National Liberation Movements subjected to occupation

Linking self-determination and International Humanitarian Law

University of Oslo

Faculty of Law

Candidate number: 3

Supervisor: Simon O' Connor

Deadline for submission:01/09/2009

Number of words: 17932

05.10.2009

Content

1 INTRODUCTION

1.1 Presentation of the topic 1
1.1.1 Purpose of the thesis 2
1.2 Structure of the Thesis 3
1.3 Demarcation of the Thesis 4
1.4 Terminology/definitions 4
1.5 Methodology and resources 5

2 1977 ADDITIONAL PROTOCOL I AND NATIONAL LIBERATION MOVEMENTS

2.1 Additional Protocol I of 1977 to the Geneva Conventions 6
2.1.1 The historical development of contemporary international law of occupation 7
2.2 National Liberation Movements (NLMs): a definition 13
2.2.1 The right to self-determination of Peoples 16
2.2.2 The prohibition of use of force and the right to self-defense in international law 20
2.2.3 Occupation versus self-determination: The resort to force by NLMs 22

3 APPLICABILITY OF HUMANITARIAN LAW TO WARS OF NATIONAL LIBERATION SUBJECTED TO OCCUPATION

3.1 The application of international law of occupation 30
3.2 Applicability of Humanitarian law to the occupying power 34
3.3 Applicability of Humanitarian law to NLMs subjected to occupation 35
3.3.1 Concrete application of the rules regulating conduct of warfare 40
3.3.2 Concrete application of rules regulating means of warfare under occupation 42

4 THIRD PARTY OBLIGATIONS TO ENSURE COMPLIANCE: INTERNATIONAL OBLIGATIONS, WHICH MAY ARISE IN SITUATIONS OF OCCUPATION

4.1 Introduction 45

4.2 Third party obligations under the Geneva Conventions 48

4.3 Third party obligations concerning the right to self-determination and prohibition of force by third parties 49

5 CONCLUSION 54

REFERENCES A

Acknowledgements

In the name of the God, the most gracious and the most merciful; all thanks to thee for giving me the ability to acquire knowledge.

For the preparation of this study I would like to thank my supervisor Mr. Simon O'Connor whose stimulating suggestions and discussions, encouragement and excellent feedback, helped me to narrow a broad topic, focus my ideas, and finally complete thesis.

Special thanks go to my good friend Dan Fuller and Mr. Kevin Duffy, for taking the time to read the first draft so quickly and provide detailed review. Finally, I am grateful to those colleagues and friends who have encouraged me and truly believed in me to get down to the business of finishing this paper on time.

1 Introduction

1.1 Presentation of the topic

'Occupations' means any effective control of a State over a territory to which it has no legal sovereign title[1] and may normally present a conflict of interest between the occupants and the occupied.[2]

In international law, the notion of occupation has always been a topic addressed in International Humanitarian Law (IHL). However, the law of occupation has been developed significantly. Some of these developments are now enshrined in *the 1977 Additional Protocol I to the 1949 Geneva Conventions Relating to the Protection of Victims of International Armed Conflicts.*[3]

Article 1 paragraph 4 of the Additional Protocol I, developed and extended the application of the Geneva Convections, as provided in Common Article 2 to those Conventions, to situations of 'armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States.'

The types of conflicts mentioned in Article 1(4) are examples of what are often referred to as wars of national liberation, because they aim at bringing to an end some form of suppression or domination. Although wars of national liberation are not a new

---

1 Article 42 of the Hague Regulations IV

2 Eyal Benvenisti, *the international law of occupation*, Princeton University Press(1993),p.4

3 Hereinafter the Additional Protocol I

phenomenon, international law did not address them directly, until the adoption of the Additional Protocol I in 1977.[4] One of the reasons for this development was due to the challenges posed by the rise of National Liberation Movements (NLMs) after the Second World War and gradual increase of significance given to the principle of self-determination, first enshrined in the United Nations (UN) Charter, also referred to in Article 1(4). In light of these references, the link between wars of national liberation and the right to self-determination and developments in IHL's applicability by virtue of Article 1(4) of the Additional Protocol I is the topic of this paper. By mainly analyzing developments in the field of IHL, this paper will examine the means and circumstances in which NLMs can be bound by rules of war when hostilities break out in occupied territories.

Despite the fact that the Additional Protocol I developed and extended the scope of application to wars of national liberation subjected to 'alien occupation', many complex problems, especially concerned with NLMs obligations and rights, may require further clarification. Contemporary or recent cases of occupation including Afghanistan, Northern Cyprus, East Timor, Palestine, Western Sahara or Iraq, demonstrate that the phenomenon of occupation and the consequent resistance by various movements, (while being a subject of controversy as far as the political term of terrorism is concerned), poses challenges to the system of rules regulating occupation, the right to self-determination and third state responsibility. Recognizing such challenges, continue to have high relevance in contemporary international law, I will now turn to outline the purpose and scope of the topic of this paper.

1.1.1 Purpose of the topic

Since foreign occupations, could essentially present 'a potential- if not an inherent-conflict of interest between the occupant and the occupied'[5], NLMs subjected to occupation seeking

---

[4] Georges Abi-Saab 'Wars of National Liberation in the Geneva Conventions and Protocols' in *Recueil des cours*,165 (1979-IV) 353-445,p.363

[5] Eyal Benvenisti supra note 2

their people's right to self-determination is the focus of this study which is based on the following hypothesis:

NLMs subjected to occupation have a legal personality under international law with a legitimate right to resist an occupation, including through armed struggle, for achieving self-determination. The regulation of wars of national liberation subjected to occupation fall under the category of international armed conflicts. Hence, both the occupying power and those NLMs who have consented to be bound by and apply humanitarian treaties are under an obligation to respect the relevant rules under international law. In the absence of consent, fundamental principles of IHL, considered customary rules including the 1907 Hague Regulations (IV) *respecting the laws and customs of war on land*[6], parts of the 1949 Geneva Convention *Relative to the Protection of Civilian Persons in time of war*[7] and the elements of Additional Protocol I shall apply equally to NLMs and the occupying state. Finally, the right to self-determination has led some to conclude that states have a universal binding obligation *erga omnes*[8] and it is the concern of all states to ensure this right under the UN Charter when it is persistently denied by the occupying power.

1.2 Structure of the thesis

This first chapter of the study presents the framework of this thesis. By setting out the terminology and methodology used, it sets the stage for the discussion, which follows.

The second chapter in analyzing Article 1(4) of the Additional Protocol I looks at the developments of IHL and its applicability to situations of occupation, the material criteria that define a NLM, and the status of wars of national liberation in the context of occupation.

---

[6] Hereinafter the Hague Regulations IV

[7] Hereinafter the Geneva Convention IV

[8] For a recent affirmation of this obligation see, the ICJ Advisory Opinion *on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004),par.155,p.139 (hereinafter The Wall Case)

Chapter three will look at the applicability of IHL to the wars of national liberation subjected to occupation. It will assess the rights and obligations of the parties to the conflict when hostilities break out in occupied territories and further assess how NLMs may be bound by the rules of armed conflict.

Chapter four deals with third state obligations to ensuring respect for the fundamental rules of international law discussed including respect for IHL and the right of self-determination when occupation is a major obstacle to its enjoyment. Finally, chapter five will offer a conclusion.

1.3 Demarcation of the thesis

Since the present study mainly focuses on the rights and obligations of NLMs under IHL, it will address the issues within the other fields of public international law such as the right to self-determination, use of force and law of state responsibility only to the extent necessary for understanding the related issues of IHL.

National Liberation Movements seeking secession or independence and operating within the boundaries of existing states are not within the scope of this study. Logically, as it is currently understood, a state cannot occupy its own territory.

1.4 Terminology/ definitions

Occupation

'Occupation' in the sense of international law means any effective military control by a power over a territory to which that power has no sovereign title.[9] In contemporary international law, different legal sources and literature[10] use various terms to express the

---

[9] Eyal Benvenisti supra note 2,pp.4-6

[10] For through account of various types of occupations see for example, Adam Roberts, *What is military Occupation?* 55 in BYIL 249(1985) and Michael Bothe, *Belligerent occupation* in 4 EPIL 65(1982)

same factual situation: Military occupation, belligerent occupation, alien occupation[11], coercive 'pacific' occupation.[12]

'Belligerent occupation' means situations when all or part of the territory of one state is occupied by another state by the use of military force.[13]

The term 'alien occupation' is distinct from the term 'belligerent occupation', in that it refer to cases of partial or total annexation by a state of a foreign territory that has not yet achieved the status of a state *per se*.[14]

For the purpose of this paper, the inclusive term 'occupation' and the term 'alien occupation' will be used unless a reference source provides with another term. The reason for this and the definitions will be discussed in more detail in sections 2.1.1 and 3.1.

In the literature, humanitarian law is also referred to as law of armed conflict or law of war. These terms will be used interchangeably throughout the text.

1.5 Methodology and sources

The legal sources used in the thesis include international Conventions and parts of relevant treaties accepted as establishing customary international law, judicial decisions and scholarly writings. *The 1969 Vienna Conventions on the Law of Treaties*[15] is used as an interpretive instrument.

---

[11] The term 'alien occupation' is specifically mentioned in Article 1(4) of the Additional Protocol I

[12] Traditionally within the notion of this type of occupation, a distinction was made between occupation based on an agreement (the German occupation of Rhineland) and those resulting from a declared war. See Adam Roberts *supra* note 10,p.273-9

[13] Yoram Dinstein, *the international law of Belligerent occupation*, Cambridge University Press (2009),p.32

[14] Pilloud, Claude; Sandoz Yves ,Swinarski, Christophe; Zimmermann, Bruno, *Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949,* Geneva and Norwell, MA, USA: International Committee of the Red Cross(1987),p.54 (hereinafter Commentary Additional Protocol I)

[15] Hereinafter the Vienna Convention

2 1977 Additional Protocol I and National Liberation Movements subjected to 'alien occupation'

2.1 The 1977 Additional Protocol I to the Geneva Conventions

The preamble of Additional Protocol I provides that the protocol develops and is supplementary to the Geneva Conventions. Article 1 of Additional Protocol I, which was adopted by a majority of 87 votes in favour, one against and 11 abstentions[16] defines, the scope of application of the Protocol and reads:

"1. The High Contracting Parties undertake to respect and to ensure respect for this Protocol in all circumstances.

2. In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from dictates of public conscience.

3. This Protocol, which supplements the Geneva Conventions of 12 August 1949 for the protection of war victims, shall apply in the situations referred to in the Article 2 Common to those Conventions.

---

[16] All participating African, Asian and Latin American countries in addition to several western countries Liechtenstein, Luxembourg, Malta, Norway, New Zealand, the Netherlands, Portugal, the holy see, Sweden, Switzerland, Australia, Austria, Belgium, Cyprus, Denmark, Finland, Greece voted in favour. Monaco, the United Kingdom, Ireland, Germany, Canada, Spain, the United States, France, Italy, Japan and Guatemala abstained. Voted against:Israel. See Official Records of Diplomatic Conference (CDDH/I/SR 36, para.58)

4. The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations."

Since this study is looking at the applicability of laws of armed conflict to NLMs subjected to all types of occupations, I intentionally use the term 'alien occupation' when referring to relevant situations and in accordance with Article 1(4). The latter provision forms the framework and starting point of this thesis as it may be said to determine the legal criteria for the definition of wars of national liberation. It is nonetheless, necessary to analyze Article 1(4) before drawing conclusions on the applicability of laws of armed conflict to NLMs when engaged in hostilities against an occupying power.

Since Article 1(3) of the Additional Protocol I provides that it 'supplements the Geneva Conventions' a brief historical background of these developments in the field of law of occupation will be discussed in the following section.

2.1.1 Historical developments of contemporary international law of occupation

IHL, which includes the law of occupation, is a set of rules, which seek to limit and regulate the conduct and effects of warfare. In public international law, these rules are referred to as *jus in bello*. The law of occupation determines the rights and obligations of both occupying power and residents of an occupied territory. An examination of the developments in both treaty law and customary law[17] may indicate that the law of occupation today applies to a broader range of situations than the traditional belligerent occupation to ensure protection of persons in the hands of a foreign power.

---

[17] Custom is one of the primary sources of international law. Customary international law is developed through *opinio juris* (consent) and actual state practice and applies irrespective of a state being party to a treaty. States through their uniform actions contribute to the development of customary norms. See Article 38(1) (b) of the Statute of International Court of Justice (ICJ)

Early efforts to regulate war produced the rules of belligerent occupation. These rules were first enshrined in the Lieber Code of 1963.[18]The 1907 Hague Regulation IV, which is now regarded as declaratory of customary international law[19] or 'general practice accepted as law', (consistent with the definition of custom in Article 38(1) (b) of the ICJ Statute) developed on its predecessor.

Article 1of the Hague Regulations IV lists the qualifications of belligerents and emphasizes that 'the rules, rights and duties of war apply not only to armies [of the contracting powers], but also to militia and volunteer corps', who fulfill the requirements set forth in the same Article. Furthermore, Article 42 seems to emphasise that an occupation is a question of fact[20] and defines the situation as follows:

"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." (My emphasis)

The above-mentioned articles make up the definition of what is traditionally understood as 'belligerent occupation'. Within the strict interpretation of Article 42 of the Hague Regulations IV, as some authors[21] persuasively argued, a belligerent occupation only appears to be a result of an inter-state armed conflict. According to this definition, only the territory of a 'hostile state' could be the object of belligerent occupation[22], following a declaration of war by belligerent states.[23] It is however, worth noting that the Hague

---

[18] M. Bothe 1982 *supra* note 10,p.65

[19] Dieter Fleck(ed.)*The handbook of international humanitarian law*, 2nd edition, Oxford University press (2008) p.24 and 270 or see Trials of Major War Criminals before the International Military Tribunal, Nuremberg Vol. XXII,497

[20] Nicholas Rostow, *Gaza, Iraq, Lebanon: three occupations under international law*, pp.205-230 in 37 IYB of Human Rights (2007)

[21] Adam Roberts *supra* note 10,p.251, Eyal Benvenisti *supra* note 2,p.3

[22] R Jennings and A. Watts (ed.),Oppenheim's International Law, vol I, 687, (9thed. 1992)

[23] M. Bothe 1982, Adam Roberts 1985 *supra* note 10

Regulations IV despite using the term ‘occupation’, it did not include any definition of the cases to which the rules applied. The strict interpretation of the definition and criteria of belligerent occupation laid down in Article 42 may help explain the challenges to the application of the rules of occupation [24] to the types of occupation that occurred after 1907. These led to the creation of a literature on types of occupations in which writers were primarily concerned with the extent of applicability of rules of occupation.[25] This was due to problems faced by the international community, in certain cases of occupation, where states refused to recognize a state of war by contesting the legitimacy of the enemy. In other cases, territories were not occupied in the course of hostilities[26], but the *de facto* presence of occupying troops had the same impact on the population of the territories occupied.

The limited definition of belligerent occupation implied by the Hague Regulations IV could be seen to create problems in the application of modern international law of occupation. It falls short of addressing many cases of occupation of foreign territories during and after the Second World War, including the cases of occupation of territories with no previous clear legal status. Thus, in addition to using the term ‘alien occupation’, for the purpose of this paper, the inclusive term of ‘occupation’ will be used for various reasons. Both terms reflect the broader scope of application of the law of war to the situations of occupation referred to in the Geneva Convention IV and the Additional Protocol I. Furthermore, it is more consistent with *Martens clause* mentioned in the preamble of the Hague Regulations IV, which is also incorporated in both the Geneva Conventions denunciation Articles[27] and

[24] The applicability of the Hague Regulations IV was generally accepted as applying to occupation of neutral territories especially during the Second World War. Feilchenfeld, H. Ernst, *the International Economic Law of Belligerent Occupation*, Columbia University Press (1942),p.6

[25] *Supra* note 10

[26] German occupation of Czechoslovakia(Sudetenland) 1938 and Denmark 1940 are the leading examples

[27] Paragraph 4 of Common Articles 63/62/142/158

Article 1(2) of the Additional Protocol I as a dynamic factor of customary international law. [28]

'The *Martens clause* prevents the assumption that anything, which is not explicitly prohibited by the relevant humanitarian law treaties'[29], may be permissible by recognizing that the provisions of IHL are not exhaustive. Finally, the term occupation encompasses developments in the field of law of occupation after the cruel experiences of the Second World War. According to Article 154 of the Geneva Convention IV the definitions and scope of the Convention is 'supplementary' to rules laid down in section I and III of the Hague Regulations, which includes Article 42. Hence, Common Article 2 of the Geneva Convention IV extends the definition and supplements Article 42 and provides:

"[…] the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them."

"In addition to the provisions which shall be implemented in peacetime, the present 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."

Two clarifications may be extracted from paragraphs stated above. Pictet, in his Commentary emphasize that, the first paragraph deprives the belligerents of excuses they would earlier uphold for not fulfilling their obligations under the Convention by formally not declaring a 'state of war'.[30] Article 2(1) holds that the occurrence of actual hostilities is sufficient, although this is not recognized by the parties to the conflict.[31] Any occupation of a 'high contracting party', which is a result of war, is covered by paragraph 1. Moreover, Article 2(2), by expressly mentioning occupations as international conflict, also extends the

---

[28] Commentary Additional Protocol I,p.38

[29] Ibid p.39

[30] Jean Pictet, *Commentary 1949 Geneva Convention IV relative to the protection of civilian persons in time of war,* ICRC,1958,p.20 (hereinafter Commentary IV)

[31] Ibid

applicability of the Conventions and law of occupation to situations of occupation that 'meets with no armed resistance'. This may indicate that presence of armed forces may agitate some form of belligerency, when a state is threaten to give up its sovereignty over its territory (e.g. Czechoslovakia in 1938) or is not capable of defending it(e.g. German occupation of Denmark in 1940). Contrary to the position held by Israel[32], the ICJ in the *Wall Case* noted that 'the object of the second paragraph of Article 2 is not to restrict the scope of application of the Convention, as defined by the first paragraph, by excluding there from territories not falling under the sovereignty of one of the contracting parties.' [33] The Court states 'it is directed simply to making it clear that, even if occupation effected during the conflict met no armed resistance, the Convention is still applicable' and its purpose is 'to protect civilians who find themselves, regardless of the status of the territory, in the hands of the occupying power'.[34] Furthermore, according to the Commentary, 'any difference arising between two States' which leads to coercive armed presence in the foreign territory 'is an armed conflict within the meaning of Article 2.'[35] This may support the idea that, 'just as belligerent occupation may be fomented by war, war can be started by belligerent occupation'.[36] Article 6 of the Geneva Convention IV, reaffirms that Article 2(2) covers situations of occupation, which may occur without hostility, such situations include armistice occupations lasting more than one year.

It is worth noting that Common Article 2 of the Geneva Conventions was not clear concerning cases of occupation of 'non-self-governing' or 'disputed territories'.[37]Thus the developments leading to the adoption of Additional Protocol I and enshrined in Article 1(4)

---

[32] The Wall Case, paras.90-4, p.173-4

[33] Ibid, para.95,p.175

[34] Ibid

[35] Commentary IV, p.20

[36] Y. Dinstein, *Supra* note 13,p.42

[37] In the case of the Israeli occupation of West Bank and Gaza in 1967, the occupation of East Timor by Indonesia and the occupation of Western Sahara by Morocco, all the occupying powers argued or continue to argue either that the territory in question belonged to them or that it had the status of *terra nullius.* (A land belonging to no one)

were mainly intended to fill the gap, by extending the scope of application of IHL with regards to cases of 'alien occupation' of territories which had not yet attained the status of a state. The occupations of Goa by India in 1961, Western Sahara by Morocco in 1975 or East Timor by Indonesia in 1979 are examples of such territories. Article 1(4) states that the application of the Additional Protocol I and the four Geneva Conventions, in addition to situations already covered by the provisions discussed above, 'includes armed conflicts in which peoples are fighting against (…) alien occupation (…) in the exercise of their right of self-determination'. Thus Article 1 (4), as already mentioned, extends the application of IHL to those types of struggle against an occupying power that may be identified as 'wars of national liberation'. According to Roberts, the reference to occupation in paragraph 4 does not concern itself directly with the definition or scope of 'alien occupation', it just makes it clear that the law of occupation is applicable to territories not having been part of the 'high contracting party' or territories with a controversial international status.[38] The Commentary also interprets the term as distinct from the traditional belligerent occupation, which is an inter-state occupation. The term alien occupation 'covers cases of partial or total occupation of territory which has not yet been fully formed as a state'.[39] These developments made it clearer that every time the armed forces of a country are in control of a foreign territory, and find themselves face to face with the inhabitants, the provisions of the law on occupations are partly or fully applicable.

It follows from the above that that the law of occupation may apply to all the cumulative situations of the Hague Regulations IV, Common Article 2 of the Geneva Conventions and Article 1(4) covering a variety types of occupations when peoples are fighting for the exercise of their right to self-determination. This argument can also, be asserted with reference to the term 'include' in the Article 1(4) of the Additional Protocol I. Nevertheless, the term NLM is not specifically used in Article 1(4). With this regard, the Commentary by analysing the historical background of the paragraph, notes that where a people take up arms in order to free itself the domination of another people are commonly

---

[38] Adam Roberts, *supra* note 10,p.254

[39] Commentary Additional Protocol I,p.54

referred to as NLMs. [40] The Commentary further identify two requirements that give rise to legal personality of NLMs, namely that such movements represent a people engaged in 1) an armed conflict in order to achieve its 2) right to self-determination.[41] Based on the two latter material criteria wars of national liberation have an international character. Nevertheless, no other clear guidelines were provided in the paragraph to identify NLMs. Thus, in the following section, I will discuss how such movements have been identified according to the material criteria set out in Article 1(4).

2.2 National Liberation Movements (NLMs): a definition

Armed struggle of a 'people' subjected to domination can be traced back to the American war of independence against British rule or Latin American wars of independence mostly against colonial Spain.[42] However, it was the decolonization process after the Second World War that produced the most intense wave of NLMs, which gradually spread from Africa to other continents. The National Liberation Front of Algeria (FLN) was the first such movement in Africa, claiming independence from France.

In the traditional sense NLMs are organized groups fighting on behalf of a 'people'[43] who share the same ethnic or national origin, with the objective of freeing themselves from a colonial power by armed resistance.[44] With the consequent end of colonialism, the term has arguably broadened to include struggles against all forms of domination or oppression by another foreign power or peoples struggling against racist regimes, and this is how it is understood at present. [45] NLMs tend to aspire to possess and control a territory that they claim belongs to peoples they represent. Characteristic of a number of these movements is

---

[40] Ibid pp.48-54

[41] Ibid pp.53-4

[42] Georges Abi-Saab, *supra* note 4,p.367

[43] Article 96(3) of the Additional Protocol I

[44] Antonio Cassese, *International Law*, 2nd ed. 2005,p.140

[45] In the legal literature no clear definition is provided, however, Antonio Cassese explains such movements in this way. See ibid pp.140-142

that either they are hosted in a friendly country, from where they carry out their struggle, or they acquire control over some part of the territory which they are fighting for.[46]

These major historical developments in international realities and social phenomena required an evolution in the relevant fields of international law, and a move from the traditional view which held that sovereign states were the only (legitimate) subjects in international law.

As already mentioned, there are two material criteria attached to the international status of NLMs. These were long contended by mostly western countries and gradually diminished with until the adoption of Article 1(4) of the Additional Protocol I.[47] The first is based on the gradual development and recognition of an international right to self-determination enshrined in the UN Charter. The second is based on the actual armed struggle carried out by such movements in order to exercise their right to self-determination. Hence, it was suggested that organized NLMs, in contrast to insurgents or rebels, may acquire international legal status based on their political goals and their struggle to be free from foreign domination.[48] Possessing an international status under international law did not only constitute the possibility of having certain rights[49] and obligations. Most importantly, this constituted that a colonial or occupying power must refrain from the use of force and territorial annexation against the will of the people concerned, while placing a duty upon other states to assist with the realization of the right to self determination.[50] These points will be discussed in the following sections.

---

[46] Antonio Cassese *supra* note 44,p.140

[47] Abi-Saab *supra* note 4,pp.366-76

[48] Commentary Additional Protocol I,p.41

[49] These rights are outlined in particular in UN GA Resolution 3103(XXVIII) of 1973 paras.1-3

[50] General Assembly Resolution 2625(XXV)'*Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States'* of 1970

Since any emerging group claiming rights of self-determination can utilize the term NLM it is practical to raise the question of who represents a 'people'.

Traditionally, an adversary or third party could bestow right and obligations to NLMs and award them international status through the recognition of belligerency.[51] After 1949, however, recognition as an international practice and determination of the legal status of NLMs has taken place mainly, but not exclusively, through the organs intergovernmental organizations such as the UN or regional organizations.[52]

It is worth noting that Article 55 of the UN Charter does not mention which 'peoples' may enjoy the right to self-determination, although it emphasize that promoting well-being puts a level of obligation upon all states to ensure self-determination. Chapter XI and XII of the Charter indicate that self-governing territories and trust territories which have 'not yet attained a full measure of self-government' have a status in the international community which is separate and distinct from the state administering them. The adoption of the UN General Assembly *Declaration on the granting of independence to Colonial Countries and Peoples* of 1960, Resolution 1514(XV)[53] was a major step towards deciding both the distinct status of these territories and the legal status of NLMs. The UN has repeatedly asserted this point since the mid-1960s through numerous Resolutions[54] and its consistent attitude when dealing with problems related to trust territories and the unique status of their peoples. General Assembly Resolution 2625 (XXV) *Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations* [55] of 1970, emphasized that:

---

[51]Andrew Clapham, *Human Rights Obligations of Non-State Actors,* Oxford University Press(2006)Chapter 7,pp.271-4

[52] Abi-Saab *supra* note 4,p.372-4

[53] Hereinafter GA Resolution 1514 (XV)

[54] UN GA Resolutions 752(A/2630), 1953, 858 (A/2890), 1954, 1253 (A/4090), 1958

[55] Hereinafter GA Resolution 2625(XXV)

"(…) such separate and distinct status under the Charter shall exist until the people of the colony or non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles."

These provisions simply indicate that the people of such territories are entitled to exercise self-determination. From these provisions one may interpret that the UN Charter refers to a duty put upon the 'administering power' to grant independence to territories not being part of its own territory.

The recognition of such movements in the above-mentioned territories was mostly either through the recognition of states or the UN or other regional organizations.[56] In Africa the FLN, PAIGC (African Party for the Independence of Guinea and Cape Verde), FRELIMO (Liberation Front of Mozambique), ANC (African National Congress in South Africa), PAC (Panafricanist Congress of South Africa) and SWAPO (South West Africa People's Organization in Namibia) are some examples. Other examples from the Middle East and Asia include the PLO (Palestine Liberation Organization) and FRELITIN in East Timor, which both emerged to fight a situation of alien occupation. Most of the movements subjected to colonialism or alien occupation mentioned above managed to acquire statehood, while others are still seeking independence.[57]

2.2.1 The right to self-determination of peoples

Traditional and contemporary developments of the right of self-determination, especially discussions regarding minority rights to self-determination, are extensive, and in this part, I only intend to address them to the extent relevant to the scope of this paper.

The right to self-determination is defined as (a) people's right to determine its own political, economic and cultural status. It is one of the fundamental principles of

---

[56] Heather Wilson, *International Law and the use of Force by National Liberation Movements*, Clarendon Press(1988) p.105-123

[57] Antonio Cassese, *supra* note 44

contemporary international law[58] and is both enshrined in treaty law and confirmed in numerous General Assembly Resolutions[59], such as GA Resolution 1514 (XV) and GA Resolution 2625(XXV). The right to self-determination is in addition incorporated in Article 1(2) and 55 of the UN Charter and reaffirmed in Article 1 of *the International Covenant on Civil and Political Rights* (ICCPR) and *the International Covenant on Economic, Social and Cultural Rights* (ICESCR) of 1966.

Article 1(2) of the UN Charter lists the promotion of 'friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples' as one of the four main purposes of the United Nations. The Charter further sets, at Article 55, self-determination as a necessary condition to achieving peaceful and friendly relations among nations.

The legal status of this principle and related state obligations has been much contested. Ex-colonial powers viewed the principle as an ideal without obligation, while the Soviet Union and the emerging Third World countries viewed the principle as a 'right' imposing an obligation on colonial powers to ensure its implementation.[60] The legal right of self-determination and its consequent legal obligations, in the UN Charter first crystallized[61] in GA Resolution 1514 (XV) pursuant to which 'all peoples have the right to self-determination'. The Resolution also called on state parties to take immediate steps 'in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations' and cease 'all armed action or repressive measures of all kinds directed against dependent peoples'. This was again confirmed in Common Article 1 to the to the ICCPR and ICESCR, which lays upon the state parties the obligation to promote and

---

[58] Case concerning *East Timor (Portugal v Australia), ICJ Reports 1995*,p.102,para.29 the ICJ held that self-determination of peoples to be 'one of the essential principles of contemporary international law.'

[59] See for example GA Resolutions 2326(XXII) of December 1967, 2396(XXIII) of December 1968, 2708(XXV) of December 1970, 3314(XXIX) of December 1974

[60] Abi-Saab *supra* note 4,p.369

[61] The prominent Israeli professor Yehuda Blum argues that self-determination was not an operative principle of international law. *'Reflections on the Changing Concept of Self-determination'*, Israel Law Review, 10 (1975), 511

respect that right in conformity with the UN Charter. Some authors[62] have further argued that the major breakthrough in this respect came in 1970 with the unanimous adoption[63] of GA Resolution 2625(XXV), which reads at its paragraph on 'the principle rights and self-determination of the peoples':

"by virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations (…) every State has the duty to respect this right in accordance with the provisions of the Charter' and 'to refrain from any forcible action which deprives peoples(...) of their right to self-determination and freedom and independence."

The ICJ in its Advisory Opinion on Namibia[64] affirms that the two Resolutions mentioned above, give expression to the development of customary international law in the field of self-determination.

Despite the fact that the UN Charter did not clearly define whom a 'people' is to enjoy this self-determination, it may be understood from Article 6 of GA Resolution 1514(XV) that the UN was extremely selective and concerned that the territorial integrity and political independence of its members remain undisrupted, as it states:

"Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations"

Traditionally it has been argued that the provisions laid down in Article 1(2) and 55 were not intended to cover minorities within already established states and that the territorial integrity of established states was not to be interrupted, [65] this view was confirmed by the

---

[62] Abi-Saab *supra* note,4, H. Wilson *supra* note,56

[63] GA Resolution 2625 (XXV) was adopted by 89:0:9. For the first time all western powers and their allies accepted self-determination not only as an ideal, but also as a right with a binding obligation

[64] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276(1970),*ICJ (Advisory opinion of June 21 1971), para.52 (hereinafter Namibia Case)

[65] Antonio Cassese *Supra* note,44,p.63

African Commission on Human and People's Rights in *Katangse v. Zaire* Case.[66] However, one may argue that GA Resolution 1514(XV) was only designed as a programme in which independence could be granted to former colonial and mandated territories under the United Nations Trustee system mentioned in chapter XI and XII. As Heather Wilson points out, since 1960 the application of the right to self-determination has been developed and interpreted more broadly, and applied broadly to situations, which would not immediately be identified as colonial subjugation or external oppression.[67] Article 1(4) of Additional Protocol I describes the situations of colonial domination, alien occupation and racist regimes as three examples of categories where self-determination may be said to be applicable and consequently the state parties are under an obligation to respect it. As already stated above, one of the most important obligations includes strictly observing actions, which are contrary to the prohibition of use of force.[68]

According to Cassese, peoples afforded rights to self-determination in contemporary international law are 1) those populations living in independent and sovereign states, 2) populations of territories that have yet to attain independence (Article 73 of the Charter) and 3) populations living under foreign military occupation.[69] It may be argued that in contemporary international law, self-determination shall above all mean the liberation of peoples subject to any foreign domination or alien occupation, since colonialism no longer exists and racist regimes such as the South African Apartheid regime are fortunately no longer prevalent in the world community.

For the purpose of this study, I will further discuss the second obligation laid upon states for ensuring the right to self-determination, namely to refrain from use of force, as this is

---

[66] The Katangese People Congress vs. Zaire, Communication 75/92 of 1995, reported in the 8th Annual Activity Report of the African Commission on Human and People's Rights (ACHPR).

[67] H. Wilson *supra* note 56,p.69

[68] Ibid p.78

[69] Antonio Cassese, *self-determination of peoples: a legal reappraisal*, Cambridge University Press,1995,p.59

related to the second material criterion linked to NLMs and their struggle against a situation of occupation or alien occupation.

2.2.2 The prohibition of use of force and the right to self-defence in international law

The prohibition of use of force in international law is regulated within the field of *jus ad bellum* and is one of the fundamental principles of international law and customary law.[70] The Commentary to the UN Charter states that 'today Article 2(4) constitutes the basis of any discussion of the problem of use of force'.[71] Some have also suggested that rules prohibiting use of force have today not only the status of customary international law but are also to be considered among the peremptory norms of international law imposing community obligations.[72] Thus, waging war by means of military force in international law is strictly prohibited under Article 2(4) of the UN Charter, which provides:

> "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

Historically, the use of force as in Article 2(4) of the UN Charter is commonly understood to imply direct 'armed attack', but the concept has in practice had wider significance.[73] Exceptions to this prohibition might arise where a state is acting in self-defence by responding to an act of aggression as laid down in Article 51 of the Charter, which states:

---

[70] This point was confirmed by various ICJ judgments including *Military and Paramilitary Activities in und against Nicaragua (Nicaragua* v. *United States of America). (Merits) Judgment I.C.J. Reports 1986,* p.*14.*pp.100-1, para.190 (hereinafter The Nicaragua Case) and *Armed activities on the territory of the Congo* (Democratic Republic of the Congo v. Uganda) para.24,p.16

[71] Bruno Simma *(ed.)'A Commentary: the Charter of the United Nations'*, Oxford University Press,1995 p.111(Hereinafter Commentary UN Charter)

[72] Commentary ILC Draft Articles, the Commission's report (A/56/10), in the *Yearbook of the International Law Commission, 2001*, vol. II, Part Two p.112(hereinafter ILC Draft Articles)

[73] Ian Brownlie, *international law and the use of force by States,* Clarendon press (1963),p.363

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council […]"

Article 51 of the UN Charter introduced the right to self-defence as the *right intent* to conduct war in international law. Because the international system does not have an effective judicial or administrative machinery, when all peaceful methods were exhausted, it permitted a victim state to go to war against an aggressive State in order prevent continued aggression. However, as some may have suggested the UN Charter strictly limited the mandate to use force to the Security Council under Article 42 of the Charter, making the use of force to accomplish territorial expansion effectively prohibited.[74] Following this argument it may be argued that Article 51 provides for a limited unauthorized right to self-defence by stating 'until the Security Council has taken measures necessary to maintain peace and security'. In the Nicaragua case, the ICJ emphasized the conditions for self-defence, agreed by the both parties, that 'whether the response to an attack is lawful depends on the observance of the criteria of the necessity and the proportionality of the measures taken in self-defence'.75 The ICJ also held to the dominant view76 that self-defence, whether individual or collective, can only be exercised in response to an "armed attack".77

According to Article 51, the right to self-defence may be used until the Security Council has taken measures and thus places an obligation on members who act under the said

---

[74] Charles Garraway, "Occupation Responsibilities and Constraints" in *the Legitimate use of Military Force: just war tradition and the customary law of armed conflict*" Howard M. Hensel(ed.)Ashgate publishing(2008)

[75] The Nicaragua Case (1986) paras.194,p.103

[76] Akerhurst, Michael Barton, *A Modern Introduction to International Law,* 5th ed. Allen and Unwin 1984,pp.222-3

[77] The Nicaragua Case (1986),para.195,p.103

Article to report to the Security Council 'immediately' once they have exercised this right. The latter obligation may be interpreted in line with Article 42 of the Charter to limit the subsidiary nature of Article 51 by emphasizing the role of the Security Council in carrying out the purpose of the UN Charter : to ensure international peace and security.[78]

2.2.3 Occupation *versus* self-determination

The aim of the following paragraphs is to focus attention on the interaction between the concept of military occupation and use of force in the context of self-determination, by raising the following questions: what is the effect of or relation between the phenomenon of occupation and the prohibition of use of force? What is the legal status of occupation in the field of *jus ad bellum*?

It was mainly during the nineteenth century and the development of the Westphalian state system that the notion of occupation began to develop. Formerly powers merely annexed territory as they conquered it and incorporated it within their boundaries. As has been remarked, the notion of occupation can be discussed and classified in many different ways.[79] For example, occupations such as the initial occupation of Iraq in 2003, led by the United States and United Kingdom Multilateral troops or the Israeli occupation of Syrian Golan Heights in 1967 are typically brought about against the will of the occupied country and are a result of hostilities. Others, such as the occupation of the Sinai Peninsula by Israel in 1973[80] are based on armistice agreements[81] marking the end of hostilities. The latter normally continue after the end of the hostilities. Occupation may also be the result of a threat to use force, prompting the threatened government to give up control over its territory to a foreign power, as in the case of Czechoslovakia in 1938. However, as interesting as discussions around types of occupation may be, due to the limited scope and

---

[78] Commentary UN Charter,pp.676-677

[79] M. Bothe supra note 10

[80] Other example of this type of occupation is Serbian occupation of Hungry in 1918.

[81] According to Bothe *supra* note 10, during and after the Second World War, some belligerent occupations were based on an armistice agreement, without being regarded as providing a legal basis for a right to occupation. Furthermore, it shall be noted that an armistice is not always considered a definite peace treaty.

purpose of the thesis, this paper remains concerned more with the practical effects of occupation than with the causes or the processes by which a territory came under occupation.

The key issue is whether rules of contemporary international law provide for the right (for a state) to occupy territories outside own boundary, either on a 'legal' basis (Article 51 of the UN Charter) or 'illegally' (contrary to Article 2(4) of the UN Charter). Logically based on either ground occupations involve the exercise of some kind of coercive act over an inhabited territory outside the recognized boundaries of the occupying state. It has been argued that in contemporary international law the principle of appropriation by force of foreign territory is prohibited by the general principle of 'inalienability of sovereignty' and no longer results in a valid transfer of sovereignty to the occupying power.[82] This principle may be asserted in the wording of Article 43 of the Hague Regulations IV emphasizing 'the authority of the *legitimate power* having in fact passed into the hands of the occupant'. Following this line of argument, the former status of the occupied alien territory may have little significance when addressing its interaction with use of force and right of self-determination. In the field of *jus ad bellum* one may still suggest that 'all occupations are essentially the same in their character'.[83]

However, once accepting the exceptional legitimate armed self-defense under Article 51 of the UN Charter, one must logically also accepts the probability of a 'legal occupation'. Nevertheless, as we shall see, the law of occupation was not merely designed to protect the inhabitants of the occupied territory against the exploitation of the occupying power; it also gave certain administering rights to the occupying power. This may indicate that in the occupied territory, the *de facto* authority of the occupying power temporarily suspends the sovereign rights of the occupied state or authorities responsible. Thus, there are no justifications for adopting stringent measures against the civilian population once hostilities have ceased. The continued coercive annexation of a foreign territory by a state may

---

[82] Eyal Benvenisti supra note 2,p.5

[83] Adam Roberts *supra* note 10,p.251

therefore constitute an unlawful act, being contrary either to the principle of sovereign equality or the right to self-determination mentioned in the UN Charter and GA Resolution 2625 (XXV), even if the said state acted under Article 51 of the Charter.

Two objectives may be asserted from Article 51 of the UN Charter when assessing the material criteria of self-defense. First, Article 51 is supposed to protect the provision laid down in Article 2(4) and second, to ensure sovereignty and territorial integrity of the victim state by responding an immediate illegal act of aggression initiated by adversary state, through 'armed attack'.[84]

This discussion leads us to assess the phenomenon of occupation and its link to the prohibition of use of force in the UN Charter and relevant General Assembly Resolutions mentioned above. The issue of the right to use force in international law (*jus ad bellum*) is of key importance when assessing the right to self-determination and its link to wars of national liberation. This is because most contemporary analysis of *jus ad bellum* focuses on 'the right intent' to use force.[85] The right intent is understood as the right to self-defence.

It is worth noting that Article 2(4) does not only prohibit the threat or use of force against territorial integrity or political independence of states, but also 'in any other manner inconsistent with the purposes of the United Nations'. Such prohibition may include the prohibition to use force in a manner that deprives peoples of the right to self-determination enshrined in Articles 1(2) and 55 of the UN Charter. Article 4 of Resolution 1514(XV) emphasized that 'all armed action or repressive measures against dependent peoples shall cease'. This interpretation is further restated in GA Resolution 2625(XXV), which provides that 'every State has the duty to refrain from any forcible action, which deprives peoples (…) of their right to self-determination and their freedom and independence'. Abi-Saab argues that the latter paragraphs of the latter Resolution clarified that denying a people of

---

[84] The Nicaragua Case(1986),para.195, p.103

[85] H. Wilson *Supra* note 56,p.14-16

their right to self-determination by use of force is inconsistent with Article 2(4) of the UN Charter.[86]

The forcible actions referred to in GAResolution 2625(XXV) may be viewed as crimes against peace or acts of aggression[87], if not justifiable or authorized under Article 51 or 42 of the UN Charter.[88] These adverse connotations may be one of the reasons why many occupying states have repeatedly denied or been reluctant to label a particular situation as 'occupation.'[89] Thus, on the basis of numerous UN Resolutions[90] , one may assert that in international law a situation of occupation is not dependent on the recognition of the situation by the occupying power. Moreover, as ICRC observes, 'the problem regarding that definition is to be found neither in the legal nor the humanitarian realm but rather in the political arena.'[91]

Article 75 of the UN Charter considers the function of the administering state as 'trustee'. In addition Article 55 of the Hague Regulations IV regards the role of the occupying power towards the occupied territories as 'administrator', although it says nothing about the form of such administration.[92] Thus, some have argued that there is no legal duty of obedience by the population of an occupied territory towards the occupying power if 'the occupant

---

[86] Abi-Saab *supra* note 4,p.371

[87] GA Resolution 3314 (XXIX) Articles 3 and 7 of 14 December 1974

[88] Ian Brownlie *supra* note,73

[89] Adam Roberts, *supra* note 10,p.301

[90] SC Res.120 of November 1956, SC Res. 253 of May 1968, GA Res.2507(XXIV) of November 1969, SC Res.460 of December 1979, SC Res.1322 of October 2000

[91] Report by the International Committee of the Red Cross on *General problems in implementing the Fourth Geneva Convention*, Meeting of Experts, Geneva, 27-29 October 1998. Viewed on the official website at http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/57jpf6?opendocument

[92] Adam Roberts, *Prolonged military Occupation: the Israeli occupied territories since 1967*, in AJIL, vol.84 no. 1, American Society of International Law (1990),p.57

violates the duties imposed upon it by the law of wars.'[93] This position is contested, however, as under certain provisions of the treaties the occupying power may enforce obedience of its orders within the permissible scope of the Geneva Convention IV and the Hague regulations 'unless absolutely prevented' (Article 43) or when 'absolutely necessary by military operations'.[94] However, as some have argued, violation against these orders by the population of an occupied territory does not constitute internationally wrongful acts.[95]

In line with these arguments and with reference to GA Resolution 2625(XXV), one may assume that the use of force, except where necessary under the said provisions, by the occupying power to ensure obedience for its rules is a breach of both the UN Charter and Geneva Conventions IV. It may follow from this that an occupation considered legal under Article 51 of the Charter shall meet the criteria of necessity and proportionality and not be prolonged unnecessarily. In the words of GA Resolution 2625 (XXV) it is stated:

"Subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle [self-determination]…and is contrary to the Charter".

Hence, if we admit that an act of occupation might occur as a result of the legal exercise of the right to self-defense, then logically for such an occupation to be legal it shall cease once the objective of self-defense has been achieved. In this respect, I consider that unnecessarily lengthy occupation is a form of persistent denial and a breach of the right to self-determination of the people living in the occupied territories, which may therefore constitute a violation of Article 2(4) and a fundamental purpose of the UN Charter. Thus, one conclusion[96] may be that all types of occupation, including those resulting from a legal act of self-defence, which are maintained despite the authoritative pronouncements of

---

[93]Myres S. McDouglas and Florentino P. Feliciano, *the international Law of war: transnational coercion and World Public Order*, Martinjus Nijhoff publishers(1994),p.771

[94] Article 53 of the Geneva Convention IV

[95] Ian Brownlie, *international law and the use of force by States,* Clarendon press (1968)

[96] Adam Roberts supra note 10,p.293 lists reasons that may be perceived as type of 'illegal occupation'

international bodies such as the ICJ[97]or are unnecessarily prolonged, may become illegal under the field of *jus ad bellum*. According to the Commentary to the UN Charter, 'the attempt by a state unlawfully to prevent the bearer of the right to self-determination from exercising it would be illegal.'[98]The remaining question, however, is how to balance the necessary legal duration of an occupation with the need to guarantee the security of the occupying state. Furthermore, what measures can the peoples of the occupied territories take under international law in order to secure their right to self-determination in situations of occupation? What are the possible tools provided by international law for settling the possible conflict of interest between the occupant and occupied?[99]

2.2.4 The resort to use of force by National Liberation Movements

Since, the struggles of NLMs for independence did not fit easily into the framework of Articles 2(4) and 51 of the UN Charter, the use of force by NLMs to further self-determination created one of the most controversial discussions and developments in the field of *jus ad bellum*.[100]

Traditionally, as emphasized under point 2.2.2, the use of force in international law was limited to states. However, the recognition of the right of self-determination as an international legal principle changed the so-called 'state monopoly' on the right to resort to force. The latter view was first expressed in 1966 GA Resolution 2160(XXI), providing 'peoples subjected to any direct or indirect forcible action, under foreign occupation, which deprives them of their right to self-determination, entitlement to seek and receive support in

---

[97] See GA Resolution 2145(XXI) of October 1966 on termination of South West Africa's mandate, of which South Africa in defiance continued to maintain its presence and consequent ICJ, Advisory opinion of 1970 in the Namibia Case para.86, p.45

[98] Commentary UN Charter,p.70

[99] Eyal Benvenisti *supra* note 2,p.5

[100] Gray Christine, *International Law and the Use of Force*, third edition, Oxford University Press,2008,p.59

their struggle in accordance with the purposes and principles of United Nations'. [101] Perhaps the most important contribution in this respect, as already pointed out, was GA Resolution 2625(XXV), which may have given NLMs a legal right to use force against forcible denial and in order ensuring a people's right to self-determination, by stating:

"(…)In their [a people's] action against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and receive support in accordance with the purposes and principles of the Charter"

The Commentary to the UN Charter provide that although 'Resolution 2625 (XXV) does not produce a binding effect *per se*'[102], it is important as 'it reveals the practice of the UN organs.'[103] Hence, various legal issues concerning the use force by NLMs may be considered resolved in the above paragraph: it prohibited armed oppression by the colonial or occupying power, while at the same time granting NLMs a legal tool to resist 'forcible' occupation as a form of self-defence by virtue of their international legal personality. If one considers the argument to be that the right to self-defence means the defence of a nation against any form of foreign domination, then people of an occupied established state or peoples of an occupied foreign territory will always have the inherent right to fight against foreign occupation. This paragraph also provides that NLMs seek support, which should mean peaceful support as only this will be 'in accordance with the purposes and principles of the Charter'.

It may be interpreted that armed resistance or self-defence by NLMs under Article 51 of the UN Charter is not be admissible as the wording of the Article may indicate that it was intended to apply to 'a members of the United Nations'[104], meaning a sovereign state.[105]

---

[101] GA Resolution 2160(XXI) *concerning Strict observance of the prohibition of the threat or use of force in international relations, and the right of peoples to self-determination* of 30 November 1966

[102] Commentary UN Charter,p.66

[103] Ibid

[104] Article 51 of the UN Charter

[105] H. Wilson supra note 56,pp.91-97

This proposition however, does not pose any problems when a sovereign state and its people act under Article 51 of the UN Charter against military presence of an occupying power in order to defend their independence. Nevertheless, according to the Commentary to the UN Charter, Article 51 applies equally to those states not being parties to the Charter by virtue of its customary nature and the legal personality of a state.[106] Thus, accepting the legal personality of NLMs falling under one of the situations of occupation covered by the Hague Regulations IV, the Geneva Conventions or Article 1(4) of the Additional Protocol I, the resort to force in pursuit of self-determination under Article 51 may exist.

It follows from the discussions above that the rules of international armed conflict apply to members of NLMs engaged in a war of national liberation and thus bestowing both rights and obligations upon the members of such movements. Before discussing the applicability of these rules in the following chapter, I will summarize the following main points in the present chapter:

- The 1977 Additional Protocol I is 'supplementary' to the 1949 Geneva Conventions. Thus, Article 1(4) extends the application of IHL to new situations of occupation, including alien occupation.

- Wars of national liberation are commonly understood as armed struggle of a 'people' subjected to foreign domination, having an international status in IHL. Thus, according to the material criteria in Article 1(4), NLMs may be engaged in an armed conflict for the exercise of their right to self-determination.

[106] Commentary UN Charter,pp.666-678

3 Wars of national liberation in international humanitarian law

3.1 The application of international law of occupation

The rules regulating a situation of occupation are part of law of armed conflict (*jus in bello*). Rules of IHL do not look into the legality of the act of occupation in the field of *jus ad bellum,* discussed above. The purposes of the law of occupation are not purely or simply humanitarian but also practical, based on state interest and practice.[107]These rules seek to provide practical solutions and regulate conduct of warfare when hostilities break out between parties to a conflict. Thus, for the purpose of this chapter I will look at the conditions that need to be met for the applicability of IHL and the law of occupation and identify which rules may apply when and to whom.

Like many other rules of international law, rules regulating occupation are also viewed as a combination of both treaty law and customary law. It should be remembered that under international law the main feature of treaties is that they apply only to parties to a conflict who have fully consented to be bound by them.[108] Nevertheless, some provisions of treaties are considered to be codification of already existing customary law and are thus considered applicable to third states not party to them.[109] Therefore, the treaty provisions of law of occupation are first and foremost binding through acts of ratification, accession or notification of succession and come into force under the respective Articles of the four Geneva Conventions (58/57/138/153). Furthermore, they may also be applicable in cases when 'a power which is not party to the Convention *accepts* and *applies* the rules' when hostilities break out.[110] Common Article 2(3) of the Geneva Conventions makes the provisions applicable between a contracting and non-contracting party only 'if the latter accepts and applies the provisions'. The Commentary confirms that 'this rule also applies like the Conventions and the Protocol (…) in relation to the conflict concerned, with

---

[107] Adam Roberts *supra* note 92,p.46

[108] Article 34 of the Vienna Convention

[109] Article 38 of the Vienna Convention

[110] Commentary IV,p.48

regards to an authority representing a people engaged in a conflict of the type mentioned in paragraph 4 of Article 1'.[111] It follows from this that for the application of IHL it is enough that a NLM accepts and applies the Conventions and the Protocol when hostilities break out.

Following these rules, it has been argued that in cases of occupation the rule enshrined in Article 4(1) of the Geneva Convention IV concerned with the protection of protected persons may be regarded as the codification of accepted principles and shall apply in all given situations of occupation mentioned in the Hague Regulations, Common Article 2 to the four Geneva Conventions or in Article 1(4) of the Additional Protocol I. However, the Commentary[112] notes that such a statement is doubtful given the definition of protected persons in Article 4, which states:

"Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals."

"Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are."

In the case of occupied territories, 'protection is accorded to all the inhabitants who are not of the nationality of the occupying state. While it clearly excludes nationals of a state which is not party to the Convention, nationals of a co-belligerent state, so long as the state in question has normal diplomatic representation in the occupying State and persons who enjoy protection under one of the three previous Geneva Conventions .'[113]

---

[111] Commentary Additional Protocol I,p.25

[112] Ibid

[113] Ibid p.47

When analyzing the applicability of law of occupation in any given situation it is important to keep in mind that the very concept of occupation asserts that military control is temporary.[114] With regards to timeframe, the application of law of occupation imposes rights and obligations upon the occupying power from the 'outset of occupation', i.e. as soon as foreign troops are in contact with civilians[115], and shall 'cease on the general close of military occupation' (Article 3 API).

Before the adoption of the Additional Protocol I and its relevant Article 3, Article 6 of the Geneva Convention IV provided that 'in the case of occupied territory' the Convention should cease to apply one year after 'the general close of military operations'.[116] It has been argued that with the cessation of hostilities, the application of the convention should cease after one year.[117] However, the second sentence of Article 6(2) states that the occupying power is bound to apply Articles 1-12, 27, 2-34, 47, 49, 51, 52, 53, 59, 61-77 and 143 of the Geneva Convention IV in so far as it continues to exercise the functions of a government. These articles must be observed in cases of prolonged military occupation. This point is also confirmed by the ICJ judgment in *the Wall Case* and refer that which adds that other applicable 'provisions include Articles 47, 49, 52, 53 and 59.'[118]Thus, there may be reasons to question the continued importance of the one year provision in Article 6 of the Geneva Convention IV, especially when Article 3 of the Additional Protocol I abrogates the timeframe as a pretext for not applying the rules of the Conventions and the Protocol.

---

[114] Adam Roberts *Supra* note 92,p.45

[115] Commentary IV,p.59

[116] This provision had the occupation of Japan and Germany in mind, when the governmental duties carried out by the occupying power had been handed over to the authorities of the occupied territories after a while.

[117] Israel has since 1967 argued the provisions no longer applied to territories occupied by her(especially in due to lack of effective control in parts of the West Bank and in Gaza Strip since 2005), but it chose to apply the 'humanitarian provisions' of the Geneva Convention IV as a matter of policy. See case HCJ 9132/07 *Albassioni v. Prime Minister* (January 2008), para.12

[118] The Wall Case paras.125-6,pp.185-7

Article 4 of the Additional Protocol I states that 'Neither the occupation of a territory nor the application of the Conventions and Protocol I shall affect the legal status of the territory in question'. Article 4 thus reaffirms 'the undisputed principle of international law, that the occupation of a territory does not affect its status'.[119] According to the Commentary, this provision was meant to ensure the application of the Convention, when an occupying power, fearing the consequences of the application of IHL, contested the international character of a conflict, because it did not consider the other party to be a state or a people as referred to in Article 1(4) or when the occupant simply did not recognize the authority claiming to represent the people engaged in fighting. It further emphasizes that it was meant to secure humanitarian protection without the political consequences of recognizing a conflict as international or appearing to confer legitimacy on a liberation movement.[120] Such an interpretation would be consistent with the purely humanitarian purpose of Article 4, which is indeed to protect individuals and not to serve the state interests of the occupying power.[121]

As Robert states, these developments can be seen as "evidence of a more general tendency to think of war as a set of minimum rules to be observed in the widest possible range of situations and not to worry excessively about the precise legal definition of military occupation".[122]

However, explicit sources of the law of occupation are Articles 42-56 of the Hague Regulations and the Geneva Convention IV (especially Articles 27-34 and 47-78) and general principles of international law. Moreover, the minimum standards of laws of occupation, especially general rules enshrined in the Articles mentioned in Article 6 of the Geneva Convention IV, must be observed by the occupying power as long as the occupation lasts, even if the occupation is carried out under the terms of an armistice

---

[119] Commentary Additional Protocol I,p.72

[120] Ibid,pp.71-75

[121] Ibid

[122] Adam Roberts *supra* note 10,p.258

agreement, capitulation or in cases where there has been no military resistance or state of war.[123] These rules are generally recognized as being the codification of customary law.[124] All organized armed forces must respect especially those provisions dealing with the conduct of military occupation.

3.2 Applicability of IHL to the occupying power

Today 168 state parties are parties to the Additional Protocol I. The number of state parties to the Protocol I can be upheld as an argument that the treaty may be considered as customary, beyond its provisions that are viewed as being a codification of customary law.[125] Despite this, its application remains a main problem to wars of national liberation subjected to occupation as several important states most affected by such wars, including the United States, Israel, Turkey, Morocco, India and Indonesia, are not formally bound by it. State practice demonstrates that states have been reluctant to *admit* that the members of resistance movements have certain rights under international law by treating them as merely rebels or terrorists, while applying some of the provisions in particular cases, regarding for example the treatment of prisoners of war.[126] Nevertheless, in such cases, the Geneva Conventions remain the only applicable law by virtue of their Common Article 2. This view was also supported by the ICJ in the case of South Africa's occupation of Namibia and General Assembly Resolution 2871 (XXVI) of 1971.[127]

In a situation of occupation, most humanitarian provisions of law of war, especially those enshrined in the Geneva Convention IV (GCIV) should be observed by virtue of the occupant's role as 'administrator' (Article 55 HagueReg). The occupying power is under an obligation to maintain and restore public order and safety (Article 43 HagueReg). The

---

[123] Commentary IV,p.63

[124] See Final Record of the Diplomatic Conference of Geneva 1949, vol. II-B, p.108 (First Report by the joint Special Committee)

[125] Adam Roberts *supra* note 92,p.53-4

[126] H. Wilson *supra* note 56,p.151

[127] *The Namibia Case,*para.96. See also GA Res.2872(XXVI)of 20 December 1971

proposition above states that the basic rules codified in Articles 1-12 of (GCIV) must be observed by the occupying power as long as the occupation lasts. Furthermore, there are rules on the prohibition of rape, torture, extermination and coercive information extraction (Articles 31 and 32 GCIV), reprisals against civilian honor and family (Articles 27 GCIV and 46 HagueReg.), measures amounting to collective punishment of the civilian population, pillage and terror (Article 33 GCIV) and the taking of hostages (Article 34 GCIV). Moreover, the law obliges the occupying power not to change the *status quo* of the occupied territories, by strictly prohibiting the mass forcible transfer of the native population and transfer of parts of its own civilian population into the occupied territories (Article 49 GCIV) and destruction of private property, except when absolutely necessary militarily (Article 53 GCIV). The occupying power has the duty to ensure food and medical supplies to the civilian population (Articles 55 and 56 GCIV) and judicial guarantees should be respected (Articles 64-69GCIV).[128] Laws of fair trial shall apply according to (Articles 70-78 GCIV).

3.3 Applicability of IHL to NLMs subjected to occupation

One might suggest that the development of the right of peoples to self-determination is to some extent intertwined with recent developments in contemporary rules of IHL especially by virtue of Article 1(4) of the Additional Protocol I.

As already argued in chapter two, resistance movements subjected to occupation enjoy the right to struggle, including armed struggle. In addition, the international status of wars of national liberation attributes rights and obligations to NLMs. This suggests that the rules of war may in one way or another be applicable to the means and modes of resistance undertaken by NLMs. The detailed provisions of the laws of war are broad and complex and beyond the scope of this paper to discuss in detail and will therefore only be addressed briefly. Before analyzing issues related to the conduct and means of warfare by members of NLMs, it is important to raise the question of how such movements subjected to

[128] Abi-Saab *supra* note 4,p.426

occupations can be bound by the rules of IHL enshrined in the Hague Regulations IV, the four Geneva Conventions or the Additional Protocol I.

For the application of treaty law, formal means or procedures are made available in which NLMs by virtue of their legal personality can be bound. They may first and foremost be bound through the act of accession[129] or formal acceptance of the rules. Furthermore, it has been argued by some authors[130] in the field that non-state actors were traditionally considered to have international rights and obligations with regard to those states or the occupying power that recognized them as having belligerent status in times of armed conflict. As already been pointed out in section 3.1, some provisions provide measures to apply the treaty provisions, even if the adversary state does not recognize the situation of belligerency.

Abi-Saab argues that the four Geneva Conventions can be interpreted as giving the opportunity to non-state actors to become parties to the treaties by virtue of the respective Articles 60/59/139/155 allowing 'any power in whose name the present Convention has not been signed, to accede to the convention'. [131] He defends his argument based on the use of the term "any power" in the articles and further states that a broad interpretation would be more compatible with the purpose of humanitarian provisions. Moreover, Common Article 2(3) of the Geneva Conventions may indicate a similar possibility by providing that a non-contracting power 'shall be bound by the convention […] if the latter accepts and applies the provision thereof'.

---

[129]Normally a state instead of signing and then ratifying a treaty may become party to it by a single act called accession. The PLO on 21 June 1989 notified the Swiss Federal Council that it wished to apply the four Geneva Conventions and its two Protocols. However, on 13 September 1989, the Swiss Federal Council informed the States-Party to the Protocol that it was not in a position to decide whether the letter constituted an instrument of accession, "due to the uncertainty within the international community as to the existence or non-existence of a State of Palestine". Source: http://www.icrc.org/IHL.NSF/WebSign?ReadForm&id=470&ps=P

[130] Andrew Clapham *supra* note 51,pp.271–285

[131] Abi-Saab *supra* note 4,p.400

Other authors who emphasize that the word "power" exclusively meant states have criticized this interpretation.[132] The Commentary provides that 'the invitation is addressed to all states'.[133] Abi-Saab, however, notes that if the above-mentioned provisions were only supposed to be open to states, the recognition of belligerency by third states should not be able to change the situation (such recognition will still not make a non-state party a signatory). He suggests that the vague term 'belligerent power' in the Hague Regulations IV should make it applicable to NLMs subjected to occupation.[134]

Despite the fact that the latter interpretation may not be precisely in line with the intention of the signatories to the Conventions, it might be, as Abi Saab also notes compatible with the humanitarian object of the Conventions. [135]Furthermore, it is also asserted to be more in line with contemporary developments and the extension of the scope of application of the four Geneva Conventions, as *supplemented* by the adoption of the Additional Protocol I.

This unclear status was also of major concern to those opposing states that were skeptical about attributing international status to wars of national liberation by virtue of Article 1(4) of the Additional Protocol I for fear that such an amendment would be discriminatory, giving liberation movements all the rights of belligerents without imposing equal obligations.[136] Thus, after the adoption of Article 1(4) the means or procedures by which NLMs could be bound by the Conventions and the Protocol needed to be discussed. Thus it was decided that the NLMs[137] who were recognized by the various regional or intergovernmental organizations be invited to participate in the Diplomatic Conference

---

[132] H. Wilson suggests that according to the historical records and especially Article 2 of the Hague Regulations, the signatories only seek to regulate war between states. See also See also Antonio Cassese, 'Wars of national liberation and humanitarian law', in *Studies and essays in international humanitarian law and Red Cross principles*, Martinjus Nijhoff Publishers(1984)pp.313- 324, p.316
[133] Commentary IV,p.621
[134] Abi-Saab *supra* note 4,p.400-403
[135] Ibid
[136] Antonio Cassese *supra* note 132,p.315
[137] These were the SWAPO, the PLO, the Panafricanist Congress (the PAC South Africa), the ANC South Africa and the African National Council (ANCZ Rhodesia)

convened by the Swiss government in 1974.[138] The discussions on means, which would make it possible for NLMs to be bound by the Conventions and the Protocol, resulted in a proposal by Norway[139], which became elaborated in Article 96(3) of Additional Protocol I, and provides for a special way to enforce the protocol and reads:

"The authority representing a people engaged against a High Contracting Party in an armed conflict of the type referred to in Article 1, paragraph 4, may undertake to apply the Conventions and this Protocol in relation to that conflict by means of unilateral declaration addressed to the depository. Such declaration shall, upon its receipt by the depositary, have in relation to that conflict the following effects:
(a) the Conventions and this Protocol are brought into force for the said authority as a Party to the conflict with immediate effect;
(b) the said authority assumes the same rights and obligations as those which have been assumed by a High Contracting Party to the Conventions and this Protocol; and
(c) the Conventions and this Protocol are equally binding upon all Parties to the conflict."

The provision did not define 'the authority representing a people', but the Commentary sets out some conditions, for the qualification of such legitimate authority. Firstly, an authority must be engaged in an armed conflict in the exercise of their right of self-determination against a party to the Additional Protocol I. Secondly a declaration must be addressed to the depository and come from an authority representing a people. The provision requires also that the authority representing a people has at least made a proposal to require recognition by a competent regional intergovernmental organization. [140]

However, following the conditions set for such movements, a problem may arise in cases where two or more authorities represent the same people. What would then be the position if a NLM is not recognized by an intergovernmental organization or regional organization such the UN or for example Organization for African States (OAS) despite a proposal

---

[138] GA Resolution 3102(XXVIII) of 12 December 1973

[139] The Official Records of the Diplomatic Conference (CDDH/I/86)

[140] Commentary Additional Protocol I,p.1088

submitted? What if an adverse party to the conflict is not bound by the Additional Protocol I? On this point there is no explicit mention in the provision that may indicate that an unrecognized NLMs subjected to 'alien occupation' by virtue of Article 1(4) is not qualified for applying the Conventions and the Additional Protocol I in cases of conflict. Furthermore, Wilson points out that the concept of a 'people' mentioned in Article 96(3) is only defined directly by reference to GA Resolution 2625(XXV) and the UN Charter.[141] Furthermore, the Commentary confirms the gradual recognition of wars of national liberation before the adoption of the Protocol I, which made it possible for such movements to accept and apply the Conventions in accordance with paragraph 3 to Common Article 2. Sometimes this would however, constitute a unilateral commitment.[142]

These points show that the most important criteria for the application of IHL require that NLMs express their consent to be bound by them and apply them when hostilities break out. Such acceptance and the consequent application will be independent of the acceptance of the occupying power[143] and bind all the parties to the conflict equally irrespective of the cause of the conflict.[144]

Nevertheless, beyond the formal procedures attached to treaty application, customary international law remains fully applicable between members of NLMs and the occupying power[145] from the outset of the conflict by virtue of their legal personality under international law. In particular, the customary provisions of the Hague Regulations IV and the four Geneva Conventions shall apply.

Adherence by a NLM to IHL may seem more beneficial to the movement than the occupying state, in that it might enhance its legitimacy and support in the international

---

[141] H. Wilson *supra* note 56, p.166. See discussion under chapter 2

[142] Commentary Additional Protocol I,p.1091

[143] Abi Saab *supra* note 4,p.403

[144] Commentary Additional Protocol I,p.1089

[145] Ibid

community. However, unilateral adherence to the rules of IHL is not always a guarantee of analogous treatment by the occupying power.

Taking this assumption into account, I will in the following section examine the effects of the declaration and the rights and duties which flow from rules of IHL both by participating in the said treaties and through binding relevant customary law provisions.

3.3.1 Concrete application of the rules regulating conduct of warfare

General Assembly Resolution 3103(XXVIII) addressed the legal status of 'the persons engaged in armed struggle against colonial and alien domination and racist regimes' by declaring them as combatants.[146] Members of the organized resistance movements mentioned in Article 1(4) of the Additional Protocol I who have accepted to be bound by Article 96(3) are, according to the resolution, considered combatants when fighting against an occupying power, provided they fulfill requirement of the legal definition set out in Article 43 of the Additional Protocol I. These conditions include being organized 'under a command responsible to that [a Party to the conflict] for the conduct of its subordinates (…)' and 'shall be subject to an internal disciplinary system which, inter alia, shall enforce compliance with the rules of international law applicable in armed conflict'. Such conditions may imply that a people must have an authority capable of applying the law of war.

Combatant status according to international law gives various benefits. Firstly the right to direct participation in hostilities within the limits proposed by IHL and secondly the right to be a prisoner of war if captured and immune from prosecution under municipal law.[147] These benefits also make combatants a legitimate military target by the opposing party to the conflict (Article 52 API). Thus, in order to ensure respect and protection of the civilian population from the effects of war, all combatants must distinguish themselves from the civilian population. Combatants must distinguish themselves according to the general rules

---

[146] UN GA Resolution 3103(XXVIII) 12 December 1973 adopted by 82:13:19

[147] Dieter Fleck, *supra* note 19,p.86

laid down in Article 4A (2) of the Geneva Convention III[148], by having a 'fixed distinctive sign recognizable at a distant' and 'carry arms openly'. A member of an organized resistance movement is equally 'obliged to distinguish himself from the civilian population' in accordance with Article 4A (2) of the Geneva Convention III and Article 44(3) of the Additional Protocol I. The latter Article is a development of the former. A combatant's failure to distinguish himself from the civilians constitutes a breach of international law liable for punishment under international criminal law.[149]

However, the Commentary to the second sentence of Article 44(3) of the Additional Protocol I, which is mainly concerned with the features of guerilla warfare[150] and situations of wars of national liberation subjected to occupation, makes some exceptions to the general rules of combatancy.[151] Article 44(3) by recognizing 'situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly(…) while they are engaged in an attack or in a military operation predatory to an attack'.[152] Furthermore, 'the exception recognized that situations could occur in occupied territory and in wars of national liberation in which a guerrilla fighter could not distinguish himself from the civilian population throughout his military operations and still retain any chance of success.'[153] Nevertheless, while taking into account circumstances in which NLMs may operate in, under normal conditions, members of so-called regular forces or members of NLMs shall distinguish themselves by for example wearing uniform more or less permanently. Thus, as also mentioned in Article 44(7) of the Additional Protocol I, 'this article is not intended to change the generally

---

[148] *Geneva Convention Relative to the Treatment of Prisoners of War, August 12, 1949*

[149] Dieter Fleck *supra* note 19,p.86

[150] Since the World War II, internal wars, guerilla tactics and an increase in different types of occupation have been more prevalent than inter-state wars.

[151] Commentary Additional Protocol I,p.527

[152] Article 44(3) Additional Protocol I

[153] Commentary Additional Protocol I,p.529

accepted practice of States with respect to the wearing of the uniform by combatants'. Despite the points advanced above, I consider, the provision laid down in Article 44(3) posing problems of application, since it may give perquisite to the occupying power not to apply the law to captured members of a NLM or guerilla soldier. However, as also Wilson points out, the "significant exceptions to the rule cannot be considered as a customary rule of international law." [154]

3.3.2 Concrete application of rules regulating means of warfare under occupation

NLMs fighting against an occupying state represent a typical asymmetric conflict between radically unequal parties in terms of resources they command. Unfortunately rules regulating occupation, as some authors have already pointed out, do not provide any direct guidelines for balancing the needs of the authority representing a people through armed resistance[155], except the rules of general customary law prohibiting indiscriminate attacks against civilians. Despite the fact that today the rules apply to a wide range of situations, they seem to give more *de jure* rights to the occupying power than to the occupied people. In this part, it is therefore necessary to assess the scope and limits of the right of struggle under IHL both for those NLMs who are bound by virtue of Article 96(3) of the Additional Protocol I and those who are bound by the fundamental principles of customary international law. For such an analysis, it is crucial to evaluate the extent of forcible denial of the right to self-determination by the occupying power. What are the permissible and non-permissible means of resistance by a people seeking to exercise their entitlements associated with the right of self-determination?

The focus of the debate is upon considerations on legal means of armed struggle according to IHL. Such considerations may affect the rights and duties of the parties to a conflict to conduct war. Parties to the conflict while considering and ensuring that their conduct is

---

[154] H. Wilson *supra* note 56,p.179

[155] Richard Falk, Azmi Bishara, the right of resistance and the Palestinian ordeal, *Journal of Palestine Studies* XXXI,no.2(Winter 2002),pp.19-33, p.24 , Adam Roberts *supra* note 88,pp.80-86

confined to security and military targets, they must also consider and are obliged to ensure the protection of civilian population according fundamental rule of distinction laid down in Article 48 of the Additional Protocol I.

It is worth mentioning that the prohibition of reciprocity (i.e. exemption from the obligation to respect a particular Convention or Protocol as a whole because the adversary has not respected it as a whole) in IHL applies equally between parties which have consented to be bound by the relevant treaties. Article 60(5) of the Vienna Convention emphasizes that the prohibition against invoking reciprocity in order not to comply with the obligations of IHL is absolute. This applies irrespective of the violation allegedly committed by the adversary.[156]

Parties to the conflict are obliged to refrain from all forms of violence deliberately directed at innocent persons and non-military targets is prohibited (Articles 31, 32 GCIV). Reprisal against civilians and their property is prohibited (Article 33 GCIV). The taking of hostages is strictly prohibited (Article 34 GCIV). Falk states 'any instance of political violence directed at civilians with a calculated intention of producing fear and physical harm'[157], shall be regarded as an act of terrorism, which can be committed by both states and non-state actors.[158] In addition Article 50 of the Additional Protocol I, confirms that 'the presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character'. Nevertheless, armed members of resistance movements shall refrain from taking hostages (Article 147 GCIV) or direct the movement of civilian population to shield military objectives (Article 51 API). Attack on cultural property is equally prohibited (Article 53 API), objects indispensible to the survival of the civilian population must be protected (Article 54 API) and actions intending to damage the natural environment are prohibited (Article 55 API).

---

[156] Dieter Fleck *supra* note 19,pp.606-7

[157] Richard Falk, *supra* note 155,p.21

[158] Ibid

The following main conclusions can be reached in this chapter:

- Beside the customary rules of IHL, which binds all states, the treaty provisions of law of occupation are first and foremost binding upon states who are party to them. Furthermore, they may also be applicable in cases when ‘a power which is not party to the Convention *accepts* and *applies* the rules’.

- NLMs engaged in an armed conflict are bound by the fundamental principles of customary international law. For the application of IHL to both recognized and unrecognized NLMs, it is enough that a NLM accepts and applies the Conventions and the Protocol when hostilities break out. Recognized NLMs may further be bound by virtue of Article 96(3) of the Additional Protocol I.

4 Third party obligations to ensure compliance: international obligations which may arise in situations of occupation

4.1 Introduction

The international system has no special machinery or centralized institution to enforce the rules of the international community. Although the UN covers and may enforce some of these rules, its effectiveness is challenged and has often been contested. This makes international law completely different from national legal systems, in that the rules of international law aim to regulate the behaviour of almost now two hundred states[159] that are its principal subjects.

The laws of state responsibility are the principles governing when and how a state is held responsible for the breach of an international obligation. Article 12 of the 2001 *International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts*[160] defines a breach of an international obligation as 'when an act of a State is not in conformity with what is required of it by that obligation'. 'Every intentionally wrongful act of a state entails the international responsibility of that state.'[161] According to the Commentary, 'State responsibility can arise from breaches of bilateral obligations or of obligations owed to some states or to the international community as a whole.'[162] It can involve relatively minor infringements as well as serious breaches of obligations under peremptory norms of general international law.'[163] Conduct attributable to the state can consist of actions or omissions.[164]

---

[159] http://en.wikipedia.org/wiki/List_of_sovereign_states

[160] Hereinafter ILC Draft Articles

[161] Article1of the ILC Draft Articles

[162] Commentary ILC Draft Articles,p.55

[163] Ibid p.56

[164] *The Corfu Channel Case, Merit, ICJ Reports* 1949, p.4,pp.22-23

Until recently, the theory of the law of state responsibility was not well developed.[165] Traditionally the rules of state responsibility were very limited.[166] After the Second World War, however, the expansion in the number of binding treaties restricting states freedom of action increased the number of legal restrictions on the right to use force in accordance with the UN Charter. Furthermore, the evolution of peremptory rules (*Jus cogens*) from the mid-1960s shaped the development of current laws of state responsibility towards a more restricted system of international community.[167] These developments are now enshrined in the ILC Draft Articles.[168]

In modern international law, the notion of state responsibility may give rise to two forms of accountability: 'ordinary responsibility' and 'aggravated responsibility'. The former requires that a state by its wrongful act has caused direct material or moral damage to another international subject, while the latter does not necessarily have to involve direct material or moral damage to another state, as its invocation stems from the violation of certain fundamental values[169] or those peremptory norms that are clearly recognized. These include the prohibition of aggression, genocide, slavery, racial discrimination, crimes against humanity and torture and the right to self-determination.[170] It follows that 'certain internationally wrongful acts attract by reasons of the special importance of the subject matter of the obligation which has been breached, a special and more severe degree of responsibility.'[171]

State responsibility designates the legal consequences of the international wrongful act of a state, namely the obligations of the wrongdoer on the one hand and the obligations and

---

[165] Ian, Brownlie, *System of the law of nations: State Responsibility* (Part I), Clarendon Press 1983 chapter 20

[166] Antonio Cassese *supra* note 44,p.176

[167] Ibid p.12

[168] D.J Harris, *Cases and Materials on International Law*,(6th ed.), London: Sweet & Maxwell,2004 Chapter 8

[169] Ibid p.244

[170] Commentary ILC Draft Articles,p.85

[171] R.Y. Jennings and A. Watts (eds.) Oppenheim's international law,9th.(ed.)1996,pp.533-4

powers of any other states affected by the wrong on the other.[172] Due to the subject matter and the scope of this study, this chapter will only focus on the second part of the definition of state responsibility, namely the rights and powers of all states- not exclusively the injured party- to invoke aggravated responsibility and take appropriate remedial action against grave breaches of international law. [173]

It may be the case that the recognized fundamental values mentioned above give rise to community obligations are either a customary obligation or an obligation *erga omnes* laid down in a multilateral treaty.[174] This means, as the ICJ also said in *the East Timor Case,* each state can be considered to have a legal interest in the protection of such norms.[175]

The rules concerning the prohibition of use of force, or the right of self-determination of peoples 'as enshrined in the Charter of the UN and the Declaration on Friendly Relations', [176] also give rise to aggravated responsibility by virtue of their customary nature. Thus, this chapter will deal with third states' responsibility to ensure compliance when there is a serious breach by an occupying state of the fundamental rules of international community enshrined in the latter mentioned instruments. I will also look at how far states can go to ensure compliance with the rules of IHL.

What measures can third parties adopt to ensure compliance by an occupying power acting contrary to the principle of self-determination mentioned in Article 1(4) of the Additional Protocol I and the UN Charter or the prohibition of the threat or use of force enshrined in the UN Charter and the relevant GA Resolution 2625(XXV)? Do third state parties have

---

[172] In the Wall Case the ICJ distinguish between, 'on the one hand, those consequences for the breach of obligations arising for Israel and, on the other, those arising for other States and, where appropriate, for the United Nations',p.197,para.148

[173] Antonio Cassese *supra* note 44,p.262-3

[174] *Barcelona Traction, Light and Power Company, Limited, Second Phase, Judgment, ICJ Reports 1970,* p. 32, para.33

[175] The East Timor Case p.102,para.29

[176] Article 1(4) of the Additional Protocol I

the capacity to bring an international claim against a responsible occupying government with a view to obtaining reparations on behalf of the people of an occupied territory?

4.2 Obligations to ensure respect for the Geneva Conventions

'The high contracting parties' are by virtue of Common Article 1(1) to the Geneva Conventions and Article 1(1) of the Additional Protocol I under an obligation to 'undertake to respect and to ensure respect' for humanitarian rules. Moreover, in as much as there occur violations of the applicable rules of IHL in a war of national liberation by both the occupying power and the NLMs. Although the rules of state responsibility can only be attributed to states, rules of personal liability may be applied to the members of NLMs.[177]

According to the Commentary, the wording of Common Article 1 includes two types of obligations for the proper functioning of the system: parties should 'not be content merely to apply its provisions themselves, but should do everything in their power to ensure that it is respected universally.'[178]In the view of the ICJ in *the Wall Case*, 'the provision provides that every state party to that Convention, whether or not it is a party to a specific conflict, is under an obligation to ensure that the requirements of the instruments in question are complied with.'[179] It follows that all contracting states have an obligation to apply the provisions towards other states, with a legal claim to compliance by all the other states.[180] Such a claim may for example entitle each state party to demand the cessation of serious violations of the Conventions. Thus as Cassese suggests, in the field of application of IHL, one may argue that the notion of 'aggravated responsibility' has also gradually evolved.[181]

There are various ways in which neutral, allied or enemy contracting parties may 'ensure respect' for the Conventions. Contracting parties undertake to cooperate with the UN in

---

177 Liesbeth Zegveld, accountability of armed opposition groups in international law, Cambridge (2002)pp.111-131

178 Commentary IV,p.16

179 The Wall Case pp.199-200, par.158

180 Antonio Cassese *supra* note 44,p.19

181 Ibid, see also *Legality of the Threat or use of Nuclear Weapons, ICJ Reports 1996*, p.226, p.257,para.79

undertaking unilateral, bilateral and multilateral measures to ensure that the rules of IHL are respected according to Article 89 of the Additional Protocol I.

For example, the UN Security Council has called upon all state parties to the four Geneva Conventions to ensure compliance by Israel with these Conventions.[182] The ICJ in its judgment in the Wall Case said 'all the States parties to the Geneva Convention IV (…) are obliged 'to ensure compliance by Israel with international humanitarian law as embodied in that Convention'[183] and inasmuch as the construction of the wall in the Occupied Palestinian Territory did constitute breach of these Conventions. It may be understood from the Courts view that obligation to ensure compliance with the rules enshrined in the Geneva Convention IV are of paramount concern to IHL.[184]

4.3 Third state obligations concerning the right to self-determination and prohibition of use of force by third parties

As already discussed in chapter two, and as also held by various judgments[185] of the ICJ, both the right to self-determination of peoples and the rules prohibiting use of force are customary and may as some have suggested be included as part of the peremptory rules of contemporary international law.[186] As pointed out in section 4.1, these rules impose an obligation *erga omnes*.[187]

By considering the nature of these obligations, Hannikainen argues that 'all States are under the peremptory obligation: 1) not to forcibly subject alien peoples to a colonial- type domination: 2) not to keep alien peoples by forcible means under a colonial type

---

[182] SC Resolution 681(1990), par.5 and 6. UN Doc. S/19443 par.27

[183] The Wall Case p.200,para.159

[184] Ibid

[185] The Nicaragua Case(1986) pp.100-1, para.190, the Wall Case p.171, paras.87-88, the Western Sahara Case pp.31-33, paras.54-59

[186] Commentary ILC Draft Articles,p.113

[187] The East Timor Case p.102,para.29

domination and 3) not to exploit the natural resources of those alien territories, which are under their domination.' [188] Following this argument, some situations of occupation may constitute a wrongful conduct and a breach of prohibition of use of force, where the occupying power is conducting a forcible action contrary to the UN Charter and GA Resolution 2625(XXV). Actions contrary to these instruments include actions that 'deprives peoples of their right to self-determination and freedom and independence.' Furthermore, actions which constitutes 'a gross or systematic failure to fulfill an obligation' (Article 40(2) ILC Draft Articles) may also constitute a breach of obligations under UN Charter.[189] The latter may include the refusal by an occupying state to end an occupation when repeatedly requested by a competent international body such as the Security Council[190]. Such refusal may give rise to aggravated responsibility.

Article 3 of the ILC Draft Articles provides: an internationally wrongful act is governed by international law and not internal law. The Commentary remarks that a state cannot escape an internationally wrongful act by pleading that its conduct conformed to its municipal law.[191] It follows that an occupying power cannot invoke internal law as a pretext for not upholding its international obligations. In addition, with the inclusion of wars of national liberation subjected to alien occupation in Article 1(4) of the Additional Protocol I, the dealing of third states with so-called 'terrorists' operating in occupied territories can no longer constitute an intervention in another state's domestic affairs.

With regards to the principle of self determination, Article 55 of the UN Charter states that the UN 'shall promote' this principle. The Charter further encourages 'all member states pledge themselves to take joint and separate action, in cooperation with the Organization'

---

[188] Lauri Hannikainen*, Peremptory Norms (jus Cogens) in International Law: Historical Development, Criteria, Present Status*, Helsinki(1988),pp.357-424.

[189] Commentary ILC Draft Articles,p.113

[190] See for instance repeated SC Resolutions 276 (1970), SC Res 283, SC Res.284 or SC Res.301 (1971) in case of Namibia

[191]Commentary ILC Draft Articles,p.37

for the realization of the principle of equal rights and self-determination of peoples' (Article 56). This duty is confirmed in GA Resolution 2625 (XXV), which in addition compels third states to support peoples in their resistance and exercise of their right to self-determination in accordance with the purposes and principles of the Charter.[192] However, it should be noted that the UN Charter did not impose direct or indirect obligation on member states in this area beyond the requirement laid down in Article 56. The latter provisions may seem rather loose and do not impose the taking of direct or specific action by member states of the UN. It follows that all members of the international community may examine, depending on the circumstances of the given situation, a wide range of diplomatic and legal measures which can be used to bring back an attitude of respect for fundamental prohibitions whenever there is a breach.

Example of such measures include that, all states are first and foremost prohibited from aiding or assisting another state in the commission of an internationally wrongful act, provided that they have knowledge that a state is committing an internationally wrongful act (Article 16 ILC Draft Articles). In the Wall Case, 'as regards the legal consequences for states other than Israel' the ICJ held that they are 'under an obligation not to render aid or assistance in maintaining the situation created'[193] by the construction of the wall. Furthermore, Article 41 of ILC Draft Articles deals with obligations under the peremptory norms of general international law and promotes cooperation between states through lawful means, especially in the framework of international organizations. It also places a duty upon states 'not to recognize as lawful a situation created by such serious breach' of peremptory norms in the sense of Article 40. According to the Commentary, 'situations created by these breaches may include the attempted acquisition of sovereignty over territory through the denial of the right of self-determination of peoples.' 'It not only refers to the formal recognition of these situations, but also prohibits acts which would imply

---

[192] GA Resolution 2625(XXV) the under section relating to 'the principle of equal rights and self-determination'

[193] The Wall Case p.200, para.159

such recognition.'[194] Examples of such practice of non-recognition were provided by the Security Council during the Iraqi occupation of Kuwait in 1990[195], with regards to right to self-determination, by the ICJ in its advisory opinions in the Namibia Case (1971) [196] and the Wall Case (2004).[197]

For the invocation of the right in question or the breach of an obligation, by a state 'owed to the international community as a whole', Article 48 of the ILC Draft provides that 'any state other than an injured state' may claim from the responsible state: to cease its internationally wrongful act, and assure and guarantee non-repetition. Furthermore, claim that the responsible state to pay reparation 'in the interest of the injured State or of the beneficiaries of the obligation breached.'[198]

If a state fails to comply with its obligations under Articles 29-37 of the ILC Draft Articles, Article 49 of the same convention provides for the limited use of countermeasures by stating that they may only be taken 'against a state(…) in order to induce that state to comply with its obligations' mentioned in the previous paragraph. Such countermeasures exclude the use of force (Article 50), but may include ending or limiting diplomatic relations, economic embargos of various kinds or withdrawal of aid programs[199] as mainly adopted by the Security Council in connection with ending South Africa's Apartheid regime.[200]

By assessing these rules, it may seems that states have been cautious in applying countermeasures in bringing to an end a situation of occupation. Nevertheless, the use of

---

[194] Commentary ILC Draft Articles,p.114,para.5

[195] SC Res.662 of 9 August 1990

[196] The Namibia Case, para.52

[197] The Wall Case par.88 and 156

[198] Article 48 of the ILC Draft Articles

[199] Commentary ILC Draft Articles,p.128,para.3

[200] See for example Security Council Resolutions 181(1963), Res.182(1963), Res.232 (1970)

countermeasures, in the form of economic sanctions, has been used in some situations constituting similar aggravated breach. Examples include collective measures against Iraq in 1990 or Security Council sanctions against the South African Apartheid regime in 1974. As Harris also remarks to the ILC Commentary, despite the fact that the Draft Articles did manage to reflect the distinction between ordinary and aggravated obligations regarding internationally wrongful acts, it did not provide any distinct penal consequences for states that breach these fundamental rules.[201] The wording of Article 54 may support this argument by simply emphasizing the possible measures any State may take under Article 48(1) in order 'to ensure cessation of the breach and reparation in the interest of the injured State or of the beneficiaries of the obligation breached'.[202] However, it may also be asserted that it rather leaves the question open instead of providing any specific or distinct mode of reaction to serious breaches of peremptory norms of international law other than those of ordinary breaches.

---

[201] DJ Harris *Supra* note 168,p.546

[202] Article 54 of the ILC Draft Articles

5 Concluding remarks and reflections

The point of departure of this thesis has been the developments of international law enshrined and reflected in the Additional Protocol I and in particular Article 1(4).
The hypothesis may be concluded or answered as follows:

The Additional Protocol I is supplementary to the four Geneva Conventions. An analysis of the Article 1(4) in chapter two confirms that developments in IHL have extended to cover broader situations of occupation, including wars of national liberation subjected to alien occupation. Such wars have an international character by virtue of the material criteria set forth in Article 1(4), namely the right to self-determination and the struggle to secure it. Concerning the right to use force by NLMs as a form of self-defence under Article 51 of the UN Charter for the exercise of the right to self-determination, it is argued that a broad interpretation of the latter Article by virtue of its customary nature may give such rights to NLMs by virtue of their international personality. This argument may be advanced if the occupying power, contrary to the principles of the UN Charter, forcibly denies peoples in the occupied territories the right to self-determination. However, this is still contested. Nevertheless, the reference to the right to armed struggle by NLMs, may be found in various UN Resolutions such as GA Resolution 2625(XXV).

Chapter three confirmed that the restrictions of the four Geneva Conventions and the Additional Protocol I apply equally to NLMs and occupying states. Furthermore, it is argued that recognized NLMs subjected to occupation as defined in Common Article 2 of the four Geneva Conventions and Article 1(4) may be bound by humanitarian treaties through procedures laid down in Article 96(3) of the Additional Protocol I. NLMs may also be bound, by the rules of IHL by accepting and applying the Conventions during hostilities. However, all members of NLMs subjected to occupations continue to be bound, by fundamental customary principles of the Geneva Convention IV when engaged in armed resistance. They are therefore entitled to have a prisoner of war status if captured, by the adversary and must respect the rules prohibiting against indiscriminate attack.

Following these conclusions, chapter four argues that third states due to the *erga omnes* character of various rules of IHL and the right to self-determination, mentioned in Article 1(4), have an obligation to ensure that they are respected. The obligations *erga omnes* nature of the rules discussed giving third states the right to invoke various measures to ensure compliance by the occupying power. The latter seem not to have been of great impact when looking at state practice since the adoption of the Protocol I in 1977. Various legal difficulties may thus be observed when looking at effective implementation of the rules:

First, the lack of clear definitions seems to pose problems for the application of the law of occupation. Second, I also consider, following Wilson, that 'the application of IHL to wars of national liberation subjected to occupation, (especially alien occupation) could be described as limited success'[203] since most occupying powers have been reluctant to recognize their legal obligations to respect rules of IHL in wars of national liberation. Moreover, it is noted that the law of occupation lacks clear guidelines on the rights and obligations of such movements. I assert that the development of clearer guidelines and definitions could help reduce this reluctance of the occupying states to apply IHL and increase practical application for NLMs. Third, despite the recognition of the right to self-determination and legal personality of NLMs, certain rights given to the occupying power governed by the law of occupation may seem to pose great problems to the enjoyment of this right. The reluctance of some occupying states to admit a situation of occupation and respect the right to self-determination is likely to remain as long as third states continue to be unwilling to undertake obligations in wars of national liberation subjected to alien occupation. Thus the application of IHL to members of NLMs remains fragile, as they are less likely to see the point in a unilateral application when the international community is not dedicated enough to ensure the law of self-determination when prevented by a type of occupation. The final implementation of an end to occupations requires not only strong legal tools, but also the clear political will to translate these rules into an effective form of state practice.

---

[203] H. Wilson supra note 56,p.179

REFERENCES

Treaties/Statutes:

Convention Respecting the Laws and customs of War on Land, The Hague Regulations (IV), October 1907

Charter of the United Nations, June 1945

Statute of the International Court of Justice (ICJ), June 1945

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (I) August 1949

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick and shipwrecked members of Armed Forces in sea (II) August 1949

Geneva Conventions Relative to the Treatment of Prisoners of War (III) August 1949

Geneva Conventions Relative to the Protection of Civilian Persons in Time of War (IV) August 1949

International Covenant on Civil and Political Rights, December 1966

International Covenant on Economic, Social and Cultural Rights, December 1966

Vienna Convention on the Law of treaties, May 1969

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1), June 1977

International Law Commission's draft articles on Responsibility of States for Internationally Wrongful Acts, August 2001

United Nations Resolutions

Declaration on the Granting of Independence to Colonial Countries and Peoples, UN General Assembly Resolution 1514 (XV) of 14 December (1960) http://www.unhchr.ch/html/menu3/b/c_coloni.htm

Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, UN General Assembly Resolution 2625 (XXV) on 24 October (1970)

Strict observance of the prohibition of the threat or use of force in international relations, and the right of peoples to self-determination, UN General Assembly Resolution 2160 (XXI) on 30 November (1966)

Basic principles of the legal status of the combatants struggling against colonial and alien domination and racist regimes, UN General Assembly Resolution 3103(XXVIII) on December (1973)

Importance of the universal realization of the right of peoples to self-determination, UN General Assembly Resolution 3070(XXVIII) on 30 November (1973) http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/281/42/IMG/NR028142.pdf?OpenElement

Case Law

Corfu Channel case, Judgment on Preliminary Objection, I.C. J. Reports 1948, *p. 15*

Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. *16*

Western Sahara, Advisory Opinion, 1.C.J. Reports 1975, p. *12*

Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports (1984), p. 392

East Timor (Portugal v Australia), I.C.J. Reports (1995), p. 90

Legality of the Threat or use of Nuclear Weapons, ICJ Reports (1996), p.226

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C. J. Reports (2004), p. *136*

Books

Akerhurst, Micheal Barton, *A Modern Introduction to International Law,* 5th ed. Allen and Unwin (1984)

Antonio Cassese, 'Wars of national liberation and humanitarian law', in *Studies and essays in international humanitarian law and Red Cross principles*, Martinus Nijhoff Publishers (1984) pp.313- 324

Antonio Cassese, *Self-determination of peoples: a legal reappraisal*, Cambridge University Press (1995)

Antonio Cassese, *International Law*, 2nd ed. (2005)

Andrew Clapham, *Human Rights Obligations of Non-State Actors,* Oxford University Press (2006) Chapter 7, pp. 271–285

Charles Garraway, Occupation Responsibilities and Constraints" in *the Legitimate use of Military Force: just war tradition and the customary law of armed conflict*, Ashgate publishing (2008)

Dieter Fleck (ed.) *the handbook of international humanitarian law*, 2nd edition, Oxford: Oxford University press (2008) p.24 and 270

D.J Harris, *Cases and Materials on International Law*, (6th ed.), London: Sweet & Maxwell, (2004)

Eyal Benvenisti, *the international law of occupation*, Princeton University Press (1993)

Feilchenfeld, H. Ernst, *the International Economic Law of Belligerent Occupation*, Columbia University Press (1942)

Georges Abi-Saab 'Wars of National Liberation in the Geneva Conventions and Protocols' in *Recueil des cours*, 165 (1979-IV) 353-445

Heather Wilson, *International Law and the use of Force by National Liberation Movements*, Clarendon Press (1988)

Ian Brownlie, *International law and the use of force by States,* Oxford: Clarendon press (1963)

Ian, Brownlie, *system of the law of nations: State Responsibility* (Part I), Oxford: Clarendon Press (1983)

Jean Pictet, *Commentary 1949 Geneva Convention IV relative to the protection of civilian persons in time of war,* ICRC (1958)

Lauri Hannikainen*, Peremptory Norms (jus Cogens) in International Law: Historical Development, Criteria, Present Status*, Helsinki (1988)

Liesbeth Zegveld, *accountability of armed opposition groups in international law*, Cambridge University Press (2002)

Myres S. McDouglas and Florentino P. Feliciano, *the international Law of war: transnational coercion and World Public Order*, Martinjus Nijhoff publishers (1994)

Nicholas Rostow, *Gaza, Iraq, Lebanon: three occupations under international law*, pp.205-230 in 37 IYB of Human Rights (2007)

Pilloud, Claude; Sandoz Yves ,Swinarski, Christophe; Zimmermann, Bruno, *Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* Geneva and Norwell, MA, USA: International Committee of the Red Cross(1987)

Simma, Bruno (ed.). *The Charter of the United Nations: a commentary*. New York: Oxford University Press (1995)

Jennings, Robert and Arthur Watts (eds.). *Oppenheim's International Law.* London: Longman, 9th Edition (1996)

Yoram Dinstein, *The international law of Belligerent occupation*, Cambridge University Press (2009)

Articles

Adam Roberts, What *is military Occupation?* 55 in BYIL 249(1985)

Adam Roberts, Adam Roberts, *Prolonged military Occupation: the Israeli occupied territories since 1967*, in AJIL, vol. 84 no. 1, American Society of International Law (1990)

Michael Bothe, M., *Belligerent Occupation*, in 4 EPIL 65 (1982)

H. Freudenschuss, Legal and Political Aspects of the Recognition of National Liberation Movements- *Millennium - Journal of International Studies.*1982; 11: 115-129

Roberts, A., *what is a Military Occupation?* In 55 British Yearbook of International Law (BYIL) p. 249- 303 (1985)

Other Sources

Report by the International Committee of the Red Cross on *General problems in implementing the Fourth Geneva Convention*, Meeting of Experts, Geneva, 27 - 29 October 1998. Viewed at http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/57jpf6?opendocument

Commentary ILC Draft Articles, the Commission's report (A/56/10), in the *Yearbook of the International Law Commission, 2001*, vol. II