Selected Violations of the Occupation Law in the Polish Territories in 1939–1940

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Abstract

The aim of this article is to present, explain, and interpret the principles and norms of the international public law which concern the military occupation law (specifically laid out in the Hague regulations of 1907), in force prior to the Second World War and on its outbreak. The discussion paves the way for the subsequent evaluation – based on selected examples – of whether the German Reich and the Soviet Union, that is, the two aggressors who seized the Polish lands following the country's military defeat of September 1939, observed the military occupation law (or rather allows for an overview of which of the aforesaid principles and norms were violated). The period under scrutiny is the years 1939–1940, i.e. the beginning of the occupation of the Polish lands and the time of the invading powers' setting up their administrations, as this is when the aggressor is particularly responsible for establishing occupying authority in accordance with the applicable law.

Introduction

In the collective consciousness of the Poles, the word "occupation" has decidedly negative connotations, mostly evoking the images of mass arrests and deportations, collective penalties, executions of civilians, and other crimes perpetrated by the occupant against the inhabitants of a conquered territory. This is barely surprising given the tragic experience of the Polish nation during the Second World War. After the Wehrmacht's and the Red Army's aggression of September 1939, and as a result of Poland's military defeat, the western and central territories of Poland were seized by the German troops, while the eastern part of the Second Polish Republic was taken by the Soviet army. Consequently, Poland was under the German and Soviet occupation. Both aggressors implemented oppressive policies toward the inhabitants of the conquered territories, employing methods not unlike the aforementioned, i.e. forced deportations and collective penalties, while their ultimate goal was to annihilate the Polish state.[1]

From the perspective of the international law in force at the time, the actions of the Third Reich and the Soviet Union in the Polish territories were in clear and blatant violation of the laws and customs of war, as well as of the regulations pertaining to the scope of the occupant's authority, its obligations toward the occupied territory, and the rights it enjoys there. Under the long-standing international rules, military occupation is a certain factual state, which has particular legal effects under the international law. The scenario referred to as military occupation is a situation whereby foreign troops are present in the territory of a conquered state. This does not, however, entitle these troops to question the legal capacity of the defeated country, while the occupied territory is not a military gain. If the foreign troops – in this case, the Wehrmacht and the Red Army – effectively control the enemy territory and exercise the de facto authority over its inhabitants, they become occupying forces, which unconditionally obligates them to respect the international laws pertaining to military occupation.

The violation of the international law by the Third Reich and the Soviet Union in the Polish territories was a deliberate act motivated both politically (the proof of which is e.g. the Molotov–Ribbentrop Pact, which was signed still before the outbreak of war) and ideologically (the Nazi and Soviet plans of introducing the "new order" in Europe did not feature independent Poland). As a result, any analysis and evaluation of the issue of respecting the military occupation law in the Polish territories basically comes down to pointing out the instances of its violation and may be seen

1 For more, see e.g. Brewing, 2019, pp. 78–144; Gąsiorowski, 2010, pp. 43–84; Mazur, 2010, pp. 87–118; Snyder, 2010, pp. 119–154.

in terms of the so-called negative example. Violations were so frequent that it would be difficult to enumerate all of them in one scholarly article. Therefore, the discussion will concern only some practices followed by both occupants which constitute international crimes and which – in a more local perspective – are considered to be in breach of the laws and customs of war. The evaluation of these acts is thus performed through the prism of the international law in force during the Second World War, while, for the clarity of the argument, the discussion of particular violations on the part of the German and Soviet occupying authorities is preceded by an overview of the Hague regulations, which are annexed to the 4th Hague Convention of 1907 respecting the laws and customs of war on land (the Convention respecting the laws and customs of war on land, 1927). The document includes, among others, detailed provisions concerning the scope of the occupant's authority and the obligation to protect the inhabitants of the occupied territory and the local public and private property. The timeframe selected for the purposes of this article is the years 1939–1940, that is the beginning of the occupation of the Polish territory and the period of establishing there the Nazi and Soviet authority – this is the period when the occupant is particularly responsible for setting up a legal occupational regime, an obligation which both aggressors completely disregarded.[2]

The concept of occupation in the international law

Occupation is usually a result of acts of war, so the evolving approach to warfare and the elaboration of the law of military conflicts had direct influence on the wording of the military occupation law and ways of enforcing it. However, the function of the norms regulating occupation goes beyond the need to curb the actions of the aggressor, since it is closely tied to the notion of sovereignty, which the occupation law is to protect.

2 In the case of the area occupied by Germany, some of the Polish territories were incorporated into the Reich, while those that were not became the General Government for the occupied Polish territories, although in July 1940, after the German army claimed victory in western Europe, the adjective "Polish" was no longer used in the name of this administrative unit (Chrzanowski & Niwiński, 2008, pp. 13–14). However, it has to be noted that from the perspective of the international law, both the Polish lands incorporated into the Reich and the General Government were occupied territories. As regards the eastern parts of the Second Polish Republic, no military administrative units were set up there by the Soviets, these lands being instead incorporated into the USSR, although from the legal point of view these were also occupied territories until August 1941, when, following Germany's aggression against the USSR, they turned into a theater of war and were later occupied by Germany (Kozyra, 2013, pp. 35–36).

As a result, the elaboration of this law both mirrored and influenced the evolution of the state sovereignty law (Benvenisti, 2012, p. vii).

But the original interpretation of occupation was to a large degree consistent with the goals of belligerents, that is, seizing the enemy territory and assuming control over it. Occupation thus interpreted was essentially no different from conquest and annexation, since the aim of military operations was eventually to take over part (or, under special circumstances, whole) of the enemy territory. Therefore, occupation resulted in territorial gains through conquest (*debellatio*), which consisted in stripping the former sovereign of the supreme authority over a given territory. In the modern period (between the 17th and 18th centuries), the European states, invoking the traditional medieval division into the *imperium* and the *dominium*, considered exercising effective control over a territory enough to claim complete sovereignty. Effectiveness was seen as the indicator of the consistency of the factual state with the legislation, so the notion of occupation had to correspond to the factual requirement under applicable law (Nicolosi, 2011, pp. 168–169).

It was only in the 19th century that a major change took place regarding the approach to the notion of military occupation, which was chiefly down to impressive progress in the field of codifying the rules of engagement and introducing regulations aimed at the limitation of suffering and losses caused by war. The notion of occupation being a result of military operations was also "moderated," and the change was motivated, on the one hand, by the enlightenment idea of the humanization of war (advocated by, among others, Jean Jacques Rousseau) and, on the other, by the principle of the nation's sovereignty (promoted during the French Revolution) (Neff, 2005, p. 191; Nicolosi, 2011, p. 170; Benvenisti, 2008, pp. 621–622; Kwiecień, 2013, p. 68). Toward the end of the 19th century, the idea of military occupation became an independent legal category. A distinction was made between the rights of the belligerent which arise solely in connection with the occupation and those which are a consequence of conquest (Benvenisti, 2012, pp. 25–31). In contrast to the *debellatio*, military occupation (*occupatio bellica*) started to be seen as an intermediate state between invasion and conquest, characterized by the retention of the constitutional and legal order of the occupied territory and effective control exercised by the occupant, which does not derive from the rights of the sovereign but from the military capacity to establish administrative authority (Nicolosi, 2011, p. 171).

One effect of the aforesaid evolution of the law of military conflicts was a conclusion that civilians must not be involved in warfare. Civilians were no longer free to take part in military operations, as this was now the exclusive right of members of the armed forces. As a result, the civilians who acted against the enemy troops risked being designated common criminals. At the same time, civilians were guaranteed protection, as long as they were not directly involved in warfare. This closer attention to the

issue of protecting civilian population against the suffering caused by war was also manifest in the field of the military occupation law. The occupying powers faced numerous limitations, whose main purpose was to see that the occupation would affect the civilians in the occupied territories as little as possible. The civilians were to respect the laws of the land and it was prohibited to force them to shift their state allegiance. Most importantly, it was not allowed to draft the inhabitants of the occupied territory to the armed forces of the occupying state. Additionally, their property could not be sequestered, unless it was necessary for the purposes of the occupation. In broad terms, the occupation law banned the voluntary or forced involvement of the inhabitants of the occupied territory in any kind of military operations of the occupying power (Neff, 2005, p. 190).

Eventually, the military occupation law, expressed in international regulations, obligates the armed forces which seize the enemy territory to protect the life and property of the locals and to respect the sovereign rights of the occupied state. The first obligation, which consists in protecting individuals and their property, derived from a provision of the military conflicts law which introduced a distinction between combatants and non-combatants, as well as the duty to protect the latter from the effects of military operations. The other obligation, i.e. respecting the sovereign rights of the occupied state, mirrors the final stages of the formation of the European notion of sovereignty as a state's exclusive right to exercise authority over its territory and citizens (Benvenisti, 2012, p. 21).

Such an interpretation of military occupation was included in the draft of the Declaration respecting the laws and customs of war, which was adopted at a diplomatic conference in Brussels in 1874 (*Project of an International Declaration…*, 1874).[3] Under art. 1, a territory is considered to be occupied if it is factually subject to the occupying army, whereas occupation only affects the territory where the occupant's authority has been established and can be exercised. The sovereign's authority is suspended and transferred to the occupant, who is duty-bound to take every measure available in order to restore and ensure, as far as possible, public safety and order (art. 2). To that end, the occupant is obligated to respect the laws of the occupied land which apply during peacetime and is not allowed to amend, suspend, or replace them unless necessary (art. 3). The declaration also introduces provisions protecting the functionaries and officials of the occupied country against being released from duty and against disciplinary measures (art. 4). It also stipulates the protection of public and private property against destruction, looting, and undue confiscation (art. 6–8).

3 For the text of the declaration, see Schindler & Toman, 1988, pp. 22–34.

The Brussels declaration did not come into force and did not become the applicable law (it was not ratified by the required number of parties), but the regulations adopted thereunder were used in the process of drafting the relevant provisions of the 2nd Hague convention of 1899 respecting the laws and customs of war on land (in particular the annexed regulations, in art. 42–56),[4] as well as in the Hague regulations respecting the laws and customs of war on land (art. 42–56), which are annexed to the 4th Hague regulations of 1907 under the same title (the convention respecting the laws and customs of war on land, 1927).[5] In both the 1899 and 1907 regulations, military occupation becomes a fact when a given territory is effectively controlled by the enemy troops, whereas occupation only obtains in the territories where the authority of the invading power has been established and can be exercised. Thus, for the military occupation law to apply two conditions have to be met: the enemy troops have assumed control over a territory and they can exercise authority over the inhabitants of this territory. Importantly, both these conditions belong to the realm of facts, which means that occupation is not a legal occurrence: it cannot be proclaimed, but is contingent on the factual state (Dinstein, 2019, p. 43; Górzyńska, 2007, p. 174; Mikos-Skuza, 2010, p. 109).

Invoking factual state to determine if occupation has taken place means that the laws which regulate it apply to every instance of occupation, regardless of whether it follows the legal use of force (e.g. in self-defense) or acts violating the international law (military aggression). This principle of the occupation law was clearly established and was then recognized in the *United States v. Wilhelm List* trial (*The Hostages Trial*), which took place after the Second World War before the American Military Tribunal, which ruled as follows:

> International Law makes no distinction between a lawful and an unlawful occupant in dealing with the respective duties of occupant and population in occupied territory. […] Whether the invasion was lawful or criminal is not an important factor in the consideration of this subject (Case No. 47 – Trial of Wilhelm List…, 1949, p. 59).

In other words, the military occupation law is binding whenever effective military authority is established over the whole or a part of

4 Poland was never a party to this convention, but its Polish translation is available in Marszałek, 2019, pp. 21–22 (Regulations, pp. 23–30).

5 Given that the 4th Hague convention of 1907 and the annexed regulations complement and qualify the provisions of the 2nd Hague convention and its regulations, all citations and references in this article are made on the basis of the 4th Hague convention and the Hague regulations of 1907.

a foreign state, regardless of whether either the state of war or occupation has been proclaimed (Benvenisti, 2012, pp. 15–18; Dinstein, 2019, pp. 2–3; Kwiecień, 2013, pp. 70–71; Thürer, 2006, p. 10).

Another noteworthy issue is the temporariness of occupation and the effective exercising of the authority over the occupied territory. The temporariness of occupation obligates the occupying power to keep the *status quo* in the occupied territory, so the fact of occupation cannot be grounds for changing the legal status of this territory, while any declarations of its incorporation or actions aimed at establishing sovereign authority over it are in violation of the international law and are null and void under this law (Benvenisti, 2012, p. 26; Bierzanek, 1982, p. 235; Dinstein, 2019, p. 44; Kwiecień, 2013, pp. 69–70).

> For that reason, the occupying forces shall not assume sovereign rights with regard to the occupied territory, they shall not annex this territory, change the status of its inhabitants, and, first and foremost, resting on them is the duty of respecting the domestic legislation of the occupied state (Mikos-Skuza, 2010, p. 111).[6]

A territory ceases to be occupied if it has been liberated as a result of military operations or has become the theater of war. In other words, occupation continues for as long as foreign troops are effectively in control of a given territory. At the same time, occupation is not discontinued by installing puppet governments or proclaiming the creation of a new state in the occupied territory – such actions breach the military occupation law (Bierzanek, 1982, pp. 232–233; Górzyńska, 2007, p. 175).

The effectiveness of occupation thus occurs when organized resistance in a given territory has been suppressed and the troops which seized this territory are, for a reasonable period, able to retain control over the whole of the occupied area. This does not mean that the occupying troops must be present in every corner of the land: what matters is whether they can make this presence felt in a given place and at a given time when the situation calls for it. But occupation cannot be symbolic and requires the physical presence of foreign troops, i.e. they are garrisoned in the occupied territory (the *boots on the ground* principle); the establishment of a naval blockade or air supremacy alone does not mean that occupation is effective (Bierzanek, 1982, p. 232; Dinstein, 2019, pp. 49–50).

The solutions adopted in the Hague regulations of 1907 provide for the protection of the civilians under the occupant's authority and guarantee the protection of the sovereign's interests during occupation

6 See also Benvenisti, 2012, p. 11.

(Benvenisti, 2012, p. 20). They are still at the core of the military occupation law, although the provisions concerning the situation of the civilians in the occupied territory are rather general and abstract, and omissions in this respect translated into certain tragic events of the occupation from the period of the Second World War. Therefore, one of the four Geneva conventions of 1949 respecting the protection of civilians during war – specifically the 4th Geneva convention relative to the Protection of Civilian Persons in Time of War (Konwencje o ochronie ofiar wojny..., 1956) – significantly strengthened the protection of civilian population through detailed regulations concerning the status of such persons and the obligations the occupying power owes to them.[7] It has to be noted that under art. 154 of the 4th Geneva convention the document complements the provisions of the Hague regulations of 1907, and as such expands the scope of the latter and concretizes certain vague passages therein, but it does not repel the 1907 document. The legal regime of military occupation was further supplemented in 1977 in the Additional protocol to the 1st Geneva convention respecting the protection of the victims of international conflicts (Protokoły dodatkowe do Konwencji genewskich..., 1992). However, because of a very detailed scope of the regulations adopted in the 4th Geneva convention, the protocol includes only few provisions directly concerning occupation (Dinstein, 2019, pp. 6–7; Mikos-Skuza, 2010, pp. 106–107).

Aside from treaty law, regulating military occupation are also norms of the international customary law, that is norms deriving from states' practices which have been recognized as legally binding. A customary law norm is thus created as a result of common practice (*usus*)[8] and the states' conviction that the international law obligates or empowers them to act in a particular way (*opinion iuris*).[9] Although the customary law concerning military occupation has been mostly codified, it has to be underlined that its application is independent of treaty law, and customary norms are mostly primary in relation to treaty law (more on that in Dinstein, 2019, pp. 4–5).

By way of summarizing the character of military occupation from the perspective of the international law, let us refer to the 2003 ruling of the International Criminal Tribunal for the former Yugoslavia in the *Naletilić & Martinović* case. The Tribunal set the conditions for determining if a given territory was under military occupation. The factual state shall be as follows:

7 See especially title III, section III of the Geneva convention discussed, entitled "Occupied territories" (art. 47–78).

8 The point of reference is, first and foremost, the actions of the states and their legislative, executive, and judicial bodies.

9 Of importance here are the convictions of the organs acting on behalf of the state.

a) the occupying forces are able to assert their authority and replace the previous authority of the sovereign, who proved unable to publicly discharge its duties;
b) the armed forces of the occupied state have surrendered, have been defeated, or have retreated (and sporadic local resistance, even if successful, has no bearing on the status of the occupation);
c) the occupant has the power or capability to make its authority felt over a reasonable period (e.g. when the situation calls for it);
d) temporary administration has been established in the occupied territory;
e) the occupying authorities issue regulations to the civilian population and enforce their execution (Prosecutor v. Mladen Naletilić..., 2003, par. 214).

The military occupation law in the context of the Hague regulations of 1907

As mentioned above, the effective control exerted by the foreign troops over the occupied territory shall never translate into the legal transfer of sovereign authority from the occupied state to the occupant. Thus, if occupation does not result in the transfer of sovereign authority, the international law has to regulate the mutual relations of the occupant on the one hand and the government of the occupied country and the inhabitants of the occupied area on the other. The principle of inalienable sovereignty leads to basic limitations which the international law imposes on the occupant. Therefore, the occupying authorities cannot annex the occupied territory nor unilaterally change its political and legal status in any other way. Instead, during the occupation, the occupant is obliged to respect and retain the institutions operating in that territory. The law empowers the occupant to protect its interests while administering the occupied land, but at the same time imposes on it obligations with regard to protecting the life and property of the inhabitants and respecting the sovereign rights of the occupied state (Benvenisti, 2012, p. 6).

In the context of the Hague regulations of 1907, the occupant, having assumed control over a territory, shall establish there authorities which administer this territory. Therefore, there exists a legal obligation to set up a governmental system which derives from the fact of occupation – under art. 43 of the Hague regulations, power is de facto transferred from the legally elected government to the occupant. The provisions of the Hague regulations indicate that the direct administration may be military, because the territory (in accordance with art. 42) is under the authority of the enemy army. Emphasizing the military character of the

authority exercised by the occupant was necessary in order to distinguish a clearly military field of activity from other spheres, which highlights the temporary character of the situation (Benvenisti, 2012, p. 4).

Focusing only on the temporary and military nature of administering the occupied territory is reflected in particular provisions of the Hague regulations, as well as the title of the section which concerns occupation: "Military authority over the territory of the hostile state." Thus, the convention discusses the character of occupation and the scope of the authority over the occupied land (art. 42–43), as well as the economic aspects of administering this territory (levying taxes, contributions, sequestrations, using public property – art. 48–55), focusing less on the protection of the civilians and private property in the occupied territory (art. 44–47, art. 56). Following this ordering, I divided the provisions of the Hague regulations discussed below into three thematic categories: the scope of the occupant's authority, the protection of the civilians inhabiting the occupied territory, and the protection of private and public property in the occupied territory.

It is also worth adding that the provisions of the Hague regulations have become customary norms. It is difficult to point to the moment when the provisions concerning occupation included in this document changed into customary law, but there is no doubt that between the adoption of the Hague regulations of 1899 and restating its stipulations in the Hague regulations of 1907, the legal concept of occupation was concretized (Arai-Takahashi, 2012, p. 65; Benvenisti, 2008, pp. 641–642). The customary character of the norms established in the Hague regulations was confirmed by the International War Tribunal in Nuremberg in its ruling on the German war criminals:

> The rules of land warfare expressed in the [Hague] Convention [of 1907] undoubtedly represented an advance over existing international law at the time of their adoption. But [...] by 1939 these rules laid down in the Convention were recognized by all civilized nations, and were regarded as being declaratory of the laws and customs of war (Trial of the Major War Criminals..., 1947, pp. 253–254).

The customary character of the provisions of the Hague regulations of 1907 was also discussed by the International Court of Justice in its advisory opinions on the legality of the threat or use of nuclear weapons (Legality of the Threat or Use of Nuclear Weapons..., 1996, par. 75, 79–80) and the legal consequences of constructing a wall in the occupied Palestinian territories (Legal Consequences of the Construction of a Wall..., 2004, par. 89).

The scope of the occupant's authority. Under art. 43 of the Hague regulations, occupation results in the transfer of the *de facto* authority from

the legally appointed government to the occupant, whose authority and rights are temporary and incidental in relation to war and its goals. In broad terms, the occupying authorities are not entitled to change the local laws and administrative structures (e.g. the local authorities) in the occupied territory, because, under the occupation law, they do not gain the sovereign rights in this territory. The occupant's role is to temporarily administer the seized territory until the occupation is over (von Glahn, 1957, p. 27). To that end, the occupant should set up the proper administrative apparatus in order to govern the occupied territory in an effective manner. This is certainly a sensible solution, but the absence of such apparatus still does not negate the factual state, i.e. the occupation itself. A lot depends on the character and size of the occupied territory, which may be too small or too sparsely populated to warrant the establishment of dedicated administrative structures. Additionally, the duration of occupation has to be considered. In the case of short-term, territorially narrow occupation, the occupying power may decide to exercise its authority through regular military troops. On the other hand, if the occupation obtains in a large, densely populated area and the occupant's long-term presence is likely, setting up dedicated administrative structures may be inevitable (Dinstein, 2019, p. 65).

In any case, the character of the authority exercised in the occupied territory is military by definition. Art. 42 of the Hague regulations refers to the "authority of the hostile army." Of course, if long-term occupation is the case, civil officials of relevant expertise and skills may be very helpful and may support the military authorities in performing various tasks connected with the administration and supervision of the occupied territory. The occupant may even establish civil administration offices, but they have to answer to the military authorities and cannot constitute independent entities. Such offices are thus part of the military structures, but they may decide on civilian matters, aside from those pertaining to security; they are not, however, independent of the military authorities and are not headed by civilians (Dinstein, 2019, p. 65).

Assuming control over the occupied territory, the occupying power also assumes responsibility for the situation there. Under art. 43 of the Hague regulations, the occupant is obligated to undertake "all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the [occupied] country." The occupation law grants to the occupant a range of important rights, which are necessary to continue the war and maintain public order in the occupied territory (Bierzanek, 1982, p. 234). These rights are to protect the military interests of the occupant and guarantee the safety of the army, which the occupying authorities use to enforce compliance with their orders. At the same time, however, the rights of the occupant are limited under the occupation law: the occupation authorities are obligated to restore and ensure, as far as possible,

"public order and safety." Importantly, the fulfillment of this task is to proceed "unless absolutely prevented," and the domestic laws of the occupied country are to be respected (Górzyńska, 2007, p. 177).

Both these duties, i.e. restoring and maintaining public order and safety and respecting the laws of the occupied state, relate to the requirement of due diligence rather than results. The degree of their fulfillment depends on the circumstances, such as the character of the occupation, its length, the resources at the occupant's disposal, the needs of the local population, or how safe the occupying forces are (Benvenisti, 2012, p. 76).

The term "public order" refers to broadly understood safety, while "social life" denotes the normal functioning of the society and regular activities performed by its members on a daily basis (Dinstein, 2019, p. 101). The necessity of "restoring" public order and social life is brought about by the military activities, which disturbed the previous order in a given territory. The process of restoration consists in taking immediate action necessary for life to resume as normal, as far as it is possible (Benvenisti, 2012, p. 78). Once the occupation becomes a fact, the occupant is also responsible for ensuring public order, and as such is responsible for its actions (and acts of negligence) in that respect. Importantly, the aim of art. 43 of the Hague regulations is to protect civilians against any acts of violence, so the responsibility of the occupying power goes beyond refraining from such acts against the inhabitants: the occupant must also not tolerate violence perpetrated by a third party (Case Concerning Armed Activities on the Territory of the Congo..., 2005, par. 178). Maintaining public order consists in both fighting crime and suppressing unrest, riots and internal frictions. Additionally, the obligation to protect the inhabitants of the occupied territories concerns not only protection from internal threats, but also external ones (e.g. originating with a third party state) (Dinstein, 2019, pp. 102–103).

The fulfillment of the obligations and the exercising of the rights of the occupying power in the field of safety cannot be without the possibility to take steps necessary to support the social life in the occupied territory. The global goal in this department is to ensure the stability and continuity of the social and economic sphere, so the lives of the inhabitants will follow the usual pre-war routine (Dinstein, 2019, p. 104). Art. 43 thus empowers the occupying authorities to take measures necessary to fulfill the tasks relative to maintaining public order and social life in the occupied territory.

The authors of said article also wanted to strike the balance between stability and change, and between the interests of the occupant and the interests of the inhabitants of the occupied territory. The obligation to respect, "unless absolutely prevented," the legislation of the occupied country means that the occupying authorities are bound to enforce the laws passed by the legally appointed government or to act in accordance with these laws (Benvenisti, 2012, pp. 89–90), unless absolutely impossible,

or if these laws do not conform to universal standards (e.g. are discriminatory) (de Mulinen, 1994, p. 221). It has to be noted that the phrase "unless absolutely prevented" is considered to embody the principle of military necessity (Kelly, 1999, pp. 191–192). Therefore, military necessity is the only circumstance which could "absolutely prevent" the occupant from maintaining the existing legal regime. In the case of short-term occupation, the occupying authorities indeed have no reason to change the law binding for the population of the occupied territory, unless this is necessary due to considerations of the safety of the occupying forces (Benvenisti, 2012, p. 91). But even if the occupation period is prolonged, it is still a temporary factual state, so the occupant should not introduce important and far-reaching changes into the legal system of the occupied state, as these could impede the process of returning authority to the legally appointed government. For that reason, institutional changes altering the status and functioning of local political authorities should be avoided in principle. This rule likewise concerns the judiciary: if it works properly, it should not be tinkered with (Benvenisti, 2012, p. 95).

Seeing as the occupant has the duty to restore and ensure public order and social life, changes in civil, commercial or labor law are unwarranted, while military necessity could be grounds for introducing changes necessary for ensuring the safety of the occupying forces and the functioning of the occupying authorities. The occupant may thus suspend the laws on military conscription, granting firearms license, or elections to the parliament of the occupied country. Military necessity could also explain suspending and limiting certain civil rights and liberties, such as freedom of speech (e.g. by means of censorship), freedom of movement (e.g. by introducing a curfew), or the right to hold demonstrations or public gatherings (for fear of riots and public unrest) (Benvenisti, 2012, p. 93).

The effective administration of the occupied territory requires considerable effort and resources, and the occupant also has its own reasons (e.g. of military nature) for having claimed a given territory and occupying it. Therefore, in an attempt to maintain the balance between the interests of the occupant and the sovereign rights of the occupying state, the Hague regulations allow the occupying power to levy taxes and fees introduced by the legally appointed government for the benefit of the state, but at the same time the occupant is obligated to cover the costs of the administration of the occupied territory to the extent that was binding for the legally appointed government (art. 48). Fees other than taxes can be only levied for the purposes of the occupying army or the administration of the occupied territory (art. 49). Contributions can only be made on the strength of a written order and at the responsibility of the superior general, and the payment of each tax requires issuing of a receipt to the payer (art. 51). In-kind requisition and the requisition of service against communities and inhabitants (performed on the basis of an order issued by the commandant of the occupied locality) may be only effected if it serves the purposes of

the occupying army; at the same time, it must not entail the obligation on the part of the locals to participate in military activities against their homeland (art. 52) (de Mulinen, 1994, pp. 222–223; Kwiecień, 2013, p. 72).

The protection of civilians. There are relatively few provisions of the Hague regulations which directly pertain to the situation of the civilians and the obligations that the occupant owes to them. First and foremost, it is prohibited to force the inhabitants of the occupied territories to pledge allegiance to the hostile state (art. 45). It is also prohibited to force them to participate in the military operations against their homeland (art. 52). As a result, the occupying power cannot coerce the inhabitants of the occupied area to serve in their armed forces or auxiliary forces. Likewise, it is not allowed to exert pressure or engage in propaganda to convince the locals to join voluntarily (de Mulinen, 1994, p. 225). Additionally, the occupant cannot force the inhabitants of the occupied territory to provide information about the home army or its defensive measures (art. 44). The occupant is obligated to respect "family honor and rights, the lives of persons, and private property, as well as religious convictions and practice" (art. 46). The private property in the occupied territory is not subject to sequestration, and looting is prohibited (art. 47). No collective penalty, whether it be financial or of different character, may be imposed on civilians for the deeds of individuals, for which they cannot be held collectively responsible (art. 50).

The protection of public and private property. As already mentioned, the military occupation does not change the legal title of the occupied territory, so the occupant does not acquire the ownership of goods and objects belonging to the occupied state. The occupying power is merely the administrator and usufructuary of public buildings, real estate, forests and agricultural farms which are the property of the occupied state, so the occupant should protect the value of this property and manage them in accordance with their purpose (art. 55). Importantly, "the property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property" (art. 56), which is not subject to sequestration, and any requisition, destruction, or deliberate profanation of said institution, as well as of historical monuments and works of art and science are forbidden and should be prosecuted.

Prohibitions in the sphere of the treatment of public and private property are counterbalanced by the rights which the occupant may enjoy if the situation calls for it. The occupying forces may thus requisition money, state-owned funds and securities, as well as weapons and ammunition stocks, food supplies, and any state-owned chattel which may serve military purposes. The occupant can also requisition any means of transport (land, naval, or air), even if they are private property, but these must be returned, while the indemnity arising from the requisition shall be granted after the war (art. 53).

The occupation of Poland between 1939 and 1940 from the perspective of the occupation law binding at the time

On the eve of the Second World War, the provisions of the Hague regulations of 1907 undoubtedly needed adjusting to the situation at the time, but they were still binding, and their scope allowed for the efficient furthering of the occupant's interests and the retention of the rights of the sovereign and of the inhabitants of the occupied country. Meanwhile, most instances of the occupation of the Second World War violated the rules adopted in the Hague regulations, and the legal framework of military administration set thereunder was not observed (Benvenisti, 2012, p. 131).

Showing blatant disrespect toward the treaty and customary laws of military occupation were especially Germany (but also the other major axis powers, i.e. Italy and Japan) and the Soviet Union. For political and ideological reasons, these states deliberately disregarded the principles of the occupation law. Both Nazism and Communism glorified power, violence, authority, and war as the means of solving any problems (Chrzanowski & Niwiński, 2008, p. 36). The occupation of the countries seized by the Third Reich before and during the Second World War were part of the megalomaniacal plans of establishing the "new order" all over the world. The Soviet Union also pursued far-reaching expansionistic policies, although for different reasons. Both powers rejected the occupation law and aimed for the permanent and exclusive control over the occupied territories. This control was supposed to be exercised either directly, through annexation or military administration, or indirectly, through installing puppet governments. The legislation of the occupied countries represented neither legal nor moral value for these occupants, and the only reason to retain it – in those few cases when it was indeed retained – was the convenience of the occupying authorities (Benvenisti, 2012, p. 140). The scale of violence perpetrated in the occupied territories by the Third Reich and the USSR leaves no doubt as to the barbaric character of the occupation model adopted by these states, the evidence of which is the Nazi practices toward carrying out the Holocaust (Arai-Takahashi, 2012, p. 64).

Numerous instances of violating the military occupation law can be observed in the case of the occupied Poland. Following the September 1939 military defeat, Poland was seized by both aforesaid countries. The non-violence pact (dated 23 August 1939) signed by the Third Reich and the USSR, and specifically its classified annex, provided for such an outcome and divided the country along the rivers of San, Vistula, Narew, and Pisa. But during the September campaign the German army advanced so far into Poland that the original plans had to be amended – on 28 September, Germany and the USSR signed an agreement concerning the borders, which were now set along the rivers of San, Bug, Narew, and Pisa (Mazur, 2010, p. 87; Snyder, 2010, p. 127). Consequently, the entire territory of Poland was under the occupying authority of its hostile neighbors, who

proceeded to implement their plans, violating the military occupation norms set by the Hague regulations. The following examples of violations committed by both occupants are just select and most well-known cases, which clearly and specifically illustrate the lawlessness and violence characteristic of the German and Soviet occupation of Poland, as well as disrespect for the international law. Importantly, both Germany and the Soviet Union were parties to the 4th Hague convention, to which the Hague regulations were annexed, but it has to be noted that still before the outbreak of the Second World War the provisions of these regulations started to be recognized as customary norms, and were as such binding for all states, regardless of their treaty obligations.

For the clarity of the argument, the individual instances of the occupation law violations are analyzed in accordance with the same thematic division as suggested above during the discussion of the Hague regulations of 1907.

The Third Reich-occupied territory. The aggression of Nazi Germany against Poland marked the beginning of working toward the global goal set by Adolf Hitler, that is, winning the so-called living space (*Lebensraum*) for the Germans, which was to be achieved through Germany's eastward expansion (*Drag nach Osten*). One obstacle in the way was the rejuvenated Polish state, which thus became the first war victim of the hegemonic drives and expansionistic policies of the Third Reich (Chrzanowski & Niwiński, 2008, p. 13; Gąsiorowski, 2010, p. 43). On going to war, Germany already had a general plan of incorporating the Free City of Danzig and the western territories of Poland – Pomerania, Greater Poland, and Upper Silesia, which the Reich considered to be old German lands. However, there were no concrete plans as to the remaining Polish territories, which were seized by the Wehrmacht after the outbreak of the war (Gąsiorowski, 2010, p. 43).[10] Eventually, the Polish territories which went to the Reich were delineated in the German-Soviet agreement of 28 September 1939: the German-occupied area extended to the west of the line marked by the rivers of San, Bug, Narew, and Pisa. The Polish territories east of these rivers had been occupied by the Soviets until the German aggression against the USSR in June 1941.

In the fall of 1939, the western and northern territories of the Second Polish Republic were annexed by Germany, which was in blatant violation of the military occupation law. On 8 October, the Führer and Reich Chancellor issued a decree concerning the division and administration of the Eastern territories, which came into force on 1 November (Erlass des Führers

10 Berlin did consider setting up the so-called fragmentary state (*Reststaat*) in the territories which were not to be incorporated into the Reich, in the area between the new Reich border and Grodno and Przemyśl, but the idea was eventually scrapped (Gąsiorowski, 2010, p. 44; see also Brewing, 2019, pp. 120–121).

und Reichskanzlers über Gliederung..., 1939, p. 2042). New administrative units were established: Reich district Danzig-West Prussia (*Reichsgau Danzig Westpreussen*) and Reich district Wartheland. The Silesian voivodeship, together with the near-border regions of the Kraków and Kielce voivodeships, and parts of northern Mazovia, were incorporated into the Silesian province (*Provinz Schlesien*) and East Prussia province (*Provinz Ostpreussen*), respectively (Chrzanowski & Niwiński, 2008, pp. 13–14; Gąsiorowski, 2010, p. 49; Brewing, 2019, pp. 121–122; Kozyra, 2013, p. 35). The remaining Polish territory became the General Government for the occupied Polish lands (*Das Generalgouvernement für die besetzten polnischen Gebiete*) under the Führer and Reich Chancellor's decree for the occupied Polish territories dated 12 October (Erlass des Führers und Reichskanzlers über Verwaltung..., 1939, p. 2077).[11] The General Government consisted of the main part of Mazovia, the southern part of Podlasie, and the Lublin, Kielce, Kraków,[12] and Rzeszów regions. Its territory was divided into four districts, with the mid-level authorities seated in Warsaw, Lublin, Radom, and Kraków (Wrzosek, 1999, p. 149). In June 1940, the name of the unit was changed into the General Government, with the adjective "Polish" scrapped.[13]

The scope of the occupant's authority. In the first phase of establishing the structures of the German occupying administration in the Polish territories (between 1 and 15 October), the German military administration was installed and some Polish lands were directly incorporated into the Reich. During the second phase, between 25 October 1939 and 22 June 1941, the German military administration was being dismantled and replaced by the structures of the civilian administration in the General Government (Kozyra, 2013, pp. 35–36).[14] Hitler's decision to

11 For a Polish translation of this document, see: https://polona.pl/item/dekret-fuhrera-i-kanclerza-rzeszy-dla-okupowanych-obszarow-polskich-z-dnia-12,MTAzMjAxNw/0/#info:metadata [accessed on 03.02.2020].

12 Aside from the aforementioned areas of the Kraków and Kielce voivodeships, merged with the Silesia province, and fragments of the Kraków voivodeship, incorporated into Slovakia.

13 The Reich's authorities said that the grounds for this change was the fact of the conquering (*debellatio*) of Poland: according to Albert Weh and Friedrich Klein's claim from 1940, the Polish state ceased to exist as a result of conquest and the sovereign rights in the seized Polish territories were transferred to the Reich, so the Reich's standing in relation to the previously occupied Polish territory was no longer regulated by the international law, but by the German domestic law. But the claim that Poland had been conquered was baseless because the factual state at the time did not meet the basic criteria of conquest: the Polish Republic, despite having its territory seized by the enemy, was still recognized by all allied and neutral states, the Polish government in exile was active and sent orders to the country, and the Polish state was still fighting a war, both domestically and on every military front of the allied powers (Kilian, 1977, pp. 130–133; Klafkowski, 1946, pp. 81–84).

14 But the temporary German civilian authorities had already been established at the commands of individual German armies invading the Polish lands (Gąsiorowski, 2010, p. 44).

remove the military occupying administration was informed by his global aim, which was to introduce the "new order" and expand the "living space" of the German nation.[15] The Führer was afraid that the military administration would – in line with their duties – focus on the immediate warfare considerations and exploit the occupied territory to that end, thus neglecting the big picture. Additionally, he did not consider the military administration fit to manage the Polish territories: military occupation is temporary by definition, as is the occupying military authority, and that ruled out taking permanent control of Poland (Wrzosek, 1996, p. 66).

The incorporation of the western and eastern Polish lands into the Reich, the creation of the General Government, an artificial entity comprising the remaining Polish territories, and the shift from the military to civilian administration breached the international law, which prohibited the annexation of the occupied lands, and were majorly at odds with the notion of military occupation as defined by the Hague regulations of 1907. Importantly, Poland, as an occupied state, had retained a legal government; it may have operated in exile, but it was recognized by the allied powers and neutral states and functioned in accordance with the provisions of the constitution, which was still in force (Wrzosek, 1999, p. 149). But the Germans did not recognize the Polish government in exile, and any changes they introduced in Poland violated the rights of the sovereign.

Prevailing in the Polish territories incorporated into the Reich was the propaganda-supported policy of "re-Germanization," to which all the remaining actions of the German administration were subjugated (Gąsiorowski, 2010, p. 49). The Germans immediately proceeded to overhaul the economic, social, ethnic, and political structures, as well as the legal system. The Polish administration in these lands was dismantled and Poles were removed from top posts (Chrzanowski & Niwiński, 2008, p. 15). Pursuant to the 8 October decree, the districts newly established in these territories were headed by Reich *gauleiters*. The Reich *gauleiters* for West Prussia and the Wartheland had their seats in Gdańsk and Poznań, respectively (Kozyra, 2013, pp. 40–41). Said decree stipulated that the installation of the administration in the newly established territories would take place in accordance with the corresponding provisions binding in the Reich District *Sudetenland*, which most fully furthered the principles of Nazi administration, that is, the leader principle and the principle of uniform administration. It was the model law, which in time was to be extended over the entire Reich territory and pursuant to which all branches

15 The term "new national order" (*völkische Neuordnung*) was used to describe "the German nation's intention of expanding and transforming the future German "living space" (*Lebensraum*). For this to happen, the local inhabitants had to be deported, relocated, and exterminated, which would then, thanks to the arrival of German settlers, see the creation of a racially pure dreamland" (Brewing, 2019, pp. 123–124).

of administration in a given area fell within the purview of the Reich *gauleiter* (Kozyra, 2013, p. 41).

The Führer and Reich Chancellor's decree of 8 October 1939 provided for the retention, until further notice, of the Polish laws in the annexed territory, as long as they are not inconsistent with the fact of the annexation of these lands into the Reich. At the same time, under a decree issued by the Reich minister of the interior (in cooperation with a competent Reich minister), it was possible to introduce the Reich legislation and the Prussian domestic law (for instance, German criminal law became binding in the incorporated territories). The competent authority for the administration of the incorporated territories was minister of the interior, who was empowered to issue legal and administrative regulations necessary for the execution of said decree (Kozyra, 2013, pp. 41–42).

The status of the Polish lands which had not been annexed was regulated by the Führer and Reich Chancellor's decree of 12 October 1939 (which came into force on 25 October). Interestingly, the preamble to the document included the formula adopted in art. 43 of the Hague Regulations: the decree was issued in order to "restore and maintain public order and public life" in the occupied territories. Pursuant to this order, the territories occupied by the German army, unless they had been incorporated into the Reich, were under the authority of the General Governor for the occupied Polish lands (§ 1). In accordance with the leader principle and the principle of uniform administration, the General Governor answered directly to the Führer, and was himself in charge of the entire administration apparatus in the General Government (§ 3). The central authority for the occupied Polish territories was the Reich ministry of the interior, while the minister of the interior was empowered to issue legal and administrative regulations necessary for executing and complementing the decree analyzed (§ 8). The costs of the administration were to be incurred by the occupied territory (§ 7 p. 1).

High-level positions in state administration were held by Germans, but Poles kept mid-level jobs (e.g. mayor or commune leader). Self-government structures (e.g. municipal boards) were also retained in the General Government,[16] and the Bank of Issue in Poland and the police force (*Polnische Polizei*) were established (Chrzanowski & Niwiński, 2008, p. 15). However, the General Government did not become part of the German customs and exchange area. In July 1940, the occupant abolished administrative judiciary and court instances: now, the decisions of occupying

16 But pursuant to the decree on the creation and representation of municipalities in the Government General of 27 June 1940, an association of municipalities was established in each county, which was to be a public territorial corporation, but in reality these associations enabled the occupant to dismantle the Polish territorial self-government structures (Kozyra, 2013, p. 46).

administration organs were only heard once, and the ruling was final (Kozyra, 2013, p. 46). As regards common courts, in October 1939, a decree was issued concerning the reconstruction of the judiciary in the General Government: it provided for the establishment of a dual judicial system of German courts and Polish courts, with the latter subjugated to the former (Wrzyszcz, 2003, p. 249).[17] The duality of the judiciary was founded on the idea of racial segregation and isolating the Germans from the locals. Following the adoption of this model, the Germans living in the Government General were under the exclusive jurisdiction of the German courts (Wrzyszcz, 2003, p. 249). In February 1940, two decrees of the Governor General concerning the German and Polish judiciary entered into force. In the Polish courts, the judges and other employees were reappointed, but they had to sign a pledge of allegiance to the German administration (Wrzyszcz, 2003, p. 265). These requirements were in clear violation of art. 45 of the Hague regulations of 1907, which prohibited coercing the inhabitants of the occupied territories into pledging allegiance to a hostile state. At the same time, Polish charity organizations were allowed to operate: standing out among them was the Central Welfare Council, which was a conduit for contacts between Polish society and the authorities of the Government General (Gąsiorowski, 2010, p. 65).

The 12 October 1939 decree stipulated that the Polish laws shall remain in force, as long as they were not inconsistent with the fact of taking over the administration by the German Reich (§ 4). Thus, these laws could not be out of keeping with Germany's political interests and could not impede the enforcement of the German laws. Raphael Lemkin was right to point out that the declarations made by the German occupant concerning the retention of the legislation previously in force actually entailed an overhaul scheme affecting a large body of the laws of a given country. Seeing as the goals of the German occupation went beyond military interests, instead aiming at the unification of the occupied states under the European "new order" with Germany at the helm, it was obvious that the majority of the legal systems and laws of the occupied countries was at odds with the goals of the German occupation (Lemkin, 1944, p. 25).[18] In the case of occupied Poland, this observation is borne out by the fact that

17 The Reich's authorities "also considered the idea of maintaining order in the Government General through police coercive measures, together with depriving the locals of protection from any legal system. However, this idea was rejected, mostly due to economic considerations: because the Government General was to become an exploitation site for the Reich, it was deemed unacceptable to only have recourse to police measures, as that would hinder the regular economic life" (Wrzyszcz, 2003, s. 249).

18 In practice, in the General Government, the provisions of Polish state, administrative, fiscal, labor, military, and settlement laws were repelled. Criminal, civil, material, and procedural laws were retained, but they were subject to frequent and significant changes (Wrzyszcz, 2003, p. 266). See also Klafkowski, 1946, pp. 59–60.

the decree under discussion vested the Council of Ministers for the Reich's Defense, the Four-Year Plan Commissioner, and the Governor General with the power to issue decree-laws (§ 5 p. 1). The President of the Council for the Reich's Defense, the Four-Year Plan Commissioner, and the Reich's supreme authorities could also issue orders necessary for planning the German living and economic space in the territories under the Governor General's jurisdiction (§ 6). These solutions clearly show that the German occupation of the Polish lands was not intended to be in line with the occupation law from the very beginning, because the immediate goal of the German administration was to maximize the exploitation of the General Government for the Reich's purposes, while a long-term aim was laying foundations for the colonization of these lands (Gąsiorowski, 2010, p. 69).

The situation of the civilians. The implementation of the expansionistic policy of enlarging the "living space" of the Germans and the idea of the *Drang nach Osten* were inextricably connected with removing the locals from the conquered lands, a goal which, according to the Nazis, could well be achieved by both relocation and extermination. The concept of military occupation as a transitory factual state which entails the duty to retain the *status quo* of the occupied territory and the obligation to protect its civilian inhabitants was, therefore, completely at odds with Hitler's plans and the idea of the European "new order." In reality, the Polish lands incorporated into the Reich were to be Germanized within ten years, the means to that end being mass terror, relocations of Poles and Jews, German settlement, and the nationalistic policies.[19] The plan was not merely to change the demographics in the conquered lands but also to make them look like the Reich. This is why all Polish institutions were abolished and replaced with German ones (Gąsiorowski, 2010, p. 52).

The General Government, initially considered an occupied territory, was also to be affected by the aforesaid German expansionism and colonized. Until then, in the words of Timothy Snyder, the General Government was a "dumping ground for unwanted people, Poles and Jews" (Snyder, 2010, p. 128). The Reich treated this territory as a source of cheap labor force and a reservoir of resources for German industry and of food, while the inhabitants of the General Government were on the receiving end of a multifaceted operation of systematic annihilation, whose part were mass relocations and executions.

Presenting the extraordinary scale of the crimes perpetrated against the Poles, both on the Reich-incorporated territories and in the General Government, would be well beyond the scope of this article, so what follows is a brief discussion of selected serious violations of

19 Daniel Brewing writes that "from the perspective of the ss units and the police apparatus, particularly uncompromising and ruthless stance was not only justified, but absolutely necessary to strengthen the German rule" (Brewing, 2019, pp. 191–192).

the occupation law, which were commonplace especially during the first months and years of the occupation. Noteworthy from the legal perspective are violations of the prohibitions with regard to pledging allegiance to a hostile state and serving in its armed forces, neglecting duties in the field of respecting the lives of individuals, family rights, private property, beliefs, and religious practices, collective penalties and collective responsibility, and, more broadly, failure to ensure public order.

The goal of the Nazi nationalistic policies implemented in the Reich-incorporated lands was to separate the inhabitants deemed to be German from the others, who were considered "less valuable" racially. Pursuant to the Führer and Reich Chancellor's decree of 8 October 1939, the inhabitants of the annexed lands "of German or related blood" were to become German citizens under the law on the Reich citizenship (Kozyra, 2013, p. 41). Those who refused to apply for inclusion on the German *Volksliste* or demanded that they be recognized as Poles faced arrest or, in the best case scenario, deportation to the General Government. Coercion and pressure were compounded by the fact that the men of conscription age included in the list had a duty to serve in the Wehrmacht (Gąsiorowski, 2010, p. 60; Chrzanowski & Niwiński, 2008, p. 24), which can be seen as the most far-reaching consequence of being granted German national affiliation.[20]

The Reich authorities also distorted the meaning of the duty to restore and maintain public order in the occupied territories, as they did not follow the letter of law but furthered their own policies and ideology. From the very beginning of the occupation, playing a unique part in the annexed lands as well as in the General Government were the SS and police units. Together with state administration and other German institutions, they worked toward introducing the state of total terror, which was supposed to see people fear for their lives and the lives of their loved ones, as well as for their freedom and property. Police terror was to suppress any activities against the German authorities and force the inhabitants of the incorporated and annexed lands to respect their orders (Gąsiorowski, 2010, pp. 51–52).

The SS units and the German police were dreaded for a reason, seeing as the first executions (in September and the following months of 1939) were perpetrated not just by the Wehrmacht, but also by the SS-controlled taskforces of the Security Police and Security Service (*Einsatzgruppen der Sicherheitspolizei und des Sicherheitsdienstes*), as well as (especially in Pomerania) the so-called self-defense units (*Selbstschutz*), a paramilitary organization composed of local Germans (Chrzanowski & Niwiński, 2008, p. 19). Treated with particular ruthlessness were "the upper echelons of society," that is, priests, teachers, army officers, policemen, state officers,

20 For more on the topic, see Kilian, 1977, pp. 146–150.

local self-government officials, the intelligentsia, etc. "Subject to physical extermination were persons taking active part in public life, who could pose a threat to the new order implemented by the Reich" (Chrzanowski & Niwiński, 2008, pp. 19–20). In March 1940 in Berlin, a special list of wanted persons (*Sonderfahndungsbuch Polen*) was drafted, which included the names of some 8,700 Poles considered to be dangerous to the Reich. Additionally, sources cite a number of 61,000 names of Poles and Jews included in various lists and deemed to be "elements hostile toward the Reich and the Germans" (Ceran, 2019, p. 302; Brewing, 2019, pp. 178–179; Snyder, 2010, p. 126).

Once the Germans invaded Poland, a scheme commenced of liquidating the persons whose names were in the aforesaid lists, which was to be a step toward bringing Poland closer to the Nazi vision of the "new order" and incapacitating the nation's ability to stand up to the occupant. In the Reich-incorporated territories, these activities, pursued between 1939 and 1940, were codenamed "Unternehmen Tannenberg" and then fused with the Intelligenzaktion, whose aim was a political purge; it should be noted that this operation affected not just the intelligentsia, but also individuals of leadership qualities and its goal was a complete Germanization of Pomerania, Greater Poland, and Silesia (Ceran, 2019, p. 302; Chrzanowski & Niwiński, 2008, p. 20; Gąsiorowski, 2010, p. 52).[21] In the General Government, the operation against Polish intelligentsia was codenamed "AB" (*Ausserordentliche Befriedungsaktion*, 'extraordinary pacification'). Governor General Hans Frank compiled a list of groups to be exterminated, which was very similar to that used in operation "Tannenberg": it included educated individuals, clergymen, and political activists. The goals of both operations were also consistent, as they consisted in depriving the Polish nation of individuals capable of mounting rebellion against the occupying authorities. The Germans launched the operation in late March 1940 and it lasted until the end of summer of that year (Chrzanowski & Niwiński, 2008, p. 20; Gąsiorowski, 2010, p. 67; Snyder, 2010, p. 147).[22]

The early stages of the German occupation of the Polish lands were also characterized by total disregard of the prohibition to enforce collective responsibility and collective penalties. In the fall of 1939, when the Germans were already in the process of setting up civilian administration in the occupied territories, the Wehrmacht was still murdering Poles in arbitrary retaliatory public executions.[23] A special case of enforcing

21 For more on operation "Tannenberg" see Brewing, 2019, pp. 177–187.

22 The killings perpetrated by the SS units and the police apparatus of the occupant were an integral part of the German conquest of Poland and were seen as a key indicator of the effectiveness of the German rule (Brewing, 2019, p. 195).

23 For more, see Snyder, 2010, p. 122; see also Gąsiorowski, 2010, pp. 45–46.

collective responsibility was the pacifications of villages, which consisted in slaughtering their inhabitants and burning down buildings, together with other forms of violence. In the period under discussion (specifically in April 1940), the intensification of such pacifications could be observed in the Kielce region, during operations launched against the guerilla units commanded by Maj. Henryk Dobrzański "Hubal."[24]

An important component of the Nazi policies toward the occupied Polish lands was forced deportations. In the Reich-incorporated territories, they were initially the unregulated deportations on the initiative of the local German authorities. They were effected in a chaotic manner and lasted until the end of November 1939. The subsequent relocations were planned and implemented on a mass scale. They were prepared and controlled by the German central authorities and spanned Pomerania, Greater Poland, and parts of Upper Silesia and northern Masovia. Relocated in the first place were those who "posed a direct threat to the German nation." The deportees were sent to relocation camps or to the General Government, while the Jews were sent to ghettos and then – from 1942 – to extermination camps (Brewing, 2019, pp. 127–128; Chrzanowski & Niwiński, 2008, p. 26; Gąsiorowski, 2010, p. 53; Snyder, 2010, pp. 132–133). Deportations of the inhabitants of occupied territories were not expressly forbidden in the Hague regulations of 1907,[25] but they certainly violated family rights and were aimed against private property, as well as disorganized public life and, given the transportation conditions facing the people displaced,[26] were a threat to the lives of individuals.

Relocations were directly connected with settlement. The German plans of colonizing the Polish lands incorporated into the Reich (and later also of the General Government) under the policy of Germanizing these territories were called the Masterplan for the East (*Generalplan Ost*):

24 For more, see Brewing, 2019, pp. 200–215. The author discusses, among others, the case of the village of Skłoby, where all men of the conscription age (between 14 and 65 years of age) were executed on 11 April 1940, and the village itself was burned down. The occupying authorities said that the execution was a response to the collective assistance provided to Dobrzański's men (Brewing, 2019, p. 209).

25 The prohibition on mass deportations was only introduced after the Second World War, in the 4th Geneva convention respecting the protection of civilians during war of 1949, in art. 49 ("Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive").

26 Timothy Snyder writes that "In normal times, the journey from Poznań, the capital city of the Wartheland, to Warsaw, the largest city of the General Government, would take a few hours. Nevertheless, thousands of people froze to death on the trains, which were often left idle on side tracks for days" (Snyder, 2010, p. 133). See also Brewing, 2019, p. 127, footnote 245.

> The initial plans of the German settlement of the incorporated territories were specified in the orders of Himmler which he issued in his capacity as the Reich's commissar for strengthening Germanism between October and November 1939. He intended to populate the so-called settlement stripes with the displaced persons of German blood (*Volksdeutsche*) from the Central and Eastern European countries and the Baltic states (Gąsiorowski, 2010, p. 56).

The colonization of the occupied country by citizens of the occupying country was not – just as in the case of deportations – described in the Hague regulations,[27] but the lawlessness of such settlement operations can be posited on the basis of the general provisions concerning the protection of the civilian population of the occupied territory and the duty to keep the *status quo* of this territory,[28] including the maintenance of public order and social life.

The German occupation of the Polish lands is also characterized by lack of respect for religious beliefs and religious practices, which is in breach of art. 46 of the Hague regulations. The Nazis saw the Catholic Church as the mainstay of Polishness, so they made efforts toward erasing religiousness from the collective consciousness of the Poles. Therefore, in their attempts to disintegrate the church structures and limit their influence on the society, especially in the incorporated territories, the German authorities persecuted clergymen, many of whom were murdered or locked away in different camps. In Pomerania and Silesia, it was additionally prohibited to use the Polish language during religious practices, while this was allowed in Greater Poland, although not without certain limitations. In the General Government, the position of the Catholic Church was not being essentially undermined, even though priests were also murdered, persecuted, and prevented from providing pastoral service in these territories (Chrzanowski & Niwiński, 2008, p. 21).

The treatment of public and private property. The picture of the crimes perpetrated by the German occupying powers in the Polish lands is not complete without the violations of the Hague regulations in the field of public and private property. Against the provisions of the occupation law, the German authorities took over both chattel and

27 A consequence of the settlement schemes implemented by the Reich during the Second World War is a prohibition to carry out deportations or relocations of portions of the civilian population of the occupying country to the territory which it occupies; it is expressed in art. 49 of the 4th Geneva convention of 1949.

28 For instance, the German settlers received houses and agricultural farms taken away from Poles and Jews, as well as industrial and commercial enterprises, which was a violation of the duty to respect private property and of the prohibition on confiscation and looting, all clearly laid out in the Hague regulations.

real estate belonging to the Polish state (paying no attention to the character of these goods and objects or to the requirement of justifying such takeover with military necessity), as well as private property. In the territories incorporated to the Reich – in the name of their Germanization and full assimilation – requisitioning affected industrial plants, workshops, shops, or forestry establishments. The German state took over the postal service, railways, and communication channels. Polish owners were expropriated and laborers were treated as lower-level workers. Industrial production was largely directed toward satisfying the military needs of the Reich. It was mostly the manufacturing potential of the incorporated lands that was being taken advantage of, rather than that of the General Government (where a radical strategy of exploitation was implemented, which saw free pillage of economic resources and deliberate deindustrialization of structurally weak areas) (Brewing, 2019, p. 133; Chrzanowski & Niwiński, 2008, p. 29). "In time, serving the purposes of the war were all branches of industry: not just heavy and chemical, but also textile and clothing" (Gąsiorowski, 2010, p. 82).

The German authorities gradually took over the property of the displaced Poles and Jews. The Nazis justified the pillage and requisitioning of the Polish and Jewish property with "racial superiority." Farms were transferred to German owners, both those already settled and those arriving as part of the settlement scheme. Former Polish owners would become agricultural workers, with no right of title (Chrzanowski & Niwiński, 2008, pp. 28–29). Many landed estates were headed by the so-called *treuhänders* (trustees), who typically followed the exploitation pattern (Gąsiorowski, 2010, p. 82).

The German occupying authorities also made little of the prohibition to seize, destroy, or deliberately profane "church, charity, or educational institutions and fine arts and scientific institutions," as well as "historical monuments, works of art, and scientific works" (art. 56 of the Hague regulations). In the Reich-incorporated lands, at the very beginning of the occupation, the Germans closed down all Polish organizations, dismantled the Polish system of education and the Polish cultural life, and imposed limitations on using the Polish language in public places (Gąsiorowski, 2010, p. 62). Particularly open to the idea of "strengthening Germanism" was Arthur Greiser, the gauleiter of the Wartheland. In the area under his jurisdiction, that is, between Poznań in the west and Łódź in the east, Greiser committed crimes which the Supreme National Tribunal described in his post-war trial as "cultural genocide." Perpetrating it, Greiser was acting to the detriment of the Polish state and nation by taking part in, inciting others to, being accessory to, and executing the systematic destruction of Polish culture, looting Polish cultural heritage, Germanization of the Polish state and nation, illegal appropriation of public property, as well as insulting and deriding the Polish nation by means of promoting the idea of its cultural inferiority and low social value (Akta

w sprawie karnej Artura Greisera, 1946, p. 11). Additionally, Greiser supervised activities aimed at destroying the cultural values and property of the Polish nation, which consisted in, among others, persecuting and shutting down Polish scientific and academic institutions, dismantling the system of education through closing schools and universities, plundering Polish art galleries, archives, and libraries, destroying historical monuments and cultural goods or altering them in such a way so they could no longer be of service to Polish culture, and finally phasing out the Polish language from public life and every level of the process of education (pp. 9–11).[29]

The territories occupied by the Soviet Union. The Soviet army invaded the eastern provinces of the Second Polish Republic on 17 September 1939, which was in line with the Molotov–Ribbentrop pact concluded still before the war. Officially, the USSR authorities were compelled to intervene, because following the German invasion the Polish state (and its government) ceased to exist. Therefore, Poland was no longer able to protect its citizens, so the Red Army had to enter the country as part of a peacekeeping mission. The Soviet propaganda maintained that in need of help were particularly the numerous Belarussian and Ukrainian minorities living in the Polish territory (Snyder, 2010, p. 124). But the fact of seizing the eastern parts of Poland by the Red Army was a clear indicator that these territories were under a military occupation, despite no formal declaration of war and the general order of the Supreme Commander not to engage in combat with the Soviet troops (Kwiecień, 2013, pp. 70–71).

From the perspective of the occupation law, the Soviet occupation of Polish territories was no better than the German occupation. The expansionistic policies of the USSR were fiercely at odds with the notion of military occupation and its basic tenets included in the Hague regulations of 1907 and failed to recognize sovereignty and to respect the prohibition to forcibly violate it. The annexation of parts of Poland, as well as other annexations completed by the Soviet Union, had clear ideological overtones justifying military expansion by invoking communist ideals. That way, political and ideological criteria stood out in the Soviet approach to the worldview-neutral rules and regulations of military occupation (Benvenisti, 2012, p. 138).

The policies of the USSR toward the seized Polish territories aimed at their full incorporation, which was to take place following the implementation of the process of Sovietization, consisting in the abolishment of the previously existing social order and the creation of an entirely new one according to the Soviet model (Mazur, 2010, p. 88). The invading Red Army troops set up Temporary Boards which claimed jurisdiction over the

29 For more on the topic, see Marcinko, 2014, pp. 659–670.

provinces, cities, and towns seized in the process. In the conquered territories, the Soviet authorities temporarily created so-called Western Belarus and Western Ukraine. The Soviets were hopeful of the swift legitimization of the conquest, so within six weeks of the invasion, general elections (labeled "plebiscite") to people's assemblies were held, following which the People's Assembly of Western Ukraine and the People's Assembly of Western Belarus were appointed on 22 October and 26 October, respectively. Both assemblies passed resolutions in which they requested the Supreme Council of the USSR to approve the incorporation of Western Ukraine and Western Belarus into the Soviet Union and the inclusion of both administrative units in the Ukrainian Socialist Soviet Republic and the Belarussian Socialist Soviet Republic. At the beginning of November, the USSR Supreme Council granted both requests and Western Ukraine and Western Belarus – which from the international-legal perspective were still parts of the Polish state – were incorporated into the Soviet Union. A month later, the inhabitants of these lands became "Soviet citizens" (Benvenisti, 2012, p. 138; Chrzanowski & Niwiński, 2008, p. 14; Mazur, 2010, pp. 88–91).

The scope of the occupant's authority. Unlike the Germans, who – at least for some time – used the term "Polish occupied territory" to describe the areas under their jurisdiction, the Soviet authorities made no secret as to what they intended for the eastern Polish territories. They did not even attempt to establish occupying administration and ignored both the situation of the inhabitants of the seized lands and the sovereign rights of the occupied state. Consequently, the actions of the Soviet occupying authorities are hard to evaluate because such authorities were formally never appointed. Invoking the collapse of the Polish state after a military defeat inflicted by the German army and refusing to recognize the Polish government in exile, Moscow overhauled the structure and operating protocols of the Eastern provinces of the Second Polish Republic, which violated the basic tenets of occupation law.

Therefore, in line with the factual state of affairs, "general elections" (organized under considerable pressure of the Soviet troops and the NKVD) were held in the Soviet-occupied territories and new civilian authorities were appointed, after which the aforementioned lands were incorporated into the USSR, their political and administrative structure now following the Soviet model. In March 1940, elections were held to councils of all levels, as well as by-elections to the Supreme Council of the Belarussian SSR, Ukrainian SSR, and the Supreme Council of the USSR, following which the Soviet administrative system was established in the entire occupied territory (Mazur, 2010, pp. 92–93). The previously existing provinces were now districts (with their borders altered and new administrative units created), which were divided into more than 300 regions (in order to control the population more tightly). Appointed top officials were persons coming from the USSR, and in the initial stage they were also picked from among the military personnel and NKVD officers

(Chrzanowski & Niwiński, 2008, p. 15). In the name of the Sovietization of the incorporated lands, all Polish, Ukrainian, Belarussian, and Jewish institutions were dismantled, including political parties, social and cultural organizations, trade unions, cooperatives, etc. Only the communist party, the VKP(b), could operate, whose emanations were in charge across the entire occupied area (Mazur, 2010, p. 88). A brand new judiciary structure was also adopted, with top posts going to persons sent from the USSR, with representatives of the local population only allowed to work as lay judges and attorneys (Chrzanowski & Niwiński, 2008, pp. 17–18).

As a result of the USSR's actions in fall 1939 and in early 1940, Moscow moved the borders of the Ukraine and Belarus republics westward, seizing lands belonging to Poland and thus effecting the annexation of part of its territory. The Soviet propaganda did not call these developments occupation, instead labeling them national and class "liberation": national minorities were freed from the Polish rule and peasants were freed from the oppression by the lords. In reality, the goals of these actions were incorporation and Sovietization, and no effort was made to even pretend that occupation was in progress. The people's assemblies of Western Belarus and Western Ukraine, appointed through a "plebiscite," were only provisional bodies, because their role was to pass a motion to incorporate the eastern Polish lands to the USSR. All formalities concerning their annexation were completed by 15 November 1939, although the actual state of affairs in the eastern territories seized by the Red Army and incorporated into the Soviet Union met all the criteria of military occupation (Snyder, 2010, p. 128).

The situation of the civilians. The Soviet authorities' deliberate ignoring of the fact of the occupation of the Polish lands and efforts to join them as soon as possible to the Soviet republics meant that the inhabitants of the seized territories were not considered to be inhabitants of an occupied area, and that, in turn, meant that the regulations and norms of the occupation law concerning the protection of these people were not observed. According to the USSR authorities, Poland ceased to exist on 17 September 1939, so the inhabitants of the territories seized by the Red Army were stateless persons, as they could no longer be citizens of a defunct Polish state. Consequently, on 29 November 1939, the Presidium of the Supreme Council of the USSR issued a decree concerning the acquisition of Soviet citizenship by the inhabitants of the western districts of the Belarussian and Ukrainian SSR. Under this document, all persons living in these lands and the refugees who were staying there at the time became citizens of the Soviet Union on the day of these territories' incorporation into the USSR, i.e. on 1 and 2 November 1939 (Mazur, 2010, pp. 91–92). Therefore, the decree applied retroactively and its provisions suggested that the inhabitants of the eastern Polish territories were no longer inhabitants of an occupied area (which is in clear violation of the occupation law).

One of the consequences of acquiring Soviet citizenship was compulsory military service in the Red Army facing the inhabitants of the eastern Polish territories. Compulsory conscription was also a form of repression against the conquered people. Drafted in the army were Belarussians, Ukrainians, Poles, and Jews, but Poles were sent to the most remote outposts, where they served in severe conditions – e.g. on the Finnish front during the war of 1939 and 1940 – so that they would prove their faithfulness to their new "homeland" in combat, which was a blatant violation of the Hague regulations of 1907 (Chrzanowski & Niwiński, 2008, p. 25; Hryciuk, 2005, p. 119; Mazur, 2010, p. 92).

Of prime importance to the Soviet authorities was the efficient functioning of the security apparatus, so the relevant units had been prepared for the task at hand still before the invasion of Poland. In September 1939, following the Red Army into Poland were the NKVD units of considerable size. Mass arrests began of Polish citizens living in the occupied areas, their number being on the order 110,000. They were typically sent to gulags, but some were sentenced to death (Snyder, 2010, p. 126). Facing arrests were mostly the leaders of political parties, state administration, police, gendarmerie, and border guard, as well as individuals whom the Soviet authorities considered to be potentially dangerous (Mazur, 2010, p. 94; Hryciuk, 2005, p. 119).[30] The NKVD also perpetrated mass executions of Polish citizens, e.g. in Grodno, where groups of high-school students were shot in retaliation for defending the city. The victims were the most numerous within the first couple of weeks of the Red Army's invasion of Poland; later, individuals designated "dangerous" to the Soviet authorities were eliminated on the strength of court judgments or administrative decisions (see the Katyń massacre) (Chrzanowski & Niwiński, 2008, p. 20). Thus, the Soviet occupant did not care about the public order and social life for the benefit of the inhabitants of the occupied lands, as dictated by the Hague regulations, but made every effort to solidify its authority and fight the "enemies of the state" with terror and violence.

One form of battling the unwelcome "social elements" in the Polish territories occupied by the USSR were also deportations. On 5 December 1939, the Soviet authorities passed a resolution concerning displacements, and on 29 December the government approved an NKVD instruction concerning the mode of relocating "Polish settlers" from the western districts of Belarus and Ukraine (Mazur, 2010, p. 111). A total of four main deportations were carried out: the first one began on 10 February 1940, the second spanned April, the third took place in late June 1940, and the fourth was in June 1941 and was interrupted by the outbreak of the Soviet-German

30 Repressive policies were actually "an integral aspect of the functioning of the communist system and a basic means of solidifying and perpetuating the so-called rule of the laborers and peasants" (Głowacki, 2005, p. 126).

war (Chrzanowski & Niwiński, 2008, p. 26; Hryciuk, 2005, pp. 120–122). Deportations affected mostly those groups of Polish citizens who were considered dangerous for the new order, e.g. state officials and policemen. They were ferried off together with their families, which the NKVD defined in very broad terms: they were the elderly parents and children of those considered a threat (Snyder, 2010, pp. 128–129). "It is estimated that during the four waves of deportations (between 1940 and 1941) deported to Siberia, Kazakhstan, and northern Russia were between 309,000 and 318,000 people, according to the Soviet convoy troops, or between 316,000 and 323,000, according to the NKVD records" (Mazur, 2010, p. 112). Although the Hague regulations do not expressly forbid to carry out deportations of the inhabitants of the occupied territory, the prohibition follows from the general duty to protect the lives and family rights of these people, respect private property, and ensure public order and social life in the occupied lands.[31]

Just as the Germans did in the territories they occupied, the Soviets in the eastern Polish lands attacked the Church structures, both of the Catholic Church and the Orthodox and Greek Catholic Churches, thus failing to fulfill the occupant's duty to respect religious beliefs and practices. These actions were part of the scheme of complete atheization furthered by the communists. Seminaries, selected monasteries, religious schools, press, and publishing houses were shut down, and all symbols of faith were removed from public buildings. Religion was confined to within churches, which meant total prohibition on pastoral service in the army, in prisons, healthcare institutions, and education (Głowacki, 2005, p. 134; Dzwonkowski, 2005, p. 140). The Soviet's fight against religion intensified in mid-1940, when more radical steps began to be taken. Church property was confiscated, sites of religious cult were profaned, and churches were turned into warehouses, cultural centers, and museums of atheism (Chrzanowski & Niwiński, 2008, p. 21).

The treatment of public and private property. The Sovietization of the eastern parts of the Polish Republic, seized by the Red Army, also affected chattel and realty, both state-owned and private. Once the Polish lands had been officially incorporated into the USSR, Soviet legal regulations were introduced pursuant to which economy was nationalized virtually in its entirety. Nationalization affected factories, enterprises, banks, railways, and mines. The state also took over communal property (Mazur, 2010, p. 95).[32] The state enterprises thus

31 See also remarks on deportations in the section concerning the situation of the civilians in the territories occupied by the Reich.

32 Radical changes also affected cooperative trade, which was reorganized in line with the Soviet model. The previously existing Polish, Belarussian, and Jewish cooperatives were liquidated and incorporated into Ukrainian and Belarussian cooperative

created were administered by the occupant. Their trustees were persons handpicked by the party hierarchy and the overwhelming majority of them came from the USSR (Chrzanowski & Niwiński, 2008, p. 18). Some of the previous owners were arrested or deported, and the deportees (mostly Poles and Jews) irrevocably lost the right of title. In early 1940, in the name of combating "profiteering" and "extorters," the remaining private enterprises, retail trade, and craftsmanship began to be eliminated (Chrzanowski & Niwiński, 2008, p. 29; Głowacki, 2005, p. 132). "The atmosphere of ever-present terror led to what was formally voluntary submission of the remaining private entrepreneurs. They typically joined the state cooperative structures, sometimes completely forfeiting workshops" (Chrzanowski & Niwiński, 2008, p. 29; Bonusiak, 2005, pp. 96–97).

Nationalization also affected ploughing lands and agricultural farms: on some of the occupied territories, grounds belonging to monasteries, churches, and even settlers and other deportees were parceled up.[33] In November 1939, and then at the turn of 1939 and 1940, decisions was made to create sovkhozes and kolkhozes, respectively. Individual agricultural farms were obligated to supply grain and other agricultural produce, and any failure to comply would bring their owners to trial. The same duty was imposed on kolkhozes, with the same consequences facing their management in the event of disregarding it (Mazur, 2010, pp. 96–98).

Aside from being guilty of clear violations of the Hague regulations, under which the occupant is not the owner but merely the administrator of public property, and the sequestration of private property is prohibited, the Soviet occupying authorities also disregarded the norms prohibiting the confiscation, destruction, or deliberate profanation of church, fine arts, and scientific institutions, as well as works of art and science. Facing persecutions was not just the Catholic Church, but also other religious communities, such as the Orthodox and Greek Catholic Churches, as well as Judaism (Dzwonkowski, 2005, p. 141).[34] The Soviet authorities also took over museums and reorganized them, with some of the collections taken

associations. The formal incorporation of all cooperatives into the Soviet system took place on the strength of the resolution of the Supreme Council of the USSR of 20 January 1940. They were now part of the system in force in the USSR (Bonusiak, 2005, pp. 95–96).

33 Włodzimierz Bonusiak writes that "it was allowed to parcel up the landlord's lands for tactical reasons. The idea was to drum up support for the new authorities from the most indigent peasants and agricultural laborers. At the same time, the strategic aim, that is, the collectivization of agriculture, was kept secret" (Bonusiak, 2005, p. 100). Cf. Głowacki, 2005, p. 132.

34 The aggressive anti-religious propaganda began at the very beginning of the Soviet occupation. It was supported by the widely-circulated atheistic books and press, radio programs broadcast over the speakers in town squares, lectures in schools and workplaces (the attendance at which was compulsory), and many other forms of mass indoctrination of all professional groups (Dzwonkowski, 2005, p. 141).

to the Soviet Union, which essentially meant that Poland would never see them again (Mazur, 2010, pp. 100–101).

Conclusions

Starting from the 19th century, efforts were made to include in the international law detailed rules and norms of military occupation, regulating the conduct of the occupying forces. The law concerning occupation was present in military handbooks and multilateral agreements; it also derived from the practices of states and was interpreted in court judgments. These norms arose from the developing European idea of sovereignty as something that cannot be taken away by force. Therefore, the occupying power cannot appropriate the occupied territory or unilaterally make changes to its political status. It is also bound to respect and retain political and non-political institutions existing in this territory. During the occupation, the aggressor has a responsibility to the local inhabitants, the legally appointed government, and the third parties to restore and maintain public order and social life in the territory under its control (Benvenisti, 2012, p. 1).

The evolution of military occupation eventually led to such concretization of this concept that it became a legal category, and its basic tenets were regulated in treaty law, in the regulations annexed to the Hague conventions (2nd, from 1899, and 4th, from 1907) respecting the laws and customs of war on land. The provisions of these regulations defined the scope of the authority enjoyed by the occupant in the occupied territory, the occupant's obligations to the inhabitants of the occupied lands, the conditions for levying taxes and other fees and effecting requisitions, as well as the duty to respect public and private property, including the items and objects of science, art, and culture. In time, the solutions adopted in said documents acquired the status of customary laws binding for all the countries in the world.

Unfortunately, at the beginning of the Second World War, the rules and norms of the law of military occupation ware facing a stern test. The Third Reich and the Soviet Union, that is, the states which invaded Poland in September 1939, rejected – for political and ideological reasons – the occupation law, seeing it as out of keeping with their intentions and plans for both the Polish state and the rest of Europe. The policies of both the Nazi and communist regimes proved very similar, as did the means which they employed in the occupied Polish lands. Mass arrests, executions, and deportations, confiscations and lootings of public and private property, grave terror and violence, lack of respect for the cultural and religious values of the inhabitants of the occupied territories, and finally the annexation of the seized lands are all features that prompt some authors to descriptively label the occupation effected by both aforesaid countries as

"barbaric," while others use the term "illegal occupation," this illegality arising from the act of aggression which led to the occupation and the illegal methods of exercising authority by the occupying powers after the invaded territory was won (Benvenisti, 2012, pp. 140–141). However, it has to be underlined that military occupation is a factual state which has particular legal effects, and that means that it obtains regardless of whether it is considered illegal, whether it follows an act of aggression, or whether the occupant observes the Hague regulations of 1907. Irrespective of the political situation, the ideology promoted, or the form of administration, the occupants have certain obligations arising from the occupation law, and it is whether they fulfill them or not that should be basis for judging them once the occupation is over. The occupation law is world-view neutral and protects two values: the rights of the sovereign state and the lives of the inhabitants of the occupied territory.

The deliberate and clear breaches of the Hague regulations concerning military occupation committed by the German Reich and the USSR in the occupied Polish territories do not, obviously, devalue these regulations nor invalidate them. On the contrary: they revealed that the Hague regulations had numerous gaps in this respect, highlighted too broad definitions of certain obligations, and pointed to the need of elaborating this document. In reality, the crimes perpetrated by the Third Reich and the Soviet Union prompted a more detailed formulation of the military occupation law. The solutions adopted in 1949 in the 4th Geneva convention respecting the protection of civilians during war obviously elaborated the military occupation law. However, they are merely a supplement to the still valid provisions of the Hague regulations of 1907, a document which should be a departure point for any legal analyses, so that the subject under evaluation will be not so much the legality of the occupation itself, but the observance of the occupation law, as in the case of the Polish territories occupied between 1939 and 1940.

(transl. by Maciej Grabski)

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