State-owned bank.³¹⁸

11.18.4.2 *Property of Mixed Ownership.* For the purpose of determining what type of control the Occupying Power may exercise over property (by way of confiscation, seizure, requisition, etc.), the most cogent evidence of public character is such a complete or partial assumption by the State of the economic risk involved in the holding and management of the property in question that the enemy State, rather than private individuals or corporations, would be subjected to a substantial portion of the loss were the property to be appropriated for the use of the Occupying Power.³¹⁹ Should property that is ostensibly private be subjected to a large measure of governmental control and management, or perform functions that are essentially public, these facts would tend to indicate that the property should be regarded in practice as public.³²⁰

If property that is appropriated by the Occupying Power is beneficially owned in part by the enemy State and in part by private interests, the occupation authorities should compensate the private owners to the extent of their interest. Such compensation should bear the same relationship to the compensation that would be paid if the property were entirely privately owned. The Occupying Power may take those measures it deems necessary to ensure that no portion of the compensation paid on account of private interests accrues to the enemy State.³²¹

³¹⁷ Refer to § 11.18.5 (Treatment of Enemy Public Property).

³¹⁸ 1956 FM 27-10 (Change No. 1 1976) ¶394a (“*Beneficial Ownership.* Under modern conditions, the distinction between public and private property is not always easy to draw. For the purpose of treatment of property under belligerent occupation, it is often necessary to look beyond strict legal title and to ascertain the character of the property on the basis of the beneficial ownership thereof. Thus, for example, trust funds, pension funds, and bank deposits generated by private persons are not to be regarded as public property simply by reason of their being held by a State-owned bank.”).

³¹⁹ 1956 FM 27-10 (Change No. 1 1976) ¶394b (“*Property of Mixed Ownership.* For the purpose of determining what type of control the occupant may exercise over property (by way of confiscation, seizure, requisition, etc.), the most cogent evidence of public character is such a complete or partial assumption by the State of the economic risk involved in the holding and management of the property in question that the State, rather than private individuals or corporation, would be subjected to a substantial portion of the loss were the property to be appropriated for the use of the occupant.”).

³²⁰ 1956 FM 27-10 (Change No. 1 1976) ¶394b (“Should property which is ostensibly private be subjected to a large measure of governmental control and management or perform functions which are essentially public, these facts would tend to indicate that the property should be regarded in practice as public.”).

³²¹ 1956 FM 27-10 (Change No. 1 1976) ¶394b (“If property which is appropriated by the occupant is beneficially owned in part by the State and in part by private interests, the occupation authorities should compensate the private owners to the extent of their interest. Such compensation should bear the same relationship to the full compensation which would be paid if the property were entirely privately owned as their interest bears to the total value of the

11.18.4.3 Property of Unknown Ownership. If it is unknown whether certain property is public or private, it should be treated as public property until its ownership is ascertained.³²²

11.18.5 Treatment of Enemy Public Property. In general, an Occupying Power may capture or seize the real (immovable) and personal (movable) property of the occupied State and use it for military operations or the administration of the occupied territory. No compensation needs to be paid to the occupied State for the use or taking of such property.

11.18.5.1 Public Real (Immovable) Property Susceptible of Direct Military Use. Real property of the occupied State that is of direct military use, such as forts, arsenals, dockyards, magazines, barracks, railways, bridges, piers, wharves, airfields, and other military facilities, may remain in the hands of the Occupying Power until the close of the hostilities, and may be destroyed or damaged by the Occupying Power, if it deems it necessary to military operations.³²³

11.18.5.2 Public Real (Immovable) Property That Is Essentially of a Non-Military Nature. The Occupying Power shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied territory. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.³²⁴ This real (immovable) property that is essentially of a non-military nature may not be damaged or destroyed unless such destruction is rendered absolutely necessary by military operations.³²⁵

The term usufruct means literally “to use the fruit.”³²⁶ The Occupying Power may use

property concerned. The occupant may take what measures it deems necessary to assure that no portion of the compensation paid on account of private interests accrues to the State.”).

³²² 1956 FM 27-10 (Change No. 1 1976) ¶394c (“*Property of Unknown Ownership*. If it is unknown whether certain property is public or private, it should be treated as public property until its ownership is ascertained.”).

³²³ 1956 FM 27-10 (Change No. 1 1976) ¶401 (“Real property of a State which is of direct military use, such as forts, arsenals, dockyards, magazines, barracks, railways, bridges, piers, wharves, airfields, and other military facilities, remains in the hands of the occupant until the close of the war, and may be destroyed or damaged, if deemed necessary to military operations.”).

³²⁴ HAGUE IV REG. art. 55 (“The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.”).

³²⁵ 1956 FM 27-10 (Change No. 1 1976) ¶402 (“Real property of the enemy State which is essentially of a non-military nature, such as public buildings and offices, land, forests, parks, farms, and mines, may not be damaged or destroyed unless such destruction is rendered absolutely necessary by military operations (see Art. 63, GC; par. 393 herein.”). Refer to § 11.18.2 (Seizure or Destruction of Property During Occupation – Application of the Military Necessity Standard).

³²⁶ See DEPARTMENT OF THE ARMY PAMPHLET 27-161-2, *II International Law*, 183 (Oct. 23, 1962) (“The term ‘usufruct’ means literally ‘to use the fruit.’ The occupant can therefore enjoy the benefits of public real property, but he cannot interfere with the substantive rights still possessed by the displaced sovereign.”); Brigadier General George B. Davis, *Working Memoranda (Confidential for the United States Delegates): The Second Peace Conference (Paragraph 2 of Programme), The Rules of War on Land*, 43 (1907) (“In the meaning which has been assigned to the term ‘usufruct’ in both the common and civil law, the usufructuary is entitled to the enjoyment of the

and enjoy the benefits of public real (immovable) property belonging to an enemy State, but does not have the right of sale or unqualified use of such property. As administrator or usufructuary, the Occupying Power should not exercise its rights in such a wasteful and negligent manner as seriously to impair the property's value.³²⁷

The Occupying Power may, however, lease or utilize public lands or buildings, sell the crops, cut and sell timber, and work the mines. The term of a lease or contract should not extend beyond the conclusion of the war.³²⁸

11.18.5.3 *Public Personal (Movable) Property.* An army of occupation may only take possession of cash, funds, and realizable securities that are strictly the property of an enemy State, depots of arms, means of transport, stores and supplies, and, generally, all personal (movable) property belonging to the State that may be used for military operations.³²⁹

Thus, all personal (movable) property belonging to an enemy State susceptible of military use may be taken possession of, and utilized for, the benefit of the Occupying Power. Under modern conditions of warfare, a large proportion of State property may be regarded as capable of being used for military purposes. However, personal (movable) property that is not susceptible of military use must be respected and may not be appropriated.³³⁰

11.18.6 *Treatment of Enemy Private Property.* Private property may not be confiscated.³³¹

Private personal (movable) property susceptible to direct military use may be seized, with a receipt to be given to allow for compensation to be paid at the conclusion of the war.³³²

Other private property may be subject to requisition, with payment in cash given as soon

revenue so long as he preserves the substance or capital of which he appropriates and uses the usufruct. In its application to the commanding general of occupied territory this means that, so long as he maintains the properties thus unimpaired, he may apply the usufructuary revenue to the necessary expenses of the military occupation.”).

³²⁷ 1956 FM 27-10 (Change No. 1 1976) ¶402 (“The occupant does not have the right of sale or unqualified use of such property. As administrator or usufructuary he should not exercise his rights in such a wasteful, and negligent manner as seriously to impair its value.”).

³²⁸ 1956 FM 27-10 (Change No. 1 1976) ¶402 (“He may, however, lease or utilize public lands or buildings, sell the crops, cut and sell timber, and work the mines. The term of a lease or contract should not extend beyond the conclusion of the war.”).

³²⁹ HAGUE IV REG. art. 53 (“An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations.”).

³³⁰ 1956 FM 27-10 (Change No. 1 1976) ¶404 (“All movable property belonging to the State susceptible of military use may be taken possession of and utilized for the benefit of the occupant’s government. Under modern conditions of warfare, a large proportion of State property may be regarded as capable of being used for military purposes. However, movable property which is *not* susceptible of military use must be respected and cannot be appropriated.”).

³³¹ Refer to § 11.18.6.1 (Prohibition on Confiscation of Private Property in Occupied Territory).

³³² Refer to § 11.18.6.2 (Seizure of Private Property Susceptible to Direct Military Use).

as possible.³³³

Private property may be forfeited to the Occupying Power as a result of the valid imposition of penalties.³³⁴ For example, a regulation closing a road for security reasons could specify that, as a penalty, unauthorized private vehicles found on the road would be subject to forfeiture without any compensation.³³⁵

11.18.6.1 Prohibition on Confiscation of Private Property in Occupied Territory. Private property may not be confiscated.³³⁶

The prohibition against confiscation of private property extends not only to outright taking in violation of the law of war, but also to any acts that, through the use of threats, intimidation, or pressure, or by actual exploitation of the power of the Occupying Power, permanently or temporarily deprive the owner of the use of such property without the owner's consent, or without authority under international law.³³⁷

The prohibition against confiscation of private property does not extend to takings by way of contribution, requisition, or the valid imposition of penalties.³³⁸

11.18.6.2 Seizure of Private Property Susceptible to Direct Military Use. All

³³³ Refer to § 11.18.7 (Requisitions of Private Enemy Property).

³³⁴ See Philip C. Jessup, *A Belligerent Occupant's Power over Property*, 38 AJIL 457, 459 (1944) ("3) Seizure and confiscation. This case is not spelled out in the Hague Regulations but it is important. Private property of any kind may be forfeited as a penalty. For example, a military regulation may forbid civilian carts to cross a certain bridge under penalty of forfeiture of the cart and its contents and the draft animal. A regulation may forbid the sale of intoxicating liquors under penalty of forfeiture of all stocks on hand. Especially in agrarian communities of rather primitive economy, fines may be imposed in terms of farm produce, articles of native manufacture, or any other commodities. Property taken by the occupant in this way is acquired with a clear title and may be used in any way the occupant sees fit.").

³³⁵ VON GLAHN, *THE OCCUPATION OF ENEMY TERRITORY* 188 ("Private property may also have to be forfeited to an occupant as a penalty: fines for a great number of minor offenses may be lawfully exacted in terms of products or goods. For instance, vehicles found on closed roads may be confiscated, clothing over and above a stated maximum might well be seized, and so on. A lawful occupant could utilize all property thus acquired in any manner he saw fit, since he would have a clear title to the goods without having paid any compensation.").

³³⁶ HAGUE IV REG. art. 46 ("Private property cannot be confiscated.").

³³⁷ 1956 FM 27-10 (Change No. 1 1976) ¶406b ("*Prohibited Acts.* The foregoing prohibition extends not only to outright taking in violation of the law of war but also to any acts which, through the use of threats, intimidation, or pressure or by actual exploitation of the power of the occupant, permanently or temporarily deprive the owner of the use of his property without his consent or without authority under international law.").

³³⁸ Brigadier General George B. Davis, *Working Memoranda (Confidential for the United States Delegates): The Second Peace Conference (Paragraph 2 of Programme), The Rules of War on Land*, 38 (1907) ("Article XLVI. ... Private property may be taken by way of contribution or requisition, in order to compel the enemy to bear his share of the burdens and hardships of war, but it can not be confiscated—that is, it can not be seized by way of punishment for a breach of allegiance, for no tie of allegiance exists between the inhabitants of the occupied territory and the invading enemy. It is not understood that in the operation of a penalty which may be imposed by a military commission or other tribunal with jurisdiction to try cases in occupied territory the private property of an individual may not be taken. It is rather a taking without compensation—a taking which is not in conformity to the laws of war which is here made the subject of the express prohibition.").

appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval law, depots of arms, and, generally, all kinds of ammunition of war, may be seized, even if they belong to private individuals, but must be restored and compensation fixed when peace is made.³³⁹

Private property susceptible of direct military use includes cables, telephone and telegraph facilities, radio, television, telecommunications and computer networks and equipment, motor vehicles, railways, railway plants, port facilities, ships in port, barges and other watercraft, airfields, aircraft, depots of arms (whether military or sporting), documents connected with the conflict, all varieties of military equipment (including that in the hands of manufacturers), component parts of, or material suitable only for use in, the foregoing, and, in general, all kinds of war material.³⁴⁰

If private property is seized on the grounds that it is susceptible to direct military use, a receipt should be given the owner, or a record made of the nature and quantity of the property and the name of the owner or person in possession of it, in order that restoration and compensation may be made at the conclusion of the war.³⁴¹

11.18.6.3 *Private Real (Immovable) Property*. Private real (immovable) property may under no circumstances be seized. It may, however, be requisitioned.³⁴²

11.18.6.4 *Municipal, Religious, Charitable, and Cultural Property*. The property of municipalities, that of institutions dedicated to religion, charity, and education, and the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction of, or willful damage done to institutions of this character, historic monuments, works of art, and science, is forbidden, and should be made the subject of legal proceedings.³⁴³

The reference to “property of municipalities” above has been interpreted as not granting

³³⁹ HAGUE IV REG. art. 53 (“All appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval law, depots of arms, and, generally, all kinds of ammunition of war, may be seized, even if they belong to private individuals, but must be restored and compensation fixed when peace is made.”).

³⁴⁰ 1956 FM 27-10 (Change No. 1 1976) ¶410a (“*Seizure*. The rule stated in the foregoing paragraph includes everything susceptible of direct military use, such as cables, telephone and telegraph plants, radio, television, and telecommunications equipment, motor vehicles, railways, railway plants, port facilities, ships in port, barges and other watercraft, airfields, aircraft, depots of arms, whether military or sporting, documents connected with the war, all varieties of military equipment, including that in the hands of manufacturers, component parts of or material suitable only for use in the foregoing, and in general all kinds of war material.”).

³⁴¹ See 1956 FM 27-10 (Change No. 1 1976) ¶409 (“If private property is seized in conformity with the preceding paragraph, a receipt therefor should be given the owner or a record made of the nature and quantity of the property and the name of the owner or person in possession in order that restoration and compensation may be made at the conclusion of the war.”).

³⁴² Refer to § 11.18.7 (Requisitions of Private Enemy Property).

³⁴³ HAGUE IV REG. art. 56 (“The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or willful damage done to institutions of this character, historic monuments, works of art, and science, is forbidden, and should be made the subject of legal proceedings.”).

preferential treatment for all types of property owned by municipalities, but as referring to communal property, such as poor houses, asylums, park buildings, museums, and public records, whether owned by a parish, a town, or a province.³⁴⁴

Just as private property may be subject to requisitions and contribution and certain other purposes during a military occupation, the types of property referred to in Article 56 of the Hague IV Regulations may also be subject to such demands.³⁴⁵ For example, such property may be requisitioned in case of necessity for quartering the forces and the sick and wounded, storage of supplies and material, housing of vehicles and equipment, and generally as prescribed for private property.³⁴⁶ Such property must, however, be secured against all avoidable injury, even when located in fortified places that are subject to seizure or bombardment.³⁴⁷

Additional rules apply to cultural property.³⁴⁸

In the practice of the United States, religious buildings, shrines, and consecrated places employed for worship are used only for aid stations, for medical installations, or for the housing of wounded personnel awaiting evacuation, provided in each case that a situation of emergency requires such use.³⁴⁹

11.18.7 Requisitions of Private Enemy Property. Although private enemy property may not be confiscated, it may be subject to requisition, which is the method of taking private enemy

³⁴⁴ William M. Franklin, *Municipal Property Under Belligerent Occupation*, 28 AJIL 383, 395-96 (1944) (“3. It was not the intention of the drafters of the article to grant the highly preferential treatment of Article 56 to all types of property owned by municipalities, simply on the basis of their ownership. Military installations maintained by municipalities and all other types of property owned by municipalities which would be susceptible of direct military use and were not dedicated to humanitarian, educational, scientific or artistic purposes do not enjoy the protection of Article 56. 4. For this reason it was never thought necessary to define the word ‘communes’ in terms of any specific unit of local government. The expression was intended to include communal property, such as poor houses, asylums, park buildings, museums and public records, whether owned by a parish, a town or a province.”).

³⁴⁵ VON GLAHN, *THE OCCUPATION OF ENEMY TERRITORY* 192 (“It has to be remembered, in this connection, that municipal property is subject to requisitions and contributions.... While an occupant is prevented from confiscating the various kinds of property listed in Article 56, the rules of international law do not prevent him, on the other hand, from utilizing these properties for certain purposes during military occupation. He is entitled to lodge troops, animals, stores, supplies, and the like in buildings belonging to exempt or immune institutions, and may convert such buildings into hospitals for the care of this wounded. In other words, municipal and other exempt property may be used by the occupying forces in the same manner and to the same extent as in the case of private property.”).

³⁴⁶ 1956 FM 27-10 (Change No. 1 1976) ¶405 (“b. *Use of Such Premises*. The property included in the foregoing rule may be requisitioned in case of necessity for quartering the troops and the sick and wounded, storage of supplies and material, housing of vehicles and equipment, and generally as prescribed for private property. Such property must, however, be secured against all avoidable injury, even when located in fortified places which are subject to seizure or bombardment.”).

³⁴⁷ Refer to § 5.17.5 (Feasible Precautions Should Be Taken to Mitigate the Burden on Civilians).

³⁴⁸ Refer to § 11.19 (Protection of Cultural Property During Occupation).

³⁴⁹ 1956 FM 27-10 (Change No. 1 1976) ¶405c (“*Religious Buildings, Shrines, and Consecrated Places*. In the practice of the United States, religious buildings, shrines, and consecrated places employed for worship are used only for aid stations, medical installations, or for the housing of wounded personnel awaiting evacuation, provided in each case that a situation of emergency requires such use.”).

real (immovable) and personal (movable) property for the needs of the army of occupation.³⁵⁰

Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.³⁵¹

11.18.7.1 *Method of Requisitioning.* Requisitions must be made under the authority of the commander in the locality.³⁵² No prescribed method is fixed, but if practicable, requisitions should be accomplished through the local authorities by systematic collection in bulk. They may be made direct by detachments if local authorities fail or if circumstances preclude resort to such authorities.³⁵³

11.18.7.2 *Types of Property That May Be Requisitioned.* Goods and services that are necessary for the maintenance of the occupation army (e.g., fuel, food, clothing, building materials, machinery, tools, vehicles, furnishings for quarters) may be requisitioned. Billeting of forces in occupied areas is also authorized.³⁵⁴

Special additional rules apply to the requisition of foodstuffs, articles necessary to support life, or medical supplies available in the occupied territory.³⁵⁵ Similarly, additional rules apply to the requisition of civilian hospitals and their supplies.³⁵⁶

11.18.7.3 *Prices and Compensation for Requisitioned Articles and Services.* Contributions in kind shall as far as possible be paid for in cash; if not, a receipt shall be given,

³⁵⁰ DEPARTMENT OF THE ARMY PAMPHLET 27-161-2, *II International Law*, 181 (Oct. 23, 1962) (“Requisition is the method of taking private enemy movable and immovable property for the needs of the army of occupation.”); VON GLAHN, *THE OCCUPATION OF ENEMY TERRITORY* 165 (“Requisition is the term used for the demand of a supply of all kinds of articles needed by an army such as foodstuffs, clothing, horses, transportation and means of transportation, and buildings.”).

³⁵¹ HAGUE IV REG. art. 52 (“Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.”).

³⁵² HAGUE IV REG. art. 52 (“Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.”).

³⁵³ 1956 FM 27-10 (Change No. 1 1976) ¶415 (“Requisitions must be made under the authority of the commander in the locality. No prescribed method is fixed, but if practicable requisitions should be accomplished through the local authorities by systematic collection in bulk. They may be made direct by detachments if local authorities fail or if circumstances preclude resort to such authorities.”).

³⁵⁴ 1956 FM 27-10 (Change No. 1 1976) ¶412b (“*What May Be Requisitioned.* Practically everything may be requisitioned under this article that is necessary for the maintenance of the army, such as fuel, food, clothing, building materials, machinery, tools, vehicles, furnishings for quarters, etc. Billeting of troops in occupied areas is also authorized.”).

³⁵⁵ Refer to § 11.14.2 (Limitation on Requisition of Food and Medical Supplies).

³⁵⁶ Refer to § 11.15.5 (Requisition of Civilian Hospitals).

and the payment of the amount due shall be made as soon as possible.³⁵⁷

The prices of articles and services requisitioned will be fixed by agreement if possible, otherwise by military authority.³⁵⁸

11.18.7.4 *Method of Enforcing Requisition.* Coercive measures may be used to enforce requisitions, but will be limited to the amount and kind necessary to secure the articles requisitioned.³⁵⁹

11.19 PROTECTION OF CULTURAL PROPERTY DURING OCCUPATION

The following rules address the protection of cultural property during occupation. The general rules for the protection of cultural property during hostilities also apply during occupation.³⁶⁰ For example, military commanders have an obligation to take reasonable measures to prevent or stop any form of theft, pillage, or misappropriation of, and any acts of vandalism directed against, cultural property.³⁶¹

11.19.1 Obligation With Respect to the Safeguarding and Preservation of Cultural Property. Any Party to the 1954 Hague Cultural Property Convention in occupation of the whole or part of the territory of another Party to the 1954 Hague Cultural Property Convention shall as far as possible support the competent national authorities of the occupied country in safeguarding and preserving its cultural property.³⁶²

Should it prove necessary to take measures to preserve cultural property situated in occupied territory and damaged by military operations, and should the competent national authorities be unable to take such measures, the Occupying Power shall, as far as possible, and in close co-operation with such authorities, take the most necessary measures of preservation.³⁶³

11.19.2 Respect for Cultural Property by Members of a Legitimate Resistance

³⁵⁷ HAGUE IV REG. art. 52 (“Contributions in kind shall as far as possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible.”).

³⁵⁸ 1956 FM 27-10 (Change No. 1 1976) ¶416 (“The prices of articles and services requisitioned will be fixed by agreement if possible, otherwise by military authority. Receipts should be taken up and compensation paid promptly.”).

³⁵⁹ 1956 FM 27-10 (Change No. 1 1976) ¶417 (“Coercive measures will be limited to the amount and kind necessary to secure the articles requisitioned.”).

³⁶⁰ Refer to § 5.18 (Protection of Cultural Property During Hostilities).

³⁶¹ Refer to § 5.18.6.1 (Obligation to Stop or Prevent Theft, Pillage, or Misappropriation of, and Acts of Vandalism Against, Cultural Property).

³⁶² 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 5(1) (“Any High Contracting Party in occupation of the whole or part of the territory of another High Contracting Party shall as far as possible support the competent national authorities of the occupied country in safeguarding and preserving its cultural property.”).

³⁶³ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 5(2) (“Should it prove necessary to take measures to preserve cultural property situated in occupied territory and damaged by military operations, and should the competent national authorities be unable to take such measures, the Occupying Power shall, as far as possible, and in close co-operation with such authorities, take the most necessary measures of preservation.”).

Movement. Any Party to 1954 Hague Cultural Property Convention whose government is considered by members of a resistance movement as their legitimate government shall, if possible, draw the resistance movement members' attention to the obligation to comply with those provisions of the 1954 Hague Cultural Property Convention dealing with respect for cultural property.³⁶⁴

11.19.3 Special Representative for Cultural Property in Occupied Territory and Application for Special Protection. An Occupying Power shall appoint a special representative for cultural property situated in that territory.³⁶⁵

The Occupying Power is competent to submit an application for immovable cultural property to be entered into the International Register of Cultural Property Under Special Protection.³⁶⁶

11.19.4 Transfers of Cultural Property From and Within Occupied Territory. The requisition of movable cultural property situated in the territory of another Party to the 1954 Hague Cultural Property Convention is prohibited.³⁶⁷

If necessary under its obligation to take measures to preserve damaged cultural property, the Occupying Power may arrange for the transport of cultural property to a refuge within occupied territory in accordance with other provisions of the 1954 Hague Cultural Property Convention.³⁶⁸ Whenever a High Contracting Party occupying territory of another High Contracting Party transfers cultural property to a refuge situated elsewhere in that territory, without being able to follow the procedure for the transport of cultural property under special protection provided for in Article 17 of the Regulations, the transfer in question shall not be regarded as misappropriation within the meaning of Article 4 of the Convention, provided that the Commissioner-General for Cultural Property certifies in writing, after having consulted the

³⁶⁴ 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 5(3) ("Any High Contracting Party whose government is considered their legitimate government by members of a resistance movement, shall, if possible, draw their attention to the obligation to comply with those provisions of the Conventions dealing with respect for cultural property.").

³⁶⁵ REGULATIONS FOR THE EXECUTION OF THE 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 2 ("As soon as any High Contracting Party is engaged in an armed conflict to which Article 18 of the Convention applies: (a) It shall appoint a representative for cultural property situated in its territory; if it is in occupation of another territory, it shall appoint a special representative for cultural property situated in that territory;").

³⁶⁶ REGULATIONS FOR THE EXECUTION OF THE 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 13 ("1. Any High Contracting Party may submit to the Director General of the United Nations Educational, Scientific and Cultural Organization an application for the entry in the Register of certain refuges, centres containing monuments or other immovable cultural property situated within its territory. Such application shall contain a description of the location of such property and shall certify that the property complies with the provisions of Article 8 of the Convention. 2. In the event of occupation, the Occupying Power shall be competent to make such application."). Refer to § 5.18.8 (Special Protection for Certain Cultural Property).

³⁶⁷ Refer to § 5.18.6.2 (Prohibition Against Requisition of Movable Cultural Property Situated in the Territory of Another Party to the 1954 Hague Cultural Property Convention).

³⁶⁸ Refer to § 5.18.9.1 (Transport Under Special Protection).

usual custodians, that such transfer was rendered necessary by circumstances.³⁶⁹

11.20 LABOR OF PROTECTED PERSONS IN OCCUPIED TERRITORY

11.20.1 Types of Labor That May Not Be Compelled. The Occupying Power may not compel protected persons to perform certain types of labor.

11.20.1.1 Prohibition on Compulsory Service in an Occupying Power's Armed Forces. The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda that aims at securing voluntary enlistment is permitted.³⁷⁰

Compelling protected persons to serve in its armed or auxiliary forces would in most cases also violate the prohibition against compelling inhabitants of occupied territory to swear allegiance to the hostile State.³⁷¹ Compelling a protected person to serve in the forces of a hostile Power is a grave breach of the GC.³⁷²

11.20.1.2 Prohibition Against Compelling Protected Persons as Guards for Compulsory Work Installations. The Occupying Power may not compel protected persons to employ forcible means to ensure the security of the installations where protected persons are performing compulsory labor.³⁷³

11.20.1.3 Prohibition Against Requisition Labor Such That Workers Are Mobilized in a Military or Semi-Military Organization. In no case shall requisition of labor lead to a mobilization of workers in an organization of a military or semi-military character.³⁷⁴

11.20.1.4 Prohibition Against Forcing Inhabitants to Provide Information About the Opposing Army or Its Means of Defense. 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.³⁷⁵ This obligation also results from the general prohibition against use of

³⁶⁹ REGULATIONS FOR THE EXECUTION OF THE 1954 HAGUE CULTURAL PROPERTY CONVENTION art. 19 ("Whenever a High Contracting Party occupying territory of another High Contracting Party transfers cultural property to a refuge situated elsewhere in that territory, without being able to follow the procedure provided for in Article 17 of the Regulations, the transfer in question shall not be regarded as misappropriation within the meaning of Article 4 of the Convention, provided that the Commissioner-General for Cultural Property certifies in writing, after having consulted the usual custodians, that such transfer was rendered necessary by circumstances.").

³⁷⁰ GC art. 51 ("The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted.").

³⁷¹ Refer to § 11.6.2.1 (Prohibition on Compelling Inhabitants of Occupied Territory to Swear Allegiance to the Hostile State).

³⁷² Refer to § 18.9.3.1 (Acts Constituting Grave Breaches).

³⁷³ GC art. 51 ("The Occupying Power may not compel protected persons to employ forcible means to ensure the security of the installations where they are performing compulsory labour.").

³⁷⁴ GC art. 51 ("In no case shall requisition of labour lead to a mobilization of workers in an organization of a military or semi-military character.").

³⁷⁵ HAGUE IV REG. art. 44 ("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 defence.").

physical or moral coercion against protected persons.³⁷⁶

11.20.1.5 *Prohibition Against Other Work That Would Involve Protected Persons in the Obligation of Taking Part in Military Operations*. Protected persons may not be compelled to undertake any work that would involve them in the obligation of taking part in military operations.³⁷⁷ This rule is formulated more broadly than the general rule against compelling a national to take part in operations against his or her own country³⁷⁸ because it prohibits compulsory service in any military operation.³⁷⁹

The purpose of this rule, at least in part, is to ensure that civilians in occupied territory are not required to engage in activities that would forfeit their protections as civilians under the law of war.³⁸⁰

The prohibition against forcing the inhabitants of an occupied territory to take part in military operations against their own country precludes requisitioning their services in work directly promoting the ends of the war, such as construction of fortifications, entrenchments, and military airfields, or the transportation of supplies or ammunition in the zone of operations.³⁸¹

³⁷⁶ GC COMMENTARY 220 (“Furthermore, coercion is forbidden for any purpose or motive whatever. The authors of the Convention had mainly in mind coercion aimed at obtaining information, work or support for an ideological or political idea. The scope of the text is more general than that of Article 44 of the Hague Regulations of 1907, under which ‘a belligerent is forbidden to force the inhabitants of a territory occupied by it to furnish information about the army of the other belligerent, or about its means of defence’; Article 31 prohibits coercion for any purpose or reason and the obtaining of information is only given as an example. Thus, the custom, hitherto accepted in practice but disputed in theory, that an invasion army may force the inhabitants of an occupied territory to serve as ‘guides’ is now forbidden.”). Refer to § 10.5.3.1 (No Physical or Moral Coercion).

³⁷⁷ GC art. 51 (“Protected persons may not be compelled to undertake any work which would involve them in the obligation of taking part in military operations.”). See also HAGUE IV REG. art. 52 (“Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.”).

³⁷⁸ Refer to § 5.27 (Prohibition Against Compelling Enemy Nationals to Take Part in the Operations of War Directed Against Their Own Country).

³⁷⁹ GC COMMENTARY 296-97 (“The prohibition in this sentence is even more general than that contained in Article 52 of the Hague Regulations; for it does not only embrace work involving the participation of the inhabitants in ‘military operations against their own country’, but refers in a general way to any work ‘which would involve them in the obligation of taking part in military operations’. The importance of the distinction will be realised if the mind is cast back to cases when the occupying authorities have tried to circumvent the law of war by pretending that they are no longer engaged in military operations against the home country of the persons whose services they are requisitioning.”).

³⁸⁰ GC COMMENTARY 297 (“One point must not be forgotten: the Fourth Convention applies to civilians and civilians are by definition outside the fighting. Any action on the part of the Occupying Power which had the effect of involving them, directly or indirectly, in the fighting and so preventing them from benefiting by special protection under the Convention must be regarded as unlawful. The application of this clause depends very largely on the good faith of the occupant, who must judge in each individual case, with a full sense of his responsibility in the matter, whether or not the work demanded is compatible with the conditions here laid down.”).

³⁸¹ 1956 FM 27-10 (Change No. 1 1976) ¶420 (“The prohibition against forcing the inhabitants to take part in military operations against their own country precludes requisitioning their services upon works directly promoting

11.20.2 Types of Work That May Be Compelled. The Occupying Power may not compel protected persons to work unless they are over eighteen years of age, and then only on work that is necessary for: (1) the needs of the army of occupation; (2) the public utility services; or (3) the feeding, sheltering, clothing, transportation, or health of the population of the occupied country.³⁸²

Thus, the Occupying Power may compel protected persons to engage in these three types of work, provided that such work is consistent with the other prohibitions against employing protected persons.³⁸³ For example, even if it is permitted to compel civilian engineers in occupied territory to provide information about the telecommunications system of an occupied country in order to facilitate restoration of service, they may not be required to provide such information where it will be used to locate and attack the armed forces of the occupied territory.

11.20.2.1 Examples of Services That May Be Requisitioned From Inhabitants.

The services that may be obtained from inhabitants by requisition include those of professionals, such as engineers, physicians, and nurses; and of artisans and laborers, such as clerks, carpenters, butchers, bakers, and truck drivers. The officials and employees of:

- railways, trucking companies, airlines, canals, and river or coastal steamship companies;
- cable, telegraph, telephone, radio, postal, and similar services;
- gas, electric, and water works; and
- sanitary authorities;

whether employed by the State or private companies, may be requisitioned to perform their duties only so long as the duties required do not directly concern the operations of war against their own country.³⁸⁴

The Occupying Power may also requisition labor to restore the general condition of the public works to that of peace, including the repair of roads, bridges, railways, and telecommunication networks, and to perform services on behalf of the local population, such as

the ends of the war, such as construction of fortifications, entrenchments, and military airfields or the transportation of supplies or ammunition in the zone of operations.”).

³⁸² GC art. 51 (“The Occupying Power may not compel protected persons to work unless they are over eighteen years of age, and then only on work which is necessary either for the needs of the army of occupation, or for the public utility services, or for the feeding, sheltering, clothing, transportation or health of the population of the occupied country.”).

³⁸³ Refer to § 11.20.1 (Types of Labor That May Not Be Compelled).

³⁸⁴ 1956 FM 27-10 (Change No. 1 1976) ¶419 (“The services which may be obtained from inhabitants by requisition include those of professional men, such as engineers, physicians and nurses and of artisans and laborers, such as clerks, carpenters, butchers, bakers, and truck drivers. The officials and employees of railways, trucklines, airlines, canals, river or coastwise steamship companies, telegraph, telephone, radio, postal and similar services, gas, electric, and water works, and sanitary authorities, whether employed by the State or private companies, may be requisitioned to perform their professional duties only so long as the duties required do not directly concern the operations of war against their own country.”).

the care of the wounded and sick, and the burial of the dead.³⁸⁵

In addition, inhabitants over eighteen years of age may be compelled to perform work necessary to meet the maintenance needs of the occupation forces (as opposed to its strategic or tactical needs), such as providing telephone, water, or electricity services to the facilities of the occupation army from which the occupied territory is administered, or providing support to prisons, police stations, and other facilities necessary for the maintenance of order among the civilian population.³⁸⁶

11.20.2.2 *Requisition of Police and Other Services Essential to Good Order.* In general, police, firefighters, prison guards, and others who provide services essential to good order and security in occupied territory may be compelled by an Occupying Power to continue to provide those services.³⁸⁷ Such a requirement is consistent with the Occupying Power's obligation to maintain public order in occupied territory.³⁸⁸

These officials may not be required to participate in military operations or other measures aimed at countering belligerent acts against the Occupying Power that are performed by privileged combatants under the law of war.³⁸⁹ For example, civilian police forces in occupied territory may not be compelled to provide security for an occupying force against attacks in compliance with the law of war launched by lawful combatants, including resistance fighters who, if captured, would be entitled to POW status under GPW Article 4.

On the other hand, such police forces may be required to continue to perform their normal policing functions with respect to actual or threatened criminal acts, even where the victim of such acts is the Occupying Power.³⁹⁰ Similarly, civilian firefighters may be required to

³⁸⁵ 1956 FM 27-10 (Change No. 1 1976) ¶419 ("The occupant may also requisition labor to restore the general condition of the public works to that of peace, including the repair of roads, bridges, and railways, and to perform services on behalf of the local population, such as the care of the wounded and sick and the burial of the dead.").

³⁸⁶ GC COMMENTARY 294 ("The wording 'work which is necessary for the needs of the army of occupation' is very comprehensive and its interpretation is open to discussion. It will be enough to note here that the clause covers a wide variety of services—those connected with billeting and the provision of fodder, transport services, the repairing of roads, bridges, ports and railways and laying telephone and telegraph lines. On the other hand it is generally agreed that the inhabitants of the occupied territory cannot be requisitioned for such work as the construction of fortifications, trenches or aerial bases. It is the maintenance needs of the army of occupation and not its strategic or tactical requirements which are referred to here. The distinction is essential and should be emphasized. It is confirmed by a provision, to be examined further on, laying down that the Occupying Power cannot compel protected persons to do work which would involve their participation in military operations.").

³⁸⁷ See VON GLAHN, THE OCCUPATION OF ENEMY TERRITORY 68 ("[I]n fact, all able-bodied native inhabitants may be called upon to perform police duties, to assist the regular native police in the maintenance of public order, to help in fire-fighting organizations, or to perform any other duty for the public good.").

³⁸⁸ Refer to § 11.5 (Duty of the Occupying Power to Ensure Public Order and Safety).

³⁸⁹ Refer to § 11.20.1.5 (Prohibition Against Other Work That Would Involve Protected Persons in the Obligation of Taking Part in Military Operations).

³⁹⁰ See GC COMMENTARY 307 ("The reference to Article 51 relates not only to the list of different types of work, but also to the conditions and safeguards contained in that Article, in particular the prohibition on the use of compulsion to make protected persons take part in military operations. This is particularly important in the case of police officers, who cannot under any circumstances be required to participate in measures aimed at opposing legitimate belligerent acts, whether committed by armed forces hostile to the Occupying Power, by corps of volunteers or by

extinguish fires endangering the Occupying Power's military property that result from attacks by unprivileged combatants.

11.20.3 Working Conditions for Laborers Performing Requisitioned Work.

Requisitioned work shall be carried out only in the occupied territory where the persons whose services have been requisitioned are resident, and such persons shall, so far as possible, be kept in their usual places of employment.³⁹¹

Workers shall be paid a fair wage, and the work shall be proportionate to their physical and intellectual capacities.³⁹²

The legislation in force in the occupied country concerning working conditions, and safeguards as regards, in particular, such matters as wages, hours of work, equipment, preliminary training, and compensation for occupational accidents and diseases, shall be applicable to the protected persons assigned to the work.³⁹³

11.20.4 Voluntary Work Not Prohibited by the GC. Although the GC prohibits protected persons from being compelled to provide certain types of work related to military operations, there is no prohibition in the law of war to such persons being employed voluntarily and for pay in such work.³⁹⁴ For example, there is no law of war prohibition against civilian firefighters putting out fires endangering civilian property resulting from attacks by lawful combatants against the Occupying Power's military property.

However, no pressure or propaganda that aims at securing voluntary enlistment in the armed or auxiliary forces of the Occupying Power is permitted.³⁹⁵

In addition, certain voluntary humanitarian work is recognized and protected by the

organized resistance movements. On the other hand it would certainly appear that the Occupying Power is entitled to require the local police to take part in tracing and punishing hostile acts committed under circumstances other than those laid down in Article 4 of the Third Geneva Convention. Such acts may in fact be regarded as offences under common law, whatever ideas may have inspired their authors, and the occupation authorities, being responsible for maintaining law and order, are within their rights in claiming the co-operation of the police.”).

³⁹¹ GC art. 51 (“The work shall be carried out only in the occupied territory where the person whose services have been requisitioned are. Every such person shall, so far as possible, be kept in his usual place of employment.”).

³⁹² GC art. 51 (“Workers shall be paid a fair wage and the work shall be proportionate to their physical and intellectual capacities.”).

³⁹³ GC art. 51 (“The legislation in force in the occupied country concerning working conditions, and safeguards as regards, in particular, such matters as wages, hours of work, equipment, preliminary training and compensation for occupational accidents and diseases, shall be applicable to the protected persons assigned to the work referred to in this Article.”).

³⁹⁴ 1956 FM 27-10 (Change No. 1 1976) ¶420 (“The prohibition against forcing the inhabitants to take part in military operations against their own country precludes requisitioning their services upon works directly promoting the ends of the war, such as construction of fortifications, entrenchments, and military airfields or the transportation of supplies or ammunition in the zone of operations. There is no objection in law to their being employed voluntarily and for pay in such work.”).

³⁹⁵ Refer to § 11.20.1.1 (Prohibition on Compulsory Service in an Occupying Power's Armed Forces).

GWS.³⁹⁶

11.20.5 General Protections Applicable to Workers in Occupied Territory.

11.20.5.1 Access to Protecting Power. No contract, agreement, or regulation shall impair the right of any worker, whether voluntary or not and wherever he or she may be, to apply to the representatives of the Protecting Power in order to request the Protecting Power's intervention.³⁹⁷

For example, it would be prohibited to forbid workers who are protected persons from applying to the Protecting Power. It would also be prohibited to require any protected persons who are workers, as a condition of work, to renounce their right to apply for assistance to the Protecting Power concerning work conditions or any other matter.³⁹⁸

11.20.5.2 No Use of Measures to Create Unemployment to Induce Work for the Occupying Power. All measures aiming at creating unemployment or at restricting the opportunities offered to workers in an occupied territory, in order to induce them to work for the Occupying Power, are prohibited.³⁹⁹

Measures intended to reduce unemployment would not be prohibited by this rule.⁴⁰⁰

11.21 JUDGES AND OTHER PUBLIC OFFICIALS

11.21.1 Continued Service of Judges and Other Public Officials. 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.⁴⁰¹

Public officials may be understood to include officials at both the national and local levels who fulfill public duties.⁴⁰²

³⁹⁶ Refer to § 7.4.5 (Collection and Care of the Wounded, Sick, and Shipwrecked by Civilians).

³⁹⁷ GC art. 52 ("No contract, agreement or regulation shall impair the right of any worker, whether voluntary or not and wherever he may be, to apply to the representatives of the Protecting Power in order to request the said Power's intervention.").

³⁹⁸ Refer to § 10.5.6 (Facility for Applying to the Protecting Powers and Assistance Organizations Such as the ICRC).

³⁹⁹ GC art. 52 ("All measures aiming at creating unemployment or at restricting the opportunities offered to workers in an occupied territory, in order to induce them to work for the Occupying Power, are prohibited.").

⁴⁰⁰ For example, Coalition Provisional Authority Order No. 39, *Foreign Investment*, preamble (Sept. 19, 2003) ("Determined to improve the conditions of life, technical skills, and opportunities for all Iraqis and to fight unemployment with its associated deleterious effect on public security,").

⁴⁰¹ GC art. 54 ("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 function for reasons of conscience.").

⁴⁰² GC COMMENTARY 304 ("[T]he term public official generally designates people in State or local government service, who fulfill public duties.").

This prohibition does not prejudice the application of the second paragraph of Article 51 of the GC.⁴⁰³ Thus, a public official may be compelled to work to meet the needs of the army of occupation or for the public utility services, such as water, electricity, or sanitation.⁴⁰⁴ Similarly, a public official may be compelled to provide certain police services.⁴⁰⁵

This prohibition does not affect the right of the Occupying Power to remove public officials from their posts.⁴⁰⁶ For example, the Occupying Power may remove the political leadership and other political agents from their posts to prevent them from undermining the Occupying Power's administration.⁴⁰⁷

11.21.2 Oath of Public Officials. An Occupying Power may not require the inhabitants of occupied territory, including officials, to swear allegiance to it.⁴⁰⁸ However, the Occupying Power may require such officials as are continued in their offices to take an oath to perform their duties conscientiously and not to act to its prejudice.⁴⁰⁹ Any official who declines to take the oath may be removed; but, regardless of whether the official takes the oath, the official is required to obey the legitimate orders of the Occupying Power.⁴¹⁰

11.21.3 Salaries of Public Officials. The salaries of civil officials of the hostile government who remain in the occupied territory and continue the work of their offices, especially those who can properly continue it under the circumstances arising out of the war – such as judges, administrative or police officers, and officers of city or communal governments – are paid from the public revenues of the occupied territory, until the military government has

⁴⁰³ GC art. 54 (“This prohibition does not prejudice the application of the second paragraph of Article 51.”).

⁴⁰⁴ Refer to § 11.20.2 (Types of Work That May Be Compelled).

⁴⁰⁵ Refer to § 11.20.2.2 (Requisition of Police and Other Services Essential to Good Order).

⁴⁰⁶ GC art. 54 (“It does not affect the right of the Occupying Power to remove public officials from their posts.”).

⁴⁰⁷ GC COMMENTARY 308 (“The provision refers primarily to government officials and other political agents who are generally removed from their posts by the occupation authorities.”). For example, Coalition Provisional Authority Order No. 1, *De-Ba'athification of Iraqi Society*, §1(1) (May 16, 2003) (“On April 16, 2003 the Coalition Provisional Authority disestablished the Ba'ath Party of Iraq. This order implements the declaration by eliminating the party's structures and removing its leadership from positions of authority and responsibility in Iraqi society.”).

⁴⁰⁸ Refer to § 11.6.2.1 (Prohibition on Compelling Inhabitants of Occupied Territory to Swear Allegiance to the Hostile State).

⁴⁰⁹ 1956 FM 27-10 (Change No. 1 1976) ¶423 (“The occupant may require such officials as are continued in their offices to take an oath to perform their duties conscientiously and not to act to its prejudice. Every such official who declines to take such oath may be removed; but, whether he does so or not, he owes strict obedience to the occupant as long as he remains in office.”). For example, Military Government, Germany, Supreme Commander's Area of Control, Law No. 2, *German Courts*, art. V, reprinted as Appendix 9 in VON GLAHN, THE OCCUPATION OF ENEMY TERRITORY 305, 306 (“QUALIFICATIONS OF JUDGES, PROSECUTORS, NOTARIES, AND LAWYERS No person shall be qualified to act as a of judge, prosecutor, notary or lawyer, until he shall have taken an oath in the following form: Oath ‘I swear by almighty God that I will at all times apply and administer the law without fear or favour and with justice and equity to all persons of whatever creed, race, color or political opinion they may be, that I will obey the laws of Germany, and all enactments of the Military Government, in spirit as well as in letter, and will constantly endeavour to establish equal justice under the law for all persons. So help me God.’”).

⁴¹⁰ Refer to § 11.7.1 (Inhabitants' Obedience to the Occupying Power).

reason wholly or partially to dispense with their services.⁴¹¹

Based on consistent practice, salaries or incomes connected with purely honorary titles would be suspended.⁴¹² Similarly, the Occupying Power need not continue to pay salaries that are rewards for loyalty to the prior regime, and may reform the pay system of public servants to increase transparency and fairness, as well as to create incentives for meritorious service.⁴¹³

11.22 PUBLIC FINANCES AND TAXES

As a result of assuming the functions of government of the occupied territory, the financial administration of the occupied territory passes into the hands of the Occupying Power. During the occupation, the fiscal laws of the enemy State remain in effect, but may be changed or suspended by the Occupying Power under certain circumstances, as discussed below.

11.22.1 Taxes. If, in the occupied territory, the Occupying Power collects the taxes, dues, and tolls imposed for the benefit of the State, it shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.⁴¹⁴

11.22.1.1 Supervision of Taxes Collected by Local Authorities. The words “for the benefit of the State” were inserted in Article 48 of the Hague IV Regulations to exclude local taxes, dues, and tolls collected by local authorities for local purposes.⁴¹⁵ The Occupying Power

⁴¹¹ 1956 FM 27-10 (Change No. 1 1976) ¶424 (“The salaries of civil officials of the hostile government who remain in the occupied territory and continue the work of their offices, especially those who can properly continue it under the circumstances arising out of the war – such as judges, administrative or police officers, officers of city or communal governments – are paid from the public revenues of the occupied territory, until the military government has reason wholly or partially to dispense with their services.”). *For example*, Coalition Provisional Authority Regulation No. 2, *Development Fund for Iraq*, §6(3) (Jun. 15, 2003) (“Purposes. Sums may be disbursed from the Fund to meet the humanitarian needs of the Iraqi people and for the economic reconstruction and repair of Iraq’s infrastructure; for the continued disarmament of Iraq; for the costs of Iraq’s civilian administration; and for other purposes the Administrator determines to be for the benefit of the people of Iraq.”).

⁴¹² 1956 FM 27-10 (Change No. 1 1976) ¶424 (“Salaries or incomes connected with purely honorary titles are always suspended.”).

⁴¹³ *For example*, Coalition Provisional Authority Order No. 30, *Reform of Salaries and Employment Conditions of State Employees*, preamble (Sept. 8, 2003) (“*Understanding* that the salaries of public workers under the former regime were paid through a complicated system largely composed of incentive pay that rewarded loyalty to the former regime over meritorious service, ... *Noting* that salary and conditions of employment reform is essential to guarantee fairness within the public system to ensure that state employees receive appropriate compensation for their efforts, but also to provide incentives for meritorious service or sanctions for failure to perform appropriately,”).

⁴¹⁴ HAGUE IV REG. art. 48 (“If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.”).

⁴¹⁵ J.A.G.S. TEXT NO. 11, LAW OF BELLIGERENT OCCUPATION 185 (“Taxes raised by local authorities for local purposes may not be diverted by the occupant from the purpose for which they were raised although the occupant may supervise their collection. It would seem that state taxes collected by local bodies and not used for local purposes but transmitted to the state treasury are taxes ‘imposed for the benefit of the state.’”). *See also* SPAIGHT, WAR RIGHTS ON LAND 378 (“The words ‘imposed for the benefit of the State’ in Article XLVIII are intended to

may supervise the expenditure of such revenue and prevent its hostile use.⁴¹⁶

11.22.1.2 *Changes in Taxes or New Taxes.* The Occupying Power shall collect taxes, as far as is possible, in accordance with the rules of assessment and incidence in force. This is an example of the general rule that the Occupying Power shall respect the laws in force in the occupied territory unless absolutely prevented.⁴¹⁷ Modifications to the tax laws may be justified by practical considerations and considerations of public order and safety.

If, due to the flight or unwillingness of local officials, it is impracticable to follow the rules of incidence and assessment in force, then the total amount of taxes to be paid may be allotted among the districts, towns, etc., and the local authorities may be required to collect it.⁴¹⁸

The Occupying Power may suspend the tax laws of the occupied territory.⁴¹⁹ Similarly, the Occupying Power may also reduce the rate of taxes under the existing tax laws.

Unless required to do so by considerations of public order and safety, the Occupying Power must not create new taxes.⁴²⁰ Additional revenue may be raised in some other form, such

exclude provincial and parochial taxes, or 'rates' as they are called in England. The latter the occupant must not intercept; he can only supervise the expenditure of such revenue, to see that it is not devoted to a hostile purpose.”).

⁴¹⁶ 1956 FM 27-10 (Change No. 1 1976) ¶427 (“The words ‘for the benefit of the State’ were inserted in the foregoing article (*HR, art. 48*; par. 425 herein) to exclude local taxes, dues, and tolls collected by local authorities. The occupant may supervise the expenditure of such revenue and prevent its hostile use.”). See also JAMES BROWN SCOTT, *THE PROCEEDINGS OF THE HAGUE PEACE CONFERENCES: THE CONFERENCE OF 1899* 523 (1920) (“Jonkheer van Karnebeek remarks that as the fundamental purport of this article is that the authority of the occupant is substituted for that of the invaded State, it cannot be admitted that the occupant, by assuming a right which the occupied State does not possess, may take possession of the municipal taxes, which the invaded State itself would not think of appropriating in normal circumstances. Mr. Veljkovitch remarks that in this eventuality the municipal authorities, being no longer able to discharge their duties, can likewise not collect the municipal taxes and especially the county rate; it is therefore proper for the occupant, whose power is substituted for that of the authorities, to take possession of the said taxes.”).

⁴¹⁷ J.A.G.S. TEXT NO. 11, *LAW OF BELLIGERENT OCCUPATION* 186 (“The occupant in collecting taxes must follow the rules of procedure as well as the law of the country with regard to the distribution of the tax burden. This is an instance of the general rule that the occupant shall respect the laws in force in the occupied territory unless absolutely prevented.”).

⁴¹⁸ 1956 FM 27-10 (Change No. 1 1976) ¶426a (“*When Existing Rules May Be Disregarded.* If, due to the flight or unwillingness of the local officials, it is impracticable to follow the rules of incidence and assessment in force, then the total amount of taxes to be paid may be allotted among the districts, towns, etc., and the local authorities required to collect it.”).

⁴¹⁹ VON GLAHN, *THE OCCUPATION OF ENEMY TERRITORY* 151-52 (“Just as an occupant may collect taxes, so he may suspend existing taxes if the unaffected levies are sufficient to cover administrative expenses and if he does not desire to enrich himself out of possible surplus revenues.”). For example, Coalition Provisional Authority Order No. 37, *Tax Strategy for 2003*, §2 (Sept. 19, 2003) (“Subject to Section 6 of this Order, the following taxes are suspended from April 16, 2003 to the end of calendar year 2003:”).

⁴²⁰ 1956 FM 27-10 (Change No. 1 1976) ¶426b (“*New Taxes.* Unless required to do so by considerations of public order and safety, the occupant must not create new taxes.”); Bassil Abu Aita *et al.* v. The Regional Commander of Judea and Samaria and Staff Officer in Charge of Matters of Custom and Excise, HCJ 69/81; Omar Abdu Kadar Kanzil, *et al.* v. Officer in Charge of Customs, Gaza Strip Region and the Regional Commander of the Gaza Strip, HCJ 493/81, Israel Supreme Court Sitting as the High Court of Justice, 200, 270-71 (Apr. 5, 1983) (“Since the power of imposing ordinary taxes are within the domain of the sovereign alone, accordingly, it is argued, it does not

as monetary contributions or customs duties.⁴²¹

U.N. Security Council resolutions may provide additional authority for the Occupying Power to amend the tax laws.⁴²²

11.22.1.3 Spending of Tax Revenue. The first charge upon such taxes is for the cost of the administration of the occupied territory. The balance may be used for the purposes of the Occupying Power.⁴²³

The Occupying Power may use tax revenue to defray the costs of maintaining order in the occupied territory or for expenditures that benefit the local population (e.g., infrastructure improvements).⁴²⁴

The Occupying Power may refrain from spending money for the support of any activity opposed to its military interests or to the restoration of order in the occupied territory, even if the State whose territory is occupied formerly allocated tax revenues to such activity.⁴²⁵

11.22.1.4 Exemption of the Occupying Power From Local Taxation. As the paramount authority in the occupied territory,⁴²⁶ the Occupying Power is exempt from indigenous taxation in the occupied territory unless it specifically waives its sovereign immunity

pertain to anyone whose authority is temporary and military, as described. However, while no one disputes the theoretical base of this doctrine, it does not of necessity create a limitation on the power to impose taxation *if the benefit and requirements of the territory deem it necessary*, since the maintenance of proper balance between them and the requirements of the ruling army is a constant central guiding principle of military government. This character of military government indeed explains why taxes may be imposed only for the requirements of the territory (or requirements of the army when army contributions are involved), but it does not necessarily lead to the conclusion that the limitation on the imposition of taxes also takes precedence over the obligation to satisfy the needs of the territory and its inhabitants, and as far as possible, to restore normal life, including the economic aspect thereof.”).

⁴²¹ Refer to § 11.22.2 (Contributions); § 11.22.3 (Customs Duties).

⁴²² Refer to § 11.1.2.5 (Occupation and U.N. Security Council Resolutions).

⁴²³ 1956 FM 27-10 (Change No. 1 1976) ¶425b (“*Surplus*. The first charge upon such taxes is for the cost of the administration of the occupied territory. The balance may be used for the purposes of the occupant.”).

⁴²⁴ See also VON GLAHN, THE OCCUPATION OF ENEMY TERRITORY 151 (“It should be pointed out in this connection that as long as it is a duty of the occupant to restore order and public safety in the territory, the expenditures incurred by him as administrator for the benefit of the territory and its inhabitants should be paid for by the beneficiaries. This appears to be particularly true in the case of capital expenditures. Normally an occupant would be unwilling to permit heavy capital outlays in occupied enemy territory (such as the construction of dams, power stations, canals, and public buildings), but if, in rare instances, permission would be granted for such extraordinary outlays over and above normal operating expenses of the native administration, then the necessary funds should come from any excess revenues collected by the indigenous agencies, not from the occupant’s own reserves.”).

⁴²⁵ VON GLAHN, THE OCCUPATION OF ENEMY TERRITORY 150 (“Obviously no occupant need spend money for the support of any activity opposed to his military interests or to the restoration of order in the area, even if the absent legitimate sovereign formerly allocated tax revenues to such activity.”).

⁴²⁶ Refer to § 11.8.1 (Paramount Authority of the Occupying Power Over Government Functions in Occupied Territory).

and consents to be taxed.⁴²⁷ Its personnel are also generally exempt from local taxation, as part of their immunity from local law.⁴²⁸

In practice, the Occupying Power often issues an order specifying that no direct taxes of any kind may be levied or assessed within the occupied territory on the persons, agencies, property, instrumentalities, or transactions of the Occupying Power.⁴²⁹

11.22.1.5 *Scope of the Occupying Power's Power to Collect Taxes.* The power of the Occupying Power to collect taxes extends only to persons or property under its actual control.⁴³⁰ For example, persons and property wholly outside occupied territory generally may not be taxed,⁴³¹ but the property of the absent inhabitants that is within the occupied territory may be taxed.

11.22.1.6 *Social Welfare Taxes.* An Occupying Power is often an employer of local civilian labor. Local law may provide that employers are responsible for the deduction and transfer to indigenous agencies of unemployment, health insurance, pensions, and similar welfare contributions. However, generally the agencies of the Occupying Power do not act as a collector for the local authorities, and will not be responsible for the employer's share of such welfare taxes. On the other hand, the inhabitants retain their obligation to pay their share of such contributions out of their remuneration.⁴³²

11.22.2 *Contributions.* If, in addition to continuing to collect taxes under the existing law of the occupied territory as permitted by Article 48 of the Hague IV Regulations, the Occupying

⁴²⁷ VON GLAHN, THE OCCUPATION OF ENEMY TERRITORY 153-54 (“[A]n occupant is virtually exempt from indigenous taxation in an occupied territory unless he takes the rather unlikely step of waiving his sovereign immunity and consents to be taxed. In actual practice the occupation authorities normally issue an order to the effect that no direct taxes of any kind may be levied within the occupied area on the persons, agencies, or property of the armed forces of the invader and that no direct taxes may be assessed against the property, instrumentalities or transactions of the occupying authorities themselves.”).

⁴²⁸ Refer to § 11.8.5 (Immunity of Occupation Personnel From Local Law).

⁴²⁹ For example, Coalition Provisional Authority Order No. 17, *Status of the Coalition Provisional Authority, MNF-Iraq, Certain Missions and Personnel in Iraq*, §10(1) (Jun. 27, 2004) (“The MNF, Sending States and Contractors shall be exempt from general sales taxes, Value Added Tax (VAT), and any similar taxes in respect of all local purchases for official use or for the performance of Contracts in Iraq.”).

⁴³⁰ J.A.G.S. TEXT NO. 11, LAW OF BELLIGERENT OCCUPATION 197 (“It must be remembered that the power of the occupant to collect taxes is purely de facto and territorial, i.e., it extends only to persons or property under his actual control.”).

⁴³¹ Cf. *MacLeod v. United States*, 229 U.S. 416, 432-33 (1913) (“A state of war as to third persons continued until the exchange of treaty ratifications, and, although rice, not being contraband of war, might have been imported, the authority of the military commander, until the exchange of ratifications, may have included the right to control vessels sailing from Manila to trade in the enemy's country and to penalize violations of orders in that respect. But whatever the authority of the commander at Manila or those acting under his direction to control shipments by persons trading at Manila and in vessels sailing from there of American registration, such authority did not extend to the second collection of duties upon a cargo from a foreign port to a port occupied by a de facto government which had compulsorily required the payment of like duties.”).

⁴³² VON GLAHN, THE OCCUPATION OF ENEMY TERRITORY 153 (“An inhabitant of the occupied territory will retain his obligation to pay such contributions out of his remuneration as approved local law demands, but must pay the amounts due from his take-home pay to whatever native agency is responsible for the collection of the funds.”).

Power levies other money contributions in the occupied territory, this shall only be for the needs of the army or the administration of the territory in question.⁴³³

11.22.2.1 *Prohibited Purposes for Levying Contributions*. Contributions may not be levied for other than the needs of the occupying forces and the administration of the occupied territory. For example, contributions may not be levied:

- for the enrichment of the Occupying Power;
- for the payment of war expenses generally;⁴³⁴
- for the purposes of collective punishment;⁴³⁵ or
- for the purposes of impoverishing the population in order to pressure the enemy to sue for peace.⁴³⁶

11.22.2.2 *Methods of Levying Contributions*. No contribution shall be collected except under a written order, and on the responsibility of a “Commander-in-chief.”⁴³⁷ The term “Commander-in-chief” may be understood to refer to the highest military officer charged with the administration of the occupied territory.⁴³⁸ Commanders of small units or detachments may not order the collection of contributions.⁴³⁹

The collection of contributions shall only be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force.⁴⁴⁰

For every contribution, a receipt shall be given to the contributors.⁴⁴¹ The receipt is intended to secure for the contributors the possibility of being indemnified afterward by their

⁴³³ HAGUE IV REG. art. 49 (“If, in addition to the taxes mentioned in the above article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or the administration of the territory in question.”).

⁴³⁴ 1956 FM 27-10 (Change No. 1 1976) ¶428b (“*Prohibited Purposes*. Contributions may not be levied for the enrichment of the occupant, for the payment of war expenses generally, or for other than the needs of the occupying forces and the administration of the occupied territory.”).

⁴³⁵ Refer to § 11.6.2.2 (Prohibition Against General Penalties in Occupied Territory).

⁴³⁶ J.A.G.S. TEXT NO. 11, LAW OF BELLIGERENT OCCUPATION 177 (“They may not be imposed for the purpose of enriching the occupant or for impoverishing the population and thus exerting pressure on it to sue for peace.”).

⁴³⁷ HAGUE IV REG. art. 51 (“No contribution shall be collected except under a written order, and on the responsibility of a Commander-in-chief.”).

⁴³⁸ J.A.G.S. TEXT NO. 11, LAW OF BELLIGERENT OCCUPATION 182 (“Seemingly the term ‘commander in chief’ refers to the highest military officer charged with the administration of the occupied territory.”).

⁴³⁹ J.A.G.S. TEXT NO. 11, LAW OF BELLIGERENT OCCUPATION 181 (“Levies of contributions by commanders of small units or detachments are prohibited.”).

⁴⁴⁰ HAGUE IV REG. art. 51 (“The collection of the said contribution shall only be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force.”). Compare § 11.22.1.2 (Changes in Taxes or New Taxes).

⁴⁴¹ HAGUE IV REG. art. 51 (“For every contribution a receipt shall be given to the contributors.”).

own government, and does not imply a promise of reimbursement by the Occupying Power.⁴⁴²

11.22.2.3 Forced Loans. The Occupying Power may seek contributions from the inhabitants of an occupied territory in the form of forced loans. The Occupying Power is required to repay such loans. As forced loans are viewed as a form of contribution, they are governed by the rules applicable to contributions.⁴⁴³

11.22.2.4 Non-Cash Contributions. As contributions are money demands, commodities may not be exacted as contributions. However, if the inhabitants of the occupied territory use certain commodities, rather than money, as a medium of exchange and receivable in payment of tax obligations, contributions in-kind limited to such commodities would be permissible.⁴⁴⁴ Additionally, if the Occupying Power finds it difficult to secure prompt money payment, it may accept securities and bills of exchange from contributors in lieu of money.⁴⁴⁵

11.22.3 Customs Duties. The Occupying Power has the right to continue to exact existing duties, as part of its right to collect existing taxes.⁴⁴⁶ Such collection must comply with the rules for the collection of existing taxes.⁴⁴⁷

The Occupying Power may also exact new duties as a form of contributions levied against the enemy or its trade.⁴⁴⁸ Such new duties must comply with the rules for

⁴⁴² J.A.G.S. TEXT NO. 11, LAW OF BELLIGERENT OCCUPATION 183-84 (“There is no obligation imposed by the Hague Regulations for the reimbursement of contributions. The receipt required to be given the contributors is evidence that money has been exacted but implies no promise to pay by the occupant. The receipt is intended to secure to the contributors ‘the possibility of being indemnified afterwards by their own government’.”).

⁴⁴³ J.A.G.S. TEXT NO. 11, LAW OF BELLIGERENT OCCUPATION 184 (“A forced loan is an involuntary exaction of money imposed on the inhabitants by the occupant which the latter is bound to repay. It is a form of contribution and differs from the latter only in that there is a duty of returning the money exacted. The same rules that govern contributions apply to forced loans.”).

⁴⁴⁴ J.A.G.S. TEXT NO. 11, LAW OF BELLIGERENT OCCUPATION 182-83 (“In primitive communities some commodities may be the medium of exchange and receivable in payment of tax obligations. In such circumstances contributions in kind limited to such commodities would seemingly be permissible as being contributions in money.”).

⁴⁴⁵ J.A.G.S. TEXT NO. 11, LAW OF BELLIGERENT OCCUPATION 183 (“An occupant who finds it difficult to secure prompt money payments may accept securities and bills of exchange from the contributors in lieu of money. This practice was used by the Germans in the Franco-German War of 1870.”).

⁴⁴⁶ *Dooley v. United States*, 182 U.S. 222, 230 (1901) (“Upon the occupation of the country by the military forces of the United States, the authority of the Spanish Government was superseded, but the necessity for a revenue did not cease. The government must be carried on, and there was no one left to administer its functions but the military forces of the United States. Money is requisite for that purpose, and money could only be raised by order of the military commander. The most natural method was by the continuation of existing duties. In adopting this method, General Miles was fully justified by the laws of war.”).

⁴⁴⁷ Refer to § 11.22.1 (Taxes).

⁴⁴⁸ For example, Coalition Provisional Authority Order No. 38, *Reconstruction Levy*, §1 (Sept. 19, 2003) (“1) Notwithstanding CPA Order Number 12 or any other CPA Order suspending a tax, levy, duty, charge, withholding, fee or tariff, there shall be created a levy known as the Reconstruction Levy. 2) For the purpose of calculating the Reconstruction Levy, the taxable value of goods shall consist of their total customs value assessed in accordance with international practice. 3) The Reconstruction Levy shall be imposed at a rate of 5% of the taxable value of goods. The revenues from the Reconstruction Levy shall be used only to assist the Iraqi people and support the

contributions.⁴⁴⁹

11.22.3.1 Exemptions for Certain Relief Shipments. Relief shipments for POWs, relief shipments for internees, and other relief consignments intended for occupied territory are exempt from customs duties.⁴⁵⁰

11.22.3.2 Power to Suspend Customs Duties and Tariffs or Exempt Certain Goods. The Occupying Power may suspend customs duties and tariffs for shipment of goods into the occupied territory.⁴⁵¹ It may also exempt certain types of goods (e.g., humanitarian goods, goods for its forces) from customs duties and tariffs.⁴⁵²

11.22.4 Enemy Public Debts.

11.22.4.1 Debts Owed to Occupied Territory. Many jurists have taken the view that the Occupying Power is generally not permitted to collect pre-occupation debts owed to the sovereign of the occupied territory, as it is not a party to the agreement originating the debt.⁴⁵³

reconstruction of Iraq. It shall expire two years from the date that this Order enters into force. 4) Unless exempted under this Order, the Reconstruction Levy shall be imposed on all goods imported into Iraq from all countries beginning 1 January 2004.”); Fleming v. Page, 50 U.S. 603, 616 (1850) (“The person who acted in the character of collector in this instance, acted as such under the authority of the military commander, and in obedience to his orders; and the duties he exacted, and the regulations he adopted, were not those prescribed by law, but by the President in his character of commander-in-chief. The custom-house was established in an enemy’s country, as one of the weapons of war. ... The duties required to be paid were regulated with this view, and were nothing more than contributions levied upon the enemy, which the usages of war justify when an army is operating in the enemy’s country.”).

⁴⁴⁹ Refer to § 11.22.2 (Contributions).

⁴⁵⁰ Refer to § 9.20.4.1 (Exemption From Dues for Relief Shipments); § 10.23.4.1 (Exemption From Dues for Relief Shipments); § 11.17.1.3 (Charges, Taxes, and Customs Duties on Collective Relief Consignments for Occupied Territories).

⁴⁵¹ For example, Coalition Provisional Authority Order No. 12, *Trade Liberalization Policy*, §1 (Jun. 8, 2003) (“All tariffs, customs duties, import taxes, licensing fees and similar surcharges for goods entering or leaving Iraq, and all other trade restrictions that may apply to such goods, are suspended until December 31, 2003.”); Coalition Provisional Authority Order No. 54, *Trade Liberalization Policy 2004*, §1 (Feb. 26, 2004) (“All customs tariffs, duties, import taxes (not including the Reconstruction Levy imposed by CPA Order Number 38), and similar surcharges for goods entering or leaving Iraq are suspended until the sovereign transitional Iraqi administration imposes such charges following the CPA’s transfer of full governance authority to that administration.”).

⁴⁵² Coalition Provisional Authority Order No. 38, *Reconstruction Levy*, §2 (Sept. 19, 2003) (“1) The following humanitarian goods shall be exempt from the Reconstruction Levy: ... e. Goods imported to be delivered as humanitarian assistance to the people of Iraq or in support of reconstruction of Iraq. ... 2) The Reconstruction Levy shall not apply to the following persons or entities: ... b) Coalition Forces;”).

⁴⁵³ See VON GLAHN, *THE OCCUPATION OF ENEMY TERRITORY* 156 (“[T]he majority of jurists concur in the view that the occupant cannot legally collect pre-occupation debts owed to the legitimate sovereign of the territory and at the same time act in accordance with the prevailing rules of international law.”); U.S. ARMY, *THE JUDGE ADVOCATE GENERAL’S SCHOOL, CIVIL AFFAIRS MILITARY GOVERNMENT: SELECTED CASES AND MATERIALS* 108 (1958) (“The first paragraph of Article 53, HR (par. 403, FM 27-10), raises, rather than answers, the question whether the occupant may collect debts due the ousted sovereign. The question is complicated by the argument that as state debts constitute obligations between the debtors and the ousted sovereign and as occupation does not transfer sovereignty, the occupant does not succeed to the privy enjoyed by the ousted sovereign. Some authorities accept this rationale and take the position that the occupant cannot legally collect any debts due the state. See, Von Glahn,

However, the Occupying Power may collect the debts owed to the sovereign, provided that the debts may be legitimately characterized as realizable securities that are strictly the property of the State (*e.g.*, bearer instruments).⁴⁵⁴ In addition, the Occupying Power may seize debts owed to insurgent forces.⁴⁵⁵

11.22.4.2 Existing Debts Owed by the Occupied Territory. The Occupying Power is under no obligation to pay the debts owed by the occupied territory, although it may choose to do so as a matter of policy.⁴⁵⁶

The Occupying Power may prevent payments from being made from occupied territory to a hostile belligerent.⁴⁵⁷

11.22.4.3 Contracting New Debt on Behalf of the Occupied Territory. In general, the Occupying Power may not contract new debts (including through the issuance of debt securities) on behalf of the occupied territory or collect taxes to pay interest on such debt.⁴⁵⁸

The Occupation of Enemy Territory 156-159 (1957). Other authorities, resorting to Article 48 HR (par. 425a, FM 27-10), contend that as the occupant is obliged to defray the expenses of administration of the territory, he ought to be authorized to collect those debts falling due during the period of his occupation. See, Stone, Legal Controls of International Conflict 717 (1954).”).

⁴⁵⁴ Refer to § 11.18.5.3 (Public Personal (Movable) Property).

⁴⁵⁵ For example, *In Re, Order of Major-General Otis Requiring Smith, Bell & Co., A Banking House at Manila, to Turn Over to the American Authorities One Hundred Thousand Dollars, Held by Said House as the Property of the Insurgent Forces in the Philippines*, Submitted October 10, 1899, Case No. 738, Division of Insular Affairs, War Department in CHARLES E. MAGOON, LAW OFFICER, BUREAU OF INSULAR AFFAIRS, WAR DEPARTMENT, REPORTS ON THE LAW OF CIVIL GOVERNMENT IN TERRITORY SUBJECT TO MILITARY OCCUPATION BY THE MILITARY FORCES OF THE UNITED STATES 261, 262 (2nd ed., 1902) (“It is conceded that the fund seized was intended to be used for promoting the insurrection and that the insurgents sought to utilize the bank as a means of transfer for said funds. Under the laws and usages of war the United States may lawfully seize and retain such funds, and to that end may compel the person having such funds, in his possession to pay over the same to the military authorities. The most favorable view of the conduct of the bank in attempting to perform the service rendered the insurgents herein, is to consider the obligation assumed by the bank as creating an indebtedness to the persons associated in the insurrection and the draft as an evidence thereof. Such indebtedness may properly be collected by the United States as a military measure calculated to weaken the insurrection.”).

⁴⁵⁶ VON GLAHN, THE OCCUPATION OF ENEMY TERRITORY 158-59 (“Most authorities concur in the belief that an occupant is under no obligation to pay interest on or the principal of any public debt owed by the territory, that is, by the lawful sovereign. The occupant may, of course, choose to do so, as a matter of public policy, just as he may decide to pay pensions hitherto charged against the absent sovereign, but ordinarily all such payments are not considered to constitute proper administrative expenses obligating the occupying power.”).

⁴⁵⁷ VON GLAHN, THE OCCUPATION OF ENEMY TERRITORY 156 (“The occupant may rightfully prevent all payments from the area under his control to the hostile government.”).

⁴⁵⁸ VON GLAHN, THE OCCUPATION OF ENEMY TERRITORY 159 (“Second, it is generally accepted that an occupant may *not* contract new debts on behalf of the occupied territory or collect taxes to pay interest on such unlawful debt. Some authorities differ with this conclusion and maintain that there exists an exception, based on necessity and on the occupant’s obligation to restore and maintain order and public safety. This latter view appears reasonable, *provided* that it could be demonstrated convincingly that the new indebtedness was not only required by the welfare of the native population but also constituted a fair and reasonable transaction.”). For example, Coalition Provisional Authority Order No. 95, *Financial Management Law and Public Debt Law*, §4(2) (Jun. 4, 2004) (“Until such time as the Iraqi Interim Government assumes full governance authority in accordance with Article (2)(B)(1) of the Law of

However, new debt may be undertaken on behalf of the occupied territory if immediately necessary for the welfare of the inhabitants of occupied territory, and if undertaking such debt constitutes a fair and reasonable transaction.⁴⁵⁹

11.22.4.4 *Refinancing or Consolidating Existing Public Debt.* The Occupying Power may refinance or consolidate already existing public debt of the occupied territory if it is clearly in the interest of sound financial administration of that territory, and therefore of direct benefit to the inhabitants.⁴⁶⁰

11.22.5 *Currency and Exchange Rates.* The Occupying Power may leave the local currency of the occupied area in circulation. The Occupying Power may also authorize domestic authorities to re-issue currency if necessary for ensuring public order and safety.⁴⁶¹

The Occupying Power may introduce its own currency into the occupied area or issue special currency for use in the occupied area territory, should the introduction or issuance of such currency be necessary.⁴⁶² There is a long history of issuing such war currency.⁴⁶³ The issuance

the Administration for the State of Iraq for the Transitional Period, the Ministry of Finance is prohibited from issuing new debt securities if the issuance of such securities would increase the total level of Iraq's public debt, including obligations to the Central Bank, beyond the current level of such debt.”).

⁴⁵⁹ John W. Griggs, Attorney General, *Cuba—Claims—Contracts*, Jan. 19, 1899, 22 OPINIONS OF THE ATTORNEY GENERAL 310, 311 (1900) (“The completion of the proposed contract between Dady & Co. and the city of Havana would involve an expenditure for the benefit of that city of \$14,000,000, to be secured by an issue of municipal bonds. It is manifest that a matter of such great importance to the city of Havana, its citizens and taxpayers, ought not to be determined without a full and complete understanding of all the facts and a thorough knowledge of the civil law applicable thereto under the system prevailing in Cuba. ... The administration of the United States in Cuba is of a military nature, and merely temporary. No action binding the island or any of its municipalities to large expenditures and continuing debt ought to be made, except upon grounds of immediate necessity, which in this case do not appear to be present.”).

⁴⁶⁰ For example, Coalition Provisional Authority Order No. 95, *Financial Management Law and Public Debt Law*, §1(2) (Jun. 4, 2004) (“This Order promulgates the Public Debt Law, which authorizes the Ministry of Finance to issue and pay debt securities guaranteed by the Government, and establishes certain related authorities and duties, for the purposes of financing Government operations and promoting a stable Iraqi economy.”). See also VON GLAHN, *THE OCCUPATION OF ENEMY TERRITORY* 159 (“[A]n occupant appears to be entitled to refinance or to consolidate already existing public debts of an occupied territory if such a step is clearly in the interest of sound financial administration and thus for the direct benefit of the inhabitants of the area.”); J.A.G.S. TEXT NO. 11, *LAW OF BELLIGERENT OCCUPATION* 232 (“Seemingly, the occupant acting as administrator of the occupied territory may refinance or consolidate the existing indebtedness of the occupied state in the interest of sound public administration.”).

⁴⁶¹ For example, Coalition Provisional Authority Order No. 43, *New Iraqi Dinar Banknotes*, §3(1) (Oct. 14, 2003) (“The CBI [Central Bank of Iraq] is, pursuant to Article 34 of the Central Bank of Iraq Law No. 64 of 1976, as amended, the sole authority in the Republic of Iraq vested with the power to issue legal tender currency. The CBI, under the supervision of the CPA, shall issue New Iraqi dinar banknotes and determine the denominations, designs, technical specifications, and other characteristics of New Iraqi dinar banknotes.”).

⁴⁶² 1956 FM 27-10 (Change No. 1 1976) ¶430 (“The occupying power may leave the local currency of the occupied area in circulation. It is also authorized to introduce its own currency or to issue special currency for use only in the occupied area, should the introduction or issuance of such currency become necessary.”); *Abotiz & Co. v. Price*, 99 F. Supp. 602, 611-12 (D. Utah 1951) (“Some recognized medium of exchange was necessary to keep the economic life of the community going. And, the power of a military government in occupied enemy territory to issue military currency cannot seriously be questioned.”).

of occupation currency may be necessary to counteract the enemy State's practice of engaging in economic sabotage.⁴⁶⁴

The Occupying Power may also set exchange rates for currency in occupied territory.⁴⁶⁵

The Occupying Power's powers to regulate currency must not be used to confiscate private property.⁴⁶⁶ For example, intentional debasement of currency by the establishment of fictitious valuation or exchange rates, or like devices, as well as failure to take reasonable steps to prevent inflation, with the result of enrichment of the Occupying Power, would violate international law.⁴⁶⁷

⁴⁶³ *Aboitiz & Co. v. Price*, 99 F. Supp. 602, 614-15 (D. Utah 1951) ("The validity of such war currency is not only supported by these principles of international law, to which our own country has given its assent, but, it is supported by the dictates of a sound public policy, and, there is back of it a long history of the use of war money by many nations. During our own Revolutionary War, the Continental Congress issued currency for use in British territory occupied by the colonial troops before the Declaration of Independence. The rebel government of the Confederate States issued a war currency which, as we have seen, was held valid by the Supreme Court of the United States. Moreover, the United States and her allies in World War II issued occupation currency in Sicily, Germany, and Austria. The Combined Chief of Staffs of the Supreme Allied Commander issued a directive June 24, 1943, that the task forces use, besides regular United States coins, yellow seal dollars and besides regular British coins, British Military Authority (BMA) notes, to supplement lire currency. The Combined Directive for Military Government in Germany, April 28, 1944, directed the Allied forces to use yellow seal dollars and British Military Authority notes (BMA), if the Reichs mark currency became inadequate. The American Directive on Military Government of Austria, June 27, 1945, ordered our forces to use for military purposes only Allied Military Schillings.").

⁴⁶⁴ For example, *Opinion on the Legality of the Issuance of AMG (Allied Military Government) Currency in Sicily*, Sept. 23, 1943, reprinted in *Occupation Currency Transactions: Hearings Before the Committees on Appropriations Armed Services and Banking and Currency, U.S. Senate, 80th Congress, First Session, 73, 81-82* (Jun. 17-18, 1947) ("The currency policies deliberately followed by the Axis in retreat were designed to make the maintenance of 'public order and safety' by the Allied powers as difficult as possible. The variety of forms of economic sabotage which the Germans might use is illustrated by the seemingly opposite practices followed in Tunisia and in Sicily. In Tunisia, the Germans distributed Bank of France notes on a grand scale, increasing wage rates to some classes of employees manifold, patronizing the black market freely, and paying collaborationists lavishly. ... In Sicily, Mussolini went even further [than in Italy] and ordered the banks to be substantially depleted to the point where additional new currency was urgently needed for immediate use to permit the resumption of normal commercial activity. ... Thus, the Axis practices made a ready supply of new currency even more essential than otherwise, and provide a complete justification for the use of such currency under the test of the Hague Convention.").

⁴⁶⁵ For example, Coalition Provisional Authority Order No. 43, *New Iraqi Dinar Banknotes*, §5 (Oct. 14, 2003) ("The 1990 dinar banknotes and the Swiss dinar banknotes and coins shall be exchanged against New Iraqi dinar banknotes at the official conversion rates of one (1) 1990 dinar to one (1) New Iraqi dinar, and of one (1) Swiss dinar to one-hundred-and-fifty (150) New Iraqi dinars.").

⁴⁶⁶ Refer to § 11.18.6.1 (Prohibition on Confiscation of Private Property in Occupied Territory).

⁴⁶⁷ 1956 FM 27-10 (Change No. 1 1976) ¶430 ("Intentional debasement of currency by the establishment of fictitious valuation or exchange rates, or like devices, as well as failure to take reasonable steps to prevent inflation, are violative of international law."). See also *Opinion on the Legality of the Issuance of AMG (Allied Military Government) Currency in Sicily*, Sept. 23, 1943, reprinted in *Occupation Currency Transactions: Hearings Before the Committees on Appropriations Armed Services and Banking and Currency, U.S. Senate, 80th Congress, First Session, 73, 82* (Jun. 17-18, 1947) ("The Germans were roundly criticized during the First World War, and again in this war, for introducing occupation marks and similar currency devices. ... The vice of the German practice is not in the use of currency, but in the excessive issue of valueless currency as a device for stripping the occupied area of its good and its labor for the benefit of Germany.").

11.23 OTHER ECONOMIC REGULATION OF OCCUPIED TERRITORY

11.23.1 General Authority of the Occupying Power to Regulate Commercial Intercourse. The Occupying Power has the right to regulate commercial intercourse within, into, or out of the occupied territory. It may subject such intercourse to such prohibitions or restrictions as are essential to the purposes of the occupation.⁴⁶⁸ The Occupying Power also may remove existing commercial restrictions or regulations when essential to the purposes of the occupation.⁴⁶⁹ For example, the Occupying Power may suspend existing customs tariffs.⁴⁷⁰

The purposes of the occupation that justify economic regulation may include the military interest of the Occupying Power, the needs of the inhabitants of occupied territory, and applicable law of war obligations.

For example, for its military purposes, the Occupying Power may impose a moratorium on business payments until an effective occupation government is in place in order to safeguard financial institutions, to preserve records, and to ensure that funds and other assets of the enemy government are not transferred without the knowledge and approval of the Occupying Power. Similarly, for purposes of security and restoration of public order, the Occupying Power may also take steps to prevent hoarding of supplies, to curb or prevent black markets, and to regulate labor conditions, including strikes.⁴⁷¹ As another case in point, in order to fulfill its obligations with respect to the preservation of cultural property in occupied territory, the Occupying Power may issue commercial regulations intended to prevent illegal traffic in, and looting of, such property.⁴⁷²

Additional authority to regulate the economy of occupied territory may be provided by U.N. Security Council resolutions.⁴⁷³

⁴⁶⁸ 1956 FM 27-10 (Change No. 1 1976) ¶376 (“The occupant has the right to regulate commercial intercourse in the occupied territory. It may subject such intercourse to such prohibitions and restrictions as are essential to the purposes of the occupation.”). *See also* WILLIAM E. BIRKHIMER, *MILITARY GOVERNMENT AND MARTIAL LAW* 268 (1914) (“One of the most important incidents of military government is the regulation of trade with the subjugated state. The Occupying State has an unquestioned right to regulate commercial intercourse with conquered territory. It may be absolutely prohibited, or permitted to be unrestricted, or such limitations may be imposed thereon as either policy or a proper attention to military measures may justify.”).

⁴⁶⁹ 2004 UK MANUAL ¶11.32 (“The occupying power may place on the occupied territory such restrictions and conditions in respect of commercial dealings as may be necessary for military purposes. For the same reasons it may remove existing restrictions, such as current customs tariffs.”); 1958 UK MANUAL ¶530 (“The Occupant may place such restrictions and conditions upon all commercial intercourse with the occupied territory as he may deem suitable for his military purpose. He may likewise remove existing restrictions; for instance, he may suspend the customs tariff in force.”).

⁴⁷⁰ *Refer to* § 11.22.3.2 (Power to Suspend Customs Duties and Tariffs or Exempt Certain Goods).

⁴⁷¹ VON GLAHN, *THE OCCUPATION OF ENEMY TERRITORY* 208 (“The occupant also appears to possess other powers over private business, including the right to prevent hoarding of supplies and raw materials, the prevention of black markets, the regulation of labor conditions, including strikes, and, in general, the power to return business conditions in the territory to nearly normal conditions as speedily as possible.”).

⁴⁷² *Refer to* § 11.19.1 (Obligation With Respect to the Safeguarding and Preservation of Cultural Property).

⁴⁷³ *Refer to* § 11.1.2.5 (Occupation and U.N. Security Council Resolutions).

11.23.2 Limit on the Overall Burdens Placed on the Economy of the Occupied Territory.

The economy of an occupied territory can only be required to bear the expenses of the occupation, and these should not be greater than the economy of the occupied territory can reasonably be expected to bear.⁴⁷⁴ For example, requisitions must be in proportion to the resources of the occupied territory.⁴⁷⁵

11.23.3 Control of Business in Occupied Territory. The Occupying Power may exercise controls over private business for the purpose of addressing the needs of the inhabitants of the occupied territory or for military purposes, including by: (1) compelling the continued operation of a business; (2) granting of business subsidies; (3) closing down a business; or (4) assuming control and management of a business.

The Occupying Power may compel a business to continue operations if necessary to serve the needs of the local population or for military purposes.⁴⁷⁶ Compulsory work of protected persons, however, must comply with the GC.⁴⁷⁷

The Occupying Power may take steps to increase production from private business, such as by granting subsidies out of available governmental revenues from the occupied territory.⁴⁷⁸

If the Occupying Power determines that the continued operation of a business is detrimental to the interests of the local population or to the Occupying Power, the Occupying Power may close down the business.⁴⁷⁹

The Occupying Power may assume control and management of such a business if necessary to serve the needs of the local population or for military purposes.⁴⁸⁰ Title to the business in such circumstances remains with the legal owner, and if the Occupying Power earns

⁴⁷⁴ 1956 FM 27-10 (Change No. 1 1976) ¶364 (“The economy of an occupied country can only be required to bear the expenses of the occupation, and these should not be greater than the economy of the country can reasonably be expected to bear.”). *See also* United States, *et al.* v. Göring, *et al.*, *Judgment*, I TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE IMT 239 (“The evidence in this case has established, however, that the territories occupied by Germany were exploited for the German war effort in the most ruthless way, without consideration of the local economy, and in consequence of a deliberate design and policy. There was in truth a systematic ‘plunder of public or private property’, which was criminal under Article 6(b) of the Charter... . Raw materials and finished products alike were confiscated for the needs of the German industry.”).

⁴⁷⁵ *Refer to* § 11.18.7 (Requisitions of Private Enemy Property).

⁴⁷⁶ VON GLAHN, THE OCCUPATION OF ENEMY TERRITORY 207 (“If the operations of a given enterprise appear necessary to the occupant, he may compel the continuation of such operations.”).

⁴⁷⁷ *Refer to* § 11.20 (Labor of Protected Persons in Occupied Territory).

⁴⁷⁸ VON GLAHN, THE OCCUPATION OF ENEMY TERRITORY 207-08 (“If existing private industries fail to supply in required quantities such commodities as may be urgently needed by the native inhabitants or by occupants own forces in the occupied territory, it appears to be permissible for him to undertake steps to increase production, if necessary by subsidization out of available government revenues of the occupied area.”).

⁴⁷⁹ VON GLAHN, THE OCCUPATION OF ENEMY TERRITORY 207 (“If, on the other hand, such continued operations appear to be against the interests of the population or of the occupying power, the latter may close down the enterprise in question.”).

⁴⁸⁰ *Refer to* § 11.18.3 (Property Control Measures).

a profit from the operation of the business, the legal owner must be indemnified, to avoid a prohibited confiscation of private property.⁴⁸¹

11.23.4 Regulation of External Trade. The Occupying Power may also regulate foreign trade, including completely suspending such trade.⁴⁸² For example, the Occupying Power may halt the export of precious metals and other valuable items that are readily converted or exchanged on the international market, including metals such as copper, jewels, and securities.⁴⁸³

Commercial relations between the occupied territory and the remaining territory of the enemy and its allies are also normally suspended.⁴⁸⁴ Such suspension may be relaxed through licenses to trade.⁴⁸⁵

11.23.5 Exchange Controls, Including Clearing Arrangements, and Asset Controls. The Occupying Power may also institute exchange controls, including clearing arrangements, and, if necessary, the freezing or blocking of certain assets, in order to conserve the monetary assets of the occupied territory, as well as for security purposes.⁴⁸⁶ For example, the Occupying Power

⁴⁸¹ VON GLAHN, THE OCCUPATION OF ENEMY TERRITORY 207 (“An occupant apparently may also lawfully place under his direct control and management any enterprise which is held by him to be vital for his needs or the needs of the indigenous population. Such an assumption of management is not expropriation, for title to the property in question remains vested in its former owner-operator; the occupant merely assumes a temporary control and has to return the firm when the need for his control has passed. If the occupant earns a profit during his operation of a private enterprise seized by him he should indemnify the owner in full for the amount of the profit, since the Hague regulations prohibit the confiscation of private property.”).

⁴⁸² VON GLAHN, THE OCCUPATION OF ENEMY TERRITORY 211-12 (“The occupant possesses a right, based on logic, to regulate all trade between an occupied area and the outside world. ... [N]ormally, also, all commercial relations between the area and its allies as well as the remainder of the sovereign’s territory are suspended as soon as occupation becomes effective.”).

⁴⁸³ For example, Coalition Provisional Authority Order No. 12, *Trade Liberalization Policy*, Annex – Prohibited Exports (Jun. 8, 2003); Coalition Provisional Authority Order No. 54, *Trade Liberalization Policy 2004*, Annex – Restricted Exports (Feb. 26, 2004); Coalition Provisional Authority Memorandum No. 8, *Exportation of Scrap Metal Under Order Number 12, Trade Liberalization Policy (CPA/ORD/7 June2003/12)*, §3 (Jan. 25, 2004) (“Effective February 1, 2004, metal, including scrap metal, shall not be exported without authorization from the Ministry of Trade. Prior to February 1, 2004, scrap metal, excluding copper and lead, may be exported without a license.”).

⁴⁸⁴ 1956 FM 27-10 (Change No. 1 1976) ¶376 (“The commander of the occupying forces will usually find it advisable to forbid intercourse between the occupied territory and the territory still in the possession of the enemy.”). Refer to § 12.1.1 (Traditional Rule of Non-Intercourse During War).

⁴⁸⁵ Refer to § 12.6.3.2 (Licenses to Trade).

⁴⁸⁶ 1956 FM 27-10 (Change No. 1 1976) ¶430 (“The occupant may also institute exchange controls, including clearing arrangements, in order to conserve the monetary assets of the occupied territory.”). For example, Coalition Provisional Authority Order No. 93, *Anti-Money Laundering Act of 2004*, §1 (Jun. 3, 2004) (“The purpose of the Anti-Money Laundering Law is to secure financial institutions and combat instability by criminalizing the acts of laundering money, financing crime, financing terrorism, and structuring certain transactions.”); *Haw Pia v. China Banking Corp.* (Supreme Ct., Philippines 1949), Annual Digest, 1951, Case No. 203, reprinted in 43 AJIL 821-23 (1949) (“As to the first question, we ... hold, that the Japanese military authorities had power, under the international law, to order the liquidation of the China Banking Corporation and to appoint and authorize the Bank of Taiwan as liquidator to accept the payment in question, because such liquidation is not a confiscation of the properties of the bank appellee, but a mere sequestration of its assets which require the liquidation or winding up of the business of said bank.”) (amendment in AJIL).

may regulate, or even prohibit, the flow of funds between the occupied territory and other countries, under the theory that preventing flight of capital assets is critical to maintaining order and stability.⁴⁸⁷ Such measures must not, however, be used to enrich the Occupying Power or otherwise circumvent the restrictions placed on requisitions, contributions, seizures, and other measures dealing with property.⁴⁸⁸

11.23.6 Price Controls in Occupied Territory. The Occupying Power may regulate prices in the occupied territory. For example, shortages of commodities and increased demand for certain commodities in the occupied territory may result in a rise in price fluctuations requiring the Occupying Power to resort to measures designed to maintain prices at a reasonable maximum level.⁴⁸⁹ However, the Occupying Power may not use its power over price controls for the purpose of exploiting the occupied territory to its own illegal advantage.⁴⁹⁰

⁴⁸⁷ VON GLAHN, THE OCCUPATION OF ENEMY TERRITORY 203-04 (“Thus an occupant would appear to possess the right to regulate and even to prohibit a flow of funds between an occupied territory and other countries, in view of the likely possibility that a capital flight would disrupt the monetary system and hence the order and safety to be preserved by the occupant.”).

⁴⁸⁸ 1956 FM 27-10 (Change No. 1 1976) ¶430 (“Such measures must not, however, be utilized to enrich the occupant or otherwise circumvent the restrictions place on requisitions, contributions, seizures, and other measures dealing with property.”). *For example*, JUDGMENT OF THE INTERNATIONAL MILITARY TRIBUNAL FOR THE TRIAL OF THE GERMAN MAJOR WAR CRIMINALS (Indictment Count 3(E)(6) (“By a variety of financial mechanisms, they despoiled all of the occupied countries of essential commodities and accumulated wealth, debased the local currency systems and disrupted the local economies. They financed extensive purchases in occupied countries through clearing arrangements by which they exacted loans from the occupied countries. They imposed occupation levies, exacted financial contributions, and issued occupation currency, far in excess of occupation costs. They used these excess funds to finance the purchase of business properties and supplies in the occupied countries.”).

⁴⁸⁹ VON GLAHN, THE OCCUPATION OF ENEMY TERRITORY 209 (“A majority of jurists writing on the law of occupation and most military manuals on the subject approve the right of an occupant to regulate prices in occupied territory. Shortages of every kind of commodity, ruined or damaged crops, lack of imported goods, increased demands through requisitions or purchases by occupation forces – all these contribute to a rise in the general price level unless the occupant resorts to measures designed to maintain prices at a reasonable maximum.”).

⁴⁹⁰ VON GLAHN, THE OCCUPATION OF ENEMY TERRITORY 209-10 (“Yet an unscrupulous occupant may easily misuse his power over price controls to exploit the occupied territory to his own illegal advantage—as shown repeatedly during the Second World War.”).