

CHAPTER 6

OCCUPATION

Section I. GENERAL

351. Military Occupation

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. (HR, art. 42.)

352. Invasion Distinguished

a. Nature of Invasion. If resistance is offered, the state of invasion within any portion of a belligerent's territory corresponds with the period of resistance. If the invasion is unresisted, the state of invasion lasts only until the invader has taken firm control of the area with the intention of holding it. Invasion is not necessarily occupation, although occupation is normally preceded by invasion and may frequently coincide with it. An invader may attack with naval or air forces or its troops may push rapidly through a large portion of enemy territory without establishing that effective control which is essential to the status of occupation. Small raiding parties or flying columns, reconnaissance detachments or patrols moving through an area cannot be said to occupy it. Occupation, on the other hand, is invasion plus taking firm possession of enemy territory for the purpose of holding it.

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.

353. Subjugation or Conquest Distinguished

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.

On the other hand, subjugation or conquest implies a transfer of sovereignty, which generally takes the form of annexation and is normally effected by a treaty of peace. When sovereignty passes, belligerent occupation, as such, of course ceases, although the territory may and usually does, for a period at least, continue to be governed through military agencies.

354. Friendly Territory Subject to Civil Affairs Administration Distinguished

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.

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. 12 *b* and *c*). A civil affairs agreement should, however, be concluded with the lawful government at the earliest possible opportunity.

355. Occupation as Question of Fact

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.

356. Effectiveness of Occupation

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. 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. 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.

357. Proclamation of Occupation

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 the 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.

358. Occupation Does Not Transfer Sovereignty

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.

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. (See *GC*, art. 47; par. 365 herein.)

359. Oath of Allegiance Forbidden

It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power. (*HR*, art. 45.)

360. Maintenance of Occupation

Occupation, to be effective, must be maintained. In case the occupant evacuates the district or is driven out by the enemy, the occupation ceases. It does not cease, however, if the occupant, after establishing its authority, moves forward against the enemy, leaving a smaller force to administer the affairs of the district. Nor does the existence of a rebellion or the activity of guerrilla or para-military units of itself cause the occupation to cease, provided the occupant could at any time it desired assume physical control of any part of the territory. If, however, the power of the occupant is effectively displaced for any length of time, its position towards the inhabitants is the same as before occupation.

361. Termination of Occupation

The law of belligerent occupation generally ceases to be applicable under the conditions set forth in paragraphs 353 and 360. However, with respect to the provisions of *GC* alone, Article 6 of that Convention provides:

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.

Protected persons whose release, repatriation or re-establishment may take place after such dates shall meanwhile continue to benefit by the present Convention. (GC, art. 6, 3d and 4th pars.)

Section II. ADMINISTRATION OF OCCUPIED TERRITORY

362. Necessity for Military Government

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. (See par. 12, which discusses military government, and par. 354, dealing with civil affairs administration.)

363. Duty to Restore and Maintain Public Order

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. (HR, art. 43.)

364. Occupation Costs

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.

365. Inviolability of Rights

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. (GC, art. 47.)

366. Local Governments Under Duress and Puppet Governments

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.

367. Functions of Government

a. Paramount Authority of Occupant. 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.

b. Functions of Local Government. 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.

368. Nature of 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.

369. Local Law and New Legislation

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

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 obligation 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. (*GC, art. 64.*)

370. Laws in Force

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. Crimes not of a military nature and not

affecting the occupant's security are normally left to the jurisdiction of the local courts.

371. Nature of Laws Suspended or Repealed

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.

372. Prohibition as to Rights and Rights of Action

It is especially forbidden * * * to declare abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party. (HR, art. 23, par. (h).)

373. Suspension of Ordinary Courts

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.

374. 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 courts of the occupied territory unless expressly made subject thereto by a competent officer of the occupying forces or occupation administration. 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.

375. Freedom of Movement

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.

376. Commercial Restrictions

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. 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.

377. Censorship

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. 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.

378. Means of Transportation

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.

Section III. RIGHTS OF THE POPULATION OF OCCUPIED TERRITORY

379. Other Provisions of Law

Articles 27-34, *GC* (pars. 266-273), apply to occupied territory and should be read together with the provisions of this section.

380. Respect for Human Rights

Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. (*HR, art. 46, 1st par.*)

381. Special Cases of Repatriation

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. (*GC, art. 48.*)

382. Deportations, Transfers, Evacuations

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.

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.

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.

The Protecting Power shall be informed of any transfers and evacuations as soon as they have taken place.

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.

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

383. 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.

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.

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.

A special section of the Bureau setup in accordance with Article 136 shall be responsible for taking all necessary steps to identify children whose identity is in doubt. Particulars of their parents or other near relatives should always be recorded if available.

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, ex-

pectant mothers, and mothers of children under seven years.
(GC, art. 50.)

384. Food and Medical Supplies for the Population

a. Treaty Provision.

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.

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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 (GC, art. 55, 1st and 3d pars.)

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.

385. Hygiene and 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, 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. Medical personnel of all categories shall be allowed to carry out their duties.

If new hospitals are setup 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.

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. (GC, art. 56.)

386. Requisition of 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 condition that suitable

arrangements are made in due time for the care and treatment of the patients and for 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. (*GC, art. 57.*)

387. 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. (*GC, art. 58.*)

Section IV. RELIEF

388. 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 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.

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. (*GC, art. 59.*)

389. 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. 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. (*GC, art. 60.*)

390. Distribution

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.

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. The Occupying Power shall facilitate the rapid distribution of these consignments.

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

391. Individual Relief

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

392. National Red Cross and Other Relief Societies

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.

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. (*GC, art. 63.*)

Section V. TREATMENT OF ENEMY PROPERTY

393. Destruction and Seizure of Property

a. Prohibition.

It is especially forbidden * * * to destroy or seize the enemy's

property, unless such destruction or seizure be imperatively demanded by the necessities of war. (*HR, art. 23, par. (g).*)

b. Occupying Power.

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. (*GC, art. 53.*)

c. General Devastation. See paragraph 56.

394. Determination Whether Property Is Public or Private

a. 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.

b. 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. 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.

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 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.

c. 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.

395. Seized Property

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.

396. Title to Captured or Seized Enemy Property

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.

397. Pillage

a. Treaty Provision.

Pillage is formally forbidden. (*HR, art. 47.*) (See also *HR, art. 28; par. 47* herein; *GC, art 33; par. 272* herein.)

b. Violation of military law. A member of the armed forces who before or in the presence of the enemy quits his place of duty to plunder or pillage is guilty of the offense of misbehavior before the enemy. (*UCMJ, Art. 99(6).*)

398. Private Gain by Officers and Soldiers

Neither officers nor soldiers of the United States are allowed to make use of their position or power in the hostile country for private gain, not even for commercial transactions otherwise legitimate.

399. Property Control

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. 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.

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.

400. Real Property of a State

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. (HR, art. 55.)

401. State Real Property Susceptible of Direct Military Use

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.

402. Occupant's Disposition of Real Property of a State

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. 53, GC; par. 393 herein). 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. 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.

403. Movable Property of a State

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 operations of the war.

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 laws, 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. (HR, art. 53.)

404. Classes of Movable Property

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.

405. Municipal, Religious, Charitable, and Cultural Property

a. Treaty Provision.

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 or destruction of, or wilful damage to, institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.
(*HR, art. 56.*)

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.

c. 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.

406. Private Property: General

a. Treaty Provision.

Private property cannot be confiscated. (*HR, art. 46, 2d par.*)

b. 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.

407. Private Real Property

Immovable private enemy property may under no circumstances be seized. It may, however, be requisitioned (see par. 412).

408. Private Movable Property Susceptible of Direct Military Use

See Article 53, *HR* (par. 403).

409. Receipts

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.

410. Types of Private Property Susceptible to Direct Military Use

a. 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.

b. Destruction. The destruction of the foregoing property and all damage to the same is justifiable only if it is rendered absolutely necessary by military operations. (See *GC, art. 53; par. 393b herein.*)

411. Submarine Cables

a. Treaty Provision.

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. (*HR, art. 54.*)

b. Application. The foregoing provision applies only to activities on land and does not deal with seizure or destruction of cables in the open sea.

412. Requisitions

a. Treaty Provision.

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 population in the obligation of taking part in operations of the war against their country.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

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. (*HR, art. 52.*)

b. 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.

413. Requisitioning of Foodstuffs 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. 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. (GC, art. 55, 2d par.)

414. Requisition of Hospitals

See Article 57, GC (par. 386).

415. Method of Requisitioning

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.

416. Prices and Compensation for Requisitioned Articles and Services

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.

417. Method of Enforcing Requisition

Coercive measures will be limited to the amount and kind necessary to secure the articles requisitioned.

Section VI. SERVICES OF INHABITANTS AND OF OFFICIALS

418. Labor of Protected Persons

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.

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. Protected persons may not be compelled to undertake any work which would involve them in the obligation of taking part in military operations. 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.

The work shall be carried out only in the occupied territory where the persons whose services have been requisitioned are. Every such person shall, so far as possible, be kept in his usual place of employment. Workers shall be paid a fair wage and the work shall be proportionate to their physical and intellectual capacities. 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.

In no case shall requisition of labour lead to a mobilization of workers in an organization of a military or semi-military character. (*GC, art. 51.*) (See also *HR, art. 23, 2d par.; par. 32* herein.)

419. Services Which May be Requisitioned

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 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.

420. Prohibited Labor

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.

421. Protection of Workers

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.

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. (*GC, art. 52.*)

422. Judges and 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.

This prohibition does not prejudice the application of the second paragraph of Article 51. It does not affect the right of the Occupying Power to remove public officials from their posts. (*GC, art. 54.*)

423. Oath of Officials

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.

424. Salaries of 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, 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. Salaries or incomes connected with purely honorary titles are always suspended.

Section VII. PUBLIC FINANCE

425. Taxes

a. Treaty Provision.

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. (*HR, art. 48.*)

b. 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.

426. Changes in Taxes

a. 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.

b. New Taxes. Unless required to do so by considerations of public order and safety, the occupant must not create new taxes.

427. Taxes Collected by Local Authorities

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.

428. Contributions

a. Treaty Provision.

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 of the administration of the territory in question. (*HR, art. 49.*)

b. 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.

429. Methods of Levying Contributions

No contribution shall be collected except under a written order, and on the responsibility of a Commander-in-chief.

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.

For every contribution a receipt shall be given to the contributors. (*HR, art. 51.*)

430. Currency and Exchange Controls

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. The occupant may also institute exchange controls, including clearing arrangements, in order to conserve the monetary assets of the occupied territory. Such measures must not, however, be utilized to en-

rich the occupant or other-wise circumvent the restrictions placed on requisitions, contributions, seizures, and other measures dealing with property. 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.

431. Expropriation of Property for Local Benefit

In order to ensure public order and safety, as required by Article 43, *HR*, (par. 363) an occupant is authorized to expropriate either public or private property solely for the benefit of the local population. The occupant is obliged, unless absolutely prevented, to respect the laws in force in the occupied area in so doing.

Section VIII. SECURITY OF THE OCCUPANT: PENAL LEGISLATION AND PROCEDURE

432. Enforcement of Obedience

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. 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. As to neutrals resident in occupied territory, see paragraphs 547-551.

433. Security Measures

a. Treaty Provision.

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.

Decisions regarding such assigned residence or internment shall be made according to a regular procedure to be prescribed by the Occupying Power in accordance with the provisions of the present Convention. This procedure shall include the right of appeal for the parties concerned. Appeals shall be decided with the least possible delay. In the event of the decision being upheld, it shall be subject to periodical review, if possible every six months, by a competent body setup by the said Power.

Protected persons made subject to assigned residence and thus required to leave their homes shall enjoy the full benefit of Article 39 of the present Convention. (*GC, art. 78.*)

b. Function of Competent Body. "Competent bodies" to review the internment or assigned residence of protected persons may be created with advisory functions only, leaving the final decision to a high official of the Government.

434. Penal Legislation

See paragraphs 369-371, regarding penal legislation which may be repealed or suspended and legislation which may be promulgated by the occupant.

435. Publication

a. Treaty Provision.

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. The effect of these penal provisions shall not be retroactive. (*GC, art. 65.*)

b. Form of Publication. The penal provisions referred to in the foregoing article must be promulgated in written form. It is not sufficient that they be announced by radio or loudspeakers.

436. Competent Courts

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. (*GC, art. 66.*)

437. Applicable Law

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

438. Penalties

a. Treaty Provision.

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. Furthermore, internment or imprisonment shall, for such offences, be the only measure adopted for depriving protected persons of liberty. 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.

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, or serious acts of sabotage against the military installations of the Occupying Power or of intentional offences which have 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.

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.

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 offence. (*GC, art. 68.*)

b. Reservation as to Death Penalty. The United States has reserved the right to impose the death penalty in accordance with the provisions of Article 68, 2d paragraph, 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.

c. Other Offenses and Penalties. The foregoing article does not preclude the imposition of penalties, such as fines, not depriving the protected person of liberty. Acts in violation of the laws promulgated by the Occupying Power which are not solely intended to harm that Power, as, for example, traveling without a permit or violating exchange control regulations, are also punishable by internment or imprisonment or other penalties depriving the protected person of liberty.

439. Deduction From Sentences of Period Spent Under Arrest

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. (*GC, art. 69.*)

440. Offenses Committed Before Occupation

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.

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. (*GC, art. 70.*)

441. Penal Procedure

No sentence shall be pronounced by the competent courts of the Occupying Power except after a regular trial.

Accused persons who are prosecuted by the Occupying Power shall be promptly informed, in writing, in a language which they understand, of the particulars of the charges preferred against them, and shall be brought to trial as rapidly as possible. The Protecting Power shall be informed of all proceedings instituted by the Occupying Power against protected persons in respect of charges involving the death penalty or imprisonment for two years or more; it shall be enabled, at any time, to obtain information regarding the state of such proceedings. Furthermore, the Protecting Power shall be entitled, on request, to be furnished with all particulars of these and of any other proceedings instituted by the Occupying Power against protected persons.

The notification to the Protecting Power, as provided for in the second paragraph above, shall be sent immediately, and shall in any case reach the Protecting Power three weeks before the date of the first hearing. Unless, at the opening of the trial, evidence is submitted that the provisions of this Article are fully complied with, the trial shall not proceed. The notification shall include the following particulars:

- (a) description of the accused;
- (b) place of residence or detention;
- (c) specification of the charge or charges (with mention of the penal provisions under which it is brought);
- (d) designation of the court which will hear the case;
- (e) place and date of the first hearing. (*GC, art. 71.*)

442. Right of Defense

Accused persons shall have the right to present evidence necessary to their defence and may, in particular, call witnesses. They shall have the right to be assisted by a qualified advocate or counsel of their own choice, who shall be able to visit them freely and shall enjoy the necessary facilities for preparing the defence.

Failing a choice by the accused, the Protecting Power may provide him with an advocate or counsel. When an accused person has to meet a serious charge and the Protecting Power is not functioning, the Occupying Power, subject to the consent of the accused, shall provide an advocate or counsel.

Accused persons shall, unless they freely waive such assistance, be aided by an interpreter, both during preliminary investigation and during the hearing in court. They shall have the right at any time to object to the interpreter and to ask for his replacement. (*GC, art. 72.*)

443. Right of Appeal

A convicted person shall have the right of appeal provided for by the laws applied by the court. He shall be fully informed of his right to appeal or petition and of the time limit within which he may do so.

The penal procedure provided in the present Section shall apply, as far as it is applicable, to appeals. Where the laws applied by the Court make no provision for appeals, the convicted person shall have the right to petition against the finding and sentence to the competent authority of the Occupying Power. (*GC, art. 73.*)

444. Assistance by the Protecting Power

Representatives of the Protecting Power shall have the right to attend the trial of any protected person, unless the hearing has, as an exceptional measure, to be held in camera in the interests of the security of the Occupying Power, which shall then notify the Protecting Power. A notification in respect of the date and place of trial shall be sent to the Protecting Power.

Any judgment involving a sentence of death, or imprisonment for two years or more, shall be communicated, with the relevant grounds, as rapidly as possible to the Protecting Power. The notification shall contain a reference to the notification made under Article 71, and, in the case of sentences of imprisonment, the name of the place where the sentence is to be served. A record of judgments other than those referred to above shall be kept by the court and shall be open to inspection by representatives of the Protecting Power. Any period allowed for appeal in the case of sentences involving the death penalty, or imprisonment

of two years or more, shall not run until notification of judgment has been received by the Protecting Power. (*GC, art. 74.*)

445. Death Sentence

In no case shall persons condemned to death be deprived of the right of petition for pardon or reprieve.

No death sentence shall be carried out before the expiration of a period of at least six months from the date of receipt by the Protecting Power of the notification of the final judgment confirming such death sentence, or of an order denying pardon or reprieve.

The six months period of suspension of the death sentence herein prescribed may be reduced in individual cases in circumstances of grave emergency involving an organized threat to the security of the Occupying Power or its forces, provided always that the Protecting Power is notified of such reduction and is given reasonable time and opportunity to make representations to the competent occupying authorities in respect of such death sentences (*GC, art. 76.*)

446. Treatment of Detainees

Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein. They shall, if possible, be separated from other detainees and shall enjoy conditions of food and hygiene which will be sufficient to keep them in good health, and which will be at least equal to those obtaining in prisons in the occupied country.

They shall receive the medical attention required by their state of health.

They shall also have the right to receive any spiritual assistance which they may require.

Women shall be confined in separate quarters and shall be under the direct supervision of women.

Proper regard shall be paid to the special treatment due to minors.

Protected persons who are detained shall have the right to be visited by delegates of the Protecting Power and of the International Committee of the Red Cross, in accordance with the provisions of Article 143.

Such persons shall have the right to receive at least one relief parcel monthly. (*GC, art. 76.*)

447. Close of Occupation

Protected persons who have been accused of offences 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. (*GC, art. 77.*)

448. Penalty for Individual Acts of Inhabitants

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. (*HR, art. 50.*) (See also *GC, art. 33; par. 272* herein.)