THE OBSERVANCE OF INTERNATIONAL LAW IN THE ADMINISTERED TERRITORIES

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I. APPLICATION OF CONVENTIONS

There is certainly a wide awareness of the great difficulty in approaching problems connected with the actual implementation of the rules of warfare without influence by innate prejudices or a deep-seated subjective outlook. The difficulty is actually twofold: the lack of that unanimity and clarity which is a comparatively frequent characteristic of municipal law, and, over and above that, the difficulty posed by political predilection. It is perhaps not superfluous to be reminded, from the start, of the well-known special characteristics of international law as put succinctly by O’Connell:

International law today is not so much a description of what States have done, as a complex intellectual construction, and it thus exhibits more affinity with the integrated exposition of the Grotian period than with the empiricism of the nineteenth century. The legal practitioner … is likely to be misled into supposing that rules of international law are more concrete and more absolute than they really are.

Before turning to the question of the observance of rules of international law, due consideration should be given to the difference between the questions connected with the observance of these rules and the prior question of the applicability of a certain set of rules to given circumstances. In other words, de facto observance of rules does not necessarily mean their applicability by force of law. There are cases of undisputed applicability of rules of law followed by no implementation, and even no protests or other censure, and there are, on the other hand, cases of the voluntary observance of certain rules unconnected with acceptance of their legal applicability.

There are no abstract legal solutions to this point, and each and every political datum is of utmost importance, not only in relation to the question of the application of the Fourth Geneva Convention, but furthermore in relation to the rights in other far-reaching subjects. The interplay of political and legal data is conspicuous. Any attempt at separation of the legal and political prob-

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lems involved, and rules of applicability, would create great difficulties \textit{de lege late}. But, on the other hand, human problems demand immediate solution.

Humanitarian law concerns itself essentially with human beings in distress and victims of war, not States or their special interests. As Max Huber said: “The fate of human beings is independent of the legal character which beligerents wish to give to their struggle.” It is, therefore, always important to seek ways and means by which humanitarian relief can be extended to victims of war without waiting for the international law to develop further and without subjecting the fate of the civilians to the political and legal reality. While political rights and the legal interpretation of a given set of factual circumstances are of far-reaching consequence for the fate of nations, and cannot be excluded from consideration, any possible separation between the decision on political issues and the pragmatic application of humanitarian rules should be considered positively. It must be borne in mind that this was also the underlying idea of Article 3, common to all four Geneva Conventions.

In my opinion there is no existing rule of international law according to which the Fourth Convention applies in each and every armed conflict whatever the status of the parties. Territory conquered does not always become occupied territory to which the rules of the Fourth Convention apply. It is apparently not so, for example, in cases of cessation of hostilities that lead to termination of war,\footnote{Oppenheim, \textit{International Law} 596 (7th ed. Lauterpacht 1952).} nor is it so in cases of subjugation,\footnote{\textit{Id.} 599.} although this question arose only before 1949.

The whole idea of the restriction of military government powers is based on the assumption that there had been a sovereign who was ousted\footnote{\textit{Id.} 434.} and that he had been a legitimate sovereign. Any other conception would lead to the conclusion that France, for example, should have acted in Alsace-Lorraine according to rules 42-56 of the Hague Rules of 1907,\footnote{Annex to the Convention concerning the laws and customs of war on land, signed at The Hague, October 18, 1907.} until the signing of a peace treaty.

As I mentioned before, I am aware of the theory of subjugation, which has been applied since World War II; if the Fourth Convention applies to every conflict, how do we adapt this theory to the Fourth Convention? In my view, \textit{de lege late}, the automatic applicability of the Fourth Convention to the territories administered by Israel is at least extremely doubtful, to use an understatement, and automatic application would raise complicated juridical and political problems. I shall mention some of them.