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The Relation Between Human Rights Law and the Law of Belligerent Occupation: Does an Occupied Population Have a Right to Freedom of Assembly and Expression?

by John Quigley*

I. INTRODUCTION

Human rights law assumes universality. The law of belligerent occupation gives considerable flexibility to an occupant. The two bodies of law appear to be on a collision course. This article analyzes the rights of assembly and expression of a population under military occupation. It attempts to determine whether human rights law or occupation law prevails. While human rights law provides broad scope to assembly and expression, occupation law requires only application of the law of the displaced sovereign and imposes severe restrictions on occupants. Assembly and expression thus are good examples of the significance of the issue of which body of law prevails.

II. POSSIBLE SOLUTIONS

When the law of belligerent occupation was formulated, human rights law did not exist. Even in 1949, when the most important treaty in belligerent occupation was adopted, the Convention Relative to the Protection of Civilian Persons in Time of War, usually referred to as the Fourth Geneva Convention, human rights law had not advanced beyond a United Nations Charter obligation to observe human rights and the United Nations General Assembly's Universal Declaration of Human Rights of 1948. By the 1980s, however, many states had

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2 U.N. CHARTER arts. 1, 55, 56.

accepted human rights law via treaty, and many important rights entered into customary international law.⁴

There are four possible solutions to the problem of whether human rights law or occupation law prevails. First, human rights law might apply concurrently with occupation law. This argument is that human rights law applies in wartime as well as in peacetime, and that when occupation law was formulated, universal norms of human rights were not considered. The Fourth Geneva Convention protects only a few human rights. The Hague Regulations, the other major treaty on the law of belligerent occupation, requires an occupant to apply the law in force at the commencement of the occupation.⁵ That was an appropriate solution at a time when no universal standards of conduct of states vis-à-vis individuals existed. It is an anachronistic solution, however, at a time when universal standards have become accepted as conventional and customary law.

A second possible solution is that human rights law does not apply in occupied territory. Human rights law was formulated to regulate peacetime situations, while occupation law was devised for belligerent occupation. The two bodies of law are thus aimed at different situations. An occupant must observe the law in force at commencement of the occupation (the law of the displaced sovereign), but not the universal standards of human rights law.

A third possible solution is a variation of the second position. This solution views human rights law as a law of universal applicability but maintains that occupation law temporarily displaces it in times of belligerent occupation.

A fourth possible solution is that human rights law applies during military occupation, not through its own force, but as part of the law in force at the commencement of the occupation. To the extent that human rights law is customary international law, it is in force in the territory at the commencement of the occupation. The displaced sovereign may have adhered to human rights treaties. Under the domestic law of the displaced sovereign, the treaties may constitute domestic law. But even if they do not, the displaced sovereign had an obligation to enforce them, and thus those norms were part of the law of that territory.

III. THE CLAIM TO UNIVERSALITY OF HUMAN RIGHTS LAW

Norms of human rights law appear to apply universally. In a report on human rights in armed conflict, the Secretary-General of the United Nations construed the United Nations Charter's human rights provisions to apply in wartime:

⁴ Filartiga v. Pena-Irala, 630 F.2d 876 (2d Cir. 1980) (torture committed by a state agency prohibited by customary international law).

⁵ Convention Respecting the Law and Customs of War on Land, Oct. 18, 1907, Annex: Regulations Respecting the Laws and Customs of War on Land, art. 43, 36 Stat. 2277, 2306. See also 1 BEVANS, TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES OF AMERICA 1776–1949, at 631 (1968) [hereinafter HAGUE REGULATIONS].
The human rights provisions of the [U.N.] Charter make no distinction in regard to their application as between times of peace on the one hand and times of war on the other . . . . These texts seem to cover all persons living in countries which are at peace as well as inhabitants of countries engaging in, or affected by, armed conflicts. The phraseology of the Charter would . . . encompass persons living under the jurisdiction of their own national authorities and persons living in territories under belligerent occupation.6

The Secretary-General also construed the Universal Declaration of Human Rights to apply during wartime:

The Universal Declaration of Human Rights does not refer in any of its provisions to a specific distinction between times of peace and times of armed conflict. It sets forth the rights and freedoms which it proclaims as belonging to “everyone,” to “all,” and formulates prohibitions by the phrase that “no one” shall be subjected to acts of which the Declaration disapproves. The Declaration proclaims that the “universal and effective recognition and observance” of the rights and freedoms shall be secured.7

The International Covenant on Civil and Political Rights, a more specific statement of human rights law, does provide for exceptional situations, which is an indication that it is to apply in wartime. It permits a state party to proclaim a “public emergency” in a situation that “threatens the life of the nation,” so long as no discrimination is made “on the ground of race, colour, sex, language, religion or social origin.”8 It lists certain provisions from which no derogation is possible even during an emergency.9 Provisions on freedom of assembly and speech are not immune to derogation.10

This “public emergency” exception does not specifically mention wartime or military occupation. Specific mention of wartime in the “public emergency” proviso appeared in a draft of the International Covenant on Civil and Political Rights. That mention, however, was deleted to avoid acknowledging the possibility of war. As reported by the Secretary-General:

When the International Covenant on Civil and Political Rights was being prepared by the Commission on Human Rights, earlier drafts of what now is article 4 of that Covenant provided that derogations from the obligations of States Parties should be admissible “in time

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7 Id. at 12, para. 24.
9 Id. at art. 4, 6 INT’L LEGAL MATERIALS at 370.
10 Id.
of war or other public emergency" or "in time of war or other public emergency threatening the interests of the people." In the course of the proceedings in the Commission on Human Rights it was recognized that one of the most important public emergencies was the outbreak of war. It was felt, however, that the Covenant should not envisage, even by implication, the possibility of war.11

The fact that participating states sought to provide for the possibility of partial derogation in wartime indicates that they viewed human rights as being applicable in wartime.

The "public emergency" provisos in the European and American regional human rights treaties provide explicitly for partial derogation in wartime. The European Convention provides that "[i]n time of war or other public emergency threatening the life of the nation" derogation is permitted "to the extent strictly required by the exigencies of the situation."12 The American Convention allows partial derogation "in time of war, public danger, or other emergency that threatens the independence or security of a State Party . . . to the extent and for the period of time strictly required by the exigencies of the situation."13 These derogation provisions indicate that state signatories intend for human rights norms to apply in wartime.14

IV. THE LAW OF MILITARY OCCUPATION AS A POTENTIALLY EXCLUSIVE LAW

Occupation law texts provide human rights protection on only a few matters. They prohibit the following human rights violations: violence against civilians; 15 adverse distinctions based on race, color, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status,

11 Secretary-General Report 1969, supra note 6, at 13, para. 26. For text of the drafts using the phrase "in time of war or other public emergency," see M. Bossuyt, Guide to the "Travaux Préparatoires" of the International Covenant on Civil and Political Rights 81–82 (1987). For a Human Rights Commission explanation confirming the Secretary-General's analysis of the reason for omission of a reference to war, see id. at 86.
15 Fourth Geneva Convention, supra note 1, at art. 27. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, art. 75 [hereinafter Protocol I].
or on any other similar criteria; physical or psychological torture; failure to respect religious practices; and collective punishment. Occupation law texts also provide a variety of guarantees to persons charged with crime. An occupant’s general power with respect to legislation is set by article 43 of the Hague Regulations, which states:

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and civil life, while respecting, unless absolutely prevented, the laws in force in the country.

This provision makes the scope of rights applicable in an occupied territory dependent on what they were prior to commencement of occupation. It sets no universal standard. Thus, if the displaced sovereign severely circumscribed freedom of assembly and speech, the occupant could lawfully circumscribe them. This provision further permits derogation from laws in force in the interest of public order and safety, but it requires an occupant to observe laws in force in pursuing that aim “unless absolutely prevented.”

Occupation law texts do not refer to human rights law, either to incorporate it or to reject its applicability. But the 1977 Protocol I, in its article enumerating human rights protections, includes the following as a final paragraph: “No provision of this Article may be construed as limiting or infringing any other more favourable provision granting greater protection, under any applicable rules of international law . . . .” This reference apparently includes human rights law because that is the body of law that provides protection to individuals.

V. RELATION BETWEEN HUMAN RIGHTS LAW AND OCCUPATION LAW: VIEWS OF WRITERS

Pictet argues that human rights law does not apply to military occupation:

[H]umanitarian law is valid only in the case of armed conflict while human rights are essentially applicable in peacetime, and contain derogation clauses in case of conflict. Moreover, human rights govern relations between the State and its own nationals, the law of war those between the State and enemy nationals. There are also pro-

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16 Fourth Geneva Convention, supra note 1, at art. 27; Protocol I, supra note 15, at art. 75.
17 Fourth Geneva Convention, supra note 1, at arts. 31–32; Protocol I, supra note 15, at art. 75.
18 Protocol I, supra note 15, at art. 75.
19 Fourth Geneva Convention, supra note 1, at art. 33; Protocol I, supra note 15, at art. 75.
20 Fourth Geneva Convention, supra note 1, at arts. 64–78; Protocol I, supra note 15, at art. 75.
21 HAGUE REGULATIONS, supra note 5, at art. 43.
22 Protocol I, supra note 15, at art. 75.
found differences in the degree of maturity of the instruments and in the procedure for their implementation. The Geneva Conventions are universal and of a mandatory nature. This is certainly not the case with human rights instruments. The system of supervision and sanctions also differs. Thus the two systems are complementary, and indeed they complement one another admirably, but they must remain distinct, if only for the sake of expediency. In case of war, only a neutral and non-political body has any chance of access to the scene of hostilities and ensure protection for the victims. This is true of the International Committee of the Red Cross (ICRC), the real 'spearhead' of the Geneva Conventions. Likewise with the effort to develop humanitarian law: its only chance of success lies in its being carried on, as far as possible, outside the sphere of politics.23

Pictet's major argument is based on expediency. He argues that implementation and enforcement differ for the two bodies of law. This is not a reason to deny the applicability of human rights norms in wartime or during military occupation, a situation which is neither fully wartime nor peacetime either. To the extent that Pictet's arguments have validity, their validity is less for military occupation than for periods of hostilities.

Cohen agrees with Pictet and stresses Pictet's point that the enforcement mechanism for the two bodies of law is different. Human rights enforcement is politicized, whereas humanitarian law enforcement is objective:

[T]he ICRC as the mainstay of the law of armed conflicts has maintained its distinct, impartial character, detached from political struggles. Only this body can ensure that the protection of human rights in armed conflicts will not fall prey to the blight of politicisation . . . . Consequently, a distinction must be made between the inter-relationship of the two bodies of law, the law of human rights and the law of armed conflicts, and the exploitation of this interrelationship by politically oriented bodies.24

Meyrowitz shares Pictet's view that the two bodies of law are different, though his reasons go less to implementation than to the nature of the relations regulated. Meyrowitz addresses specifically the situation of military occupation; he argues that it is not susceptible to regulation by human rights law because the relation between the occupied population and the occupant is one of hostility, and therefore not comparable to a peacetime situation:

[T]he situation of fact and law of a population of an occupied territory casts light on the contrast with the domestic public law relation

supposed by human rights. With the sovereignty of the occupied state, the occupation allows the duty of loyalty of the nationals to remain. Also, between the occupied persons and the occupants there can be no political or societal association, still less any sort of community. The law of the occupant—“martial law” as it was called until recently—and “military government” do not require the consent of the occupied persons; but they [the occupied persons] must not compete with it [the law of the occupant]. Their practical and moral existence must be, to transpose the famous word of Renan, an everyday plebiscite against the occupant . . . . What is more, the duty of obedience is quite precarious, since the occupied persons have the right to military resistance, if they meet the conditions stated in article 4(A) of the Third Geneva Convention.25

Meyrowitz’s statement of the differences between the relation of an occupied population to an occupying power, and of a population to its government in peacetime, is correct. The law of military occupation presupposes hostility. But that law also requires an occupant to permit life to proceed as normally as possible, save for the necessities of maintaining control.26 Moreover, human rights law also presupposes a difference of interest between a government and the population it controls. The government desires to maintain itself in power, while the population desires to avoid repression. There would be no need for human rights law if hostility between the government and the population did not exist. If it is true that an occupied population has a right to revolt, the same is true of a peacetime population vis-à-vis its government; revolt within a state is not forbidden by international law. Thus, the difference that Meyrowitz sees as fundamental is in reality one of degree. There is no reason why human rights law cannot apply in military occupation any more than in peacetime.

Most scholars disagree with Pictet, Cohen, and Meyrowitz, and find human rights law applicable in wartime. Robertson, one of the early exponents of that view, writes: “[H]umanitarian law is one branch of the law of human rights . . . [and] human rights afford the basis for humanitarian law.”27 He states that “[h]uman rights law relates to the basic rights of all human beings everywhere, at all times; humanitarian law relates to the rights of particular categories of

26 See Hague Regulations, supra note 5, at art. 43. See also Fourth Geneva Convention, supra note 1, at arts. 47-78.
human beings—principally, the sick, the wounded, prisoners of war—in par-
cular circumstances, i.e. during periods of armed conflict."\textsuperscript{28} Robertson states that human rights law provides protection on certain topics not covered by humanitarian law, while humanitarian law provides protection on certain topics not covered by human rights law.\textsuperscript{29} He contends that the two bodies of law complement each other.\textsuperscript{30}

Draper, too, regards human rights law as universal in its application:

[If armed conflict breaks out, whether inter-State or intra-State, that regime [of human rights law] does not dissipate. First, it is there waiting in the background the whole time, to take over once the conflict abates. Second, a different and exceptional regime, namely that of the law of war, a lower level of the human rights regime but part of it, comes into play as a series of derogations made necessary, and strictly necessary, by the conflict situation . . . . That which cannot be strictly allowed by the conflict stands to be condemned to the extent it violates the regime of human rights.\textsuperscript{31}

Many organizations and writers maintain that human rights law and occupation law apply together. The International Committee of the Red Cross, the agency primarily responsible for enforcement of occupation law, views human rights law as applying along with occupation law.\textsuperscript{32} Calogeropoulos-Stratis finds that the two bodies of law complement each other: "[T]he two laws are two crutches on which the individual may lean to avoid—insofar as is possible—the disastrous consequences of armed conflict."\textsuperscript{33} Partsch identifies certain issues on which the two bodies of law reach different results but finds that human rights law is recognized as supplementing occupation law.\textsuperscript{34} Gros Espiell considers the two to operate together: "The individual can be considered protected by both systems of norms. In situations not regulated by international humanitarian law, all human beings are protected by the international law of human rights."\textsuperscript{35}

\textsuperscript{28} Robertson, supra note 27, at 797.
\textsuperscript{29} Id. at 798.
\textsuperscript{30} Id. at 802.
\textsuperscript{31} Draper, The Relationship between the Human Rights Regime and the Law of Armed Conflicts, 1 ISR. Y.B. ON HUM. RTS. 191, 198 (1971).
\textsuperscript{34} Partsch, La Protection Internationale des Droits de l’Homme et les Conventions de Genève de la Croix-Rouge, 26 REVUE INTERNATIONALE DE DROIT COMPARE 73, 83 (1974).
This view is similar to state practice, which recognizes the applicability of human rights law in wartime, and specifically during military occupation. That state practice is reflected in litigation arising under the European human rights convention and in proceedings of the United Nations which considered the law relating to military occupation.

VI. RELATION BETWEEN HUMAN RIGHTS LAW AND OCCUPATION LAW: CASE LAW

In the only two cases to raise the issue, the European Commission of Human Rights has decided that human rights law applies during military occupation. In Cyprus v. Turkey, filed after Turkey occupied a portion of Cyprus in 1974, Cyprus alleged that Turkey committed a variety of human rights violations in that territory. Cyprus cited several articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms that it claimed Turkey had violated. Both states are parties to that Convention. Turkey denied that it was in military occupation, on the grounds that a new government had been established in the portion of Cyprus in question, and that Turkey did not exercise control there.

The Commission found Cyprus' application admissible and decided that Turkey did exercise control as a military occupant. Turkish forces, it said, had "entered the island of Cyprus, operating solely under the direction of the Turkish Government and under established rules governing the structure and command of these armed forces including the establishment of military courts."36 The Commission cited article One of the European Convention, which renders states-parties responsible for human rights "to everyone within their jurisdiction."37 It stated that this article means "that the High Contracting Parties are bound to secure the said rights and freedoms to all persons under their actual authority and responsibility, not only when that authority is exercised within their own territory but also when it is exercised abroad."38

Turkey did not argue that the Fourth Geneva Convention takes precedence over human rights norms; rather, Turkey asserted the position that it was not in military occupation. Cyprus argued that human rights norms were applicable. The Commission agreed. Cyprus v. Turkey has been characterized as "a significant recognition in principle of the applicability of international human rights law to occupied territories."39

37 European Convention, supra note 12, at art. 1.
38 Id. at 74.
The Commission reached the same conclusion in a previous case, *Hess v. United Kingdom.* Rudolf Hess had been incarcerated in Spandau Prison, Berlin, for World War II crimes against peace. His wife petitioned for his release. The United Kingdom was one of four states in joint military occupation of Berlin. The Commission decided that the U.K. was not responsible for Hess' incarceration under article One of the European Convention, but only because of the quadripartite character of the occupation:

The commission is of the opinion that the joint authority cannot be divided into four separate jurisdictions and that therefore the United Kingdom's participation in the exercise of the joint authority and consequently in the administration and supervision of Spandau Prison is not a matter "within the jurisdiction" of the United Kingdom, within the meaning of Art. 1 of the Convention. 41

The Commission said "that there is in principle, from a legal point of view, no reason why acts of the British authorities in Berlin should not entail the liability of the United Kingdom under the Convention." Thus, though it found that the quadripartite character of the occupation relieved the U.K. of responsibility, the Commission considered the European Convention to cover its actions while in military occupation of foreign territory.

In neither *Cyprus v. Turkey* nor *Hess v. United Kingdom* did the Commission discuss the interplay between human rights law and occupation law. Evidently, it did not consider such a discussion necessary to its conclusion that the European Convention applies.

VII. RELATION BETWEEN HUMAN RIGHTS LAW AND OCCUPATION LAW: PRACTICE OF STATES REFLECTED IN UNITED NATIONS WORK

United Nations reports, resolutions, and decisions on military occupation show a state practice consistent with that of the European Commission of Human Rights. The U.N. General Assembly (Assembly) affirmed in a near-unanimous resolution the applicability of human rights law to armed conflict: "Fundamental human rights, as accepted in international law and laid down in international instruments, continue to apply fully in situations of armed conflict."43
The Assembly has referred to the Universal Declaration of Human Rights as providing law applicable in military occupation. In establishing a committee to monitor human rights in territories occupied by Israel in 1967, the Assembly stated that it was "[g]uided by . . . the Universal Declaration of Human Rights." In the same resolution, it cited the Fourth Geneva Convention. The Assembly evidently considered both bodies of law applicable to the occupied territory. It referred to no conflict between them and to no need to limit human rights norms in light of the Fourth Geneva Convention.

In a resolution calling on Israel to accept recommendations made by that monitoring committee, the Assembly asked Israel "to comply with its obligations under the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, the Universal Declaration of Human Rights, and the relevant resolutions adopted by the various international organizations." Again, the Assembly evidently considered the belligerent occupant to be under an obligation to observe both the Fourth Geneva Convention and human rights law.

After conducting a study mandated by the Assembly, the Secretary-General, too, found human rights law to apply in wartime: "[T]he human rights provisions of the [United Nations] Charter, the Universal Declaration of Human Rights and the International Covenants on Human Rights apply both in times of peace and in times of war and armed conflicts." He found, referring to the United Nations Charter, that "[t]he phraseology of the Charter would . . . encompass persons living under the jurisdiction of their own national authorities and persons living in territories under belligerent occupation." The Secretary-

45 Id. at preambular para. 2.
General considered as reflective of state practice Security Council Resolution 237, adopted following the 1967 Arab-Israeli conflict, which appeared to contemplate the applicability of human rights norms in wartime:

The principle that human rights shall be protected not only in peace time but also under conditions of armed conflict was significantly repeated more recently by the Security Council when, in its resolution 237 (1967) of 14 June 1967, it stated that "essential and inalienable human rights should be respected even during the vicissitudes of war."⁵⁰

The Human Rights Commission of the United Nations, like the General Assembly, has referred to both the Universal Declaration of Human Rights and the Fourth Geneva Convention in calling upon Israel to refrain from certain actions in territory it occupied in 1967.⁵¹ The Commission stated that

[1] In accordance with the provisions of the Charter of the United Nations and those of the Universal Declaration of Human Rights, Member States bear a special responsibility to ensure the protection of human rights and to reaffirm faith in fundamental human rights and in the dignity and worth of the human person.⁵²

The reference to the Charter is evidently to its provisions on human rights—articles 1, 55, and 56. The Commission has also referred to the International Covenant on Civil and Political Rights as a document by which it is "guided" in assessing the situation in the Arab territory that Israel has occupied since 1967.⁵³ The fact that U.N. bodies consider human rights law applicable in occupied territory is consistent with the history of the United Nations development of human rights law. The United Nations promoted human rights law in part because of the atrocities committed on occupied territory during World War II:

The prominence given to human rights in the Charter was the consequence of the appalling atrocities and degradations inflicted by the Nazi régime on the Jews of Europe and on peoples of the occupied territories. The motive behind its provisions was the desire to prevent any recurrence of such outrages upon humanity by mak-

⁴⁹ Secretary-General Report 1969, supra note 6, at 12, para. 23.
⁵⁰ Id. at 15, para. 31.
⁵² Id. at preambular para. 4.
ing the preservation of the fundamental rights and freedoms of the individual everywhere a matter of international concern to every State.54

VIII. PRIOR DOMESTIC LAW VERSUS AN INTERNATIONAL STANDARD

If human rights did not apply in military occupation, one significant consequence would be that an occupant would have to apply the law of the displaced sovereign regardless of its content. This would mean that states in the situation of the World War II victors coming into occupation of Germany would have been required to apply laws discriminating against Jews. One commentator who finds that occupation law prevails, in general, over human rights law, concedes that in such a situation an international minimum standard is found in state practice:

[B]ecause the fundamental structures of society found by Allied occupiers during World War II were so far below generally accepted minimum standards of civilization that enforcing those structures would itself have been a violation of international law, recent state practice appears to have established an exception to those rules when the occupying power is faced with a local system that is anathema to the minimum standards of civilization.55

The Allies in post-War Germany suspended National Socialist criminal legislation deemed to fall below the international minimum standard.56 They suspended laws that discriminated on the basis of race or religion, even though the pre-1949 law of occupation provided no protection from such discrimination.57 "In so exceptional a situation," writes Schwarzenberger, "compliance with the standard of civilisation may . . . make unavoidable the exercise of the occupant's legislative powers for the double purpose of destroying the legal foundations of such a barbarous system and restoring a minimum of civilised life in the occupied territory."58

58 Id.
IX. IMPLICATIONS FOR FREEDOM OF ASSEMBLY AND EXPRESSION: THE APPROACH THROUGH OCCUPATION LAW

In the areas of freedom of assembly and expression, reliance on human rights law or occupation law produces sharply different approaches to the rights of individuals. Occupants have imposed severe restrictions on freedom of assembly, speech, and the press, on the theory that public order and safety is threatened by activities and publications evidencing hostility to the occupant.59

Fauchille, writing at the end of World War I, cited substantial restrictions on the press during the German occupation of France during 1870–1871, during the German occupation of Belgium in 1914, and during the Allied occupation of Germany under the Armistice of 1918.60 He found a great latitude in law for an occupant: "It [the press] is for it [the occupant] a grave danger. The occupant has the right to restrict freedom of the press, to suppress it and to forbid publication of newspapers. The current usages of war leave to the conqueror complete freedom of action."61

More recent writers on military occupation, also citing practice prior to the development of human rights law, find authorization in occupation law for broad restrictions. According to Von Glahn:

Most writers as well as military manuals permit severe restrictions on the freedom of the press, suspension or closing of newspapers, and even imprisonment of journalists on the grounds that such control will tend to lessen materially the spirit of opposition in the native population and will aid in the suppression of news items of military importance. Dispatches dealing with any aspect of the war or of the occupation, and particularly stories hostile in tone to the occupying authorities, are subject to strict censorship.62

Von Glahn finds authorization as well for prohibitions on import of publications containing material hostile to the occupant,63 on hostile radio/television communication,64 and on public meetings of a political character.65 Greenspan also finds broad restrictions on the press permissible:

Obviously the circumstances of a military occupation do not allow for freedom of the press. The occupant is not required to observe existing laws regarding the press; he may impose a censorship on

60 P. Fauchille, supra note 59, at 247–48.
61 Id. at 247.
62 G. Von Glahn, supra note 56, at 139.
63 Id.
64 Id. at 139–40.
65 Id. at 140.
it, may prohibit it entirely or prescribe regulations for publication and circulation especially in unoccupied parts of the country and in neutral countries. 66

The United States Army manual on land warfare follows that approach: “The belligerent occupant may establish censorship of the press, radio, theater, motion pictures, and television, of correspondence, and of all other means of communication. It may prohibit entirely the publication of newspapers or prescribe regulations for their publication and circulation.” 67

Israel’s occupation since 1967 of the Gaza Strip, West Bank, and Golan Heights has given rise to issues of freedom of assembly and expression in military occupation. Israel’s courts have followed the military occupation law and have ignored human rights law. In a prosecution for violation of the Order (No. 101) Prohibiting Hostile Sedition and Propaganda (West Bank Region), which permits extensive restrictions on expression and assembly, the Supreme Court of Israel stated: “[N]o doubt has been cast on the capacity of the military administering authority to restrict or even totally prohibit political activities in administered territory; and, in any event, it is empowered to resort to criminal law sanctions against those who infringe the prohibition.” 68

In a case in which the military government banned a periodical, the Supreme Court of Israel made a similarly categorical statement about the power to suppress. The Court stated that “[t]he duty to ensure safety and public order . . . vests in the military government, inter alia, the authority to prohibit political activities and to limit or even prohibit political publications, and the opinion of jurists of international law on that point is clear.” 69

X. IMPLICATIONS FOR FREEDOM OF ASSEMBLY AND EXPRESSION: THE HUMAN RIGHTS LAW APPROACH

By contrast, human rights law provides broad protection for assembly and expression. The Universal Declaration of Human Rights states: “Everyone has the right to freedom of peaceful assembly and association.” 70 “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold

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69 Israel National Section, supra note 68, at 78 (quoting Al-Talia Weekly Magazine v. Minister of Defence, High Court of Justice No. 619/78, 33(3) Piskei Din 505, 510 (1979)).
70 Universal Declaration, supra note 3, at art. 20.
opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”71

The International Covenant on Civil and Political Rights affords broad protection to assembly and expression: “The right of peaceful assembly shall be recognized.”72 In addition, it states:

Everyone shall have the right to hold opinions without interference .... Everyone shall have the right to freedom of expression: this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.73

The European and American conventions similarly provide broad protection to assembly and expression. The European Convention states: “Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.”74 “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”75

The American Convention protects assembly and expression: “The right of peaceful assembly, without arms, is recognized.”76 “Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.”77

Additionally, the American Declaration of the Rights and Duties of Man,78 which is used by the Inter-American Human Rights Commission as a document binding on states who are members of the Organization of American States, protects assembly and speech. The Declaration states: “Every person has the right to assemble peaceably with others in a formal public meeting or an informal gathering, in connection with matters of common interest of any nature.”79

71 Id. at art. 19.
72 International Covenant, supra note 8, at art. 21.
73 Id. at art. 19.
74 European Convention, supra note 12, at art. 11.
75 Id. at art. 19.
76 American Convention, supra note 13, at art. 10.
77 Id. at art. 13, para. 1.
78 This declaration is found in the Final Act of the Ninth International Conference of American States, Bogotá, May 2, 1948. For full text, see I. Brownlie, Basic Documents on Human Rights 381 (1981).
79 American Convention, supra note 13, at art. 21.
"Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever."\textsuperscript{80}

The African Charter provides for freedom of assembly: "Every individual shall have the right to assemble freely with others."\textsuperscript{81} "Every individual shall have the right to free association provided that he abides by the law."\textsuperscript{82} As to expression, the Charter provides: "Every individual shall have the right to receive information. Every individual shall have the right to express and disseminate his opinions within the law."\textsuperscript{83}

The universal and regional norms provide for three exceptions to protection of freedom of expression and assembly. These exceptions are: (1) where exercise of the freedom threatens national security or public order; (2) where rights are exercised in a way that would negate protected rights; and (3) in time of a declared public emergency. These three exceptions will now be considered.

A. Exception for National Security and Public Order

In the Universal Declaration of Human Rights, there is no language in the provisions limiting assembly and expression. A separate proviso, however, permits a state to limit any of the Declaration's enumerated rights: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."\textsuperscript{84}

The International Covenant on Civil and Political Rights contains no such proviso of general applicability, but includes limitations applicable specifically to assembly and expression. As regards assembly, the Covenant states:

No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.\textsuperscript{85}

\textsuperscript{80} Id. at art. 4. See also application in Inter-American Commission on Human Rights, Exercise and Regulation of Freedom of Expression in Costa Rica: Compulsory Membership in a Professional Association of Journalists: Schmidt Case, reported in 6 Hum. RTS. L.J. 211, 216 (1985).

\textsuperscript{81} African Charter, supra note 14, at art. 11.

\textsuperscript{82} Id. at art. 10.

\textsuperscript{83} Id. at art. 9.

\textsuperscript{84} Universal Declaration, supra note 3, at art. 29.

\textsuperscript{85} International Covenant, supra note 8, at art. 21.
As regards expression, the Covenant provides:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (ordre public), or of public health or morals.86

The European Convention also permits limitations on expression and assembly. As to expression:

The exercise of these freedoms . . . may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.87

As to assembly, the European Convention states:

No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.88

The American Convention on Human Rights contains similar limitations on assembly and expression. Expression shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (a) respect for the rights or reputations of others; or (b) the protection of national security, public order, or public health or morals.89

In addition, expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination

86 Id. at art. 19.
87 European Convention, supra note 12, at art. 10.
88 Id. at art. 11.
89 American Convention, supra note 13, at art. 13. By way of exception, public entertainment is subject to prior censorship for the moral protection of children. See id. at art. 13.
of information, or by any other means tending to impede the communication and circulation of ideas and opinions.\footnote{19}{Id. at art. 13.}

Assembly, in the American Convention, may be limited as follows:

No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedoms of others.\footnote{20}{Id. at art. 15.}

In addition, the American Convention contains a proviso imposing a limitation on all its enumerated rights: "The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society."\footnote{21}{Id. at art. 32.}

The African Charter of Human and People's Rights permits the right of assembly to be limited as follows: "The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others."\footnote{19}{Supra note 14, at art. 11.} It contains no limit applicable to the right of expression but does, unlike the European and American conventions, include a separate chapter headed "Duties" that limits an individual's rights enumerated in the Charter. One such duty is that "[t]he rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest."\footnote{22}{Id. at art. 27.} An individual also has a duty "not to compromise the security of the State whose national or resident he is."\footnote{23}{Id. at art. 29.}

The European Court and the European Commission of Human Rights have interpreted this exception in a number of cases. The Court permitted the Netherlands to limit publications hostile to it written by a member of the armed services. In that case Dutch servicemen had written and circulated articles critical of and disrespectful towards superior officers.\footnote{24}{Case of Engel and Others, 22 Eur. Ct. H.R, 22 (ser. A) (1976).} The Court stated that "[t]he proper functioning of an army is hardly imaginable without legal rules designed to prevent servicemen from undermining military discipline, for example by writings."\footnote{25}{Id. at 41.} In another case the European Commission permitted Austria to prohibit a planned meeting by a group promoting pan-Germanism and a
merger between Austria and Germany. The Commission concluded that the meeting might endanger public security.98

In a number of cases, however, the European Commission and the Court have upheld freedom of expression against an assertion by a state that suppression of speech was necessary. The European Court explained in one case that a restriction on speech must be "necessary;" the Court stated that while "necessary" is "not synonymous with 'indispensable,' neither has it the flexibility of such expressions as 'admissible,' 'ordinary,' 'useful,' 'reasonable,' or 'desirable' and that it implies the existence of a 'pressing social need.'"99 So stating, the Court found that it was not necessary for the United Kingdom to prohibit publication of a news article on a matter under litigation (the safety of thalidomide), where the U.K. Attorney General had secured a court injunction against publication on the grounds that the publication would cause public prejudgment of an issue pending in court.100

The European Commission found that a prohibition against a Nazi collaborator on all publication activity was an abuse of the national security exception. The Commission implied that had the prohibition related to publication on public affairs topics only, "national security" might have provided a justification.101

The European Commission found that press censorship in Greece that forbade criticism of the governing military junta was not justified as a limitation "necessary in a democratic society for any purposes in paragraph (2) of article 10."102 The junta's press order had instituted "preventive censorship of all sorts of printed matter put into circulation."103 The order prevented "publication of any piece of information, comment, picture or cartoon, tending to vilify the general policy of the National Government, the constitutional order, and to sabotage the internal and external security of the country."104 Specifically prohibited was any item containing insult to the Government, or any item which "in the opinion of the (Press Control) Service damages the task of the Government." The order prohibited notices of leftist organizations such as reports from the Communist Party radio station. As subsequently relaxed, the order permitted publication of items appearing in the foreign press critical of the Government.105 Thus, the Commission considered that controls on hostile press comment were not permitted.

100 Id. at 42.
103 Id. at 160.
104 Id.
105 Id.
The Commission found a colorable case that Germany had invalidly invoked the exception to article 10 (though it did not clarify which exception) in the case of a public school teacher dismissed for allegedly failing to dissociate herself from the German Communist Party. The Commission found the complaint admissible on two grounds, as a violation of freedom of expression and as an absence of justification under article 10, paragraph 2.106

B. *Exception Where Right Is Invoked to Promote Negation of Rights*

A second exception to protection is one stated in the International Covenant on Civil and Political Rights. The Covenant states that no person may use enumerated rights to "perform any act aimed at the destruction of any rights and freedoms" contained in that Covenant.107 The European Convention contains a similar exception, expressed in article 17:

> Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.108

The European Commission found inadmissible a complaint by the German Communist Party objecting that the Federal Constitutional Court of Germany had declared the Party illegal. The Party invoked articles 10 and 11 of the European Convention. The Commission addressed the case under article 17 and reasoned that the Party sought to establish a dictatorship of the proletariat, which the Commission said would negate rights secured by the Convention.109

The American Convention provides one additional exception to freedom of expression:

> Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar illegal action against any person or group of persons on any ground including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.110

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107 International Covenant, supra note 8, at art. 5.
108 European Convention, supra note 12, at art. 17.
110 American Convention, supra note 13, at art. 13.
C. Exception for Public Emergency

In recognition of exceptional situations, human rights law contemplates the possibility of derogation from certain human rights norms. The International Covenant and the European and American conventions allow for declaration of a “public emergency.” The public emergency exception must be found to exist on objective criteria. A state that has declared an emergency is entitled to a “margin of appreciation” in assessment of the seriousness of the threat, but the state bears a burden of proof to demonstrate conditions justifying the declaration.

The European Court found that a “public emergency” existed in the Republic of Ireland in 1956–1957. The government had taken extraordinary measures after declaration of an emergency. The Court recounted that there was in Ireland “a secret army engaged in unconstitutional activities and using violence to attain its purposes; ... that this army was also operating outside the territory of the State, thus seriously jeopardising the relations of the Republic of Ireland with its neighbour.” The Court also cited “the steady and alarming increase in terrorist activities from the autumn of 1956 and throughout the first half of 1957.” The Court defined “public emergency” as “an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed.”

The European Commission found no “public emergency” in Greece in 1967 after the governing military junta declared a state of siege. The junta asserted that a government takeover by insurgents was imminent, but the Commission found no evidence to substantiate that claim. The junta relied on street demonstrations and labor strikes, but the Commission did not find their scope extraordinary. The Commission found no “public emergency” though it conceded that Greece had experienced “political instability and tension, ... an expansion of the activities of the Communists and their allies, and ... some public disorder.” The Commission took the position that for a “public emergency” there must be an imminent threat to the existing order, not merely the possibility that the current situation might be leading to such a threat.

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111 See supra text accompanying notes 8–14.
113 Greek Case, 1969 Y.B. EUR. Conv. on Hum. Rts. at 72.
115 Id.
116 Greek Case, 1969 Y.B. EUR. Conv. on Hum. Rts. at 73–75.
The three exceptions to protection for assembly and expression do not swallow up those rights. Despite the exceptions, the protections afford considerable latitude in assembly and expression. It remains now to ascertain the applicability of the indicated standards in the context of military occupation.

XI. Assembly and Speech in Military Occupation

The above recitation of state practice indicates that human rights law is applicable in armed conflict, including military occupation. The practice is recent because human rights law only developed after 1945. The United Nations took interest in application of human rights law to wartime only in 1968. Customary norms of international law, however, may form in a short time.\textsuperscript{117} State practice reflected in the United Nations is consistent on this point, and in the only two cases to arise under the European Convention, the European Commission decided that an occupant is bound to observe human rights law.\textsuperscript{118} The position that existed prior to development of human rights law—that an occupant may suppress all hostile speech and assembly—has given way to a norm calling for protection of freedom of assembly and speech.

Even apart from the International Covenant on Civil and Political Rights, an obligation to respect freedom of assembly and expression is found in customary law. State practice beginning with the Universal Declaration of Human Rights, and the American Declaration of the Rights of Man, reflects a view that states are not at liberty to suppress assembly and expression at will. The United States finds that states accept human rights law as binding apart from treaty obligation:

There now exists an international consensus that recognizes basic human rights and obligations owed by all governments to their citizens. This consensus is reflected in a growing body of international law: the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; and other international and regional human rights agreements. There is no doubt that these rights are often violated; but virtually all governments acknowledge their validity.\textsuperscript{119}

Most, perhaps all, of the provisions of the Universal Declaration have been accepted as customary law. The United Nations General Assembly has fre-


\textsuperscript{119} U.S. Dept. of State, \textit{supra} note 46, at 1.
sequently referred to the Declaration as binding. 120 The Declaration has exerted considerable influence over the constitutions of many states. 121 "This constant and widespread recognition of the principles of the Universal Declaration," concludes one author regarding the deference shown the Declaration, "clothes it, in my opinion, in the character of customary law." 122 Even if not every provision of the Declaration is accepted as customary law, the most basic rights, like freedom of assembly and expression, are so accepted.

States may also be obliged to grant freedom of assembly and expression by virtue of membership in the United Nations. The binding character of the Charter's human rights provisions is disputed, since the Charter does not expressly oblige states-members to observe human rights. But the Charter does oblige the organization to "promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all." 123 The Charter also obliges states-members to "take joint and separate action in cooperation with the Organization" for the achievement of that purpose. 124

Oppenheim concludes that "[t]here is, in basic constitutional instruments such as the Charter, probably no room for reasoning . . . that although one of the objects of the United Nations is to promote respect for human rights and fundamental freedoms, its members are not under a duty to respect and observe them." 125 While the Charter does not enumerate rights,

> [t]he absence of a definition of these rights and of provisions for their enforcement, far from detracting from the obligatory nature of these articles, imposes upon the members a moral—and, however imperfect, probably a legal—duty to use their best efforts, either by agreement or, whenever possible, by enlightened action of their own judicial and other authorities, to act in support of a crucial purpose of the Charter. 126

Under occupation law, an occupant must follow the domestic law of the displaced sovereign on freedom of assembly and expression. An occupant may


121 Waldock, supra note 54, at 14.

122 Id. at 15.

123 U.N. CHARTER art. 55.

124 Id. at art. 56.


126 Id. at 740.
derogate these freedoms if "absolutely necessary" for public order and safety. 127
If the displaced sovereign has strong protection of assembly and expression, the situation resulting from the application of substantive law does not differ substantially from that resulting from the application of human rights law. Human rights law, however, provides an additional enforcement mechanism. 128 If the displaced sovereign's standard is low, then the standard of protection of human rights law will raise the level of rights applicable to the occupied population.

The broad protection of assembly and expression found in human rights law applies in military occupation. This prohibits prior censorship of publications, understood by the states drafting the International Covenant to be precluded by the Covenant's formulation of protection of speech. 129 The right to assembly includes a right to form and join trade unions. 130

As for the exceptions, the situation is more complex. The national security/public order exception, and the exception for actions that would lead to negation of protected rights, apply in military occupation. In the case of the national security/public order exception, an occupant typically faces a hostile population. The hostile population may heighten the risk to public order from hostile assembly or speech. Other governments, however, may face a hostile population. There is no reason in principle why this exception should apply differently in a situation of military occupation. Moreover, hostility is not always found, as for example, with the post-World War II occupation of Berlin.

It is questionable whether the "public emergency" exception can apply in military occupation. It would be difficult to demonstrate imminent threat since the territory of occupation is separate from (though possibly contiguous to) the territory of the occupant. If there is serious disorder in occupied territory, that may pose a threat to the occupier's continued control, but not necessarily to the occupying state itself. In construing a similar provision in the European Convention on Human Rights and Fundamental Freedoms, the European Court of Human Rights indicated that the emergency must threaten the entire nation. 131

In one case, however, the European Court found a "public emergency" although the threat existed only in a portion of the territory of the state in question. In Ireland v. United Kingdom, the United Kingdom had declared an emergency in the part of the United Kingdom known as Northern Ireland. The United Kingdom did not declare an emergency in, or allege a threat to, any other portion of the United Kingdom. The Court did not address the

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127 Hague Regulations, supra note 5, at art. 43.
128 See infra note 139 and accompanying text.
129 M. Bossuyt, supra note 11, at 398–99.
130 International Covenant, supra note 8, at art. 22.
question of the territory in which the threat existed. Instead, the Court decided the entire issue in a single paragraph:

article 15 [of the European Convention] comes into play only 'in time of war or other public emergency threatening the life of the nation.' The existence of such an emergency is perfectly clear from the facts summarised above ... and was not questioned by anyone before either the Commission or the Court. The crisis experienced at the time by the six counties therefore comes within the ambit of article 15.132

The Court, by its reference to "the six counties," which means Northern Ireland, acknowledged that the emergency existed there only. One commentator noted that "it is very hard to see that the situation really threatens the life of the whole nation. The reality seems to be that, for purposes of article 15, 'the whole nation' is simply Northern Ireland."135

This case seems wrongly decided, a situation which may be explained by the fact that Ireland did not argue the point, so that the Court's attention was not directed to it. Preparatory documents of the United Nations Human Rights Commission leading to finalization of the emergency clause in the International Covenant on Civil and Political Rights indicate that the phrase "public emergency which threatens the life of the nation" means "life of the nation as a whole."134

An emergency cannot be claimed by an occupant that has come into occupation by aggression. The negotiating history of the International Covenant indicates that the intent was to deprive a state that had created an emergency situation from claiming an emergency by committing aggression. Therefore, the International Covenant permits derogation of guaranteed freedoms "provided that such measures are not inconsistent with the other obligations [of states-parties] under international law."135

Apart from the question of whether an alleged threat affects the entire nation, it must still be determined whether circumstances warrant a finding of "public emergency." An occupant might contend that military occupation constitutes a continuing emergency. But military occupation alone does not suffice. As in a nonoccupancy, non-war situation, the state must demonstrate imminent threat.136 Military occupation does not necessarily involve a situation of emer-

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133 Higgins, supra note 112, at 302.
134 M. Bossuyt, supra note 11, at 86.
135 International Covenant, supra note 8, at art. 4. For the negotiating history see M. Bossuyt, supra note 11, at 89.
136 Greek Case, 1969 Y.B. EUR. CONV. ON HUM. RTS. at 75.
gency. A state may come into military occupation without hostilities.\textsuperscript{137} Even if the occupation is a result of hostilities, the situation following termination of hostilities is not necessarily a “public emergency.” If it is decided that a “public emergency” exists in occupied territory, restrictions on assembly and expression must nonetheless be based on actual necessity. States may derogate rights during a public emergency only “to the extent strictly required by the exigencies of the situation.”\textsuperscript{138}

XII. ADVANTAGES OF SIMULTANEOUS APPLICATION OF HUMAN RIGHTS AND OCCUPATION LAW

Applicability of human rights law does not negate the law of military occupation. The latter continues to provide the most basic rights, particularly those relating to protection from physical harm. But human rights law applies as well. It provides an additional enforcement mechanism for those rights that overlap in the two bodies of law. For the rights found only in human rights law, but not in occupation law, human rights law provides the sole protection, apart from the domestic law of the displaced sovereign.

Occupation law and human rights law are enforced by different mechanisms. Occupation law is enforced by a “protecting power” or by the International Committee of the Red Cross, operating confidentially in cooperation with the occupant.\textsuperscript{139} Human rights law is enforced by a reporting system, by United Nations investigation, and by regional commissions and courts.\textsuperscript{140} Both enforcement systems are weak.\textsuperscript{141} For that reason, it is efficacious that the two operate simultaneously.\textsuperscript{142} In a particular situation, one may gain compliance more effectively than the other.\textsuperscript{143}

The two enforcement mechanisms operate in different ways: “The mechanism of humanitarian law has a preventive character, while that of human rights has a corrective character.”\textsuperscript{144} Humanitarian law seeks to convince the occupant to comply, while human rights law leads to a finding of past violation. This


\textsuperscript{139} Fourth Geneva Convention, supra note 1, at arts. 9, 10, 142, 143.

\textsuperscript{140} For a comparison of the enforcement of the two bodies of law, see Eide, supra note 137, at 691–95; Espiell, supra note 35, at 708.

\textsuperscript{141} Eide, supra note 137, at 694; Robertson, supra note 27, at 798–800.

\textsuperscript{142} Accord Calogeropoulos-Stratis, supra note 33, at 661–62.

\textsuperscript{143} Robertson, supra note 27, at 798–800.

\textsuperscript{144} Calogeropoulos-Stratis, supra note 33, at 660.
factor makes it advantageous that both apply simultaneously. The two complement each other.\textsuperscript{145}

The occupation law mechanism has possibilities that the human rights mechanism lacks. Since the former works on a confidential basis, the International Committee of the Red Cross can often gain access to information unobtainable by bodies operating on the basis of publicity of their information. On the other hand, the publicity cast on violations by the human rights mechanism can, at times, secure compliance where confidential representations do not. "[I]n humanitarian law the consent of the state in question is required, while in human rights law no state can stop the procedure."\textsuperscript{146} Alleged Turkish violations in Cyprus in 1974, the subject of the European Commission proceedings recounted above, are cited as a situation in which a public human rights procedure was needed because a state refused to cooperate in application of humanitarian law: "[T]he Turkish government refused the application \textit{de jure} of humanitarian law; however, it could not stop the application of the European Convention of Human Rights."\textsuperscript{147}

XIII. Conclusion

A state in belligerent occupation is obliged to adhere to the norms of human rights law. An occupied population is in need of freedom of assembly and expression no less than any other population. An occupant may limit assembly and expression only on the bases permitted under human rights law.

\textsuperscript{145} \textit{Id.} at 661.
\textsuperscript{146} \textit{Id.} at 659.
\textsuperscript{147} \textit{Id.} at 657.