

## End of occupation from the viewpoint of International Law

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**Abstract:** *This article discusses the end of occupation, types, and consequences of the end of occupation from the perspective of International Law. Every military occupation is temporary, eventually, comes to an end and undoubtedly leaves some consequences and impacts. It is not ended upon a truce, declaration of the end of occupation or withdrawal or expulsion of the occupying power, it continues after occupation and the people of the occupied country are the victims of its negative outcomes and impacts. The purpose of this study is that the occupiers' power shall plan and exercise its privative and required acts attributed to its rights and authorities in a way not to lead to irreversible backwardness, and the withdrawal of the occupying power shall not lead to any insecurity and instability that as the result of it the occupied country asks for the continuation of the occupation. This research answers the following questions: Does the end of occupation have international legitimacy or not? What are the obligations and responsibilities of the occupying power during the occupation and after the end of the occupation in terms of protecting the legal status of the occupied country? The legal and real persons of occupying power who committed international crimes during the occupation shall be subjected to international criminal responsibility and how to ensure the rights of the occupied country? This is qualitative research with the descriptive-analytical method and the data has been collected from books, popular academic articles, and International Conventions through library research. It is concluded that international agreements in form of conventions cannot respond to the contemporary requirements in terms of ending the occupation and other ways need to be searched for ensuring human rights, freedoms and harnessing the occupying power.*

**Keywords:** *End of occupation, Occupying Power, law of occupied country, types of occupation.*

### 1. INTRODUCTION:

The history of mankind has experienced many conflicts and clashes over power and political dominance from far past to the present. Some of these dominance clashes besides having other results and impacts led to the military occupation of the opponent country that some of the similar cases can be seen now. The difference between occupation and occupying has not been the same based on their methodologies and objectives and states' performance has not been the same in the international arena because the occupying power was considering the occupied region as a part of its territory and was posing its power and sovereignty there as per their desire. Meanwhile, as the objective of occupation was to expand the territory and was thus considered as a pride, from the beginning of the invasion, it was inevitably accepted that the victorious side would be the owner of the territory. Over time, the international performance of states has also changed in this regard, especially after the development of international law and signing several conventions to limit the military powers and also the international organizations were established on regional and global levels to regulate the countries relations and cooperation's in different fields in a better way. The earlier beliefs, forms and objectives of occupation were also changed and eventually, these changes caused that fewer states dream the annexation of independent territories of other countries and most of the occupiers believed that their dominance on other countries is temporary, not permanent. Hence, they exploit the occupied territory as much as they want and eventually leave the occupied country alone with many problems and calamities and return to their own countries.

However, any military occupation ends one day but undoubtedly leaves negative effects and consequences. From legal perspective, especially international law, these effects and consequences can be studied in different fields as by the end of war or declaration of the end of occupation or withdrawal or expulsion of the occupiers, it is not finished yet and the occupying state has a lot of obligations toward an occupied country which must fulfill them. It will be tried to firstly introduce the occupation briefly and then the forms of ending the occupation will be discussed that how to end occupation and then the effects and consequences of occupation will be discussed from a legal perspective.

### 2. END OF OCCUPATION:

Before discussing the end of the occupation, it is better to answer the question, what is the end of occupation and when an occupation is ended? It can be answered that based on occupation definition and its occurrence conditions, the end of occupation can be defined as below: "end of the occupation is the end of effective control of the occupied

territory by the occupying power which has been done through different ways (formal or informal) and paves the way for the fulfillment of occupying power international obligations toward the occupied country from perspective of time." Although the restoration of suspended sovereignty of the native government that had been in sovereignty before the occupation can be considered a condition for the end of the occupation it has been seen in many cases that the previously suspended sovereignty has not been able to return to the occupied territory due to different reasons. It can be inferred that this act is not a full condition and by adding it, the definition would lose its comprehensiveness. Hence, we can say that occupation is considered ended when the occupying power lost its effective control over the occupied country and is no more responsible for controlling the administration of the occupied country. The occurrence of this circumstance requires different conditions which will be discussed under the following headings (Konstantinos, 2009, p.36).

Principally, two issues shall be taken into consideration in terms of end of the occupation that one is rules and regulations relevant to human rights and humanitarian laws that are stated in international documents and the other one is activities for tracking the acts of occupying power particularly the acts within the scope of international obligations. When we talk about the end of occupation, our focus is mostly on the following issues: what have been done by occupying country during the occupation from perspective of International Law and what have not been done yet and what are the impacts of these acts on the lives of native and civilian people and how changed their lives? In other words, we can say as occupation is a temporary act in today world irrespective of its ways of occurrence and objectives, there shall be a focus on the performance of occupying country during occupation that either has considered the citizens' rights which is the main goal and has deeply rooted in the international conventions and customs or not. The judgment of public opinions is also important in this regard, as the end of occupation is not solely dependent on the occupation and occupying power, the acts of occupying country can be evaluated by consideration of citizens' rights in accordance with the achievements of International Criminal Law and can take legal actions against the felonies and crimes committed by the occupier in the occupied country.

By consideration of the violent events of the armed wars that mostly the civilians are the victim directly or indirectly, there are rules under "**Jus ad Bellum**" (The law in waging war)<sup>1</sup> that the occupying power shall not ignore them but if somehow occupation occurs, there is International Humanitarian Law under "**Jus in Bello**" (Law in War)<sup>2</sup> which shall be observed during war or military occupation. These preventing rules are the main needs in today's world based on the military progress and developments that observing them by the military forces can reduce civilian casualties. Occupation under any name or purpose does not mean the occupier has absolute freedom and can do anything. Among the different situations arises from military belligerence that affects the civilians, one of them is the phenomenon of occupation that the existence of alien armed occupying forces deteriorates the mental lives of the native people of the country and results in their frustration. From one side, there is an occupying power that has all military capabilities but on the other side, there are civilian people who are subject to the will of alien power and want security and their human rights. The humanitarian law imposes some international commitments on the occupying power following its patronage principles and specific universalism approach (The Hague Rules, Fourth Geneva Convention and additional protocol 1 of 1977). The fourth Geneva Convention stipulates its inclusion in all cases of partial or total occupation of territory even if the said occupation meets with no armed resistance (Article 4 of the Fourth Geneva Convention 1949). On the other hand, based on The Hague Convention, when a territory is considered occupied which is under the effective control of occupying power (Article 42 of the Hague Regulations 1907). By consideration of the above issues, it can be inferred that the real state of seizure and sovereignty of the occupier is the identifying factor of this situation. It is the situation that inevitably imposes obligations and commitments on the occupying country. The commitments impose big responsibility on the occupying country because of patronizing the civilians and the population under occupation and it would continue up to end of occupation and also after occupation. Therefore, the end of occupation is a step of a complicated process that its legal nature requires to be addressed from the perspective of Humanitarian Law. It means

<sup>1</sup>- According to definition of Urban Dictionary, "**Jus ad bellum**" is (the law in waging war), it defines standards by which a country can conduct war maintain that they have "just" actions in war. The term was coined in the same era in which the League of Nations originated. However, it was not used in doctrine until the late 1940s. Urban online Dictionary: <https://www.urbandictionary.com/define.php?term=Jus%20In%20Bello>. According to ICRC definition the "**Jus ad bellum**" meaning (law on the use of force) which seeks to limit resort to force between States. Under the UN Charter, States must refrain from the threat or use of force against the territorial integrity or political independence of another state (Art. 2, para. 4). Exceptions to this principle are provided in case of self-defense or following a decision adopted by the UN Security Council under chapter VII of the UN Charter. <https://www.icrc.org/en/document/jus-ad-bellum-jus-in-bello>

<sup>2</sup>- According to the ICRC organization definition: the purpose of international humanitarian law "**Jus in Bello**" or (law in war) is to limit the suffering caused by war by protecting and assisting its victims as far as possible. The law therefore addresses the reality of a conflict without considering the reasons for or legality of resorting to force. It regulates only those aspects of the conflict which are of humanitarian concern. Its provisions apply to the warring parties irrespective of the reasons for the conflict and whether or not the cause upheld by either party is just. ICRC online document: <https://www.icrc.org/en/document/jus-ad-bellum-jus-in-bello>

to address the end of the occupation as the step of a process that had a specific commencement and its continuation needs to patronize the civilians based on the basic rules of International Humanitarian Law. At the end of occupation irrespective of its form and ways, as discussed before, the performance and acts of occupying power which is including rights, authorities, and obligations shall be evaluated. Whereas the acts of the occupying country will also continue after occupation, it is required that international patronage organizations for ensuring the rights of civilians and population under occupation monitor the acts of occupying the country if needed. This issue is also restated in the Fourth Geneva Convention. The fourth Geneva Convention (Article 27) emphasizes on not violating the basic rights of the citizens of an occupied country, the basic rights which are similar with the provisions of International Covenants on Human Rights, Universal Declaration of Human Rights and in most cases is similar with The Hague Regulations rules. We can state the following rights:

- Right to life, execution solely by the court
- Prohibition of torture and insulting behaviors particularly against the women.
- Supporting the family, children, women, and mothers.
- Prohibition of prejudice.
- Respect to religion, thought, and conscience.
- Respect to the right of ownership
- Right to appropriate food and healthcare,
- Right to education
- Prohibition of irresponsible arrest and detection
- Fair trial
- Right to allegation
- Appropriate conditions for arrest and punishment
- Prohibition of expulsion and....

In addition to the experiences which show the possibility of violation of the basic rights of the citizens during occupation, the establishment of criminal courts such as Nuremberg, Tokyo, Sierra Leone, etc.... and also establishment of International Criminal Court itself shows that based on the assumed supporting objectives better than the past and the traditional concepts of end of occupation and end of the situation created by occupation, this step of occupation shall be the beginning of the implementation of criminal justice and a proper time for following up the international obligations of occupying power.

However, the civilians of the occupied country as the entitled citizens of the country face to the problems at the start of the occupation due to observing the rules and decrees of the occupying power but this issue shall not be considered as the irresponsibility of the occupying country towards the citizens of the occupied country. The occupying country in terms of bringing security and order shall take into account the time when the temporary period of occupation is ended and the results of the occupation get revealed based on the international rules. That is why the occupying power under any circumstances even in reactive circumstances is not allowed to physically punish, torture, cut any limb of the body, medical test or other violent actions and it is interesting to say that these types of illegal actions can be disclosed after the end of the occupation. Based on the article 33 of Geneva Fourth Convention 1949, the end of occupation shall not be considered as the end of responsibilities but end of occupation is responding to the severe and systematic offenses against the citizens and civilians such as collective deportation, seizure of the properties through enacting law or administrative activities within the settlement and towns' construction, separation and prejudice policies based on the ethnicity, religion, etc. These are the acts that their perpetrators shall be prosecuted in criminal courts following the specific rules and general rules attributed to Geneva Fourth Conventions (Article 3), humanity and common conscience criteria and "Martens Clause". The cases of occupation by the occupier powers by using force and firearms such as the war crimes in Iraq and Kuwait, USSR in Afghanistan, the systematic war crimes of Israel in Palestine and the occupying power in Iraq are considered crimes against humanity and these crimes either cannot be evaluated during the occupation or are not evaluated properly by the relevant impartial organs. Thus, the end of occupation is when it is possible to evaluate these crimes properly (Konstantinos, 2009, p.30).

If the acts and the offenses are considered war crimes or crimes against humanity, it is not depending on the time based on its definition even when the occupation is ended, it is prosecutable and the occupying power shall be punished. After the end of the occupation, these kinds of acts which have been committed against the victims of the occupation get legal status, and although the occupying power does not accept itself as occupier, anymore but the international community knows it as an occupier and it is emphasized to consider the rights and commitments related to occupation. It can be inferred that the end of occupation can pave the way for evaluating the acts of occupying power. It must be added, sometimes it is possible that the occupation is seemingly ended but the effective control is in the hand of occupying power because if there is such a case, the responsibility of the commitments will still remain with the occupying power and the occupation is not considered ended. As end of occupation has a direct relation with the situation

after end of occupation and the new governance system in the occupied country, so the performance of the occupying country during occupation is linked with the acts at the end of occupation, particularly the occupying country in the long occupation such as Palestine occupation deprives the citizens of occupied country of civil-political rights and known components of collective rights in terms of cultural, social and economic development and humanitarian development by implementing restrictive policies.

It is obvious that the continual and slow process of structural changes based on the development criteria needs the required actions of occupying power and the occupying power shall be asked to plan and implement its negative and required actions attributed to its rights and authorities in a way that not result in irreparable damages and backwardness. In some cases, the activities of occupiers during occupation shall not be planned in a way to make the occupied country dependent on the continued military presence of the occupiers. In other words, the withdrawal of occupiers shall not lead to the insecurity and instability that causes the occupied country to ask for the continual existence of the occupier. It can be also pointed that if geographical annexation through prohibited ways, is considered end of occupation, making the occupied country dependent to the occupying power is not acceptable so after occupation, an environment shall be created for the citizens that they can use their civil, political, economic, social and cultural rights to make their political future. If the occupying power is determined to assign a dependent and under dominance government and does not consider the alternatives or by using different ways restrict the competition for the opponents, when the occupation is ended but the influence and interference of the occupying power can be seen or the occupation is not ended but a government is established or political future is made through these illegal actions, obviously, establishment of such government instead of elected government with the new traditional criteria is not consistent with the democratic ways of making political future. In this case, also the end of occupation is a vital stage for making political future and political system after occupation, and if there is no enough accuracy or there are failures and excesses, it will not only result in peace and culture of coexistence but also creates a kind of instability (Tarazkoohi, 2011, pp. 368-387). The obvious example can be Afghanistan after end of occupation by USSR that its negative impacts and results can be still seen, it is known the victims are the citizens of the occupied country and meanwhile, after the end of the occupation, the citizens' rights derive from human rights and humanitarian law will not be observed and considered. It can also create concerns for the International Community.

### 3. TYPES OF ENDING THE OCCUPATION:

As the military occupation of a country or a part of it is considered a temporary act so is ended soon or later but it does not have only one reason, as the occupation itself could occur in different forms, its ending can be also done through different ways. Regardless of the way of occupation of a country, it is required to evaluate its ending too, here will be tried to discuss and evaluate the different ways of ending occupation under different titles.

- a. **End of occupation due to decision of occupying power:** this circumstance can have several reasons, for instance, USA government declared to UN that would end Iraq occupation on 30 June 2004 due to internal and foreign forces (the internal is the USA itself and the foreign is Iraq) and Security Council also accepted USA request in a resolution dated 8 June of the same year. But the existence of American forces in Iraq after the aforementioned date cannot be called "occupation", because there was an agreement between the two countries for one year and was extended each year until 2011 and by 2011 all American forces had withdrawn Iraq.
- b. **End of occupation due to the victory of the defending military forces of the occupied country:** for this case, there are two circumstances. One is the total occupation of a country and the other is the partial occupation of the territory of the country. In the first circumstance, if the government is established during deportation, the high-ranking officials of the occupied country (deported officials) can request for military assistance from other countries and expel the occupying power within the legitimate collective defense from the occupied country. For instance, after Kuwait's occupation by Iraqi forces in 1990, Kuwait deported government officials who requested other countries and International Community to military intervene and they responded positively and also Security Council intervened in this regard. In the second circumstance, a part of the territory of a country is occupied by the military forces of the occupying country and eventually, the military forces of occupied country defeat the military forces of the occupying country and expel them from the occupied country. For instance, Iranian armed forces could expel the Iraqi forces from the occupied cities such as "Naftshahr", "Khorramshahr", and "Abadan" by force.<sup>3</sup>
- c. **Victory of Resistance Forces:** This type of ending occupation was common for exploitation cases. In this case, eventually, the resistance forces defeat the occupying power and expel them by force, for these cases the term "expulsion" is appropriate than the "withdrawal". Because the occupying power itself does not withdraw from the occupied country but it is the continual force of the combatants that compel the aggressors to withdraw the

<sup>3</sup>- See Konstantinos M. How and when do military occupations end? Sri Lanka Journal of International Law, Vol. 21, No.1, 2009, pdf available at: <http://ssrn.com/abstract=1663054>

occupied country. It is to mention that in case of victory of the resistance force, the occupying power eventually looks for respectful ways of withdrawing the occupied country and finally aims to withdraw the occupied country by issuing a declaration or an agreement or similar documents. One of the reasons for looking lawful ways of withdrawing is to ignore after occupation obligations such as paying compensation for war damage and other similar compensations. A good example of this type of end of occupation is the expulsion of American forces from Vietnam. Another obvious example is the expulsion of USSR forces from Afghanistan that the USSR eventually lost its resistance to sacrifices and Jihad (Sacred War) of people of Afghanistan and withdrew Afghanistan territory through the issuance of “Uniting for Peace” Resolution by the general assembly of UN.

- d. **The Military intervention of international organizations:** This type of military intervention can take place by UN or regional organizations such as NATO. Obviously, such intervention will be within the frameworks of authorities given by charter of the United Nations and by laws of aforementioned organizations to repress the occupying forces and force them to withdraw the occupied country, for instance, intervention of security council (military intervention of multinational forces by permission of council) in expelling the Iraqi forces from Kuwait was very instrumental in terms of ending Kuwait occupation (Bigdeli, 2013, pp. 294-295).
- e. **Issuance of “Uniting for Peace” Resolution:** Although the decision of Security Council regarding withdrawal of USSR forces from Afghanistan on 7 July 1980 was vetoed by the Soviet Union, but the General Assembly once more issued the “Uniting for Peace” resolution with 104 votes for and 18 votes against the withdrawal of USSR forces from Afghanistan and USSR withdrew Afghanistan and ended the occupation based on the aforementioned resolution (Qasem, 2011, p.58). There are also some other situations for ending occupation such as loss of the effective control, the collapse of sovereign ruling power,<sup>4</sup> signing peace agreement or war-ending treaties with the collapse of government and transition of authority to a native government through a referendum by agreement of occupied country nation and recognition of International community (Benvenisti, 2009, p.6).

#### 4. CONSEQUENCES OF END OF OCCUPATION:

After the full withdrawal of occupiers from the occupied country, the end of occupation has the following consequences: The occupying power either during occupation or after the end of occupation shall be obliged to protect the legal position of the occupied country. If the occupying power brings some changes in legal position during the occupation due to some exceptions, it shall return it to the legal position before occupation after the end of the occupation. Article 4 of additional protocol 1 of 1977 stipulates: “The occupation cannot change the legal position of the occupied country (National Committee of Humanitarian Law of Islamic Republic of Iran, 2011, p.333).

So, after the end of the occupation, all laws, judicial provisions, bylaws, decrees and administrative and executive decisions of the occupying power will be automatically nullified and the dependent entities and structures to them will be dissolved and once more the occupied country get its former sovereignty. The vague issue in this regard does not know about the implementation of the legal position under the laws and regulations of the former occupying country. It can be justified as that its implementation is right and credible if it is not in contrast with the laws and regulations of the formerly occupied country. After the end of the occupation, firstly, the occupying power has international obligations that whether the act of occupation had international legitimacy or not. Secondly, the occupying power is accountable for all crimes committed during occupation which was discussed before. Thirdly, the real people who belong to the occupying power who committed international crimes during the occupation shall be internationally subject to punishment (Bigdeli, 2013, p.295). So, the occupying power shall take into consideration the consequences of the occupation and post-occupation obligations of itself and its dependents during the occupation period because it cannot leave the occupied country with a lot of calamities and ignore its obligations.

At the end of the occupation, all detainees and their relevant records shall be handed over to the officials of the occupied country (Article 77 of Geneva Fourth Conventions 1949). The handing over process to the government officials shall be organized and take place after proper preparedness and organization. The supporter country or International Committee of the Red Cross can intervene in this process. The Geneva Fourth Convention does not discuss whether the prisoners shall be released or keep in detention after handed over but, the fact is that they cannot see all detainees of occupation period the same because there are war criminals, political detainees, war captives and others among the detainees. Each of the aforementioned crimes has its own regulations and shall be subject to punishment accordingly. End of occupation in addition to the aforementioned consequences has some other general regulations that require to be discussed as separate and independent topics but seemingly it is out of the capacity of this article. The major regulations are war damage compensation, exchanging captives, remaking the relations and other issues (Diter, 2012).

#### 5. CONCLUSION:

<sup>4</sup> However, it has been recognized by *Debellatio* but this is obviously inconsistent with principle of people’s independence so mostly it is considered outdated.

In an overall conclusion, we can say that observing the rights and political freedoms of human and implementation of International Human Rights Law and International Humanitarian Law is important at any time but during the occupation of a country by another country, there is risk of non-observation and violation of these rights and freedoms in comparison to any other time due to potential changes that usually occur. So it is seen that from distant past in traditional rules and then in the Hague rules (early 20 century) also during development of Geneva Conventions in 1949 and then its additional protocols, the lawyers and representatives of the countries have paid enough attention to this important issue in order to better support the human rights and enact some regulations in this regard.

As it is seen, these rules and regulations are not only for the period of occupation but are also applicable for the end of occupation and even post-occupation. As every action has some effects and consequences, also the occupation has effects and negative and damaging consequences particularly when the occupation is not legitimate and the occupying power does not observe the national and international rules and regulations for the protection of humans', their properties, independence, and freedom during its dominance over the occupied territory.

The occupation usually takes a long time; also end of occupation is not an immediate action that happens immediately and leaves no effects but negative that may remain for a long term, so the rules and regulations are enacted in a way that makes the occupying power accountable for the occupied country and its people not only during occupation and withdrawal but for the long term by consideration of occupation effects and consequences.

By conclusion of the conducted studies, it can be realized that in spite of the rules and regulations which were discussed, it is seen that developed international conventions do not meet all requirements of today's world in different fields of international law such as end of occupation and still there are legal problems and ambiguity in this regard. Then, it is required international organizations such as the International Committee of Red Cross, relevant countries and organizations, training centers and researchers and others for removing these gaps try more to ensure the rights and freedoms of the humans and harness the occupying powers.

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